

## Independent Assessment Process Oversight Committee

Meeting of April 17, 2012

Victoria, BC

### Minutes

#### Members present

Mayo Moran	Chair
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

Caroline Clark	Alternate Government of Canada representative
Daniel Ish	Chief Adjudicator
Michael Mooney	Court monitor, Crawford Class Action Services
Dan Shapiro	Deputy Chief Adjudicator; Chair, Technical Subcommittee <i>present for item 1 only</i>
Akivah Starkman	Executive Director, IRSAS
John Trueman	Recorder, IRSAS

#### Absent with regrets

Mitch Holash	Church representative
Randy Bennett	Court counsel

#### 1. Introductions

Marielle Doyon introduced Caroline Clark, General Counsel and Director of Legal Services for Aboriginal Children's Issues at Aboriginal Affairs and Northern Development Canada. Ms. Clark sits on the Technical Subcommittee and is Canada's alternate on the Oversight Committee.

#### 2. Report of the Technical Subcommittee

Dan Shapiro reported on the meeting of the Technical Subcommittee held April 16, 2012.

The subcommittee again discussed the disclosure of the source of admissions of staff knowledge of student-on-student abuse. Canada had committed to include the source information as required in CAD-8, but in some cases this was not disclosed. This may have taken place during the transition period as Canada was adding the material. In some cases, claimant counsel may need to ask for them if not included in the evidentiary package.

The parties discussed how material could be added to school narratives. Canada has agreed to set up an email address, [nra.requests@inac-ainc.gc.ca](mailto:nra.requests@inac-ainc.gc.ca), where parties can forward material for consideration.

The subcommittee recommended approval of a Guidance Paper on withdrawal of claims. The proposed paper standardizes the approach when a claim is withdrawn before a hearing and stipulates that the claimant may re-apply by the September 19, 2012 application deadline. When a claim is before an adjudicator, the adjudicator will put the parties on the record (either at a hearing or by teleconference) and then write a short decision. In exceptional cases, the adjudicator may decline to accept the withdrawal, and instead grant a postponement or proceed with the hearing.

- *Decision: The Oversight Committee approved Guidance Paper 8 – Withdrawal of IAP Claims.*

The subcommittee recommended amendments to the Chief Adjudicator's Directive on distribution of transcripts, which was last updated in 2008. The amendments add three circumstances in which transcripts may be requested: (1) when an adjudicator gives oral reasons in support of a Short Form Decision, (2) when the parties provide closing comments to the claimant at the end of the hearing, and (3) for complex issues track hearings, to assist the parties in making submissions.

- *Decision: The Oversight Committee approved Chief Adjudicator's Directive 7, revision 1 – Transcript Distribution Policy.*

The subcommittee also discussed the pilot project for claimants over 65, and Dan Shapiro distributed a short paper. Hearings are proposed to start the last week of June and continue to October. There is some concern that certain claimants' counsel will be unavailable in the weeks leading up to the September 19, 2012 application deadline, but hearings will be scheduled to avoid excessive concentration in the same place at the same time.

David Paterson expressed concern over language in the paper that signifies a distinction between claimants who “provide medical evidence that any delay in

hearing their testimony involves a significant risk that they may die or lose the capacity to provide testimony” (Schedule D, p. 23), and claimants who “submit a doctor’s certificate indicating that they are in failing health such that further delay would impair their ability to participate in a hearing” (Schedule D, p. 44). He suggested that these do not signify two different categories of people, but rather different measures that could be taken depending on the timing of the medical evidence. The page 44 provision gives priority in the scheduling queue to those in failing health above other hearing-ready claimants, while the page 23 provision allows an ‘expedited’ hearing before the claim is hearing-ready, in order to preserve the claimant’s evidence.

Kerry O’Shea said that there needs to be a distinction between those claimants who are drastically ill, such as in a hospital bed, and those who need their claims dealt with expeditiously but who can wait for a hearing to be scheduled. It would not be an effective use of resources to marshal the forces for an extremely urgent hearing in situations that do not require one.

Dan Shapiro said that the pilot project was not intended to prevent access to ‘expedited’ hearings for those claimants who require one. If a claimant in the pilot project takes a turn for the worse, they can be pulled out of the pilot project and given an expedited hearing.

### **3. Approval of minutes**

The committee approved the minutes of the February 28, 2012 meeting with minor corrections.

### **4. Key performance indicators**

Akivah Starkman gave an overview of key trends in the ‘dashboard’ report distributed before the meeting.

As of the end of March 2012, over 12,500 claims have been settled or decisions rendered. If the initial estimates of claim volume had been accurate, the IAP would be completed a year and a half ahead of schedule.

The rate of standard track hearings offered remains problematic. While staff shortages have been an issue, the Adjudication Secretariat is also finding that hearings are being scheduled so far in advance that it is difficult to get agreement on dates from claimants’ counsel. More aggressive measures may need to be considered.

The targets for hearings held in April and May 2012, and to a lesser extent in June, had to be revised downward due to staff shortages. Staffing delays

imposed by Aboriginal Affairs and Northern Development Canada meant that some qualified candidates accepted positions elsewhere.

The Adjudication Secretariat continues to monitor the rate of postponements and will be improving the methodology for tracking these beginning at the next meeting. It is too early to determine the effect of the postponement policy (Guidance Paper 7), since the purpose of the policy was to improve practices rather than to deny legitimate postponement requests. Early indications show that the postponement rate is at its lowest point in some time.

Decision processing also is not meeting targets, although a significant backlog of decisions was cleared in the last few weeks. The average adjudicator writing time is 60 days, which is consistent with past practice but much more than contemplated in the Settlement Agreement. The Adjudication Secretariat has also been short-staffed in the decisions unit. The Secretariat is working on a more robust tool to assist the Chief Adjudicator with managing adjudicator workload and file assignment.

Alison Molloy noted that Canada and claimants' counsel can be overwhelmed when significant numbers of decisions are released at once. Akivah Starkman responded that the Adjudication Secretariat aims for a consistent and timely flow of decisions, but cannot entertain slowing down the release of completed decisions merely to smooth out the rate.

## **5. Executive Director's report**

Akivah Starkman discussed the Adjudication Secretariat's expanding outreach program, to help ensure survivors are aware of the application deadline. More than 150 community activities have been held this year. The focus in the last few weeks has been in the north.

In addition, Aboriginal Affairs and Northern Development Canada (AANDC) sent out a press release on March 19 in advance of the formal notice program that commenced March 24. The multimedia program will include personal letters to people who have filed a CEP application but not applied to the IAP.

Canada has notified the parties that it has dropped its appeal of Chief Justice Winkler's decision adding Stirland Lake and Cristal Lake schools to the Settlement Agreement. The Adjudication Secretariat will be doing some specific work to ensure that students at those schools are aware of their right to apply.

The application form itself does not say that the deadline is September 19, 2012. The Adjudication Secretariat is having a stamp made to apply this information to the front page.

Dan Ish noted that the section for the claimant's lawyer to certify the application does not have a place to put a date. This has been problematic on fee reviews and in Crawford's application. The next printing will add this.

In response to a question, Akivah Starkman said that the Adjudication Secretariat would be working with Crawford to ensure sufficient bandwidth is available for last-minute applications.

In response to a question about applications from former students who are incarcerated, Akivah Starkman said that the Adjudication Secretariat has been doing a significant amount of outreach to penal institutions, friendship centres to reach homeless people, and other harder-to-reach populations. However, the Secretariat does not have a clear sense of how many former students are incarcerated, since many applicants use their lawyer's address or a home address on forms.

In response to a question about outreach, Akivah Starkman said that the Assembly of First Nations and community leaders have been integral to the Adjudication Secretariat's outreach program. The program depends on invitations and support from community leaders, and Akivah is working to set up a meeting with the AFN to discuss the role they can play in support of this work.

The interactive file management system was launched in mid-March and 27 law firms are now participating. This electronic tool is expected to yield tangible benefits in terms of monitoring the progress of document collection. More law firms continue to join, and the Adjudication Secretariat is taking requests for new features in version 2.

## **6. Chief Adjudicator's report**

Dan Ish reported that he had attended the Truth and Reconciliation Commission regional event in Victoria the previous weekend. It was well-organized and over 2000 people attended. The next TRC event is the national event in Saskatoon at the end of June.

The new adjudicators appointed in 2011 are mostly up to speed. The Chief Adjudicator is still dealing with the distribution of hearings among the adjudicators to help ensure cases are assigned more equitably. Two adjudicators have departed: Kelly Macdonald, who conducted the very first ADR hearing in May 2004, resigned for health reasons. Troy Sweet from Moncton was appointed to the Provincial Court of New Brunswick.

The Chief Adjudicator asked the Oversight Committee for approval to add two names to the list of approved delegates to conduct 'correctness' reviews of adjudicators' decisions. The previous list was approved on September 13, 2011.

In response to a question, the Chief Adjudicator says that this action does not reduce the pool of adjudicators available for hearings, but makes more adjudicators available for reviews.

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

## **7. Request for Proposals for a Deputy Chief Adjudicator**

The Chief Adjudicator discussed his goals in seeking to recruit a sixth Deputy Chief Adjudicator. The new DCA would focus primarily on dealing with issues relating to lawyers and will have the ability to go to court on behalf of the Chief Adjudicator as necessary. The Oversight Committee was provided with a draft Statement of Work for the position. It is not anticipated that the new DCA would have a regular cadre of adjudicators, but might step in while someone is away.

- *Decision: The Oversight Committee gave agreement in principle for the recruitment of an additional Deputy Chief Adjudicator. The draft Request for Proposal document will be circulated by email when it is ready.*

## **8. Articling students**

The Chief Adjudicator referred Oversight Committee members to its May 5, 2009 motion regarding articling students. His interpretation is that the motion does not prevent lawyers from being assisted by articling students, but that an articling student was not to act alone for the claimant at the hearing.

The Chief Adjudicator said that he would provide some guidance on this issue to adjudicators and have it posted on the web site.

A question arose about legal clinics staffed by law students working under the close supervision of a member of the law society. Normally these clinics do not charge any fees to the claimant. Canada's position was that it would not pay the 15% contribution towards legal fees to such a clinic, where such clinics did not charge fees.

## **9. Meeting with the National Administration Committee**

Mayo Moran reported that she, Dan Ish, Akivah Starkman, and John Trueman will attend a meeting with the National Administration Committee in Saskatoon in June. The focus will be on issues related to completion of the IAP. The other

issues raised by the NAC, about the Chief Adjudicator's authority to protect the integrity of the IAP, will be dealt with by the supervising court.

#### **10. Next meeting**

The next Oversight Committee meeting is scheduled for Tuesday, May 29, 2012, in Toronto.