

Independent Assessment Process Oversight Committee

Meeting of May 28, 2013

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
Line Paré	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>
Shelley Trevethan	Executive Director, IRSAS
John Trueman	Senior Policy Advisor, IRSAS (recorder)

1. Report of the Technical Subcommittee

Dan Shapiro reported on discussions at Technical Subcommittee following approval of the Incomplete File Resolution procedure by the Oversight Committee at the April 24, 2013 meeting. Paragraph 25 was redrafted to improve clarity. As well, the Technical Subcommittee recommended that the Chief Adjudicator's delegates, to consider reconsideration decisions under paragraph 25, be limited to Deputy Chief Adjudicators.

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

2. Approval of minutes

The committee approved the minutes of the April 24, 2013 meeting, with minor corrections.

3. Key performance indicators

Shelley Trevethan discussed some key statistical indicators:

- To date, almost 38,000 applications have been received, and almost 32,000 claims have been admitted. 2,378 claims have been refused admission, about 7% of all claims received.
- About 10,000 claims are at the pre-hearing case management stage, mostly waiting for mandatory documents.
- The shortage of hearing-ready files continues, but is abating slightly. There are now 257 cases available to schedule, compared with 150 in February.
- 855 hearings are scheduled for the April-June quarter, which is somewhat higher than previously anticipated. The actual number will be higher once expedited hearings are included.
- A little over 17,000 hearings have been held since implementation, including almost 4,200 hearings in 2012-13. As well, 624 claims were resolved through negotiation in 2012-13.
- The postponement rate has increased slightly to 13%, up from 9% in fall 2012.
- In total, over 21,000 claims have been resolved, about 56% of all claims received. About 16,696 claims are in progress.
- The rate of self-represented claimants has risen to 16%, about four times the rate of a year ago.

Line Paré said that Canada is encountering challenges with the very high number of claims received in the months leading up to the deadline. Canada's commitment is to deliver its documents within 165 days of admission, even if the hearing will not take place for longer. To date, Canada is meeting its commitment for hearing-ready files, but will continue to monitor progress and report back to the committee.

Shelley Trevethan said that the Adjudication Secretariat is conservatively projecting March 2016 for the final first claimant hearings, based on 4,200 hearings and 600 negotiated settlements per year.

4. Executive Director's report

Shelley Trevethan reported on initiatives underway in the Adjudication Secretariat:

- The Accelerated Hearing Process is moving along to implementation. The communications materials are nearing completion and will be sent out in

- June. Communications materials are being planned for claimants' counsel, Canada, self-represented claimants, adjudicators, and the web site. The Secretariat has begun the work to identify suitable cases with a goal to hold teleconferences in July and hearings in September/October.
- In response to a question, Shelley Trevethan said that the communications materials will include a person at the Secretariat for claimants' counsel to contact.
 - Phase one of the Incomplete File Resolution procedure is to transition the current Admissions Unit into a Case Analysis and Resolution (CAR) unit to support the process. This will be slower than hoped because of the large caseload remaining in the Admissions Unit, which will continue into the winter, resulting from the surge of applications leading up to the deadline.
 - In the interim, the Secretariat is working with Crawford on an intensive case management approach to contact lawyers and obtain more specific information on claims that are not moving ahead. Mandatory document collection continues to be problematic and appears to result from specific document-holding institutions. The ICM project will help gather more detailed information to help address this.
 - The Secretariat is developing a new strategic communications plan to guide efforts to provide better information to claimants in the post-deadline environment. The web site will be restructured and provide a new section for legal counsel. Communications efforts will be more closely linked with outreach and client services functions. As well, a greater emphasis will be placed on internal communications to staff.

5. Chief Adjudicator's report

Dan Ish congratulated Mayo Moran, Chair of the Oversight Committee, on receiving a YWCA Woman of Distinction Award, and Delia Opekokew, Deputy Chief Adjudicator, on receiving the Law Society Medal from the Law Society of Upper Canada.

Mayo Moran, Dan Ish, Shelley Trevethan, and John Trueman attended a meeting with the National Administration Committee on May 7. Dan and Shelley provided a progress report and an overview of initiatives underway. They also reviewed the 2011 process that led to agreement on a target of 4,500 first claimant hearings per year.

At the NAC meeting, there was some discussion of possible education for legal counsel on the IAP, perhaps similar to the Continuing Legal Education BC session held in 2010.

The Chief Adjudicator's annual report to the Oversight Committee is being finalized and will be distributed in the next few weeks.

Two issues have emerged in the Stephen Bronstein/Ivon Johnny case in British Columbia. The first involves the provision of information by the Adjudication Secretariat to the Monitor to assist its review. In the previous Blott case, there was a specific court order allowing personal information to be provided. There is no specific order in this case, although the March 2007 implementation orders provide the Monitor with general power to access information. The Chief Adjudicator believes that claimant confidentiality must be upheld, information only shared with specific authority from the court, and measures taken to ensure it does not fall into the wrong hands.

The second issue is an application brought by the Vancouver Sun to remove the publication ban, which will be heard in Vancouver on June 3. The Chief Adjudicator supports removing the ban so long as claimant information is protected.

The Manitoba form fillers case is following a timetable for written submissions set by Court Counsel, which will first address the legal question of whether the authority of the court is broad enough to deal with non-lawyer third parties. It has not yet been set for hearing.

In response to a question, Dan Ish said that about 38-40% of IAP cases receive a 'schedule 2' legal fee review, in which the adjudicator determines if the proposed fees are fair and reasonable. The number of appeals has dropped substantially since the Chief Adjudicator's fee guidelines were issued. He said, however, that the fee guidelines are not automatic, and lawyers should expect to receive lower fees than the guidelines if they provide poor service.

6. Expert assessment roster

Dan Ish presented three names for addition to the roster of psychological experts, two of whom are French-speaking. Staff in the Chief Adjudicator's Office conducted reference checks of the candidates.

In response to a question, John Trueman said that the issue of religious affiliations had been raised the last time that candidates were proposed for the expert roster, but acknowledged that there had been an overcorrection. Mitch Holash suggested that the candidates be asked if they had any religious affiliations that would interfere with their ability to do the work.

- Decision: The Oversight Committee approved three names to be added to the roster of psychological experts.

7. Date of September 2013 meeting

David Paterson asked if the September 17, 2013 meeting could be moved in order to avoid a conflict with events planned by Reconciliation Canada and the Truth and Reconciliation Commission on that date.

- Decision: The Oversight Committee changed the September 2013 meeting date to Monday, September 16, 2013.

8. Dates for January-June 2014 meetings

- Decision: The Oversight Committee approved the following meeting dates and locations:

Tuesday, January 14, 2014	Vancouver
Tuesday, February 25, 2014	Toronto
Tuesday, April 1, 2014	Edmonton
Tuesday, May 6, 2014	Toronto
Tuesday, June 10, 2014	Yellowknife

9. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, July 9, 2013, in Vancouver.