

OVERSIGHT COMMITTEE

May 21, 2008
Listel Hotel, Vancouver

Chair: Mayo Moran

James Ehmann	Church Representative
David Iverson	Church Representative
Len Marchand	Claimant's Counsel
David Paterson	Claimant's Counsel
William Wuttunee	AFN Representative
Luc Dumont	IRSRC
James Ward	Department of Justice
Jeffery Hutchinson	IRSAS
Dan Ish	Chief Adjudicator
Irene Fraser	IRSAS (Recorder)

Guests: Alison Molloy (morning)
Dan Shapiro (9:00 a.m. to 10:00)

Regrets: Rosemarie Kuptana

Item 1. Additions and Approval of the Agenda

Additions:

- a) September meeting date
- b) Transfer to Indian and Northern Affairs
- c) Additions to the list of residential schools
- d) Student abuse reopeners
- e) Communication to NAC regarding not meeting the target

Deletions:

- a) Remove 3 e) from the agenda

Agreed that Alison Molloy would be present for the discussion from the Technical Working Group.

Agenda approved.

Item 2. Approval of April 8, 2008 Minutes

Page 2, 3 c). Remove the last line of the first paragraph. Reopener decisions will be open to review.

Page 4, bullet 3 is to read: The parties will meet bilaterally to discuss disclosure of documents and admission of knowledge in student on student claims. If requested, the Chief Adjudicator's Office could provide someone to lead the discussion.

Page 5, 9, first bullet. Take out the sentence, "The reason must be stated in less than 3,500 words. Add, "The reason will be stated in writing."

Page 6, Persons of Interest Report. "Circulate" should be "circulated."

Approved as above.

Item 3. Matters Arising from the Minutes

a. Protocol for Adding and Deleting to the Roster of Experts

There is agreement about the protocol but a question around implementation, primarily because of procurement issues.

Decision: Jeffery Hutchinson and James Ward will examine the document and report back to the next meeting.

b. Discussion Paper on Governance

- This is a body unlike a board of directors. It does not contemplate fiduciary duties.
- Responsibility is not to the "corporation" or the organization. Members of the Oversight Committee are responsible to the stakeholders.
- There must be sensitivity to confidentiality.
- It is implicit that the stakeholders have a responsibility to make sure that the process works for the reasons it was established.
- There are additional requirements in place established by the courts.
- The government is the administrator under the Settlement Agreement.

c. Confidential Distribution of Canada's Comments

Decision: Comments on hearing decisions and/or participants can come forward from any party but should come to the OC meeting at least two weeks ahead of the meeting.

Concerns or kudos should identify the issue, the name of the adjudicator and claimant counsel, the file number and church entity.

d. Persons of Interest (POI) Report

The following recommendations were discussed.

1. In cases where the allegation made against a person of interest is not proved at the claimant's hearing it will no longer be necessary to hold a POI hearing unless the adjudicator is of the opinion that the holding of the hearing may assist in determining credibility or, with the claimant's consent, a hearing is to be held for the purpose of giving the person of interest the opportunity to confess.

Agreed but needs more specific wording.

2. In cases where the allegation is withdrawn, it will no longer be necessary to hold the hearing for the person of interest.

Discussion: This requires qualification. A withdrawal should require consent of the parties or a decision by the adjudicator. It was suggested that if an allegation is withdrawn the person of interest must be heard, if they so wish. The adjudicators must test why an allegation is withdrawn; filter out "tactical withdrawal". Withdrawing because of mistaken identity is reasonable. The POI should be informed as to why the allegation is withdrawn. The evidence of the POI could be germane to the credibility of the claimant.

3. In cases where a new allegation is made against a new POI, the timelines set forth in Appendix III (ii) of the Settlement Agreement apply (60 days to locate except where contacted by a church entity by agreement, then 90 days, with a maximum of 75 days from contact for the POI to decide to participate and provide a statement or an interview.) If the timelines are not met the hearing should proceed without further involvement of the POI.

Accepted.

4. If the POI fails to attend a hearing without reasonable excuse, the hearing should proceed without further involvement of the POI.

Accepted.

Other points:

- By the time a hearing begins the contact process with the POI should have been completed.

- Adjudicators have not been consistent in withdrawing allegations.
- If the adjudicator feels that the allegations are not proven, Canada must be informed so that the POI can be informed.
- The POI's name must not appear in the decision.
- Particular concern was expressed when allegations are withdrawn in cases of student-on-student sexual assault because of the pressure on the claimant.

Decision: Dan Ish will redraft the above and bring it back to the next meeting.

e. Case Management (CM)

- Swat team worked in CM.
- Intense work begun to streamline the process.
- Looking for a minimalist approach to negotiated settlement.
- The 9 month obligation is a concern.
- Recognition of the need for making it easier for the parties to communicate with the Secretariat.

Decision: The Secretariat will convene a meeting to discuss case management.

f. Discussion Paper on Transcript Policy

Six questions are raised in the paper. James Ward wants to consult with Department of Justice staff on the consistency of the policy with the Privacy Act and the Access to Information Act. Another question: Should the Secretariat send out a reminder of confidentiality when sending out the transcript?

Item 4. Chief Adjudicator's Report

- Given that Adjudicator Jane Morley was appointed to the Truth and Reconciliation Commission (TRC), adjudicator recruitment will be for 34 contractors rather than 33.
- Dan Ish met with Harry Laforme, chair of the TRC and with Michael Wernick, Deputy Minister of INAC.
- Interviews for the Deputy Chief will be held next week.
- 49 people, including 8 Aboriginal applicants, have been screened into IAP adjudicator competition.
- ADR cases and negotiated settlements will be included in the measuring performance requirements.

Decision: 1) Jeff Hutchinson will ensure that selection panel members receive the entire RFP submitted by the applicants.

2) Grant Britton will arrange a conference call with the "super panel" if necessary subsequent to the interviews.

Item 5. Executive Director's Report

- The TRC launches officially June 1.
- June 11 is the date of the Prime Minister's apology to former residential school students.
- There is a new tool in Finance for tracking OC payments. All cheques up to year end have been mailed out.
- Total account of DR cases is 1843; 533 DR cases are being processed, 863 DR cases are at the Secretariat; 427 are post hearing. Approximately 100 DR cases are being heard per month.
- 860 IAP cases are still in admissions, approximately one half are at secondary review. 2374 cases are with the Secretariat. 37 IAP cases have been scheduled. 3 are post adjudication. The rate of new applications is approximately 100 per week.
- A mapping (workload analysis) of the process will be available at the next meeting.
- Letters for LOO reopeners are going out immediately. The student-on-student letter is not ready.
- Johanna Hill will arrange for a meeting to discuss reframing of PCAN.

Discussion: We must make all parties aware that the process is moving. Can the figures be broken down into represented versus unrepresented claimants?

Item 6. Report of the Technical Sub-Committee

DCA Dan Shapiro reported on behalf of the Committee.

- Actual Income Loss – There has not been an AIL hearing yet. The Guidance Paper has been circulated to the parties. It needs to be communicated to self-represented claimants, possibly in a standard letter prior to the pre-hearing conference.
- Similarly, the basic information on OWA needs to go out.
- An economist from Vancouver, Rob Carson, met with the Technical Sub-Committee. He is prepared to provide information on six levels of education attainment as predictors of life time earnings. The information will have to come from census reports through Stats Canada. He also gave a report to the TSC on the possibility of using a website where the variables for the AIL process could be plugged in so that an adjudicator would be able to aid their decision without hiring an economist. The package would not include allowances for traditional income nor will it be able to take into account the dramatic differences across the country.
- The Technical Sub-Committee is working on a list of economists for use by the adjudicators.
- Cost of living is going to be factored in to the numbers. There is no agreement regarding interest on the AIL.
- Rob Carson should present at the adjudicator training.

Item 7. LOO 4 & 5 Waiver Update

Canada has instructed and provided guidelines to its staff regarding the discretion to waive LOO 4 & 5.

Item 8. One-Stop Shopping for Medical Experts

Decision: Jeff Hutchinson will report at the next meeting.

Item 9. In- Camera Session

Decision: There was discussion on an interpersonal issue.

Item 10. Scheduling of Hearings

Discussion: If any of the parties find a 9:00 start time a problem then by consent the start time will be adjusted.

Decision: Irene Fraser will convey the concern to the schedulers.

Item 11. Time Limits for Reviews

Decision: Dan will draft a motion for the next meeting.

Item 12. Communication to IAP Claimants about Delays in Implementation – Len Marchand

The topic was introduced and put over to the next agenda.

Item 13. Concerns re timelines of DOJ Attending Hearings – Len Marchand

Dealt with in Item 10.

Item 14. July 29 Confirmation of Meeting Date

July 29 in Vancouver is confirmed.

Item 15. September Meeting

The Oversight Committee will meet September 30, 2008 in Regina. A teleconference may be called for Sept 9th.

Item 16. Transfer of Indian Residential Schools Adjudication Secretariat to Indian and Northern Affairs

- There are mixed feelings about the transfer.
- The decision came out of the Prime Minister's Office.
- The court was consulted on the decision.

- INAC has great capacity regarding corporate services.
- DM Michael Wernick is supportive of the independence issue. However, it will be a challenge in some instances to separate the Secretariat from the government.

Item 17. Additions to the List of Residential Schools

Only two schools have been added to the list since the Settlement Agreement was signed. The Settlement Agreement sets out the test for accepting the schools in Article 12 of the SA, page 63. Provincial schools such as Ille a la Crosse in Saskatchewan do not fit the criteria. Other schools are being researched. Appeals can be made by the requester, first to Crawford, second to NAC or the supervising judges.

Item 18. Training

The default package from the economist will be circulated to the OC and is to be ready for the training.

Decision: The draft of the training manual is to be ready for distribution for the July 29 meeting.

Chairperson Mayo Moran

Date