

OVERSIGHT COMMITTEE (OC)

Sept 9, 2008

Ramada Hotel
Toronto, Ontario

Chair: Mayo Moran

David Iverson	Church Representative
Len Marchand	Claimant's Counsel
David Paterson	Claimant's Counsel
Luc Dumont	Government of Canada Representative
William Wuttunee	AFN Representative
Rosemarie Kuptana	Inuit Representative
James Ward	Department of Justice
Dan Ish	Chief Adjudicator
Jeffery Hutchinson	IAP Adjudication Secretariat
Irene Fraser	IAP Adjudication Secretariat (Recorder)

Regrets: James Ehmann

1. Additions and Approval of the Agenda

- a) Timeliness of decisions
- b) Disclosure issue
- c) Reopeners
- d) Future meetings, including location of October 1st meeting
- e) Proposal on the Criteria for the Selection of Hearing Location

Items 6. f and g can be removed from the agenda.

Agenda approved.

2. Approval of the Minutes

- a) May 13, 2008 Conference call

Approved.

- b) June 20, 2008 Minutes

-The second last bullet is to read, "The goal is to move 1700 to 1800 files as soon as possible to Hearings Management."

-In the last bullet insert the word "proposed" in front of "change".

Accepted with the revisions.

c) July 29 In-camera Minutes

The wrong copy was submitted. It will be resubmitted.

d) July 29, 2008 Minutes

- Page 2, under first decision, add “to” in the first line behind “not”.
- Page 3, 2nd bullet, change “on” to “of”
- Page 3. Chief Adjudicator’s Report, #4, 3rd bullet, remove “to produce the case of 2500”.
- Page 4. Last bullet under the Executive Director’s Report regarding form fillers. Remove the second sentence and replace it with, “Two law societies consulted expressed that it is not an unauthorized practice of law if form fillers assist only with filling out applications as directed by the claimants.” The last sentence of that bullet should be removed and replaced with, “The Secretariat is considering issuing an RFP seeking an Aboriginal organization to develop a training program and an accreditation program for form fillers.”

Accepted with the revisions.

e) June 20, 2008

The minutes for the June 20th in-camera conference call will be provided at the next meeting by Mayo Moran.

3. Executive Director’s Report

- The total number of new IAP claims is 3991. Total number of claims in the process is around 7000.
- Within the 3991 claims, there were 169 non-admits.
- Approximately 100 of the 169 non-admits are because the school named in the claim is not covered in the Settlement Agreement (SA). Thirty-nine are already settled through another process. A few have allegations which do not fall within the SA.
- Of 3991, 1200 are from AB, 1000 from BC, 662 from MN, SK is around 470, 26 from NWT, 19 Nunavut, Yukon 132, Quebec 21 French & 77 English, Ontario 230, New Brunswick 3, Nova Scotia 11, Prince Edward Island 1, Newfoundland 1.
- 47 hearings were scheduled last week; about 600 so far this year.
- Many files are on hold, mostly due to claimant preferences.
- Approximately 40 NSP decisions per month are anticipated in the future.
- Workmen’s Compensation and Corrections Records will not be necessary in cases where the claimant indicates no such records exist.
- There was minimal response to the letters which went out to counsel from Case Management.

- The first resolution conference, now called “block hearing conference”, was held and considered a positive advancement. These will be less suitable for income loss cases. Complex cases need to be grouped in one mini block and standard in another mini block to accommodate the best use of time of the Department of Justice representative or the Resolution Manager.
- Dedicated hearing space in Winnipeg, Regina, Edmonton and Vancouver will be ready shortly.
- The website will have an accessible database in the future.
- The financial system is being revised. The Secretariat is still behind in processing invoices.
- David Paterson, William Wuttunee and Jeffery Hutchinson were at a meeting regarding form fillers with Ken Young from AFN, representatives from the Manitoba Chiefs, B.C. Indian Residential Schools Survivor’s Society, the National Indian Residential Schools Survivor’s Society and Health Canada. Another meeting is to be held on Sept 12, 2008.

Discussion:

- The churches are experiencing a significant drop in requests for church presence, possibly up to two-thirds. This may result in a change in their approach to hearings.
- Development of criteria was suggested for the contracting process of form filling. Canada’s role would be a monitoring function, not an administrative one.
- It will be useful to have the number of cases that are complex vs. standard, AIL, OWA included in the stats.
- There is a reluctance to use NSP when the claimant is self-represented. The involvement of an adjudicator will be helpful in these cases.
- Four types of Negotiated Settlement:
 1. At the end of the hearing, there is agreement by the parties with the adjudicator’s assessment of the claimant’s testimony.
 2. Previous testimony from the examination for discovery and/or the DR hearing is available.
 3. The case is straightforward, such as standard track, and the ground rules are agreed to.
 4. The Loss of Opportunity Reopeners could be negotiated.
- Len Marchand offered kudos to the Department of Justice and Luc Dumont for the success to date on negotiations.

Decision: An update from Jeff Hutchinson regarding NSP is to be on the next agenda.

4. Chief Adjudicator’s Report

- The pool of potential adjudicators may be exhausted as we did not recruit the number of adjudicators we expected notwithstanding a significant advertising and outreach effort.

- Procurement and financial issues continue to be taking too much time. For example, we are being asked to be accountable before we have even spent the money for the training. The Chief Adjudicator is pursuing these issues.
- Delia Opekokew is now carrying out the duties as a Deputy Chief.
- The Chief Adjudicator met with Randy Bennett and Chief Justice Winkler.
- A copy of the Quarterly report was given to OC members. The Quarterly report is a document of the Courts and while the information in it can be shared, the document itself cannot.
- The Chief Adjudicator must present an annual report to the Oversight Committee. The OC can decide whether to make it public.

Decision: Agreed that the first annual report will be based on the calendar year; therefore, the first report will cover the period from September 19,2007 to December 31,2008.

Discussion:

- There is a complaint that the amount of time it takes to get a hearing is long, particularly in Quebec. An effort is being made to reduce the time frame as much as possible.

Decision: Jeff Hutchinson will present a written interpretation to OC of the commitments to hold a hearing within nine months of applications being accepted and the target of 2500.

Decision: A statistical report is to be a standing item on future agendas.

Decision: Irene Fraser is to send out the names of the adjudicators to the Oversight Committee.

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

Decision: There is concern about adjudicators, who are contractors, retaining an expert from the Roster. A short term strategy and a long term strategy to address this is being developed by Procurement.

6. One Stop Shopping

This item is to be on the agenda following the October 1st meeting.

7. Persons of Interest (POI) Report

Dan Ish presented a redraft of the previous draft of the POI policy.

Discussion:

- The policy should use the term “alleged perpetrator” rather than POI (persons of interest) as the alleged perpetrator is the term of the Settlement Agreement.
- If the parties consent to the withdrawal of allegations, the adjudicator does not need to make a decision about withdrawal of the allegation. If there is no agreement then it is up to the adjudicator to make the decision.
- It is important to consider the timing of the withdrawal. If the allegation is going to be withdrawn, the withdrawal should be done before it goes on the record. If the evidence is on the record then the alleged perpetrator has a right to be heard.
- Claimants may want to withdraw an allegation because of confusion or realization that they have attached the wrong name or are unsure about the name they have attached to the alleged perpetrator.
- If an allegation is made and testimony is given then in the absence of consent among the parties, the alleged perpetrator has the right to give evidence.
- If the allegation is withdrawn it is not to impact the award of points.
- Adjudicators must send a written notice to the parties of withdrawal of the allegation.

Decision: Dan Ish will revise the draft and bring it back to OC.

8. Transcript Policy

Canada’s representatives gave the result of their reflection on the discussion paper presented to OC on May 21, 2008.

Suggestions for change to the current policy:

- If one party gets a copy of the transcript then it is to be sent to all parties.
- In cases of adjournment the current policy suggests that a transcript go to the parties if a significant period of time of five to six months has elapsed. The time period should be three to four months. In complex track cases, requests for transcripts will be honored regardless of the time period.
- Change POI to alleged perpetrator to reflect the wording of the Settlement Agreement.
- The alleged perpetrator should not be entitled to a copy of their own transcript.

Decision: James Ehmann’s opinion on the above point should be sought before changing the policy.

- Conditions of confidentiality and destruction of transcripts do not have to be imposed on anyone receiving a transcript other than the claimant.

- A fee should not be charged for receipt of a transcript.
- A transcript for purposes of reviews will be sent on request.

Decision: James Ward will provide Dan Ish with a written copy of the suggestions.

9. Time Lines for IAP Reviews

Decision: Revision accepted.

10. Use of CEP evidence in the IAP Claims

While Canada is confident about the research for the CEP payments on the years of attendance identified by claimants at residential schools that research is not to be taken as an absolute confirmation of dates by adjudicators at hearings.

11. Canada's Comments

To be on the agenda of the next meeting.

12. Proposal on the Criteria for the Selection of Hearing Location and Process

Luc Dumont gave an overview of *Proposal on the criteria for the selection of hearing location and process to change hearing time and location*.

Discussion:

- Some of the issues are operational rather than ones that require Oversight approval.
- The challenge of holding hearings in homes is not questioned. Can the necessity of holding a hearing in a claimant's home be questioned by Hearings Management? What are the exceptional circumstances? Can alternatives to holding the hearing in the claimant's home be suggested to claimant's counsel or the self-represented claimant?
- It would be helpful to have basic principles for hearing locations.
- Jeff Hutchinson wants this to be an internally written document. When it is ready he will share it with the Oversight Committee.

13. Next Meeting

Timeliness of Decisions, Disclosure Issue, and Reopeners to be carried over to the next agenda.

The next meeting will be in Toronto. Mayo Moran has to be absent for part of the morning. In her absence David Iverson will chair.

Chairperson Mayo Moran

Date