Independent Assessment Process Oversight Committee

Meeting of May 29, 2012
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
Caroline Clark	Government of Canada representative [alternate]
Alison Molloy	Government of Canada representative
Les Carpenter	Inuit representative
Paul Favel	Assembly of First Nations representative

Also present

Daniel Ish	Chief Adjudicator
Michael Mooney	Court monitor, Crawford Class Action Services
Akivah Starkman	Executive Director, IRSAS
John Trueman	Recorder, IRSAS

Absent with regrets

Marielle Doyon	Government of Canada representative
Randy Bennett	Court counsel

1. Approval of minutes

The committee approved the minutes of the April 17, 2012 meeting with minor corrections.

2. Key performance indicators

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

By the end of April 2012, 26,150 claims had been received; by mid-May, the number was up to 26,500. Over 15,000 claims have been resolved, including over 13,000 adjudicators' decisions and negotiated settlements.

The rate of applications is up significantly, as are calls to the info line and crisis line. Interest is driven by the looming application deadline, the court-approved

notice plan, and intensified outreach efforts. As well, the Court Monitor's investigation into Blott and Company revealed approximately 1,200 applications that have not yet been submitted.

The Adjudication Secretariat continues to experience difficulty having claimants' counsel provide available dates for hearings. A number of claimants' counsel have limited their availability for summer 2012 as the application deadline approaches. Obtaining availability for later dates is also problematic.

The rate of postponements is now down to 13.6% in April and 13.5% in March. It is too early to determine the impact of the postponement policy, but the rate is better than it has ever been.

The length of time for decisions to be issued has increased slightly. It may continue to increase as more complex cases move through the system. The Adjudication Secretariat continues to monitor the various components, such as expert assessments, adjudicator writing time, and staff time to issue the decision. The Adjudication Secretariat has recently implemented a more rigorous tool for the Chief Adjudicator to monitor adjudicator workloads and writing time.

Alison Molloy noted that three cases remain ongoing from the ADR process. One had final submissions last week, and the other two will have final submissions in June and July. She noted that trying to arrange final submissions after the hearing can take a lot of time.

The Chief Adjudicator noted that most hearing adjournments are because of the protections provided to the defendants, such as hearings for alleged perpetrators and expert assessments. These are built-in features of the IAP, but without them adjudicators could receive submissions at the hearing in every case. The parties cannot expect to have these protections and also be finished the day of the hearing.

Akivah Starkman mentioned work underway in the Adjudication Secretariat to develop a process for managing files that are not progressing in a timely way. Proposals will be brought to a future Oversight Committee meeting and possibly included in the application to the court for an extension of the completion date.

In response to a question, Akivah Starkman confirmed that the Adjudication Secretariat projects holding the final first claimant hearing in December 2014. This will, however, depend on maintaining full capacity up to that date and on all cases being ready for a hearing by then.

Mitch Holash asked if analysis had been done on the reasons behind the higher-than-anticipated rate of applications. John Trueman explained that the government's estimate of 12,500 applications was based on studies of other institutional abuse compensation programs, but that those programs often did not compensate physical abuse or other wrongful acts, did not cover abuse by students, and did not cover non-resident day students or children permitted on

the premises; thus, the pool of potential applicants is larger. As well, the national reach and sustained publicity surrounding the Settlement Agreement may cause more eligible claimants to apply, as have the activities of lawyers and form-filling organizations. Finally, it appears that the incidence and severity of abuse at Indian Residential Schools may have been higher than in other institutional settings. He noted that some of these factors are speculative and difficult to quantify. David Paterson pointed out that the Assembly of First Nations had estimated about 26,000 total applications to the IAP.

Members discussed the need to ensure that this and other aspects of the IAP experience be documented for future generations. It has been difficult, in the context of a confidential process, to help the public understand what the IAP is doing. The IAP's legacy speaks not only to residential school survivors and their communities, but also to the larger issues of reconciliation.

It was suggested that in addition to the Adjudication Secretariat's current efforts, that a historian or social scientist should be retained to assist in documenting the legacy of the IAP and its role in reconciliation. Akivah Starkman committed to return to a future meeting with some thoughts.

3. Executive Director's report

Akivah Starkman discussed the revised timeline for the request for proposals for an additional Deputy Chief Adjudicator distributed before the meeting. The target is to circulate the RFP on June 8, so that the successful candidate can be ratified at the September 25 meeting of the Oversight Committee and a signed contract awarded in early October. The RFP must be posted at www.merx.com for a minimum of 40 days.

The notice plan for the application deadline is well underway. There have been 207 television advertisements in English, 133 in French, and numerous newspaper advertisements and radio spots. As well, a letter was sent to all CEP recipients who have not applied for IAP.

Kerry O'Shea and David Paterson said they have experienced an increase in calls since the letters went out. Some survivors may have received letters but have already settled a claim in ADR or litigation, and be ineligible for the IAP.

The Adjudication Secretariat has also expanded and intensified its outreach efforts in advance of the deadline. In 2011-12, the Secretariat held 168 sessions; since April 1, a further 33 sessions have been held with a strong focus on the North, as well as survivors in federal prisons. The goal is ensuring that eligible survivors are aware of their right to bring a claim.

The Interactive File Management System (IFMS) is now being used by 28 law firms to track mandatory document production. The system is proving successful in better understanding the progress of claims.

4. Chief Adjudicator's report

Dan Ish reported on a number of recent court cases impacting the IAP.

The Supreme Court of British Columbia hearing into Blott & Company was held in April and May. The Court Monitor had brought an application to remove the firm, its lawyers, and others from the IAP, and to appoint a 'claimant representative' to oversee the transition of files to other lawyers. David Blott's counsel seemed to support as adequate the conditions placed on his practice by the Law Society of Alberta, which among other things prevent Mr. Blott from representing claimants at IAP hearings or having contact with clients. He has also hired an experienced practice management advisor to oversee his practice.

Over five and a half days, Madam Justice Brown heard submissions from counsel for the Court Monitor, Blott and Company, two of Blott's associates, Canada, the Assembly of First Nations, the National Consortium, Independent Counsel, Merchant Law Group, the Law Society of Alberta, BridgePoint Financial, and the Chief Adjudicator.

One of the issues raised in the Blott case was the Supplemental Hearing Report implemented by the Chief Adjudicator, in cases where an adjudicator is concerned about the conduct of claimants' counsel. Merchant Law Group opposed any questions being asked to claimants, while the National Consortium and Independent Counsel argued that questions should be asked at the time of the legal fee review, not the hearing. The Chief Adjudicator's position is that the hearing is the only time where the claimant appears in person, that detailed legal fee reviews are conducted in only 40-45% of cases, and that the claimant attends the fee review conference call about 5% of the time. This would lead to only about 2% of claimants being asked about areas of concern, which would negate the process in most cases.

There is no indication when a decision will be rendered.

Two new challenges have been filed regarding review of legal fees. The three prior challenges have been brought in the name of the lawyer. These two cases are unique in that the claimants have apparently given instructions to their lawyer to bring a case in Federal Court arguing that their Charter right to pay their lawyer more than the adjudicator's determination has been violated. The Chief Adjudicator has retained counsel to respond to the action.

The Quebec Court of Appeal has ruled in the case regarding the rights of alleged perpetrators in the IAP that the case should proceed before the supervising

judge, Justice Tingley. The Oblate Fathers have sought leave to appeal to the Supreme Court of Canada.

The number of reviews continues to increase. Virtually every zero-dollar award is appealed by the claimant. Most are on issues of credibility and reliability, which consume more resources than a jurisdictional review because the reviewing adjudicator will review the hearing transcript.

The Chief Adjudicator responded to a letter from a student legal clinic, outlining the Oversight Committee's policy on articling students in the IAP.

Along with Mayo Moran, Akivah Starkman, and John Trueman, the Chief Adjudicator will meet with the National Administration Committee on June 21. The primary agenda item will be to bring the NAC up to speed on work done over the past year on the completion strategy, in order to frame the application to the courts for an extension of the September 19, 2013 completion date.

5. Expert assessment roster

The Chief Adjudicator referred to three resumes proposed by the Adjudication Secretariat for addition to the expert roster, all of which are capable of working in French.

Members expressed some concern about the resumes, including whether references were sought, whether the French-language capability has been verified, the suitability of the proposed experts in working with Aboriginal people, and other questions related to their qualifications.

The Chief Adjudicator withdrew the resumes for further inquiries by staff on the issues raised by committee members.

6. Observers at hearings

Caroline Clark said that Canada has been experiencing difficulty getting trainees to observe hearings, because claimants' counsel are objecting to their attending. Some claimants' counsel immediately refuse permission for any observers, raising the question whether they actually check with claimants. She noted that Canada is hiring and training a number of new Resolution Managers and Counsel and that observing hearings is an important part of the training.

Alison Molloy referred members to a paper adopted by the previous Chief Adjudicator's Reference group in 2005 that gave Canada and church organizations the ability to bring observers as of right. She asked whether a directive or web site posting should speak to the need for training opportunities,

not only for Canada's representatives but also for adjudicators and others. Such a posting would specify that observers are subject to the same confidentiality provisions and will not take an active role in the hearing.

David Paterson pointed out that many claimants want as few people as possible to attend their hearing, even to the point of asking their own family members and the health support workers to leave the room. The Oversight Committee should be loath to impose upon them.

Dan Ish said that this problem has rarely arisen in the case of adjudicator training. The high number of hearings means that training opportunities can usually be found where necessary while respecting the wishes of the claimant.

Caroline Clark said there may be 'pockets' of problems, such as hearings in Manitoba and Ottawa where systematic refusals are encountered.

Dan Ish said he would continue to advise adjudicators on the need to accommodate observers for training purposes, but that disputes should be resolved between the parties.

7. Dates of future meetings

- *Decision: The Oversight Committee set the following meeting dates:*

  Tuesday, July 10, 2012 – Vancouver

  Tuesday, September 25, 2012 – Toronto

  Tuesday, October 30, 2012 – Toronto

  Tuesday, December 4, 2012 - Vancouver

  Tuesday, January 15, 2013 – Toronto

  Tuesday, February 26, 2013 – Vancouver

  Wednesday, April 24, 2013 – Montreal

  Tuesday, May 28, 2013 – Toronto

8. Over 65 pilot project

Alison Molloy raised some concerns about the project: there are over 500 claims included, documents appear to be incomplete in many cases, and ten hearings are proposed per week per adjudicator, resulting in a heavy workload and potential impact on claimants if two hearings are scheduled per day.

Dan Ish said he understood that there were continual and ongoing discussions between Canada and Secretariat staff, where these issues were being discussed.

Mayo Moran mentioned that the pilot project is being managed by the Technical Subcommittee, and that issues should be raised with Dan Shapiro. If concerns are not resolved at the subcommittee, they can then be brought forward to the Oversight Committee.

9. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, July 10, 2012, in Vancouver.