

OVERSIGHT COMMITTEE
Sept 22, 2009
Marriott Courtyard, Toronto

Mayo Moran	Chairperson
David Iverson	Church Representative
Mitch Holash	Church Representative
David Paterson	Claimant's Counsel
Len Marchand	Claimant's Counsel
Alison Molloy	Government of Canada Representative
Luc Dumont	Government of Canada Representative
William Wuttunee	Assembly of First Nations Representative
Les Carpenter	Inuit Representative
Dan Ish	Chief Adjudicator, IRS Adjudication Secretariat
Jeff Hutchinson	Executive Director, IRS Adjudication Secretariat
Irene Fraser	Recorder, IRS Adjudication Secretariat

Guests: Deputy Chiefs Dan Shapiro and Kaye Dunlop, present only for the report of the Technical Sub-Committee; Randy Bennett, Court Counsel for National Administration Committee

1. Additions and Approval of the Agenda

Delete: Report of Research.

Additions:

- a) Closing of ADR
- b) Articling Student Issues
- c) Teleconference Security
- d) Qualifications of Adjudicators
- e) Compensation Improvement Project and Negotiated Settlements

Approved.

2. Approval of Minutes of August 5th

Minutes approved with changes.

3. Technical Sub-Committee

The Committee met the previous evening. In attendance: Dave Iverson, Mitch Holash, DCA Kaye Dunlop, Susan Riley, Alison Molloy, DCA Dan Shapiro, Len Marchand, David Paterson.

Dan Shapiro reported for the Committee.

- The paper on student-on-student reopeners was originally written and intended to be guiding instructions to adjudicators. However, it became a guidance paper and as such Canada and claimant counsel had concerns.

Decision: DCA Kaye Dunlop will clarify the questions raised. The document will henceforth be an instruction paper for adjudicators, not a guidance paper. It will be posted on the web site as will the Opportunity Loss Paper.

- The letter to the expert as currently written is somewhat disconnected from the summary guideline for psychologists but are being sent out together.

Decision: DCA Kaye Dunlop will revise the template of the letter to the expert so that it is more in sync with the summary.

- In a standard case plausible link has to be established but there is considerable inconsistency in decisions.

Decision: Alison Molloy will prepare suggestions for consideration.

- In cases where counsel appear to have a conflict of interest, adjudicators were advised by the Chief Adjudicator to deal with it in a conference call in advance of the hearing if there is prior knowledge. Otherwise, adjudicators are to seek advice from the party alleging the conflict and then assume jurisdiction to deal with the conflict.
- Adjudicators have been asked by counsel to become involved in disagreements concerning legal fees where a claimant has changed lawyers in the course of a file. Neither the Secretariat nor adjudicators are to become the arbiter of fees between lawyers.
- The objectives of a short form decisions are understood by the churches. The churches are delegating the authority to Canada to consent to a decision on their behalf.

Decision: Canada will determine whether they can accept short form decisions and under what restrictions, including how to manage the review timelines.

- Admission of one line of denial from an alleged perpetrator will be monitored to determine whether action needs to be taken to address the shortage of information.
- There are continued delays of in obtaining alleged perpetrator hearings.

Decisions: Schedulers will be asked to immediately take a more court-like approach and schedule the alleged perpetrator hearing at the same time as the claimant's hearing, but

six weeks apart. The negotiating of dates is to be curtailed. A date will be set and if the alleged perpetrator cannot make it, the case will have to be made as to why the alleged perpetrator cannot attend or the hearing will go ahead.

A template, *Alleged Perpetrator Information Form*, was recently introduced to the adjudicators to assist with speeding up delivery to Canada of the summaries of new allegations or retractions.

Decision: Dan Shapiro and Dan Ish will consider revisions to CA Directive #6.

Decision: Alison Molloy and Len Marchand will gather more information on a concern raised regarding contacting witnesses who are not listed as alleged perpetrators.

4. Matters Arising

a) Update on Procurement of Experts

Jeff Hutchinson distributed partial results from ZSA, the firm hired to review the potential candidates for the roster. There are still names to be vetted. Viewpoint Medical indicated a reluctance of the experts associated with their firm to be interviewed, primarily psychiatrists, due to very busy practices and their proven record with Viewpoint.

Decisions:

- a) Similar organizations to Viewpoint should be invited to submit names of experts for the roster.
- b) A roster of candidates chosen on the basis of suitability after review of the interview information is to be presented by Irene Fraser and Jeff Hutchinson two weeks prior to the next meeting. OC members are to ask their constituents if they have comments on the names submitted and forward comments to Jeff Hutchinson and Irene Fraser.
- c) If OC members have questions they feel are necessary as follow-up they are to draft and submit them to Jeff Hutchinson and Irene Fraser.

5. Matters Carried Over

a) Oversight Committee Governance

Decision: Mayo Moran will invite Kerry Eaton to one or more a meetings to provide feedback to OC on governance issues.

b) Exchange of Gifts

Decision: Dan Ish will set the basic elements of a policy on exchange of gifts for adjudicators, will let the adjudicators know that it was raised at OC and ask them to

send him a note if gifts are offered and/or received at hearings so that he can monitor whether this is a problem.

c) Admissions: Partial Years of Operation.

There are schools on the SA Schedule F list which did not operate as a residential school for a full period of time, for example, a burned school closed for rebuilding or a school operating as something other than a residential school, a hospital or day school. There is no capacity to fact find in the Admissions Unit and, therefore, a claim can be admitted into the process even though it is not valid. In such cases it is likely that the claim will go forward and possibly be identified and dealt with prior to the hearing. If not, it is up to the adjudicator to determine validity.

A revised list will be forthcoming from NAC but is not likely to be comprehensive regarding operating dates. It is not likely that it will state which church operated which school as has been requested by the churches.

6. Executive Director's Report

- Legal counsel updates – first batch of those has gone out. On the same page with the file in respect of being on the same page with the firm. Will be helpful with blocks.
- The Adjudicator RFP is going out tomorrow, Sept 23. The RFP was revised slightly as agreed to by members through email to reflect both the decision at the previous meeting and the wording of the SA for non-lawyer applicants. It will read that the candidate must have a university degree and two years experience as an adjudicator.
- A timeline of screening and interviews will be sent out shortly. Training of the new adjudicators is likely to be the third week in February.
- The statement of work for the expert assessment procurement is done but the best way to carry this forward is still not determined.

7. Decision Database

- A draft plan will be presented at the next meeting.
- There will be a working tool in December.
- The input of the Chief Adjudicator and the Deputy Chief Adjudicators is required to determine key decisions to be posted on the website. Consideration will be given to claimant counsel requests for a decision to be included on the database.
- Decisions that go up will not have a precedential value but rather the value will be interpretation.
- Churches and counsel will have access.

- The redaction protocol needs to be determined. Redaction principles need to be upheld.
- What will be the search capabilities?
- The database will have a bilingual capacity.

Decision: The TSC is to be asked to consider the issue of redaction of decisions for the database.

8. Chief Adjudicator's Report

- The Chief Adjudicator will be meeting with the Deputy Minister tomorrow, Sept. 23 to discuss the difficulties posed by Canada's role as administrator.
- The interview for the French adjudicator is done and reference checks are underway.

Decision: The Oversight Committee approves appointment of the top candidate subject to positive reference checks.

- Many requests for extension of the review period are coming in.

Decision: Dan Ish will review the draft policy.

- The Adjudicator Evaluation process is approved subject to the questions raised.

Decision: The document will be sent out to adjudicators and claimant counsel.

9. Completion of Adjudicator Decisions

Delays in decisions to the parties continue to be an issue. There is a request that some statistics come forward from the Secretariat so that this can be looked at objectively.

Two pages were received from Canada, titled IAP Compensation Steps and NSP Performance and Targets.

10. H1N1 Planning

A committee of the Secretariat is drafting a document which is looking at how the Secretariat can manage should there be a major outbreak. Videoconferencing of hearings will be a last resort.

11. Future Dates

November 3 – Winnipeg
 December 15 - Ottawa.
 January 26 - Toronto
 February 23 – Calgary
 Apr 7 - possibly Vancouver