

Independent Assessment Process Oversight Committee

Meeting of April 24, 2013

Montreal, QC

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
Orest Wasarab	Government of Canada representative (alternate)
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 items 1 and 2 only</i>
Shelley Trevethan	Executive Director, IRSAS
John Trueman	Senior Policy Advisor, IRSAS (recorder)

1. Introduction: Orest Wasarab

Caroline Clark introduced Orest Wasarab, who attended the meeting as Canada's alternate representative in the absence of Line Paré. He is a Senior Resolution Manager with Aboriginal Affairs and Northern Development Canada in Vancouver, where he has worked since 2003. He recently joined the Technical Subcommittee as one of Canada's representatives.

2. Report of the Technical Subcommittee

Dan Shapiro reported on the meeting of the Technical Subcommittee held by teleconference on April 12, 2013. The subcommittee proposed adoption of the Incomplete File Resolution procedure by the Oversight Committee.

The purpose of the IFR procedure is to provide assistance in dealing with claims that are not proceeding in the usual way. It proposes a two-step approach with the objective of moving files ahead normally but which, subject to court

approval, will provide a means of ending those claims that have no hope of proceeding. Upon completion of the admissions process for new claims, the Adjudication Secretariat will re-dedicate its Admissions Unit as the Case Analysis and Resolution Unit to help deal with these files administratively. If unsuccessful, the case can be referred to a file management adjudicator who can convene teleconferences, establish timelines, obtain undertakings, and take other steps to resolve issues and move the claim ahead.

If this is not successful, the claim can move to step 2, which will require approval of the court and Oversight Direction on its implementation. Step 2 is designed to protect parties' rights while empowering an adjudicator to deal with a claim. The adjudicator would have authority, after hearing from the parties, to decide about documents, set the claim for hearing with or without documents, to ask legal counsel to show cause why they should not be removed from the file if the adjudicator finds that counsel is not acting on instructions from the claimant, or to dismiss the claim where there is no realistic prospect of proceeding within a reasonable time. The process includes rights of review and a possibility for reconsideration by the Chief Adjudicator.

Dan Shapiro said that the proposed procedure is the result of considerable negotiation between the parties, who recognized that there had to be a process to support winding up the IAP.

In response to a question, Dan Shapiro said that the court application would likely be filed in the summer.

Committee members discussed the "reconsideration" clause in the proposed procedure, and how the deadline for reconsideration applications would be set. It was explained that the infrastructure to hold hearings needed to be in place for a claim to be reconsidered, but it was not possible to know with certainty at this time when the final hearings would take place. The proposed procedure leaves this date to be set by the Oversight Committee.

- Decision: The Oversight Committee approved the Incomplete File Resolution procedure as proposed.

3. Approval of minutes

The committee approved the minutes of the February 26, 2013 meeting, with the addition of the letter from Line Paré to Mayo Moran dated April 5, 2013 to be appended to the minutes.

4. Key performance indicators

Shelley Trevethan distributed a two-page document titled "IAP Status Report" and discussed her work to provide more focused performance information to the Oversight Committee.

Several members commented that they would like to continue receiving the one-page "IAP stat overview," which is useful for distribution to constituents.

Shelley Trevethan highlighted some information from the documents:

- About 37,740 applications have been received. The court order regarding Mistassini Hostels was just approved, extending the deadline for those former students to September 2, 2013.
- About 31,000 claims have been admitted, and about 4,544 are still in progress at the admissions stage.
- 16,807 hearings have been held, including over 4,200 in 2012-13, very close to the target of 4,500 per year. Presently, there are insufficient hearing-ready files to meet the target. About 440 a month need to be scheduled to meet the target, taking into account a 13-14% postponement rate, but claimant document production has allowed only 260 hearings per month to be scheduled in April and May 2013, increasing to about 300 in June.
- 20,531 cases have been resolved since implementation of the IAP, leaving about 17,200 in progress. Given historical rates of withdrawal and ineligible claims, about 15,000 more hearings will need to be held.
- Total awards are \$1.3 billion, with total compensation including legal fees and disbursements of \$1.952 billion.
- The number of self-represented claimants has increased significantly, from 636 a year ago to 2,233 now, or 15.2% of all claimants.

Kerry O'Shea asked why claims were being scheduled into September when there is a shortage of hearing-ready files now. Shelley Trevethan said that the normal procedure is to fill the schedule three months in advance, but where the claimant or claimant counsel are not available, a later date will be set. Efficient 'blocking' of hearings in the same location is also an objective, but not at the expense of delay.

5. Executive Director's report

Shelley Trevethan reported on some of the things the Adjudication Secretariat is doing to address the current shortage of hearing-ready files:

- The Accelerated Hearing Process, which was agreed upon at the Technical Subcommittee and discussed at Oversight Committee at the January and

February 2013 meetings, will allow the IAP to create week-long blocks of hearings by augmenting scheduled hearings with cases that are not yet ready, with some active case management assistance from an adjudicator. Hopefully document production will be complete in time for the hearing, but at worst the claimant will have had their hearing to preserve the testimony and document production continues after the hearing before a decision is issued.

- The Secretariat is also commencing an intensive case management project as an interim step prior to the launch of the Case Analysis and Resolution unit (part of the Incomplete File Resolution procedure). The intensive case management group will work with lawyers to identify issues that are holding up claims and identify possible solutions.
- Analysis continues to better understand the delays claimant counsel are encountering in obtaining mandatory documents. The Adjudication Secretariat is looking at creating a ‘tools for counsel’ on its web site to provide current information, forms, and mailing addresses for document-holding institutions. Work is underway to better understand the largest blockages and provide assistance where possible.

Shelley Trevethan also discussed other initiatives underway in the Secretariat:

- Considerable work has occurred on staffing, including approval to extend all of the Adjudication Secretariat’s term employees to March 31, 2017, providing a measure of job security to staff.
- New features will be rolled out on the Interactive File Management System including an online calendar tool, which will allow adjudicators and claimant counsel to indicate their availability. This should speed up the scheduling process.
- The Adjudication Secretariat is developing a new outreach strategy following the application deadline, centered around the strategic objective of “ensuring a claimant centered approach to the IAP.” The new strategy aims to build claimant knowledge and awareness of the process with better information products (e.g., DVD of the hearing process, fact sheets, and other products). The approach will be to engage stakeholders and partners to help provide information to communities. A small in-house capacity will be retained to help respond to issues that arise, such as the Williams Lake situation.

6. Chief Adjudicator’s report

Dan Ish reported on regional adjudicator meetings recently held in Vancouver and Montreal. This year, two-day meetings were held, with an optional full-day

session on vicarious trauma and resilience, followed by a day that provided an opportunity for adjudicators to learn about and discuss ongoing issues and important recent decisions.

The batch four adjudicators were appointed in June 2011 and, in 2012, were renewed to September 2013 to allow them to complete enough work to conduct an evaluation. The Deputy Chief Adjudicators are presently doing those evaluations, which will lead to the Chief Adjudicator's recommendation to the Oversight Committee with respect to renewal of adjudicator contracts. The Chief Adjudicator asked the Oversight Committee members to advise him in advance if there were any major issues significant enough to warrant non-renewal of an adjudicator's contract, so that they could be considered when finalizing the recommendations.

It was agreed that a list of the current batch four adjudicators would be circulated to Oversight Committee members, who would be asked to indicate any concerns within two weeks of circulation of the list.

The Chief Adjudicator stressed that while batch one, two, and three adjudicators were renewed to the end of the IAP, he would continue to conduct evaluations, which could possibly lead to a recommendation to the Oversight Committee to terminate an adjudicator's contract.

7. Review adjudicators

Dan Ish asked the Oversight Committee for approval to add two names to the list of approved delegates to conduct 'correctness' reviews of adjudicators' decisions. He explained that his primary criteria for making these recommendations are the adjudicator's ability to write, to analyse and to produce timely decisions.

- *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.*

8. Evaluation of the IAP

Shelley Trevethan reported on work conducted since the last meeting to plan an evaluation of the IAP for the Oversight Committee. The Secretariat proposed to use 2013-14 for planning and conducting a Request for Proposals to hire a suitable consultant, and to then have an interim report for April 2015 and a final report completed and published in 2016.

Committee members discussed several facets of this project:

- The relationship between the evaluation and the 'legacy' project that Akivah Starkman is currently working on.
- Whether the evaluation should be conducted when the IAP is still underway.
- The importance of documenting this process, and concern that an evaluation may not be conducted after the IAP is completed.
- Whether the evaluation could examine the strengths and weaknesses of the Settlement Agreement itself, and not merely its implementation.
- Concern as to whether an evaluation conducted by or for the Oversight Committee may seem biased.
- Self-examination and evaluation has been undertaken throughout the life of the IAP, leading to initiatives such as short form decisions and the over 65 pilot project. The Chief Adjudicator's annual reports also tell the story of how the IAP has evolved.
- How to conduct an evaluation that looks not only at statistics and efficiencies, but also examines the claimant experience in the IAP.

It was agreed that the Secretariat move forward in 2013-14 with a report that looks at efficiencies and improvements for the IAP, while at the same time starting to develop a final report that describes the whole process and how objectives have been achieved.

9. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, May 28, 2013, in Toronto.