

OVERSIGHT COMMITTEE
October 1, 2008
Ramada Hotel, Toronto, ON

Chair: Mayo Moran

David Iverson	Church Representative
Alison Molloy	INAC (Alternate for James Ward)
Luc Dumont	INAC
William Wuttunee	AFN Representative
Len Marchand	Claimant Counsel
David Paterson	Claimant Counsel
Jeffery Hutchinson	IRSAS
Dan Ish	Chief Adjudicator
Irene Fraser	Recorder

Regrets:

James Ehmann	Church Representative
Rosemarie Kuptana	Inuit Representative
James Ward	Department of Justice

At the invitation of Mayo Moran, David Iverson chaired from 8:15 to 10:30 a.m. Mayo Moran chaired the remainder of the meeting.

1. Additions and Approval of the Agenda

- The transcript policy item will be moved to the next agenda.
- A Statistics report will be included in the Executive Director's Report.
- Approval of June 27, 2008 In-camera Minutes

Additions:

- Health Canada Counseling Supports
- Provision of Decisions to NAC for CEP Appeal Purposes

Approved.

2. Approval of Minutes

- a) June 20, 2008 In-camera Minutes
- In the top right hand corner, page 1, note "Solicitor/Client Privilege."
 - Add names of participants.
 -

Accepted with changes.

- b) June 27 In-camera Minutes
 - Add “Solicitor/Client Privilege” to top right hand corner of page 1.

Accepted.

- c) July 29 In-Camera Minutes to be provided at the next meeting.
- d) Sept 9, 2008 Minutes

- Page 2, d) “replace” should be “replaced.”
- Page 2, item 3, 8th bullet to be replaced with “Workmen’s Compensation and Corrections Records will not be necessary in cases where the claimant indicates no such records exist.
- Page 3, 2nd bullet, “data base” should be “database”.
- Page 3, under the heading Discussion, 1st bullet, change “may require” to “may result in”.
- Page 3, add the four types of Negotiated Settlement and the kudos to the government on the item, Decision.
- Page 3, item 4, 2nd bullet, change “spend” to “spent”.
- Page 3, item 4, 3rd bullet, change the sentence to read, “Delia Opekokew is now carrying out the duties of a Deputy Chief.
- Page 4, item 7, 1st bullet, replace “this” with “the alleged perpetrator”.
- Page 5, 2nd bullet, remove “(unless the parties agree otherwise)”.

Accepted with changes.

- e) Sept 9, 2008 In-camera Minutes.

- In the top right hand corner note, “Solicitor/Client Privilege”.
- First page, 3rd bullet, change “Bruning” to “Brunning”.
- Page 2, 2nd bullet, take out the word “not”.

Accepted with changes.

3. Executive Director’s Report

- The operational focus is on Hearings Management.
- Claimant preference for location of hearings is changing.
 - 3.6% of hearings have been held in claimant homes.
 - An analysis showed age, health, mobility and psychological health to be the major reasons for holding hearings in the home.

Decision: If a specific location for the hearing is requested, claimants or claimant’s counsel must give a reason. A doctor’s certificate will not be required. The claimant preference form will be changed to reflect this.

- Resolution conferences are gaining momentum.
- The analysis of geographical distribution of claimants and the benefit to scheduling of hearings is ongoing.
- Current financial processes to manage the invoices associated with hearings are struggling to adapt to the increased scale but the processes are being reinforced.
- The contract with the firm responsible for the adjudicator database must be on a long term basis.
- Expert assessments are being monitored to ensure compliance with procurement contracting rules.
- Mid-year forecasts are underway. Sufficient resources are not expected to be an issue.
- A meeting between Jeff Hutchinson and the Deputy Minister confirmed his respect for the independence of the Secretariat.
- The issue of form fillers for self represented claimants is still not settled but has been the subject of rich and colourful discussion. The decision does not have to be signed off by the Oversight Committee.
- Statistics:
 - The number of files in progress is approximately 6000. This includes transfers but not reopeners.
 - 205 files have been rejected for admission, mostly because the school attended is not on the approved list.
 - 767 hearings have been scheduled, 695 held.
 - 726 DR cases are still in the system.

Discussion: The Protestant churches want to be given the choice of participation when changes to the hearing process are discussed. They want to be notified of discussions when negotiated settlements are proposed so they can respond. Concern was also expressed about the downward trend of requests for church attendance at hearings. Jeff Hutchinson is invited to attend the next ecumenical meeting.

4. Chief Adjudicator's Report

- The feedback from the Adjudicator training in September was positive. We have 78 adjudicators plus four Deputy Chief Adjudicators.
- The Adjudicator website is very important to the adjudicators work, in particular for those who are new. It has been down for several months; it is important that it becomes operative as soon as possible.
- The security restrictions associated with moving protected documents causes delays in getting decisions out as quickly as possible. Transferring documents electronically would be a real improvement and is being explored.
- The system for gathering reliable statistics is a work in progress.

Discussion: Claimant counsel want access to redacted decisions. It might be possible for the Deputy Chief Adjudicators to select a few decisions with significant issues and make them available to counsel.

- Personnel Issue – Ms. Blair’s employment is terminated by mutual consent. The Deputy Chief Adjudicator position left vacant by the termination of Ms. Blair will not be filled immediately. Various options will be explored to find a French speaking Deputy as well as the possibility of recruiting more Aboriginal candidates as adjudicators.

5. Matters Arising from Minutes

a) Draft Policy on POI Hearings

The draft was circulated. Suggestions for change:

- Item 3. c. replace “person of interest” with alleged perpetrator.
- Must add a piece saying that the adjudicator will send written notice to the parties of the withdrawal.
- In the opening paragraph, eliminate the word guidelines.
- Item 3. Replace “that all allegation has not been provided, it will not be necessary to hold a hearing...” with “that the allegation has not been proved, a hearing will not be held...”.
- Item 4. says “...unless the parties agree...”. As the draft is written, if the Church is not present at the hearing then the Church will have to be contacted. Staff can send a letter and ask for a response within ten days.
- Item 5. The sentence is to begin with, “Where an alleged perpetrator hearing has not been held because the allegation has been withdrawn or has not been proven...”

Approved subject to the above changes being made by the Chief Adjudicator.

b) Communication

Does the Secretariat have a communication plan if the 2500 target is not met?

Decisions:

- This was an information item. A draft plan will be provided.

c) Negotiated Settlement Process (NSP)Update

Luc Dumont reported 44 NSP cases have been settled. 644 cases have been identified so far as having potential for settlement and 212 cases are active. All of the cases moved forward for settlement have been successful.

Canada's focus is on the cases which can be settled prior to holding a hearing (pre-hearing) and wrapping up cases where there is an examination for discovery or where claimants are ill.

Negotiations on loss of opportunity are not part of the 44 which have been settled. There have been 13 loss of opportunity settlements. They are tracked separately.

Decisions:

- Luc Dumont will submit a report on NSPs prior to the next OC meeting.
- Dan Ish will give adjudicators direction to be pro-active about settlements.
- Pre-hearing and post-hearing settlements are to be recorded separately to ensure they are not recorded twice.

6. Timeliness of Decisions

A concern was expressed on the lack of timeliness of decisions. If specific file information is provided to the Chief Adjudicator's Office then follow-up can be done with the adjudicator.

Adjudicators are reminded frequently of the importance of timely decisions. Currently two adjudicators are "on probation" because of late decision submissions. The Chief Adjudicator's Office is implementing a new bring forward system for tracking late decisions which will mean tighter supervision.

7. Reopeners

A guidance paper was issued to adjudicators. Student-on-student internal procedures are being developed.

8. Training

The agenda for the French training was received for information. It is set for Nov 20th and 21st in Montreal. All adjudicators fluent in French have been asked to attend.

9. Interpretation of Production Benchmarks

Document provided for information.

10. Health Canada Supports

To be put over to the next meeting.

11. Provision of Decisions to National Administration Committee (NAC) for CEP Appeal Purposes

Luc Dumont spoke to the issue of providing ADR/IAP decisions as part of the package to the NAC for cases of CEP appeals. The question is whether or not decisions need to be redacted before being included. Luc wanted to make sure Committee members were comfortable with having unredacted decisions sent to NAC and wondered whether it is necessary to make others aware that we would be doing so. There is an associated disclosure agreement with the package and documents are returned to Canada once a decision is made. The documents will be provided only to the same parties as represented on the Oversight Committee.

Decision: No opposing views were provided.

12. Dates of Next Meetings

The next meeting will be held on November 21st in Montreal, the second day of the French training. If possible, arrangements are to be made to share lunch on the 21st with the French adjudicators.

Future dates are January 6, 2009 in Vancouver, February 3 in Toronto, March 19 or March 24 in Regina.

Note: The meeting in March is confirmed for March 24th.

Chairperson Mayo Moran

Date