

## Independent Assessment Process Oversight Committee

Meeting of December 4, 2012

Vancouver, BC

### 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
Aideen Nabigon	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
Dan Shapiro	Deputy Chief Adjudicator; Chair, Technical Subcommittee <i>present for item 1 only</i>
Akivah Starkman	Executive Director, IRSAS
John Trueman	Senior Policy Advisor, IRSAS (recorder)

#### 1. Report of the Technical Subcommittee

Dan Shapiro reported on the meeting of the Technical Subcommittee held December 3, 2012.

##### Admissions of staff knowledge of student on student abuse

Canada and claimants' counsel met bilaterally prior to the Technical Subcommittee meeting on December 3. Caroline Clark reported that she was joined at that meeting by Heather Wilson, counsel for Canada, and Graham Macdonald, a Senior Resolution Manager. The discussion was productive and dealt with the drafting of submissions as well as the master list of admissions.

There was no agreement on the issue of release of information from the master list, and it was suggested that the parties provide written submissions to the Chief Adjudicator on this issue.

- Decision: *The parties will provide written submissions to the Chief Adjudicator on the issue of releasing information from the master list of admissions by January 15,*

*2013; the submissions will then be circulated to all parties including the churches; and any party may make reply submissions by February 5, 2013.*

The parties also discussed the letter from claimant counsel Eric Lepine, which was sent to the Chair of the Oversight Committee and referred to the Technical Subcommittee. The letter raised concerns about a case where an admission was not brought to the adjudicator's attention in time for the decision to be written, because of timing and an oversight. Canada contacted Mr. Lepine and the adjudicator, and the adjudicator offered to re-open the decision, received submissions, and wrote a new decision. The issue was resolved to Mr. Lepine's satisfaction. Canada will respond to Mr. Lepine, and Dan Shapiro will respond on behalf of the Technical Subcommittee.

Dan Shapiro reported that the Technical Subcommittee also discussed how to gather data about cases currently in the system that present student-on-student issues, in order to assist block scheduling and other measures. Adjudication Secretariat staff are examining ways of gathering this data, and Crawford may be able to assist.

In response to a question, Dan Shapiro estimated that about 25% of all claims involve a student on student allegation.

#### Resolution of incomplete files

The subcommittee reviewed in detail the proposals circulated in October by Dan Shapiro.

It was suggested that the first two steps could be combined into one, involving file management by the Adjudication Secretariat with the option for the Secretariat or a party to request the early intervention of an adjudicator. It was also proposed that the more formal stage, which could lead to a case being dismissed by an adjudicator, be put before the courts for approval but that implementation be delayed to a date set by the Chief Adjudicator after consulting the Oversight Committee. This would allow for a better understanding of the issues coming out of the file management process.

Akivah Starkman said that it continues to be the intention of the Adjudication Secretariat to transition staff from the Admissions Unit into the file management role. However, the high volume of applications in the weeks before the application deadline means that these staff will likely not be available until the late spring of 2013.

## 2. Approval of minutes

The committee approved the minutes of the October 30, 2012 meeting with minor corrections.

## 3. Key performance indicators

Akivah Starkman highlighted some key items in the reports distributed before the meeting:

- The last official count shows that about 37,500 applications have been received since implementation, including transfers from ADR, continuing ADR cases, and re-openers. About 18,000 claims have been resolved to date, leaving about 19,000 claims to go. Assuming that some applications will not be admitted and some will be resolved through negotiation, there are perhaps 13,000-14,000 more hearings to be held.
- The transition of Blott & Company files is largely complete, and was far less problematic than anticipated. Claimant counsel have taken on a lot of files, and Canada has been flexible with scheduling.
- The number of hearings held are exceeding targets. The Secretariat is already at capacity until February.
- The percentage of postponements is down to 9.5%, compared with 19-20% a year ago.
- The number of expedited hearings has increased noticeably. There were 38 in October, 52 in November, and 40 scheduled for December. The number may continue to increase as claimants age and health problems emerge. If so, the Secretariat may have to reconsider how it schedules and arranges these hearings.

## 4. Executive Director's report

Akivah Starkman reported on some key activities in the Adjudication Secretariat:

- The Adjudication Secretariat will send a notice to stakeholders in January providing an update on the admissions process following the application deadline.
- The Secretariat has tracked the number and location of outreach activities and correlated them with a decrease in the gap between CEP recipients and IAP applicants in several regions. Whether this change can be attributed to outreach activities cannot be proven. A team is continuing to work on this.

- In response to a question, Akivah Starkman said that this was his last meeting of the Oversight Committee as Executive Director, but he had indicated to the Chair that he could make himself available to attend the January meeting depending on the status of the hiring of his successor.

## 5. Chief Adjudicator's report

Dan Ish reported that the significant media interest before the application deadline has subsided.

He is working closely with the Deputy Minister of Aboriginal Affairs and Northern Development to hire a new Executive Director. The posting closed on November 15, and yielded 21 applications. They are beginning by considering the applicants who are already at the EX-03 level.

On November 9, the Supreme Court of British Columbia issued the supplemental reasons in the Blott & Company matter. Among several other matters, the court held that adjudicators can inquire into the relationship between claimant and counsel, including its duration and scope of services, when it has an immediate bearing on matters in the case in question. It held that the Chief Adjudicator has authority to set guidelines, including specific penalties or disciplinary measures. The court did not provide any special process for already-settled claims involving Blott to be re-opened.

The Chief Adjudicator has also received notice of a court action involving the Schedule D provisions allowing an IAP claimant who is a class member to obtain access to the courts by applying to the Chief Adjudicator. In this case leave was previously granted to pursue a court action. The current application seeks a hybrid approach, in which some issues are dealt with by the IAP adjudicator, with actual income loss to be assessed by the court. The Chief Adjudicator will monitor the outcome but not play an active role.

In November, the Chief Adjudicator filed a request for directions regarding third-party form fillers operating out of Manitoba. The principal concern is that certain form fillers charge fees directly to claimants for a service normally provided by a lawyer, thus circumventing the legal fee review process. As well, it appears that improper means have been used to collect those fees. The request for directions is currently with the Administrative Judges, who will assign it to one of the supervising courts for hearing.

All of these legal matters have presented challenges in procuring independent legal counsel for the Chief Adjudicator. While the Adjudication Secretariat has blanket authority from the Department of Justice to hire non-government lawyers, the procurement limit for these services at Aboriginal Affairs and Northern Development Canada is fixed at \$100,000.

Akivah Starkman has a meeting with the Director General responsible for procurement on December 13 in hopes of finding a resolution. Caroline Clark offered her assistance. Dan Ish said that if these internal efforts are unsuccessful, he will need to consider applying to the courts for an order permitting him to procure and pay legal counsel as required.

#### **6. TRC-Canada request for directions re access to records**

Dan Ish reported that the TRC's request for direction on Canada's obligation to provide documents will be heard in Toronto on December 20-21. He became concerned that IAP records would be drawn into the current dispute, rather than being dealt with as a separate matter, involving the Oversight Committee stakeholders as planned.

The Chief Adjudicator has instructed his counsel, Will McDowell, to obtain assurances from the parties that IAP records will not be dealt with in the current court hearing. If assurances are not forthcoming, a pre-hearing conference will be held with the parties and Justice Goudge.

#### **7. Correspondence from First Nations Summit**

The Oversight Committee received for information a copy of a letter sent by the First Nations Summit to the Assembly of First Nations, seeking an extension of the IAP application deadline.

Mayo Moran said that to her knowledge, the AFN's request for directions has not yet been filed with the courts.

#### **8. Next meeting**

The next Oversight Committee meeting is scheduled for Tuesday, January 15, 2013, in Toronto.

Dan Ish said that due to an unavoidable personal commitment, he will be unable to attend the January 15 meeting in person.