

Independent Assessment Process Oversight Committee

Meeting of June 21, 2011

Vancouver, BC

Minutes

Members present

Mayo Moran	Chair
Mitch Holash	Church representative
David Iverson	Church representative
Kerry O'Shea	Claimant counsel representative <i>absent for item 8(a) and in-camera session</i>
David Paterson	Claimant counsel representative
Luc Dumont	Government of Canada representative
Alison Molloy	Government of Canada representative
Les Carpenter	Inuit representative
Paul Favel	Assembly of First Nations representative

Also present

Randy Bennett	Court counsel
Marielle Doyon	Canada – Director General Designate
Dan Ish	Chief Adjudicator
Michael Mooney	Court monitor, Crawford Class Action Services
Dan Shapiro	Deputy Chief Adjudicator; Chair, Technical Subcommittee <i>present for items #1 and 2 only</i>
Akivah Starkman	Executive Director, IRSAS
John Trueman	Recorder, IRSAS

1. Introductions

Luc Dumont introduced Marielle Doyon, who will begin as Canada's Director General of Settlement Agreement Operations on July 1. She is currently Director General for Human Resources and Workplace Services. In addition to serving as one of Canada's two representatives on the Oversight Committee and being responsible for Canada's role in the IAP, she will also be responsible for CEP and research.

Over lunch, the committee members gave tributes to Luc Dumont, who is leaving the committee after this meeting to take up his new role as Associate Regional Director General for Quebec Region at Aboriginal Affairs and Northern Development Canada (AANDC).

Akivah Starkman introduced John Trueman, who is taking over as Executive Officer to the Chief Adjudicator and Secretary to the Oversight Committee.

Dan Ish gave a tribute to Irene Fraser, who is retiring. She was a tremendous asset to this organization. She, along with the Hon. Ted Hughes and Anita Murdoch, were the first three people appointed to administer the Adjudication Secretariat for the Alternative Dispute Resolution process, back in 2003. She was a source of wisdom and knowledge and courage. We are going to miss her.

2. Technical Subcommittee – Dan Shapiro

a. Role of the Technical Subcommittee

There was some discussion about the role of the Technical Subcommittee (TSC). The Chief Adjudicator reviewed the role of the subcommittee. It was pointed out that the agenda for the TSC is sent to all nine members of the OC; that the TSC can be assigned work by the full OC; and that the TSC is to bring proposals to the full OC when they are ready to be approved and acted upon.

b. Estate pre-hearing teleconferences

One of the parties had requested that the TSC review the Secretariat's internal procedures for pre-hearing teleconferences held in cases where the claimant has died prior to a hearing.

The question was raised whether an estate pre-hearing teleconference could result in a decision that finalizes the claim. It was pointed out that there is not yet a body of decisions that would enable an adjudicator to decide the claim without a hearing. At this point, the pre-hearing teleconferences are modelled more on the early track assessment teleconferences for self-represented claimants in the complex issues track: it provides an opportunity to discuss obstacles to proceeding, additional materials that might be necessary for the claim to proceed, and to provide an opportunity for the estate to consider whether to proceed. The purpose is informational rather than adjudicative.

c. Student on student admissions

Concern had been expressed that when Canada provides admissions of staff knowledge of student on student abuse in the evidentiary package, the source of the admission is not included in the document as required in Chief Adjudicator's Directive 8 (CAD-8). There were also questions about the format and detail of the admissions provided.

Canada's representatives undertook to report back within two weeks on four issues: (a) why the source of admissions is not included, and whether Canada would agree to update its submissions to include this; (b) Canada's position on supplying staff lists; (c) Canada's format for admissions; and (d) whether the master list provided confidentially to adjudicators pursuant to CAD-8, which is presently an Excel spreadsheet, should include the full wording of Canada's admissions.

d. Case management

The Chief Adjudicator had sought advice from the TSC on how to best manage files that are 'stuck' at various stages in the process, a condition estimated to apply to about 3,000 files. The Adjudication Secretariat had prepared a deck to assist the discussion.

The TSC had a wide-ranging discussion about a number of causes and potential solutions for this problem, including measures that could be implemented administratively as well as those requiring agreement of the parties or intervention from the courts.

It was pointed out that while better solutions need to be found to address specific barriers to moving claims forward, that all parties have capacity issues that limit the number of cases that can be heard each year. Effective solutions must actually conclude cases more quickly, and not just move the problem to another stage of the process.

- *Decision: The Oversight Committee requested the Adjudication Secretariat staff to redouble its efforts to develop a focussed, viable approach to dealing with the volume of claims more expeditiously.*
- *Decision: The Oversight Committee requested the Technical Subcommittee to turn its minds to internal or external solutions that may be possible at this time, with an eye to developing a workable framework in August.*

The committee discussed the need for approaches to address claims of elderly survivors, as well as those that have been in the process for an extraordinary length of time.

Akivah Starkman and Michael Mooney discussed a new web-based file management tool that the Adjudication Secretariat and Crawford would shortly be rolling out to participating claimants' counsel. The system is designed to assist both the Secretariat and claimants' counsel in better understanding the status of claims.

3. Approval of minutes

The committee approved the minutes of the May 10, 2011 meeting, subject to editorial corrections to be provided by the Chair.

4. Key performance indicators – Akivah Starkman

Global milestones: more than 21,000 claims received; more than 10,000 claims still in progress; almost 8,000 hearings held [plus 1,400 ADR hearings for a total of over 9,300]. Canada has issued compensation over \$1 billion.

Akivah Starkman distributed a new ‘dashboard’ report produced collaboratively between the Adjudication Secretariat, Canada, and Crawford. The new report is designed to focus less on raw data and more on trends, issues, and challenges. It shows month-over-month data and compares actual progress to established service standards.

Luc Dumont mentioned that the Canada Post strike is affecting Canada’s ability to send cheques. Aboriginal Affairs and Northern Development Canada has a limited capacity to produce cheques manually. He hopes the situation will not last long.

In response to a question, Luc Dumont indicated that the small number of payments taking over 100 days were due to cases where estate documentation is required, more than one lawyer is involved, a request for review was received, a dispute over disbursement was ongoing, or where the claimant is self-represented and requires independent legal advice.

5. Chief Adjudicator’s report – Dan Ish

The Deputy Chief Adjudicators are currently conducting performance reviews of adjudicators, to be completed by the fall. This is the second round of reviews, and may be used as a basis for a recommendation to the OC on the renewal of an adjudicator’s contract beyond 2012. OC members with comments on individual adjudicators should address them to the Chief Adjudicator.

The OC will also have to consider the renewal of the contracts of the DCAs and the CA. The CA suggested that the renewal discussions should start with the adjudicators, then address the contracts of the DCAs, and then the CA’s contract. It was also suggested by the CA that the OC may want an in camera meeting (in his absence) to discuss generally the contract renewal process in addition to an ultimate in camera meeting to discuss the CA’s contract. .

The Chief Adjudicator recently sent a memorandum to claimants’ counsel on a number of practice issues. He advised counsel that his interpretation of the court orders is that an adjudicator’s review of legal fees for fairness and reasonableness

can result in a reduction of fees below Canada's 15% contribution towards legal fees. As examples of conduct that might warrant such a reduction, he cited lawyers who repeatedly attended with the wrong client, claims where the application form bears no resemblance to the case, and application forms where the lawyers' certification is signed by someone else, photocopied, or falsified. All of these are, regrettably, actual situations that have occurred.

In his memorandum, the Chief Adjudicator also discussed the proper trust accounting practices where a legal fee review is underway, and reminded counsel that amounts payable under the Settlement Agreement cannot be assigned to other persons or agencies.

6. Executive Director's report – Akivah Starkman

Akivah Starkman advised the committee members that he is working with AANDC Procurement to find an appropriate mechanism for paying the meeting attendance fees specified in the Settlement Agreement.

An issue where multiple health support workers were attending the same hearing has been addressed with Health Canada.

The Adjudication Secretariat's Claimant Support group, which works directly with self-represented claimants to provide support and guidance in the process, was recently recognized with a Deputy Minister's award, the highest accolade in the department.

David Paterson raised a situation in which one of his clients was contacted directly by a church representative, before counsel had advised that a hearing was scheduled. Akivah Starkman asked for details so he could look into it.

The Adjudication Secretariat is examining circumstances in which it would be appropriate to copy the claimant directly on notices sent to legal counsel. David Paterson pointed out that some claimants require confidentiality, and have instructed him not to contact them at home.

7. Matters for decision

a. Application form – Akivah Starkman

At the previous meeting, the Oversight Committee approved proposed changes to the English version of the Application Form, and received the revised Guide for information. The French translation is now ready for approval. Once both the English and French versions are approved, the new Form and Guide can be put into use.

Following feedback from OC members and further consultations, the section that asked claimants to select the standard or complex issues track has been removed. The Secretariat's Admissions Unit will continue its practice of admitting claims to the standard or complex issues track based on the substance of the claim.

- *Decision: The Oversight Committee approved the English Application Form, and approved the French Application Form, subject to any final changes to be provided by Luc Dumont within one week.*

Once finally approved, version 3 will be available in fillable and non-fillable versions on the web, and printed copies will be available through the info line. Previous versions of the form will no longer be distributed, but applications made on such forms will be accepted until the application deadline.

b. Review adjudicators – Dan Ish

In accordance with Schedule D, the Chief Adjudicator is seeking the Oversight Committee's approval of the list of Chief Adjudicator's delegates to conduct 'correctness' reviews of adjudicators' decisions. The previous list was approved on July 28, 2010.

- *Decision: The Oversight Committee approved a list of adjudicators as delegates of the Chief Adjudicator authorized to conduct 'correctness' reviews of adjudicators' decisions.*

c. Adjudicator training manuals

Copies of the draft adjudicator training manual were provided to those who had requested one in advance.

- *Decision: The Oversight Committee requested that the table of contents of the adjudicator training manual, and a list of changes from the previous version, be sent by email to the committee members.*

It was suggested that a short module on negotiated settlements be added to the adjudicator training scheduled for August.

8. Matters for discussion

a. Adjudicator selection

Kerry O'Shea left the meeting during discussion of this item.

Pursuant to Schedule D, the Oversight Committee constituted itself as a selection board for this item, with each of the four interests – claimants,

claimants' counsel, church organizations, and the government – having a single vote. Unanimous agreement of the four interests is required to appoint an adjudicator.

The members were provided with a list of candidates ranked by their scores in the selection interviews. It was confirmed that the average scores did not include the non-voting participation of Hugh McCall and Dan Shapiro, who served as the Chief Adjudicator's non-voting delegates.

- *Decision: The Selection Board reaffirmed its existing requirement that the appointment of any person who is currently an employee of the government is conditional on that person's resignation from their position.*
- *Decision: The Selection Board unanimously approved the appointment of 19 persons as adjudicators.*

The work of the Selection Board having been completed, the Oversight Committee meeting resumed.

Kerry O'Shea rejoined the meeting.

b. Completion strategy – Akivah Starkman

Akivah Starkman described the work done by staff following the last Oversight Committee meeting, where it was determined that merely extending the time to resolve claims because of higher-than-anticipated application volume is not an acceptable option.

There are issues of both capacity and process. Even if process changes moved greater numbers of claims forward, all parties have capacity constraints. The Adjudication Secretariat currently projects that it could handle about 4,400 first claimant hearings per year. Certain process changes could increase that capacity to about 5,000, but the Secretariat would require about 35 additional staff.

Akivah Starkman committed to return to the committee at its August meeting with concrete suggestions for dealing with the items identified. The Secretariat is looking at items that it could do, those that the parties could do, and those that would require direction from the court.

A detailed deck summarizing the Adjudication Secretariat's study of hearing cancellations and postponements was distributed to committee members in advance of the meeting.

There was general agreement on the need for an approach that would impose costs for avoidable cancellations and postponements.

- c. National Administration Committee meeting, June 22, 2011 – Mayo Moran
The committee discussed its joint meeting with the National Administration Committee (NAC), scheduled for the next day.

9. Next meeting

The next Oversight Committee meeting is scheduled for Wednesday, August 3, in Vancouver.