

OVERSIGHT COMMITTEE (OC)

December 15, 2009

Toronto, ON

Chair: Mayo Moran

Stephen Kendall	Church Representative
Mitch Holash	Church Representative
Luc Dumont	Government Representative
Alison Molloy	Government Representative
Les Carpenter	Inuit Representative
William Wuttunee	AFN Representative
Len Marchand	Claimant Counsel Representative
David Paterson	Claimant Counsel Representative
Dan Ish	Chief Adjudicator
Jeffery Hutchinson	IRS Adjudication Secretariat
Leah Kraft	IRSAS, recorder

Guests: Kerry Eaton; Daniel Shapiro was present for the TSC report.

1. Approval and Additions to the Agenda

Add:

- a) In-camera Session
- b) Posting minutes on website

2. Technical Sub-Committee Report

Dan Shapiro reported for the TSC.

Short form decisions

- Crawford has put together the electronic format
- An instructional video is being prepared for Adjudicators and parties
- SFD format will be posted on the website

CAD-6

- Consensus around a revision to this directive, Dan Shapiro will work on a draft for review by other members

SCC cases on incarceration

- Put over to next meeting

Letter to experts

- Dan Shapiro will follow up with Kaye Dunlop regarding the status of this

Decisions database

- Discussion continued on the level of redaction of decisions but still no agreement
- The more fundamental issue is whether there should be a database
- Intermediate options discussed included
 - Turning the issue over to the CA
 - A more limited database, e.g. review decisions, complex track, novel interpretation points, cases where knowledge is actual or constructed knowledge is established.

OC Discussion

- Mitch raised issue of whether access to decisions database would be contrary to the SA, and if so, what was appropriate forum for amendment to SA
- Discussion continued around access and ensuring level playing field while respecting privacy issues

Decision: Issue handed over to Dan Ish to come back with recommendations.

3. Review of Key Performance Indicators (Jeff Hutchinson)

- Three documents were circulated – IRSAS dashboard report as December 6, 2009, Adjudication Secretariat Statistics from September 19, 2007 to December 6, 2009 and a new one, Admissions weekly snapshot, which gives the breakdown of how Admissions is working within the Secretariat
- Highlighted that number of hearings scheduled has passed the 2500 mark, for 2009 will be around 3000
- Have targeted 44 decisions released per week – were behind but are now are on track for this
- In terms of trends, have remained at approximately 90 new applications per week
- Kerry indicated that this is not surprising – would expect this level of consistency
- In terms of processing by province, claims are processed more quickly in BC because BC Government gets the documents to the claimants more quickly than other provinces
- Secretariat has initiated discussions with provinces/territories regarding document collection
- Biggest factor in moving claim through the process is the document collection – in cases where 9 months not met, most often attributable to delays in obtaining documents

4. Executive Director's Report

- Secretariat has added a number of resources since early October
- Priority for the Secretariat is in hearings management – although we have resources in place to support a higher number of hearings, there are still issues, mostly internal conflicts that are affecting productivity
- Have provided training in public service values and ethics
- In last two weeks of November, saw logistics getting towards the service standard, however, we continue to see cases where notice and logistics are last

minute.

- Are continuing to look at options for taking burden off process, including changes around distribution of work and payment processes
- Don't read the SA as obligating the Secretariat to do as much as it does, e.g. disbursements – Secretariat is doing 40,000 financial transactions/year
- Looking at whether claimant counsel should be looking after travel and billing as disbursement – pushing operations to operate like a court registry
- Len Marchand – suggested would be helpful if worked with claimant counsel on this
- Interviews for additional Adjudicators being held this week, will have list which will need to be approved by OC asap to meet timelines for getting contracts in place and training scheduled
- OC agreed to a conference call on December 23rd
- Discussion around rigor applied to screening of applicants, OC agreed to look at the screening process before next round of hiring

5. Chief Adjudicator's Report

- Staffing continues to be a challenge
- A monitoring system has been put in place to track decisions
- Will be setting clear expectations for Adjudicators with regard to timelines for decisions
- In terms of service standard – are getting close to 14 day turnaround
- Short form decisions have been sent to NAC and don't anticipate issues with approval
- Need to set up a line of communication with the TRC – want to be sure that TRC has the right information and numbers when referring to IAP
- Need for a liaison person between IAP and TRC
- Worthwhile to have 3-4 people that have been through process to have a meeting with the three Commissioners
- Further discussion on relationship with TRC resulted in OC agreement that there should be a subcommittee on TRC – noted that Stephen, David and Luc were already on TRC Advisory Committee – subcommittee could include these three along with Dan
- In addition, informal lines of communication will continue between Dan and TRC Chair, Jeff and Executive Director, TRC
- On NAC – Dan will be drafting a paper on the relationship between NAC and the IAP for the OC to consider

6. Decisions required:

- a) Update on Procurement of Experts (Jeff Hutchinson)
 - The accountability framework is ready to go – has been approved by OC in principle

- Outstanding issue is around the management of fees – Canada wants a framework, a briefing note has been distributed which sets out some options
- An approved fee schedule may be a way of managing fees
- Following review of briefing note, Len advised that 3 of experts recently approved were not with Viewpoint – Secretariat to follow up and confirm

Decision: Approve option D set out in briefing note, revised as follows – Subject to the addition of the three recently approved experts not with Viewpoint, approve the hourly rates for the list of experts set out in annex “A”, limit the use of other approved experts whose rates are greater than those set out in annex “A’ to cases where annex “A” experts are not available or a particular specialization not offered by these experts is required.

b) Database Plan (Jeff Hutchinson)

- Discussed under Report of Technical Sub-Committee

c) Referencing Decisions in Hearings (Dan Ish)

- Dan Ish indicated that the position was that in hearings, parties were not to reference decisions and that he would further underscore this with the Adjudicators
- Examples where provided as to when it is very useful to make such references, e.g. providing Adjudicators with other cases where traditional healing programs were used as part of future care
- Canada confirmed that representatives had been instructed not to reference decisions
- Discussion around whether this could be tied to limited database approach – could include key cases
- Discussion around the option of directives/guidance papers
- Dan Ish confirmed that review decisions would be distributed, will discuss with DCA to see how this can be done in a systematic way

Decision: OC confirmed that decisions are generally not to be referenced in hearings as they are of no precedential effect.

7. Protocol for Adding and Removing Experts from the Roster

- David Paterson reported that two experts, Dr. Robinson and Dr. Devrome, who were not added to the roster at the last OC meeting because they hadn’t confirmed interest in participating, have since provided confirmation of interest
- A copy of the draft protocol for adding to the roster was briefly discussed

Decision: Approve the addition of these two experts to the roster and revise the draft protocol for discussion at the January meeting.

8. Update on Future Care Plan (Len Marchand)

- Not discussed as the issue was not clear

9. Outreach Strategy (Jeff Hutchinson)

- A draft outreach strategy and deck were circulated
- Jeff gave a brief summary of the strategy – outreach would be focused in those regions where, based on the gap analysis, there was low uptake
- Secretariat will be in contact with local bars and regional organizations in these areas, the north needs particular attention and Quebec needs a unique strategy
- Jeff stated that the Secretariat would be happy to receive OC feedback before the next meeting

Decision: Review and provide feedback to Secretariat at next meeting.

10. Publication of Admissions regarding Student-on Student Abuse (Len Marchand)

- Len Marchand briefed the OC on the issue – certain scenarios regarding student-on-student abuse under the Settlement Agreement where the onus is on the claimant to establish that Canada and/or the Church knew, or ought to have known, about the abuse
- Len Marchand stated view that once this onus has been met, Canada is obliged under Schedule D to share this information with claimant counsel more broadly, rather than on a case-by-case basis, would be beneficial to the whole process if this information was shared and counsel would be in a better position to know if the claimant had a case before filing an application
- Canada expressed view that it has interpreted the relevant section to apply on a case-by-case basis and that it is not in a position to publish admissions for all schools
- Jeff Hutchinson suggested the need for a practical solution, indicating that with the establishment of the secure website for EDI, could look at posting minimal information that would allow claimant counsel to determine if there was sufficient info to make further inquiries

Decision: OC to consider the database recommendation and Canada will further consider its position on the issue.

11. Posting Minutes on Website

- Issue raised about minutes on website not being kept up to date and need for evaluation tools for Adjudicators to be kept current and posted
- Also suggested that CA directives be moved from claimant counsel section of website
- Secretariat to follow up on these issues

Added to Agenda

a) Update on Processing of Cheques (Luc Dumont)

- Currently taking 89 days to process payments.
- Making progress with respect to separating processing of awards and legal fees/disbursements
- Need to separate the process for self-represented claimants.
- Hoping to get cheque processing down to 62 days
- In terms of the timing to get cheque issued after request for payment made – 25-30 days

c) Update on ADR (Alison Molloy)

- Progress is being made with remaining inventory
- In terms of hearing scheduled, the numbers still look low to DRO – in some cases, have lost touch with self-represented claimants and claimant counsel
- Are a number of model Bs that were moved to model A with little information coming
- Would like to ensure that Adjudicators are aware that DRO is trying to close the ADR process by March 31st and want to look at fast tracking any assessments
- Model B claims should be given priority
- No possibility to extend ADR authorities – anything not heard by March 31st will be transferred to IAP
- Jeff indicated that IRSAS schedules ADR claims as soon as they are ready – have to balance hearing these claims with meeting obligations with respect to number of IAP hearings required under the Settlement Agreement

Next meeting: January 26th in Ottawa.