

Independent Assessment Process Oversight Committee

Meeting of September 13, 2011

Toronto, ON

Minutes

Members present

Mayo Moran	Chair
Mitch Holash	Church representative
David Iverson	Church representative
Kerry O'Shea	Claimant counsel representative
David Paterson	Claimant counsel representative
Marielle Doyon	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
Dan Ish	Chief Adjudicator
Michael Mooney	Court monitor, Crawford Class Action Services
Akivah Starkman	Executive Director, IRSAS
John Trueman	Recorder, IRSAS

1. Technical Subcommittee report

Alison Molloy reported on a meeting of the Technical Subcommittee held by teleconference on September 12, 2011. The subcommittee followed up on several items outstanding from the June meeting related to student-on-student admissions:

- The source of admissions (i.e. file number) is contained on the master list provided to adjudicators but not on the admissions in individual cases. CAD-8 suggests this information should be available to all parties and not just the adjudicator. Canada will be getting back to the parties on this.
- Staff lists are occasionally provided with school narratives but are relatively rare. Canada is looking at the feasibility of including these in the school narratives. This is part of a larger project for making school narratives available on the decision database, rather than sending them out in evidentiary packages.
- The format of admissions was also discussed, as there are currently three formats in use. Canada will get back to the parties on this.

Caroline Clark is Canada's new representative on the Technical Subcommittee, and will also be its alternate at the Oversight Committee.

2. Approval of minutes

The committee approved the minutes of the August 3, 2011 meeting with minor corrections.

3. Key performance indicators

Akivah Starkman gave an overview of key trends in the 'dashboard' report distributed before the meeting:

- The IAP has now surpassed 10,000 hearings held, and 10,000 cases resolved through adjudicators' decisions or negotiated settlement. While there are still more cases ahead than have been completed, this is a huge landmark.
- Application volume remains steadily high, although it fluctuates somewhat from month to month.
- There is continued interest in applications, possibly driven by the notice program for the Common Experience Payment deadline. Call volumes and application mail-outs have already (early September) surpassed the total volumes for 2010. There has not been a corresponding increase in applications, suggesting that there are many applications in the field.

In response to a question about the impact of the recent Ontario Court of Justice decision adding Cristal Lake and Stirland Lake to the schools list under Article 12 of the Settlement Agreement, Randy Bennett indicated that the time limit for an appeal has not yet expired, but that this would be dealt with in the order. There are an estimated 350 to 600 potential new class members, a subset of whom might apply to the IAP.

Resources and hearing capacity: Akivah Starkman discussed the process underway within the Adjudication Secretariat to obtain resources beyond the current fiscal year, while recognizing that the parties are going to be in discussions on process changes that might change the requirements. A key driver of resource requirements is the number of hearings to be held per year. A reasonable but maximum target seems to be 4,500 first claimant hearings per year, since current process requirements (particularly the time required to gather mandatory documents) prevent more cases becoming hearing-ready in a given

year. The Adjudication Secretariat will be requesting the resources to deliver this volume of hearings beginning in 2012-13.

Kerry O'Shea asked about hearing scheduling in Saskatchewan, where hearings are currently being booked into the April/May/June 2012 quarter – meaning that a hearing-ready claimant may be waiting another eight months for a hearing. Akivah Starkman responded that booking that far into the future is never ideal, but can be a function of Canada's capacity to attend hearings in some provinces. (The Adjudication Secretariat's capacity is also an issue, but not geographically limited in the same way.) He noted that some lead time is unavoidable, because of government procedures for travel arrangements, pre-approvals, and so forth.

Dave Iverson asked about adjudicator capacity to handle 4,500 first claimant hearings per year. Akivah Starkman replied that this can be accommodated with the current number of adjudicators on hand, but the Secretariat will continue to monitor attrition and other factors. He noted that certain claimants' counsel may have capacity limitations as well.

4. Executive Director's report

Akivah Starkman reviewed significant activities underway within the Adjudication Secretariat.

The funding request to government is being finalized, and will go forward this fall. The Secretariat is striving to ensure that the resource requirements are accurate and fully funded.

There has been no further communication from the Truth and Reconciliation Commission regarding the disposition of IAP records. In the meantime, the Adjudication Secretariat has had discussions with Library and Archives Canada to ascertain what their requirements would be, in the event it is determined that the *Library and Archives of Canada Act* applies to the IAP:

- Under the *Act*, LAC determines what materials are of historical or archival value, and then issue an authorization to dispose of the remaining material.
- LAC has treated the Adjudication Secretariat independently from AANDC. They conducted an archival appraisal of the Secretariat's records and determined that they want to receive all adjudicators' decisions, and any policy or strategic planning records that deal with adjudication and administration of the IAP. LAC is not interested in any other records.
- Once documents are at LAC, protection under the *Privacy Act* expires 110 years after the date of birth of the person to whom the information relates.

Some committee members questioned whether this was consistent with the Settlement Agreement's provisions on confidentiality.

Committee members discussed several facets of this issue, including the applicable legal regime, privacy and confidentiality protections for claimants and other participants, a consent program, Settlement Agreement requirements to give claimants the option to have their transcript placed in an archive or documents given to the TRC, and the role of the supervising courts.

- *Decision: The Oversight Committee formed a working group comprised of John Trueman (convener), Mitch Holash (Catholic entities), Alison Molloy (Canada), and David Paterson (claimants' counsel) to examine the question of disposition of records and make recommendations to the Oversight Committee.*

5. Chief Adjudicator's report

Dan Ish discussed the training session for 19 new adjudicators held in Saskatoon the week of August 22. The training brings the total number of adjudicators to 110. The new adjudicators are already starting to observe hearings and conduct them under the supervision of a Deputy Chief Adjudicator.

The Chief Adjudicator recently gave an interview to the Aboriginal Peoples Television Network on the IAP and the Settlement Agreement. It is expected to appear in March 2012.

Alison Molloy asked about the instructions given to adjudicators about the timing and length of hearings. She mentioned that adjudicators sometimes state at the beginning of a hearing that they need to be on a flight at 2:30pm. Dan Ish replied that this definitely should not be happening, and that he would address it in a communication to adjudicators.

6. Matters for decision

6(a). Review adjudicators

Dan Ish said that the number of requests for review continue to grow, and are becoming a significant driver of workload. The Chief Adjudicator is seeking to add four names to the list of approved delegates to conduct 'correctness' reviews of adjudicators' decisions. The previous list was approved on June 21, 2011.

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

7. Matters for discussion

7(a). Completion strategy

Akivah Starkman thanked the committee members for their written responses to the Adjudication Secretariat's paper, "Options for completion: strategies to complete more IAP claims by 2013," which was distributed for the August 3 meeting. He noted that the meeting with Randy Bennett, to discuss five items identified at the August 3 meeting, has now been scheduled for September 28.

Akivah Starkman gave an update on several related items underway in the Adjudication Secretariat:

- The legal counsel code has been revised in response to comments at the previous meeting and discussions with David Paterson. It is close to being finalized for use this fall.
- On the strategy for detering hearing postponements, the Adjudication Secretariat took the main message that the concept was okay, but the procedure was complicated and bureaucratic. The Secretariat has stripped it down, and put the focus on deterring avoidable postponements. A series of communications will begin shortly, first to build awareness of the problem and then to outline the new approach. A Deputy Chief Adjudicator is developing a Guidance Paper. The plan is to implement the new procedure by November 2011.
- An item arising in discussion at the August meeting was the desirability of earlier exchange of documents between the parties. Currently, the Adjudication Secretariat receives all of the documents, compiles them into a package, and then sends them out shortly before the hearing. Parties have indicated that an earlier exchange of information would assist with student-on-student issues, assessing claims for negotiated settlements, and other purposes. The Secretariat is looking at ways this could be done; the major concern is that the Secretariat not lose control and awareness of the status of the file.
- Beginning in September, the Adjudication Secretariat will be conducting a fairly intensive outreach program to Nunavut and northern communities.

Committee members discussed whether item 2.15 from the paper, "alternative defendant participation," was going to be pursued, especially given the discussions necessary to engage the other participating church organizations. It was noted that the purpose of this suggestion was to expand the number of hearings that could be held, but members noted that other measures – such as added resources, better planning, flexibility, and reducing unnecessary postponements – would enable Canada to attend more hearings without the need for the churches to play this role.

7(b). Process for renewal/extension of adjudicator contracts

Dan Ish discussed the status of adjudicator contracts, which all end in September 2012. The contracts contain a one-year option, which if exercised would take them to September 2013.

The Settlement Agreement gives the Chief Adjudicator exclusive authority to recommend termination or renewal of a contract, and gives the Oversight Committee power to carry it out, on the regular 7/9 voting rule. The Deputy Chief Adjudicators are presently completing a second round of adjudicator evaluations, which will inform the Chief Adjudicator's recommendations.

The major question is timing: September 2012 seems a long way off, but there is a need to avoid a situation where the contract ends and a case needs to be transferred to another adjudicator. This likely requires that adjudicators be advised whether they will be renewed by January 2012 at the latest.

Committee members discussed ways of ensuring that non-renewed adjudicators can finish their work on cases already underway. It was noted that unlike many statutory tribunals, the adjudicator contracts do not contain provisions allowing them to remain seized of matters beyond the end of their appointment. It was suggested that the Oversight Committee might entertain a recommendation from the Chief Adjudicator that an adjudicator receive a contract extension for the express purpose of completing existing work, on the proviso that no new cases be assigned.

7(c). Correspondence re: alleged perpetrators

Mayo Moran said that she had replied to the letter from counsel representing alleged perpetrators, which was discussed at the August 3 meeting. Her response indicated that the Oversight Committee lacks the jurisdiction to intervene in individual cases.

Dan Ish discussed the new initiatives taken on this issue at the recent adjudicator training. In addition to a DCA-led presentation, a panel representing the various stakeholders spoke to the adjudicators on issues arising at hearings for alleged perpetrators.

7(d). National Administration Committee

Mayo Moran discussed a letter received from Peter Grant, the new chair of the NAC, following the joint OC-NAC meeting held in June. She replied to Mr. Grant's letter with thanks for the NAC's offer of assistance, which the OC will take up once issues arise that warrant the NAC's attention.

8. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, October 25, in Toronto.