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## Judge Laments Gov't 'Inertia'

An exasperated Nunavut judge has cited a senior federal agency, the Privy Council Office, for “bureaucratic inertia” over extraordinary delays in what’s become the longest-running litigation in territorial history.

Justice Earl Johnson ordered senior civil servants to “pick up the pace” in complying with requests to disclose thousands of files in a land claim dispute entering its ninth year. “I accepted that there was a certain amount of bureaucratic inertia in a large institution like Canada,” wrote Johnson, who complained of the “leisurely pace” of Privy Council staff.

[Nunavut Tunngavik Inc.](#) sued cabinet for \$1 billion in damages in 2006 alleging that officials breached terms of an Inuit land claim settlement that led to creation of the territory in 1999. Inuit said the Government of Canada “failed to engage in good faith negotiations”, and did not pay promised benefits.

Nunavut Tunngavik has sought thousands of documents that cabinet authorities claim are privileged – some 6000 documents to date. The Nunavut Court of Justice cited staff for the casual pace of disclosure, about two documents a day.

“It’s a case that has taken a long time to get disclosure of relevant documents, longer than it should have,” said Dougald Brown, counsel for Nunavut Tunngavik. “We’ve done our best to press it along.”

“We had two status conferences, in June and August, and both times told the judge this is not moving nearly fast enough,” said Brown, partner with [Nelligan O’Brien Payne LLP](#) of Ottawa. “It’s a sizeable piece of litigation. There have been a lot of delays. We need time to review these documents before the trial.”

The case is set to go to trial on March 15, 2015. Pre-trial question of witnesses did not start till 2009. Justice Johnson noted Privy Council staff have known for years that documents were to be released, but “only at the eleventh hour has Canada put a system into place that will pick up the pace.”

“By November 28, 2013, some seven years after the filing of the statement of claim, the Privy Council Office had not even started to review the documents that might be subject to the claim of cabinet privilege,” Johnson wrote; “I was somewhat dismayed to find out that the clerk had not even started her review and that Canada failed to review the documents not subject to cabinet privilege for other claims of privilege.”

Government lawyers have argued there has been no stalling, but that all confidential cabinet papers must be examined one at a time by the Clerk of the Privy Council to ensure they can be released under the *Canada Evidence Act*. The Nunavut court noted the government has repeatedly changed lawyers, adding further delay.

Justice Johnson ordered the release of all relevant documents by January 9, 2015. "As the judge says, we need to set a hard deadline," Brown said.

By Paul Delahanty 🇩🇪 🇨🇦