

Oversight Committee Minutes
May 10, 2011

Metropolitan Hotel, Toronto

Mayo Moran	Chair
David Iverson	Church Representative
Mitch Holash	Church Representative
David Paterson	Claimant Counsel Representative
Kerry O'Shea	Claimant Counsel Representative
Alison Molloy	Government of Canada Representative
Luc Dumont	Government of Canada Representative
Les Carpenter	Inuit Representative
Paul Favel	AFN Representative
Akivah Starkman	IRSAS
Dan Ish	Chief Adjudicator
Irene Fraser	IRSAS (Recorder)

Guests: Michael Mooney, Crawford Class Action Services; DCA Dan Shapiro, Technical Sub-Committee; Randy Bennett, Court Counsel

1. Technical Sub-Committee (TSC) – Dan Shapiro

a) Schedule P and Non-Resident Claimants

Canada will revisit its policy regarding the use of short form decisions for these claims, particularly in cases where the claimant was a day student and records to support this exist.

b) Student on Student Admissions

Further to Chief Adjudicator Directive 8, Canada was asked to provide all admission sources including that from examinations for discovery, school histories, litigation and decisions.

There are 375 decisions on the database in total. While it is becoming more populated and functioning well, the decision where an admission was made at a hearing may not be on the database.

Head notes are needed on about 50 SOS decisions. This is a Secretariat responsibility. (Note: This turned out to be only 29.)

c) Follow-up to discussion on Chief Adjudicator 6 on Hearings for Alleged Perpetrators.

Luc Dumont advised that Canada's representatives will not insist on notifying the claimant if the alleged perpetrator is named for the first time at a hearing and is withdrawn at the hearing unless there is an issue with respect to credibility in which case the person may be contacted.

- d) Canada requested that decisions not be posted on the IAP database until the review period is passed and, if under review, that it be held until the review is completed.

Decision: The database will be changed so that decisions under review will be tabbed so that there is access to the decision but it is identified as being under review.

- e) A revised draft to the Chief Adjudicator's Policy regarding Canada's admissions of staff knowledge / failure of supervision in cases of allegations of student on student: (a) physical abuse; and (b) sexual abuse that is below level 4 or is not predatory or exploitative, was discussed.

Consensus could not be reached. Canada has indicated that it will consult on this most recent version of the draft. Canada feels related issues such as financial, scheduling and cancelling of hearings, complex track preliminary case assessments need to be considered in the discussion. Claimant Counsel were not prepared to support a process whereby Canada had the unilateral ability to consent or withhold its consent to a reopener.

Gathering data on the number of claimant counsel holding applications pending possible admissions, particularly student-on-student ones, is difficult.

One application for a reopener has already been brought to the Chief Adjudicator.

Major challenges such as reopening of the Settlement Agreement and the principles of fairness and justice associated with new evidence have to be weighed. If there is no resolution at this level, the issue may have to go before the Courts for direction or before the Chief Adjudicator in response to an actual application.

Decision: Akivah will check into the possibility of gathering more data.

- f) Disbursement Disputes

Where an adjudicator has to adjudicate a dispute between Canada and counsel, a decision must be written. The Chief Adjudicator was asked to include a reminder in the next CA Update.

2. Approval of Minutes

- a) March 29, 2011

- 1 a) Should read: 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.
- The second sentence of 1 e) should conclude with, “because of concerns that it may mean a change to the Settlement Agreement.”
- Include in 1 e) Replace the third sentence to read: Mitchell Holash provided a memorandum outlining a position on behalf the Catholic entities: an OC resolution would require Canada’s consent.

Approved with the above changes.

b) In-Camera Minutes, March 29, 2011

Approved.

3. Key Performance Indicators – Akivah Starkman

- Total number of hearings to date, 9000
- 3500 hearings held in fiscal year 2010/11
- 3100 decisions
- 47% of decisions are short form.
- 670 conference calls
- 85% of invoices paid within 30 days
- 80 outreach sessions
- 98% of calls to Crawford answered within 10 seconds
- No group IAP applications in this fiscal

Crawford Class Action is working on a framework for tracking mandatory documents.

4. Completion Strategy

A draft document on the completion strategy was circulated. An extension to the end date of the Settlement Agreement is anticipated but will require an application to the courts. A final document will need agreement from the parties and would have external audiences such as the courts, NAC, Treasury Board and Cabinet.

Despite the difficulty it would impose, the completion strategy should include a plan for meeting the current deadline. Court Counsel indicated that it cannot be assumed that an extension will be easily granted, at least without a clear indication that all efforts have been made to meet the current deadlines in the Settlement Agreement

The draft document identifies issues for staff. Planning will continue on different approaches and not necessarily assume a 4000 yearly maximum.

Decision: The Secretariat will revisit the completion strategy document and provide more information at the June meeting of the OC. Methods of increasing hearing numbers and resolution of files will be surveyed and shared with the OC.

5. Postponements and Cancellations

A preliminary document was circulated prior to the meeting. Recommendations will be presented at the August meeting.

Dan Ish is seeking direction from the Court on how to deal with problematic counsel. This would be helpful to the completion strategy.

6. Application Form

A document outlining changes to the form was circulated prior to the meeting. The main changes address translation and grammatical errors. A plain language specialist is reviewing the form as well.

Decision: Both versions, English and French, are to be submitted for approval to OC.

7. Chief Adjudicator's Report

- A story regarding the IAP appeared in the Winnipeg Free Press. A lawyer who is working in Manitoba is charged with a disciplinary offense and cannot be named but the name of the Chief Adjudicator appeared in the article. As a result, several press people contacted Mr. Ish and it was an opportunity to explain the process to the press and public. He also responded to the story in the paper to clarify two points.
- Legal actions:
 - An appeal has been filed by Legal Counsel Harley Schachter of the Winkler decision re legal fees.
 - Conflict of interest – process to get those resolved. Wants it to be internal.
 - The Quebec court case has gone to the Court of Appeal.
 - Counsel Len Marchand and several other legal counsel have indicated that they will seek direction of the Court on interpretation of certain provisions of the IAP that were the subject of decisions by the Chief Adjudicator.

- The Annual Report of the Chief Adjudicator to the OC was received. It will be posted on the website.

8. Executive Director's Report

- Follow-up has been done on the lack of certification by legal counsel on claimant applications. As a result, letters were sent to counsel who submitted applications without certification and the process within the Secretariat changed to give closer scrutiny. Incomplete applications will be sent back to counsel for certification before it goes forward.
- The TRC was provided with the most recent draft of consent forms and information sheets which the Secretariat is intending to use.
- The CEP is 100% prescribed.

9. Matters for Discussion

a) Meeting with NAC

The completion strategy, issues with claimant counsel, the TRC discussions and the public education strategy will be on the agenda for the meeting with NAC. Dan Ish, Akivah Starkman and Mayo Moran will lead discussion with an update.

Decision: Dan Ish and Mayo Moran will contact the NAC chairperson regarding agenda items.

b) Claimant Consent Form for archiving Claimant Information

Is it possible to have the consent form included with the application form?

If the consent form is provided at the hearing, it is to be provided at the end of the hearing.

c) August OC Meeting

The meeting will be held in Vancouver rather than Toronto.

10. Next Meeting

Monday, June 20 with NAC and Tuesday, June 21, 2011