

OVERSIGHT COMMITTEE (OC)

March 29, 2011

Toronto, ON

Mayo Moran	Chair
David Iverson	Church Representative
David Paterson	Claimant Counsel Representative
Les Carpenter	Inuit Representative
Paul Favel	AFN Representative
Luc Dumont	Government Representative
Akivah Starkman	IRSAS
Dan Ish	Chief Adjudicator
Irene Fraser	IRSAS (Recorder)

Regrets: Alison Molloy, Mitchell Holash, Kerry O'Shea

Guests: Michael Mooney, Crawford Class Action Services; DCA Daniel Shapiro for Technical Sub-Committee only; Randy Bennett, Court Counsel, morning only.

1. Technical Sub-Committee

a) Chief Adjudicator Directive, Hearings for Alleged Perpetrators

Decision: Luc Dumont will check to see if Canada's representatives have received notification, as discussed at the last OC meeting, that it is not necessary to contact alleged perpetrators in circumstances where the alleged perpetrator is named for the first time at the hearing, but the allegation is withdrawn.

b) Short Form Decisions (SFD)

There was discussion on possibly relaxing Canada's internal policy that it will not consent to SFDs in cases where a Schedule P release is required. Luc Dumont will advise as to whether Canada will consider an exception to this policy in cases where the claimant was a day student and records to support this exist.

c) Reopening of Student on Student Cases Settled in Litigation

Kerry O'Shea had invited the Chief Adjudicator/Deputy Chief Adjudicators to advise as to whether a student on student reopener is available for cases settled in litigation. The Chief Adjudicator advised that he declined to offer an opinion on the issue in this forum given that if such cases are put forward and denied admission, the Chief Adjudicator would be called upon to decide the matter by way of an admission appeal. The latter would therefore be the most appropriate venue to address the matter, with specific facts and submissions to assist in the resolution of the issues.

d) Source on Admissions

There was discussion on the possibility of short form decisions being used as a basis to support admissions regarding student-on-student future cases. Canada's position was that it is not in the Agreement. The TSC recommended that the Chief Adjudicator consider instructing adjudicators that short form decisions are not to be used in student-on-student cases where findings of staff knowledge are not derived from existing admissions.

Decision: It was further decided to table a decision on whether admission sources from examinations for discovery could be included in the IAP database.

e) Student on Student Admissions After a Decision

At the last OC meeting Canada had asked for more time to review a draft policy presented prior to that meeting. Following review, Canada advised that it was not in a position to consent to either aspect of the draft policy – (a) gathering the evidence and adjourning for submissions; or (b) re-openers. Mitch Holash advised that his constituents shared Canada's concerns with respect to the draft policy because of concerns that it may mean a change to the Settlement Agreement. Mr. Holash provided a memorandum outlining a position on behalf of the Catholic entities: an OC resolution would require Canada consent. David Iverson advised that his constituents support the draft policy in principle, provided it is not used as a basis to reopen other aspects of the Settlement Agreement.

Options:

- Do nothing and let matters unfold. This will perpetuate unequal treatment of claimants depending on whose case is heard first and is apt to create a bottleneck in the orderly wind-up of the IAP.
- Claimant counsel could take the matter to the Courts for directions – Claimant counsel are considering this but would likely need to wait until September, 2012 at which point all admissions would be published and counsel would be able to bring hard factual data before the courts in support of the request for directions.
- The Chief Adjudicator could establish a policy which would be subject to challenge.
- The parties could continue to try to achieve consensus.

Given the drawbacks associated with (a), (b) and (c), it was agreed that further efforts be undertaken to attempt to achieve consensus.

Other issues of discussion considered by Canada to be related:

- Location of hearings.
- Cases not ready for hearings.

2. Alternates for OC Members

This meeting was without quorum. In the past members have often had an alternate attend for them when they have been unable to attend the meeting.

3. Minutes

- a) Minutes of January 25, 2011
- b) In-Camera minutes January 25, 2011

Decision: Both sets of minutes were approved subject to approval by the members absent. Irene Fraser is to contact those absent to see if they have comments.

Note: Approved by all as of April 12, 2011

4. Performance Indicators

Akivah Starkman reviewed the documents sent by email with the agenda.

- Approximately 28,000 claims are expected to be received.
- The ratio of active files to those on hold is about 2 to 1.
- There were 845 hearings last quarter and an unacceptable rate of cancellations. The cancellation issue is under study.
- We have adjudicator capacity but the capacity of Hearings Management and Canada are problematic.
- The average time from receipt of application to decision is 16 to 17 months.

5. Meeting with National Administration Committee (NAC)

A joint meeting with NAC was proposed.

Decision: Dan Ish and Randy Bennett will follow-up and suggest June 22 as a meeting date.

6. Chief Adjudicator's Report

- The Justice Winkler decision on legal fee reviews has been issued. The stay order is lifted. More than 900 legal decisions were released by the Secretariat after the decision was released.
- Regarding the Merchant firm appeal to the BC Court of Appeal (BCCA) of the NSP decision of Justice Brenner, our lawyer has received notice that the issue has been moved to the six month non-active list by the BCCA. If there is no activity on the file by the Appellant within six months, the appeal will be deemed to be abandoned.
- The bias issue of an adjudicator raised by a party is before Justice Winkler.
- The Quebec cases are moving very slowly.

- In some cases claimant counsel are not meeting with their clients prior to the hearing. The certification in the application by some counsel that there has been an in-person meeting with the claimant is questionable.

Discussion: Cases are not to go forward without counsel signing the certification in the application form. If it is not signed, it is an incomplete application and should not go forward. It should be returned to counsel and counsel given an opportunity to provide a completed application. A turn around time of three weeks was suggested as reasonable.

- Some claimant counsel are using the application as a ticket to get into the IAP and therefore submitting poorly filled out applications.
- Discussion: A system is required to check the application before it goes forward to ensure that the application is reasonably filled out and certified by counsel.

Decision: Dan Ish is to notify counsel and adjudicators that adjudicators can consider a figure of less than 15% as contribution towards legal fees if counsel have done less than satisfactory work on a case. Canada's contribution of 15% is not to be seen as a guaranteed minimum fee. The issue is whether a legal fee is fair and reasonable and in some cases a 15% fee may be found not to be fair and reasonable for the legal services provided a claimant.

7. Executive Director's Report

- The Secretariat will be going back to Treasury Board with a completion strategy requesting resources to 2017.
- Outreach is being increased.
- A strategy on how to deal with applications that come in after Sept 19, 2012 has to be developed. It may mean that they will have to go to the Supervising Courts for direction.

8. New Adjudicator Numbers

No more than twenty adjudicators are to be hired. Hiring will be based on needed requirements versus depending specifically on ranking.

9. Future Meeting Dates

Change April 10, 2012 to April 17, 2012.

10. Adjudicator Training Agenda

A draft agenda for the training in August was distributed with the agenda for discussion.

Luc Dumont would like to see any additions that are going to be made from the last training manual to the one that will be used in August. They will be provided.

11. Truth and Reconciliation Commission

- Dan Ish and Akivah Starkman met Murray Sinclair, Willy Littlechild, Tom McMahon and Kim Murray.
- There seemed agreement that it would be a historical wrong for accounts of the experiences of former Indian residential school students to be destroyed. The issue of the status of our records will continue to be an issue, particularly their status upon the completion of the IAP. More information from and discussions with Libraries and Archives Canada is required.
- The TRC will have access to our statistical information.

12. Comments by Canada re Adjudicators

Provided to the Chief Adjudicator to be dealt with appropriately.

13. Departure of Luc Dumont

Luc Dumont will be leaving his current position July 1st to take the position of Associate Regional Director General for AANDC in Quebec City. The OC will be notified of the name of the replacement when that is apparent.

14. Next Meeting

May 10, 2011, Toronto