

OVERSIGHT COMMITTEE (OC) MEETING

February 26, 2008

Ramada Hotel, Toronto, ON.

Participants:

Mayo Moran	Chair
Dave Iverson	Church Representative
James Ehmann	Church Representative
Alison Molloy	IRSRC Representative
Luc Dumont	IRSRC Representaive
William Wuttunee	AFN Representative
Rosemarie Kuptana	Inuit Representative
David Paterson	Claimant Counsel Representative
Len Marchand	Claimant Counsel Representative
Dan Ish	Chief Adjudicator, IAP
Ted Hughes	Chief Adjudicator, ADR
Jeffery Hutchinson	Executive Director, IAP Secretariat
Irene Fraser	Recorder

Guests:

Laura Cabott	Claimant Counsel
Dan Shapiro	Deputy Chief Adjudicator
Bill Percy	Claimant Counsel
Carol Brzezicki	Claimant Counsel
Miriam Girard	IRSRC Representative

1. Welcome to Jeff Hutchinson, Executive Director of the IAP Secretariat.
2. Approval of the Agenda, Additions

Additions:

- a) Student-on-Student Abuse
- b) Expedited hearing in the U.S.
- c) Delegation of Deputies for Reviews of Decisions
- d) Cross-over item on the CARG agenda re Loss of Opportunity Issues
- e) Oversight Independence

3. Approval of the Minutes Dec 4, 2007 & Jan 15, 2008

Approved.

4. Report from the Chief Adjudicator

- The Chief Adjudicator has to report quarterly through the monitor Crawford & Company. A draft is underway. The report is narrative and statistical. It will be shared routinely with the Oversight Committee if the courts approve its distribution to the Oversight Committee.
- Current IAP stats show 1211 new applications and 915 ADR transfers to IAP. However, there are still many ADR cases to run. This will impact on the number of resolved IAP decisions in the first year. It is to be confirmed whether ADR and IAP decisions together can make up the 2500 number of continuing claims processed in the first 12 month period, as required by the Agreement.
- In ADR Canada played a role as defendant and administrator. Canada is now taking more of a role as a defendant. The Secretariat will lead as a neutral body.
- All Regina staff are now permanently located in two locations, 1975 Scarth Street and 2<sup>nd</sup> floor 1870 Albert. The Chief Adjudicator's office is in the latter.

5. Report on Implementation – Executive Director, IAP Secretariat

The Executive Director reports directly to the IRSRC Deputy Minister and the Chief Adjudicator. The IAP Secretariat has to operate independently and must be transparent.

- Memorandums of understanding are being developed with IRSRC Human Resources, IT and Procurement.
- A business intelligence platform is being developed with the assistance of Price Waterhouse.
- Staffing positions are being filled in all areas.
- The backlog in Finance should be cleared by March 7, 2008.
- Although other names for the Secretariat have been considered, unless objections are forthcoming in the near future, the name will continue to be Indian Residential Schools Adjudication Secretariat.
- There is a request from the National Residential School Survivor's Society for simplified application forms.
- The use of form fillers is not finalized.

Discussion: A position was put forward that the use of form fillers is unlawful, akin to practicing law without a license. AFN is concerned about partial payments versus payments for the full period of time a former student attended residential school.

6. Adoption of CARG policies.

Decision: This item will come back to the OC at a future time.

7. Resolution of Distribution of Redacted copies

Resolution: The Oversight Committee resolves to rescind its decision regarding provision of unredacted decisions to counsel for the claimant and that henceforth, in accordance with the privacy clause contained in the IAP, unredacted decisions will be sent to the government and the relevant church entity, while neither the claimant nor counsel for the claimant shall be entitled to receive a copy of the decision which has the names of any abuser or alleged abuser redacted.

The word “not” following “...which does” in the second last line was in error, deleted and accepted as a friendly amendment.

Moved by Jim Ehmann. Seconded by Luc Dumont.

Decision: Motion not carried.

The previous policy regarding non-disclosure of the alleged perpetrator name in the decision if dead, medically incapable, of advanced age or not located will still stand. The CAO will issue a consolidated directive to the adjudicators to make clear the current redaction policy that is in effect.

8. Report of the Technical Sub-Committee

Dan Shapiro, Alison Molloy, Miriam Girard (for James Ward) and Len Marchand and David Paterson met by teleconference Feb 11 and in-person Feb 25, 2008.

- The document on review of legal fees will be distributed shortly to the OC for information.
- Student-on-student abuse has been added to the sub-committee agenda.
- The sub-committee has more work to do before proposals will come to the OC.

9. Prehearing Teleconference (Complex Track)

The proposal was distributed.

Decision: It was approved in principle with the changes proposed by the Technical Sub-Committee to be made before distribution. It will be distributed as a directive to adjudicators.

Decision: Dan Ish will incorporate the changes and circulate it.

10. Role of the Technical Sub-Committee

This was envisaged as a sub-committee to which the Chief Adjudicator's office could bring issues to see if there was a like understanding. The sub-committee has turned into a venue for dealing with a number of issues. The sub-committee seems to be performing the role of the previous PCAN (Plaintiff Counsel Advisory Network.) The message is that the sub-committee is performing a valuable service and that the Deputy Chief facilitator role should continue.

Jeff Hutchinson is open to meeting separately on bilateral issues between counsel and the IAP Secretariat. The issue of privacy and access to information could possibly be dealt with in a bilateral meeting. If not, it could go the Technical Sub-Committee.

This work is considered volunteer work on the part of the members.

11. Counsel who are Fired by Claimant before the IAP Hearing

Decision: This item is referred to the Technical Sub-Committee.

12. Update of RFPs

Difficulty with translation and issues with the logo have delayed the posting of the RFPs of Deputy Chief and Adjudicators. The positions will be advertised in three national papers and two weeklies.

Decision: OC members are to give their calendars to Jeff Hutchinson so that the selection board and interview schedule can be determined. Locations will be consolidated.

Decision: The newspaper advertisement is an opportunity to explain who/what the Secretariat is. The title should be changed to show that the RFP is about residential schools. The use of multiple logos is acceptable. The draft is approved with the changes.

13. Form Fillers

This item is to be added to the next agenda.

14. Performance Evaluation Criteria

The CA and the deputies will review the process for evaluation of adjudicators and report back to the OC.

15. Standing Item: In-Camera Session

Decision: Future agendas are to include an in-camera session which allows members to bring forward their views on adjudicators, Canada's representatives and claimant counsel.

16. Notice to Claimants on Reopening Claims

A paper was distributed for discussion. The recommendation on the second page is to be considered in a conference call:

- IAPS identifies eligible claimants and invites them to consent to participate in the re-opener process.
- The IAPS forwards these claims to Deputy Chief Adjudicators, who will oversee the assignment of files to adjudicators.
- Adjudicators determine whether a hearing, paper review or other suitable option is appropriate and whether an expert assessment is required.
- This option is relatively simple, financially efficient, claimant-friendly, context-specific and is consistent with the Settlement Agreement.

Decision: There will be a conference call on March 11, 8:00 a.m. B.C. time to discuss the recommendation at the bottom of the 2<sup>nd</sup> page.

*Note: The conference call was cancelled.*

#### 17. Legal Counsel Website

The website should be easily searchable and private. Further discussion on the website could be part of the discussion on privacy and access to information.

#### 18. Restriction on Contacting POIs.

An information item, Briefing Note Persons of Interest POI information, was distributed by Alison Molloy.

#### 19. Transcription Policy

This is being reviewed. Oversight Committee will receive recommendations from the review when it is ready.

#### 20. Priorizing IAP Hearings and Requirements of a Doctor's Letter

The IAP and DR, Appendix XI for both, give priority to applications from claimants who submit a doctor's certificate indicating they are in failing health. However, there is inconsistency throughout both in terminology. There are references to treatment professional, expert, medical professional, etc. Given the inconsistency it was argued that "doctor's certificate" can be taken to mean "medical evidence." This is important as it is difficult in remote communities, particularly in the North, to get a doctor's certificate. The community health nurses in the communities are often more aware of a person's state of health and can provide supporting documents.

Recommendation: When considering priority of applications that Crawford accepts a letter on failing health from a community health nurse.

Decision: There is agreement in principle. Jeffery Hutchinson and Dan Ish will develop the wording to be used.

#### 21. Accountability of Crawford

It is not known who to take a complaint to if there is one on the intake process. Crawford's admission role is an extension of the IAP Secretariat.

Decision: Jeffery Hutchinson will communicate soon on how to go forward with a complaint.

#### 22. Deputies re: Reviews

Page III r. IAP Oversight Committee lists a duty of OC as, "Approve designates to exercise the Chief Adjudicator's review authority as set out in tem l (i) above."

Dan Ish asked the OC to approve the four Deputy Chiefs and the 5<sup>th</sup> one to be hired as his designates to conduct reviews and act as an ex officio at the discretion of the Chief.

Decision: Approved.

#### 23. Expedited Hearing

There is a request from a claimant in poor health to hold the hearing in Washington, U.S. CARG had made a decision, rather than a policy, not to do hearings in the U.S.

Decision: There is a sentiment to try alternatives that may assist the resolution of the file. The possibility of conducting the hearing via a web link or video link is to be explored.

#### 24. Student-on-Student Abuse

Section of Appendix VIII, page 30, says,

With respect to student-on-student abuse allegations, the government will work with the parties to develop admissions from completed examinations for discovery, witness or alleged perpetrator interviews, or previous DR or IAP decisions relevant to the Claimant's allegations.

Decision: This is to be dealt with bilaterally. Churches will be invited to participate.

#### 25. Oversight Independence

A governance discussion needs to take place. This item is to go on the next agenda.

26. Next Meeting

April 8, 2008 in Calgary