

Oversight Committee (OC)

April 7, 2010

Listel Hotel, Vancouver

|                  |                                     |
|------------------|-------------------------------------|
| Mayo Moran       | Chair Person                        |
| David Iverson    | Church Representative               |
| Les Carpenter    | Inuit Representative                |
| William Wuttunee | AFN Representative                  |
| David Paterson   | Claimant Counsel Representative     |
| Kerry O'Shea     | Claimant Counsel Representative     |
| Luc Dumont       | Government of Canada Representative |
| Alison Molloy    | Government of Canada Representative |
| Jeff Hutchinson  | Executive Director, IRSAS           |
| Dan Ish          | Chief Adjudicator                   |
| Irene Fraser     | IRSAS, recorder                     |

Regrets: Mitch Holash, Church Representative

Guests: DCA Daniel Shapiro to report for Technical Sub-Committee; Leah Kraft, IRSAS; Kerry Eaton, Crawford Class Action Services

1. Approval of Agenda

In the future there is a suggestion to have a standing item of past issues on the agenda. Future agendas will not have approval of the agenda as items are to be submitted in advance.

2. Technical Sub-Committee (TSC) – Deputy Chief Adjudicator Dan Shapiro

- There have been 138 short form decisions (SFD) written, 129 released since Jan 16, 2010.
- There is general agreement that the SFD option is working. However, there is a request from Canada to modify the form. Alison Molloy will be providing Dan Shapiro with more information.

Decision: Oversight Committee is to review the SFD option again in six months.

- David Paterson and Alison Molloy will meet to discuss changes to the IAP application and bring a draft copy back to the TSC for the next meeting. Once finalized by the TSC, it will go forward to the OC. A major change is addition of an alert to claimants that all alleged perpetrators are contacted.

- Canada is considering ways to minimize the risk to claimants and alleged perpetrators. Alison Molloy will report back to the TSC.
- Revisions are being made to the letter to the expert requesting an assessment. This will be shared with DCA Kaye Dunlop.
- The previous discussion regarding articling students was not published. However, a new policy has not been adopted; the standing policy was previously reaffirmed.

Decision: There will be no exception to the decision regarding articling students. The issue of legal fees in such cases will be left to the adjudicator.

- The Supreme Court decision negating compensation for incarcerated time is not public policy. The plausible link test still applies.
- The Resolution Health Support Workers need up-to-date information to ensure that the correct information is being given to claimants.

Decision: Luc Dumont liaises with Health Canada. Health Canada is to be advised of changes in the process.

### 3. Approval of the Minutes – Mar 1 & 2, 2010

Approved.

### 4. Matters for Decision

#### a) Future Meeting Dates, 2010

June 1, Calgary  
 July 27, Quebec City  
 Sept 21, Toronto  
 Oct 19, Ottawa  
 Dec 14, Vancouver

### 5. Confidentiality of Hearing Recordings

Confidentiality is the underpinning of the IAP. There is a question as to who owns the information and how will it be managed in the future. Canada and the churches also require clarity on what the courts will consider full and final release.

Decisions:

- 1) Jeff Hutchinson will prepare a briefing to OC on the possibility of a court order.
- 2) An outside legal opinion will be sought on the issue.

These steps will assist the OC to determine an opinion which may be put forward to the courts.

#### 6. Review of key performance indicators

Jeff Hutchinson distributed statistical information. The number of claims has exceeded 15,000. 10% of claims are non-admits.

Decision: Jeff Hutchinson will provide the next meeting with a report of the counsel who have a significant number of files pending.

Alison Molloy reported that there are 223 ADR cases left, only two require hearings. She expressed gratitude for the effort by everyone to bring things to this point.

#### 7. Executive Director's Report

- Prior to the meeting, Jeff Hutchinson emailed a revised comparison of courier costs versus electronic distribution of information (EDI). There were no objections from OC members. They expressed their readiness to have this move forward.
- As a last step on the database issue, Jeff will check with member Mitch Holash who was unable to attend this meeting to see if he is in agreement with the other OC members on using the placeholder method of redaction of decisions for the database.
- Advice received is that the redacted information is not at risk of being circulated.

Note: Mitch Holash relayed his agreement to Jeff Hutchinson.

- The expert assessment package will be emailed to members a final time.

Decision: If there is no response from members it will be considered approved.

- Six staff have been hired for Hearings Management.
- The possibility of limiting the search criteria for corrections records is being considered by the Secretariat.
- The database of claimant counsel has been revised which increases the total number to approximately 300 names.

Decision: A reminder is to go to staff that mailings to claimant counsel from the Secretariat are to include the other parties at the same time.

## 8. Chief Adjudicator's Report

- A framework is being developed to deal with the more serious complaints about claimant counsel conduct. Several options will be considered including resolution through a case management approach, assigning someone to undertake an investigation, and referral to the Law Society.

Decision: Jeff Hutchinson will come back to OC with a framework.

- INAC is asking for increased, stringent security measures to be taken by adjudicators regarding protected information.

Decision: Jeff Hutchinson is following up.

- Court Actions:

1) The B.C. court decision regarding legal fee reviews applying to negotiated settlements has been appealed on the grounds that the original courts did not have the jurisdiction to delegate authority to adjudicators to do fee reviews. Canada will respond as will the lawyer for the Chief Adjudicator.

2) The Quebec action continues.

3) There is an application before the Manitoba courts seeking judicial review of a legal fee review.

- The Annual Report from the Chief Adjudicator was distributed.

## 9. Matters for Discussion

### a) Meeting with TRC

The meeting held on March 2 with Executive Director Tom McMahon was discussed. The OC will continue to be supportive and collaborative of the mission and efforts of the TRC. The Secretariat is planning involvement in the TRC's first national event which will be June 16 -19 in Winnipeg.

### b) Funding from Health Canada

There is no knowledge of any change to the Health Canada support program for former residential school students and their families. However, Luc Dumont will follow-up on specific evidence forwarded to him.

## 10. Oversight Committee Report from Kerry Eaton

Kerry Eaton was excused for the discussion on the report.

- Future items for discussion by OC should be ones with a “shared sense of purpose” for all members.
- The focus of the meetings would benefit from less time spent on informational issues and more time on larger issues such as protecting privacy, areas of the country that are underserved, winding down the program, claimant counsel issues and succession planning.

Decision: A time line on the strategy to meet Sept 18, 2012 is to be prepared by the Secretariat for the September OC meeting.

Decision: A “go forward” list will be kept and brought to future meetings. The agendas are to specifically set time aside for larger discussion items.

#### OC Discussion on Confidentiality

- What are our obligations regarding privacy?
- Is there a time limit on confidentiality of the files?
- What are the risk areas where confidentiality might be compromised?
- Is it certain that court access is the only way to access the files?
- After a certain time, will family have access to the files?
- How do we achieve the goals of the IAP and the TRC?
- How can we make the truth known while equally protecting the claimants?
- How can the OC ensure confidentiality continues after the IAP finishes?

#### 11. Report from Luc Dumont

Canada has met its goal of processing payments of awards within 60 days after Canada receives the decision. They also achieved 390 negotiated settlements in the 2009/2010 fiscal year.

#### 12. William Wuttunee

William Wuttunee was thanked for his contribution as AFN representative to OC. Paul Favel has been appointed by AFN to be their new representative at future meetings.