

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Mobil Investments Canada Inc.

v.

Canada

(ICSID Case No. ARB/15/6)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Sir Christopher Greenwood QC, President of the Tribunal

Dr. Gavan Griffith QC, Arbitrator

Mr. J. William Rowley QC, Arbitrator

Secretary of the Tribunal

Ms. Martina Polasek

November 24, 2015

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Introduction

The first session of the Tribunal was held on November 3, 2015, at 9 a.m. U.S. EST, by telephone conference. The session was adjourned at 11:01. U.S. EST.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal

Sir Christopher Greenwood QC, President of the Tribunal
Dr. Gavan Griffith QC, Arbitrator
Mr. J. William Rowley QC, Arbitrator

ICSID Secretariat:

Ms. Martina Polasek, Secretary of the Tribunal
Ms. Kendra Magraw, Assistant Secretary of the Tribunal

Representatives of the Claimant:

Mr. Kevin O’Gorman, Norton Rose Fulbright US LLP
Ms. Lucy Greenwood, Norton Rose Fulbright US LLP
Mr. Mark Stadnyk, Norton Rose Fulbright US LLP
Mr. Denton Nichols, Norton Rose Fulbright US LLP
Mr. Tom Sikora, Exxon Mobil Corporation
Ms. Stacey L. O’Dea, ExxonMobil Canada Ltd.

Representatives of the Respondent:

Ms. Sylvie Tabet, Department of Foreign Affairs, Trade and Development
Mr. Adam Douglas, Department of Foreign Affairs, Trade and Development
Mr. Mark A. Luz, Department of Foreign Affairs, Trade and Development
Ms. Heather Squires, Department of Foreign Affairs, Trade and Development
Ms. Michelle Hoffman, Department of Foreign Affairs, Trade and Development
Ms. Valantina Amalraj, Department of Foreign Affairs, Trade and Development
Ms. Melissa Perrault, Department of Foreign Affairs, Trade and Development
Ms. Darian Parsons, Department of Foreign Affairs, Trade and Development

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on October 6, 2015, as amended by the parties on October 23, 2015;
- The Draft Procedural Order circulated by the Tribunal Secretary on October 6, 2015; and

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- The parties' comments on the Draft Agenda and the Draft Procedural Order received on October 23, 2015, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration.

1. Applicable Arbitration Rules

Convention Article 44; NAFTA Article 1120

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, except to the extent that they are modified by Section B of NAFTA Chapter Eleven.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 6; NAFTA Article 1123

- 2.1. The Tribunal was constituted on September 11, 2015 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted in accordance with Article 1123 of the NAFTA and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on September 11, 2015.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.
- 2.4. The President of the Tribunal confirmed that he is not related to Ms. Lucy Greenwood of Norton Rose Fulbright US LLP, counsel for the Claimant.

3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees
 - 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
 - 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
 - 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
 - 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
 - 4.1. Unless otherwise agreed by the parties, the presence of all three Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.
5. Decisions and Procedural Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
 - 5.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.

5.4. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

6. Power to Fix Time Limits
Arbitration Rule 26(1)

6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.

6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal
Administrative and Financial Regulation 25

7.1. The Tribunal Secretary is Ms. Martina Polasek, Senior Counsel, ICSID, assisted by Ms. Kendra Magraw, Legal Associate, ICSID, or such other persons as ICSID may notify the Tribunal and the parties.

7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Martina Polasek
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: +1 (202) 458-4567
Fax: + 1 (202) 522-2615
Email: mpolasek@worldbank.org
Paralegal: Ms. Olutosin Akinyode, akinyode@worldbank.org

Ms. Kendra Magraw
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Paralegal: Ms. Olutosin Akinyode, akinyode@worldbank.org

7.3. For local messenger deliveries, the contact details are:

Ms. Martina Polasek
701 18th Street, N.W. (“J Building”)
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Ms. Kendra Magraw
701 18th Street, N.W. (“J Building”)
2nd Floor
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8. Representation of the Parties
Arbitration Rule 18

8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimant

Mr. Kevin O’Gorman
Ms. Lucy Greenwood
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Mr. Adam Douglas
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stacey.l.odea@esso.ca

8.2. Ms. Melissa Perrault, Senior Paralegal, Department of Foreign Affairs, Trade and Development (melissa.perrault@international.gc.ca) shall also be included in email correspondence in this arbitration.

9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

9.2. By letter of September 16, 2015, ICSID requested that each party pay US\$150,000 to cover the initial costs of the proceeding. ICSID received Claimants’ payment on October 30, 2015 and the Respondent’s payment on October 15, 2015.

9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

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10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); NAFTA Article 1130
 - 10.1. The seat of the Centre (Washington D.C.) shall be the place of the proceeding.
 - 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
 - 10.3. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
 - 11.1. English is the procedural language of the arbitration.
 - 11.2. Documents filed in any other language must be accompanied by a translation into English.
 - 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
 - 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
 - 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need not be translated.
 - 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.
 - 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
 - 11.8. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

12. Routing of Communications

Administrative and Financial Regulation 24

- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.
- 12.5. The parties may communicate directly with the Tribunal by email in exceptional instances, with a copy to the other party and the Tribunal Secretary, at the email addresses contained in §§ 7.2, 8.1 and 13.4.

13. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

- 13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and indices of exhibits and legal authorities,¹ and upload the pleading with the supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case.
- 13.2. No later than seven (7) days following the electronic filing, the parties shall courier to the Tribunal Secretary:
 - 13.2.1. one unbound hard copy in A4/Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);
 - 13.2.2. one hard copy in A4 or A5 format, single or double sides, of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² The A4/Letter format is required for ICSID's archiving.

- 13.2.3. two USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.
- 13.3. Also no later than seven (7) days following the electronic filing, the parties shall courier to the opposing party at the address(es) indicated at §8.1 above and to each Member of the Tribunal at the addresses indicated at §13.4 below:
- 13.3.1. for the other party: one hard copy in A4 format, single sided of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities);
- 13.3.2. for Mr. J. William Rowley: one hard copy in A4 format, single sided, of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities);
- 13.3.3. for Sir Christopher Greenwood and Dr. Gavan Griffith: one hard copy each in A5 format, double sided with spiral binding, of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and
- 13.3.4. one minimum USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.

13.4. The addresses of the Tribunal Members are as follows:

| | | |
|---|--|--|
| Sir Christopher Greenwood QC International Court of Justice Peace Palace Carnegieplein 2 2517 KJ The Hague The Netherlands Tel: +31 44 1223 276162 | Dr. Gavan Griffith QC Essex Court Chambers 24 Lincoln's Inn Fields London WC2A 3EG United Kingdom Tel: +44 20 7813 8000 | J. William Rowley QC Suite 2700, Brookfield Place 161 Bay Street Toronto, Ontario M5J 2S1 Canada Tel: +1 416 865 7008 |
| Email: | Email: | Email: |
| c.j.greenwood123@gmail.com | ggqc@gavangriffith.com | wrowley@20essexst.com |

- 13.5. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
- 13.6. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word) and compatible with both Macs and PCs. References to exhibits in pleadings,

witness statements, expert reports and other submissions shall provide a hyperlink to the relevant exhibit capable of being followed on both Macs and PCs. A footnote with a reference to an exhibit or authority shall additionally be identified by the number of that exhibit or authority (e.g. RL-001) in accordance with §16.5. The hyperlinked version shall be distributed to the Tribunal Secretary, each Member of the Tribunal and the opposing party with the materials described in §13.2.3 and §13.3.2.

13.7. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation. The hyperlinked version may be distributed to the Tribunal Secretary, each Member of the Tribunal and the opposing party with the materials described in §13.2.3 and §13.3.2.

13.8. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

13.9. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

14.1. Having heard the submissions of the Parties with regard to whether the proceedings should be bifurcated so as to provide for preliminary consideration of whether the Award in *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada* (ICSID Case No. ARB(AF)/07/4) (“the AF Award”) is *res judicata* as between the parties, having been informed that the AF Award is currently the subject of challenge proceedings before the courts of Ontario, and having deliberated upon the matter following the first session, the Tribunal has decided that bifurcation is not appropriate. Accordingly, the schedule of pleadings will be as set out in Annex A to this Order.

15. Production of Documents
Convention Article 43(a); Arbitration Rules 24 and 33-36

15.1. The parties shall file their document requests according to the schedule set out in Annex A in the form of a “Redfern Schedule” comprising four columns:

(a) Identification of the documents or category of documents that have been requested;

(b) Rationale for each request;

(c) Objections by the objecting party to the production of the requested

document(s);

(d) Decision of the Tribunal.

- 15.2. A party's request for production of documents made after the first round of pleadings shall be limited to documents which could not have been reasonably foreseen as material to the case and relevant to its outcome at the time of that party's first request for production of documents.
- 15.3. The Tribunal shall rule promptly upon any objection to the production of documents or categories of documents.
- 15.4. Documents shall be produced to the requesting party in electronic format only by sending via courier a CD-ROM, USB key or other similar media with each individual document clearly labeled with a unique identifying number and an index of the produced documents.
- 15.5. Documents so disclosed shall not be considered part of the record unless and until one of the parties submits them in evidence to the Tribunal pursuant to §16.

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

- 16.1. The parties' pleadings shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the rebuttal pleadings.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.
 - 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
 - 16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

- 16.5. The documents shall be submitted in the following form:
- 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 16.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits, “CL-” for legal exhibits containing authorities, “CW-” for witness statements and “CE-” for expert reports. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits, “RL-” for legal exhibits containing authorities, “RW-” for witness statements and “RE-” for expert reports.
- 16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 16.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 16.5.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.6. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 16.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting. In addition, as soon as possible after a hearing, the parties shall produce electronic copies of all demonstrative exhibits used in the hearing.
17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24

- 17.1. As appropriate, witness statements and expert reports, if any, shall be filed together

with the parties' pleadings.

17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.3).

17.3. Each witness statement and expert report shall be signed and dated by the witness.

18. Examination of Witnesses and Experts
Arbitration Rules 35 and 36

In addition to the guidance provided by the International Bar Association Rules on the Taking of Evidence ("IBA Rules"), the following procedures shall be followed:

18.1. For each witness, a sworn or affirmed witness statement shall be submitted to the Tribunal in accordance with the schedule set out in Annex A or any subsequent schedule determined by the Tribunal, unless the disputing parties cannot obtain such a statement from a witness for a legitimate reason which such party shall explain to the Tribunal. Each witness statement shall state the witness's name, birth date, present address and involvement in, or relation to, the case, and include a photograph of the witness.

18.2. Each disputing party shall be responsible for calling its own witness to an oral hearing, except when the other disputing party has waived cross-examination of a witness or expert and the Tribunal does not direct his or her appearance. Should the other disputing party waive cross-examination of a witness or expert, that waiver shall not be deemed an admission or acceptance by that party of the testimony of that witness or expert.

18.3. Each disputing party shall advance the costs of appearance of its own witness. The Tribunal will decide upon the appropriate allocation of such costs in its final award.

18.4. At the request of a disputing party, the Tribunal may call a witness to appear.

18.5. If a witness fails to appear when first called to an evidentiary hearing, the Tribunal may call the witness to appear a second time if it is satisfied that there was a valid reason for the first failure to appear and that the testimony of the witness is relevant and material to the outcome of the case.

18.6. The Tribunal may consider the witness statement of a witness who provides a valid reason for failing to appear when called to an evidentiary hearing or whose cross examination has been waived, having regard to all the surrounding circumstances.

18.7. At oral hearings, the examination of each witness shall proceed as follows:

- 18.7.1. The written statement of each witness shall stand as evidence in chief;
- 18.7.2. The disputing party summoning the witness may conduct a brief direct examination of the witness limited to: 1) establishing the identity of the witness; 2) ensuring that the witness is given the opportunity to correct any mistakes in the written statement; and 3) (to the extent necessary) putting to the witness any new facts and other evidence that have only come to light since the statement was submitted;
- 18.7.3. The disputing party adverse in interest to the witness may then cross-examine the witness;
- 18.7.4. The disputing party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination, with re-cross examination with respect to any matters or issues arising out of the re-examination at the discretion of the disputing party adverse in interest to the witness; and
- 18.7.5. The Tribunal may examine the witness at any time, either before, during or after examination by one of the disputing parties.
- 18.8. It shall not be inappropriate for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.
- 18.9. Each disputing party may retain and submit the opinions of one or more experts to the Tribunal. The procedural rules set out above shall apply to the opinions of experts.
19. Pre-Hearing Organizational Meetings
Arbitration Rule 13
- 19.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after prior consultation with the parties by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.
20. Hearings
Arbitration Rules 20(1)(e) and 32
- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. The hearing shall be held at a place to be determined in accordance with §10 above.

- 20.3. The date of the hearing shall be determined at a later stage.
- 20.4. The Members of the Tribunal shall endeavour to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 20.5. All hearings shall be public. However, attendance at any public hearing by any individual(s) not identified in paragraph 9 of the Confidentiality Order referenced in §27.1 shall be through closed-circuit video link. At the request of one of the disputing parties, the Tribunal shall hold *in camera* sessions to protect confidential information as defined in the Confidentiality Order. Where sessions are held *in camera*, the Tribunal shall make appropriate orders respecting the closed-circuit video link and witness exclusion from the hearings.
21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)
- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. The Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.
- 21.3. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 21.4. The parties shall agree on any corrections to the transcripts within 20 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.
22. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)
- 22.1. The Tribunal shall, in consultation with the parties, determine the schedule for the filing of post-hearing memorials and statements of costs, if necessary, in a future procedural order.

23. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4); NAFTA Article 1137(4)

23.1. The parties consent to ICSID publication of the award and any order or decision issued in the present proceeding, subject to the conditions and procedures of the Confidentiality Order referenced in §27.1, including redaction.

24. Non-disputing NAFTA Parties

24.1. The Governments of Mexico and the United States may make submissions to the Tribunal pursuant to the procedure and requirements set forth in NAFTA Article 1128 and in accordance with the schedule set out in Annex A. The Governments of Mexico and the United States are entitled to receive a copy of the evidence and written argument from Canada in accordance with the procedure and requirements in NAFTA Article 1129 and the Confidentiality Order referred to in §27.1. Responses to the NAFTA 1128 submissions by the parties shall be limited to the argument presented in those submissions.

25. Non-disputing parties

25.1. Any non-disputing party, other than a NAFTA Party referred to in Article 1128 of the NAFTA, that wishes to file a written statement to the Tribunal shall apply for leave from the Tribunal to file such a submission in accordance with the schedule set out in Annex A. The Tribunal shall consider non-disputing party submissions in a manner consistent with the recommendations of the North American Free Trade Commission on non-disputing party participation, issued on October 7, 2003. As recognized therein, the disputing parties shall have the right to respond to all applications and submissions by non-disputing parties.

26. Conservation of the Record

26.1. ICSID, Mobil Investments Canada Inc., the Government of Canada and the Government of Newfoundland and Labrador may each retain a complete copy of the record, including confidential information. All other confidential documentation relating to this procedure must be returned to the respective party or otherwise destroyed, within two weeks following the conclusion of any annulment or revision proceedings or after the time to request annulment or revision proceedings under Article 1136 of the NAFTA has expired. Members of the Tribunal need not return any confidential documentation but shall ensure that such documentation is destroyed in a manner which suitably protects its confidentiality.

27. Confidentiality

- 27.1. The Tribunal's Confidentiality Order, Procedural Order No. 2, dated November 24, 2015, applies to these proceedings.
- 27.2. Section I (Access to Documents) of the Notes of Interpretation of the NAFTA Free Trade Commission, issued July 31, 2001, applies to the treatment of documents in these proceedings.

28. IBA Rules as Guidelines

- 28.1. The IBA Rules shall be followed as guidelines on:
- (a) the exchange of documents (Article 3 of the IBA Rules, excepting Article 3.13, concerning confidentiality, which shall be governed by the Confidentiality Order referenced in §27.1);
 - (b) the presentation of evidence by fact and expert witnesses (Articles 4-6 of the IBA Rules);
 - (c) on site inspection (Article 7 of the IBA Rules);
 - (d) the conduct of the evidentiary hearing (Article 8 of the IBA Rules); and
 - (e) the admissibility and assessment of evidence (Article 9 of the IBA Rules).

[Signed]

Sir Christopher Greenwood QC
President of the Tribunal
Date: November 24, 2015

Annex A – Timetable

| DATE | ACTION |
|--|---|
| December 4, 2015 | Claimant – Request to produce documents |
| December 18, 2015 | Canada – Objections to Claimant’s document requests, if any |
| January 8, 2016 | Claimant – Responses to Canada’s objections to document requests, if any |
| January 22, 2016 | Canada – Production of documents |
| Within two weeks after Tribunal’s ruling | Canada – Production pursuant to Tribunal’s Ruling on Objections to Requests to Produce (if necessary) |
| March 11, 2016 | Claimant – Memorial with Witness Statement(s), Expert Report(s), Exhibits and Legal Authorities |
| March 25, 2016 | Canada – Request to produce documents |
| April 8, 2016 | Claimant – Objections to Canada’s document requests, if any |
| April 22, 2016 | Canada – Responses to Claimants objections to document requests, if any |
| April 29, 2016 | Claimant – Production of documents |
| Within two weeks of Tribunal’s ruling | Claimant – Production pursuant to Tribunal’s Ruling on Objections to Requests to Produce (if necessary) |
| June 30, 2016 | Canada – Counter Memorial with Witness Statement(s), Expert Reports(s), Exhibits and Legal Authorities |
| July 15, 2016 | Claimant may request Canada to produce documents based upon the contents of Canada’s Counter-Memorial |
| July 29, 2016 | Canada – Objections to Claimant’s document requests, if any |
| August 5, 2016 | Claimant – Responses to Canada’s objections to document requests, if any |
| August 12, 2016 | Canada – Production of documents |
| Within two weeks of Tribunal’s ruling | Canada – Production pursuant to Tribunal’s Ruling on Objections to Requests to Produce (if necessary) |
| September 23, 2016 | Claimant – Reply Memorial with Witness Statement(s), Expert Report(s), Exhibits and Legal Authorities |
| December 16, 2016 | Canada – Rejoinder Memorial with Witness Statement(s), Expert Report(s), Exhibits and Legal Authorities |
| January 13, 2017 | NAFTA Article 1128 Submissions and Applications for Leave to File a non-disputing party Submission |
| February 10, 2017 | Claimant and Canada Submissions, if any, on NAFTA Article 1128 submissions and on non-disputing party submissions, if any |
| February 24, 2017 | Pre-hearing Organizational Conference to be held on or near this date |
| March/April 2017 | Oral hearing on dates to be determined |