

Independent Assessment Process Oversight Committee

Meeting of July 9, 2013
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
Line Paré	Government of Canada representative
Les Carpenter	Inuit representative
Paul Favel	Assembly of First Nations representative

Also present

Daniel Ish	Chief Adjudicator <i>absent for item 6</i>
Michael Mooney	Court Monitor, Crawford Class Action Services <i>absent for item 6</i>
Shelley Trevethan	Executive Director, IRSAS
John Trueman	Senior Policy and Strategic Advisor, IRSAS (recorder)

1. Report of the Technical Subcommittee

Caroline Clark reported on a meeting of the Technical Subcommittee held on June 3, 2013.

The first issue was claimant attestations in lieu of letters from government departments. For example, if a claimant did not have a corrections file, the claimant might send an attestation to this effect rather than obtaining a letter from federal or provincial corrections authorities indicating that no records exist. Questions had been raised by Canada about the Secretariat's policy in this area, and a claimant's counsel had encountered a situation where adjudicators were not accepting the attestation.

The Desk Guide for Counsel, available on the Adjudication Secretariat's web site, contains the applicable guidelines. Page 15 states that counsel can provide a written explanation for documents they are not able to submit. The Secretariat will ensure these guidelines are applied consistently.

The second issue was future care, and a list in circulation that purported to be a list of services that Health Canada will provide to claimants at no cost. Deputy Chief Adjudicator Rodger Linka joined the call to discuss this issue.

Mr. Linka explained that he thought adjudicators should be well-informed on this issue, and the Health Canada information was covered at the regional adjudicator meetings in April 2013.

Both claimants' counsel and Canada are encountering problems. Some adjudicators have been putting the document forward at hearings, or assuming that Health Canada pays for all counselling for IRS claimants, when this is not the case. In fact, Health Canada has different programs that vary across the country and may change over time.

After discussion, it was agreed that Mr. Linka will send a communication to adjudicators indicating that while the information on the Health Canada web site is accurate, Health Canada does not pay for all counselling. The clarification document was later circulated to the Technical Subcommittee. David Paterson and Kerry O'Shea have provided some comments and asked that it not be distributed until their comments are taken into consideration. Another Technical Subcommittee meeting will be scheduled if necessary.

2. Approval of minutes

The committee approved the minutes of the May 28, 2013 meeting as presented.

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.
- A little over 3,000 claims remain in the Admissions process, about 8% of all claims received. The remaining cases are taking longer to process because of the number of incomplete and blank applications received in the weeks before the application deadline. The Admissions process will likely not be complete until the winter. About 2,600 applications have not been admitted, which is about 7.7% of claims received.
- About 230 new applications have been received since the application deadline. Some have missed the deadline and will receive notices indicating that the deadline has passed; some are new applications on existing claims and the additional information will be added to their file;

and a few are former Blott claimants or attended Mistassini Hostels, which are eligible due to court orders.

- About 8,500 cases are in case management, which is down from over 9,000. A large number are still missing mandatory documents, but about 40% of the cases have been there less than six months.
- About 17,000 hearings have been held in total, including almost 4,200 in the 2012-13 fiscal year, the highest rate ever. The postponement rate is averaging 13%, but in May was only 10.8%.
- Hearing numbers are, however, significantly lower than we would like them to be. The Secretariat has 233 cases available to schedule, which is up from 150 in February but less than the ideal of about 300, which helps the Secretariat schedule hearings in blocks.
- In the first quarter (April-June), about 860 hearings will be held; in the second quarter (July-September), it will be around 997. Both are significantly lower than desired: about 1,100 per quarter need to be scheduled to meet targets. The Secretariat is beginning to schedule hearings into October based on claimant counsel availability.
- With Accelerated Hearing Process coming into effect, hearing numbers should be higher in the third and fourth quarters. However, it is unlikely that we will meet the 4,200 hearings held last year; the best case scenario is probably less than 4,000.
- About 1,800 cases are awaiting decisions, a number which is fairly stable.
- Almost 22,000 claims have been resolved, including over 16,000 decisions and 3,000 claims withdrawn or not admitted (about 15%).
- About 17.2% of active claimants are self-represented, much higher than the 7% rate a year ago.

Shelley Trevethan explained that as the Accelerated Hearing Process and other initiatives will increase the number of hearings scheduled for the third and fourth quarter, the Secretariat and Canada may begin to encounter capacity issues arising from a shortage of staff. She said that she has a briefing note in with the Deputy Minister of Aboriginal Affairs and Northern Development to seek additional flexibilities on staffing. Issues include the time to staff positions, especially with the measures implemented to help place staff who are laid off in other government departments. These people do not accept positions at the Secretariat, because it is unable to offer indeterminate (permanent) positions, but they can tie up the staffing process for months.

Line Paré added that Canada experiences this problem with Resolution Managers: many surplus employees will accept term positions, but leave as soon as they can find an indeterminate position in another department.

Dan Ish said that this is a huge risk to the IAP and achieving its targets, but it is especially a risk for Canada, which will be blamed for staffing issues that cause delays.

Dave Iverson said that extraordinary actions and responses are required to deal with this critical situation. The alternative is to lose faith with claimants.

4. Executive Director's report

Shelley Trevethan reported on initiatives underway in the Adjudication Secretariat to deal with the shortage of hearing-ready files:

- The intensive case management project is contacting claimants' counsel to obtain information on the status of files and what can be done to move them along. The Secretariat has sent out batches of letters to lawyers, and Crawford Class Action Services is on contract to help. This initiative is not helping address the low volume of hearing-ready files issue, but it is helping identify other issues, which may be helpful down the road when Incomplete File Resolution is implemented.
- To help improve the rate of mandatory document collection, the Secretariat has sent out template information on obtaining Canada Pension Plan records to claimants' counsel and posted it on the web site. Shelley Trevethan has also reached out to past colleagues in correctional institutions to get a sense of the issues. Alberta Corrections, for example, has a backlog of over 300 files. She talked to them about the possibility of putting a memorandum of understanding in place to provide funding so that these records could be produced more quickly.
- Implementation of the Accelerated Hearing Process is underway, with potential 'blocks' of hearings identified; Scheduling has contacted claimant counsel. Pre-hearing teleconferences will likely begin in the summer with hearings scheduled for September. Communication material has been sent to claimants' counsel and Canada's representatives, and posted on the web site.
- Incomplete File Resolution will be part of the report to the court that is being worked on, and likely will not begin until the winter, once the Court has provided approval for step 2 of the process.

Shelley Trevethan reported that the Secretariat is working on approaches to deal with claimants who have lost contact with the Secretariat or their legal counsel. The challenge is finding the right approach that protects their privacy rights

while protecting their right to move forward in the IAP. The Secretariat is seeking legal advice on the issue, and may put it forward in the upcoming report to the court. Shelley Trevethan invited comments from Oversight Committee members:

- Dan Ish recalled that when Canada was winding up the ADR process, it hired private investigators to try to find people. This may have been misinterpreted by some as suggesting that the claimants were in trouble.
- Shelley Trevethan mentioned that local Aboriginal organizations have been helpful in the past.
- Line Paré offered to share a report that Canada had put together, when dealing with the misuse of lost CEP claimants.
- Kerry O'Shea expressed concerns about the use of some health support workers to locate claimants.

As part of the national outreach strategy mentioned at a previous meeting, the Secretariat is working with Native Counselling Services of Alberta to produce a DVD on the hearing process.

Work is underway to improve the quality of interpreters at hearings. The Secretariat is building a better roster of interpreters, and preparing guides for interpreters and for adjudicators presiding over hearings where interpreters are used.

As discussed with the Oversight Committee last fall, research work has been undertaken in collaboration with the Truth and Reconciliation Commission to build a better understanding of abuse at residential schools and its effects. No names or any identifying information will be provided to the TRC. Shelley Trevethan has reviewed a draft of the report and the Secretariat will be meeting shortly with the TRC's researcher.

5. Chief Adjudicator's report

Dan Ish delivered his final report as Chief Adjudicator:

- Adjudicator capacity has never been a problem in the past but is something he continues to monitor. There are presently about 100 adjudicators, although not all work at the same capacity. An informal survey indicates that perhaps 10-12 adjudicators may retire in the next 18 months. Dan Ish suggested that his successor may recommend to the Oversight Committee a fifth RFP for adjudicators.
- In May, the Chief Adjudicator issued his decision on release of information from the master list of student on student admissions. Canada has not appealed the decision, and work is now underway to

ensure that personal information is properly redacted from the list. Caroline Clark agreed to share the proposed redaction model with David Paterson and Kerry O'Shea.

Dan Ish also presented his sixth Annual Report to the Oversight Committee, covering the 2012 calendar year. The report is directed to the Oversight Committee but written so that it can be provided to members' constituencies and the public. It will be posted on the Secretariat's web site shortly.

6. Appointment of the Chief Adjudicator

Dan Ish and Michael Mooney left the meeting for discussion of this item.

Mayo Moran distributed the report of the Selection Board, which she chaired on a non-voting basis along with members representing claimants, claimants' counsel, church organizations, and Canada. There were several terrific candidates, but after considering the applications, interviews, and references, the Selection Board unanimously recommended the appointment of Daniel Shapiro, Q.C., as Chief Adjudicator.

- *Decision: The Oversight Committee unanimously approved the appointment of Daniel Shapiro, Q.C., as Chief Adjudicator of the Independent Assessment Process and the Alternative Dispute Resolution process.*

Mayo Moran asked members to keep this information confidential until the court order confirming the appointment has been made, and the candidates have been contacted.

A dinner in honour of Dan Ish's service as Chief Adjudicator will be held the evening of July 9, at the Teahouse in Stanley Park.

7. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, August 20, 2013, in Toronto.