

Independent Assessment Process Oversight Committee

Meeting of August 20, 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 Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS
John Trueman	Senior Policy and Strategic Advisor, IRSAS (recorder)

1. Report of the Technical Subcommittee

Dan Shapiro reported on a meeting of the Technical Subcommittee held on August 19, 2013.

The Chief Adjudicator has asked Deputy Chief Adjudicator Kaye Dunlop to chair the Technical Subcommittee. She is on vacation and will begin with the September meeting.

The subcommittee examined the policy options open to the Adjudication Secretariat for claimants with whom the Secretariat has lost contact. The subcommittee felt it important to undertake proactive measures to locate lost claimants before the possible dismissal of a claim. The goal is to minimize the privacy risks associated with finding people.

Low-risk options include individuals already named by the claimant, online telephone directories, and a general notice about the closing of the IAP. As well, the subcommittee agreed that a court order should be sought to allow the release of information from the Indian Registry System, correctional agencies, provincial vital statistics and public trustee offices. Community organizations such as health centres, friendship centres, hostels, shelters, and band offices could be

useful resources. Finally, as a last resort, the subcommittee supported empowering an adjudicator to approve use of a skip tracing service or private investigator where necessary to locate a claimant.

The Adjudication Secretariat will prepare a paper for the Technical Subcommittee's consideration, in time for the Chief Adjudicator's application to the courts on the Completion Strategy.

In response to a question, Dan Shapiro said that an approach to 'lost claimants' could apply to claimants represented by a lawyer, but that lawyers often withdraw from the case when they are unable to contact their client to obtain instructions.

Les Carpenter suggested that land claim beneficiary lists may be helpful in locating claimants in the three northern territories.

Line Pare noted that Canada will be launching the Personal Credit program, as the second stage of the Common Experience Payment. This may yield updated contact information for some claimants as they make applications for credits.

The subcommittee discussed the lengthy delays in obtaining corrections records, especially in Saskatchewan and Alberta. It had been suggested that these records could be obtained more quickly if the volume of documents could be reduced somewhat. The subcommittee reviewed a list of different kinds of corrections records and agreed upon about ten types of documents that would not be necessary: things like temporary absence applications, travel permits, and correspondence from legal aid.

The subcommittee discussed the management of claims involving student-on-student abuse allegations. Canada shared worksheets it prepared, which identified claims that could potentially lead to new admissions of staff knowledge of student-on-student abuse. The current proposal is to focus on five individual schools in different parts of the country, where there is a high number of gaps in admissions, and many claims pending. All claims from each school would be assigned to a single adjudicator to be managed jointly.

The subcommittee discussed the issue of hearing cancellations due to negotiated settlements. About 12 claims per month are scheduled for hearings and then cancelled because the claim is settled through negotiation. Statistically, only 1 in 100 claims that enters Canada's negotiated settlement process (NSP) does not resolve successfully through negotiation. The subcommittee approved the Secretariat's two-pronged proposal:

- As soon as the Adjudication Secretariat is notified that a claim has entered NSP, the hearing will be cancelled.
- In the unlikely event that an NSP case does not settle through negotiation, the Secretariat will arrange a hearing for that claim on an expedited basis.

A related issue is the substitution of claimants when hearings are postponed on short notice. A challenge to date has been the Secretariat's lack of agility to obtain the necessary financial approvals on short notice. The subcommittee discussed the possibility of claimants' counsel making arrangements and being reimbursed by the Secretariat after the fact. Canada has committed to consult internally and report back on the minimum notice their representatives would require to accommodate a claimant substitution.

The subcommittee discussed a situation that had arisen in reviews of Alternative Dispute Resolution (ADR) cases. Under the DR Model, reviews requested by Canada could only be conducted by the Chief Adjudicator. It had recently come to light that three ADR reviews had been assigned to other adjudicators, and Chief Adjudicator Ish determined those reviews to be a nullity. The sense of the subcommittee was that the parties to those decisions need to be notified and informed of the situation, and be given the option of having a new review conducted by the Chief Adjudicator.

It was also suggested that the Oversight Committee clarify that Dan Shapiro has been appointed Chief Adjudicator of both the IAP and the ADR process.

An issue was raised regarding jurisdictional pre-hearing teleconferences in 'years of operation' cases. In August 2012, Chief Adjudicator Ish wrote a re-review decision that provided guidance to adjudicators on how to handle cases where the years of operation of a listed residential school are disputed. David Paterson is now putting together a Request for Directions asking the supervising courts to overturn that decision. His concern is that these cases are now going to jurisdictional pre-hearing teleconferences (JPHTs) and being denied, then to reviews where they are denied, and then put on hold at the re-review stage while waiting for the outcome of a future court decision. He asked instead that these cases be permitted to be adjourned before JPHTs, similar to how student on student cases can be adjourned before submissions while waiting for admissions from other cases.

Canada has requested more time to consult internally and determine its position.

Dan Shapiro indicated his general concern about either party filing Requests for Directions and grinding the process to a halt. He said that this happened once

before, on an issue related to legal fees, where decisions were put on hold for a year and a half, leading to a massive backlog.

2. Approval of minutes

The committee approved the minutes of the July 9, 2013 meeting with an amendment clarifying that Daniel Shapiro was appointed Chief Adjudicator of both the Independent Assessment Process and the Alternative Dispute Resolution process.

3. Key performance indicators

Shelley Trevethan discussed some key statistical indicators:

- Almost 38,000 applications had been received by the end of July, about 20 more since the June meeting. About 32,000 claims have been admitted, and about 2,600 – about 7% – are still waiting for a decision on whether their claim is admitted. These remaining claims are often missing large amounts of information, and many are self-represented. As well, there are still a number of claims on hold where two lawyers claim to represent the same claimant.
- Almost 3,000 claims have not been admitted, about 8.5% of all claims with an admit decision.
- About 250 applications have come in since the September 19, 2012 deadline. Seven are from Mistassini Hostels, where the court extended the deadline to September 2, 2013. Some are former Blott claimants, who are protected by the court order in the Blott case. Some are new applications on existing claims, and the new information has been added to their file. The remainder are people who have missed the deadline.
- Almost 18,000 hearings have been held to date.
- About 8,000 claims are still awaiting mandatory documents, although this number has dropped by 500 since the June meeting.
- The Adjudication Secretariat is now getting a higher number of cases available to schedule, after a significant shortage of hearing-ready cases over the past several months. In April-June, 857 hearings were held, which was higher than expected but significantly lower than the target. For July-September, almost 1,100 are scheduled to date and the target is 1,125 in anticipation of some postponements.
- The Secretariat expects to schedule hearings at full capacity (440 hearings/month, except December) for October onwards. This will not,

however, make up for the shortfall from earlier in the year. The current expectation is about 4,000 total hearings, after postponements, in 2013-14, which is down from the 4,200 accomplished last year, or the 4,500 that was targeted.

- Canada plans to resolve around 700 claims through negotiation, so about 4,700 claims should be processed in total this fiscal year.
- 22,651 claims have been resolved, about 60% of all claims received. About 15,000 claims remain to be resolved. Total compensation, as of the end of July 2013, is slightly over \$2 billion.

In response to a question about the 7,000 unresolved claims that are not waiting for mandatory documents, Shelley Trevethan said that these claims are in a number of stages, including the admissions process (3,000) and awaiting decisions to be written (1,800).

Line Paré reported on Canada's experience to date with Mistassini Hostels. The application deadline for CEP and IAP for this institution is September 2, 2013. She said that 230 CEP applications had been received, of which 225 were completed. 197 applications had been approved for Common Experience Payments of over \$2 million. The previous week, the first IAP claim from Mistassini Hostels had been admitted.

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 looking at files that are on hold, incomplete, or older than two years in the Case Management stage. The Secretariat has completed two rounds of communication with claimant counsel and a third round is about to begin. So far, the project has not produced a large number of hearing-ready files, but it has usefully identified the issues preventing claims from moving forward, such as claimants who are deceased or with whom their legal counsel has lost contact. This information will be helpful as the Secretariat moves to implement the Incomplete File Resolution procedure.
- Shelley Trevethan has contacted the heads of Corrections in Alberta and Saskatchewan to discuss delays in production of corrections mandatory documents. Saskatchewan has made good progress in clearing its backlog, and is looking at ways of more efficient production, which led to the discussion at Technical Subcommittee on what kinds of records could be left out.

- In Alberta, Corrections was very open with statistical information on the substantial backlog of requests. The Adjudication Secretariat has agreed to provide money under a Memorandum of Understanding to fund staff in the provincial head office and institutions to gather, copy, and redact records needed for the IAP.
- The Adjudication Secretariat has received a request from a health authority on a reserve in Ontario, looking for funding to assist in the production of records. Normally, doctors charge patients for this service, which is then paid by Canada at the time the claim settles. Apparently, this health authority is not set up to invoice for this service, and are looking for an alternative method of funding. Shelley has asked for more information on the particular situation.
- The Secretariat is conducting a survey of claimants' counsel, to identify the biggest issues with mandatory documents, focusing on the top 25 firms with a high number of files.

Line Paré reported on a conversation with the Director General of Service Canada responsible for Canada Pension Plan records. They have a backlog of over 6,000 files, of which 700 are related to residential schools. The required information is not contained in an automated database, so CPP officials have to research the files to prepare the report they send to claimants' counsel. Line's team is working on a template that would help focus their energies on the information that Canada and claimants' counsel require for IAP purposes.

Line Paré said that she had recently received word about a new policy at the Correctional Service of Canada that only certain types of records would be provided for IRS-related requests. She said that she would like to get a sense of what corrections records Oversight Committee members feel are essential, so she can discuss the matter with CSC.

David Paterson said that there was agreement at Technical Subcommittee to limit the types of documents coming from Alberta and Saskatchewan Corrections because of the specific problems in their production, but that this was not intended as an across-the-board proposal. He said that he would need to have a better sense of what the CSC proposed not to deliver.

Shelley Trevethan reported on other activities underway in the Secretariat:

- The Secretariat is conducting a survey of adjudicators to ascertain their future plans. This will help inform the Chief Adjudicator's decision on whether a further adjudicator RFP is required.
- The 'first cut' of the claimant information DVD has been completed. David Paterson appears in it as a claimants' counsel, as well as some

adjudicators, a church representative, a Deputy Chief Adjudicator, a Resolution Manager, an Elder, and others. The goal is to have it ready in time for the September TRC event in Vancouver.

- The Adjudication Secretariat is working with Native Counselling Services of Alberta on the 'Project of Heart' program, which focuses on bringing information and education about residential schools to students across the country. The Secretariat has held events in its offices, with the participation of residential school survivors. Shelley agreed to send information about the project to committee members.

Members discussed the impact of recent news reports on nutritional studies conducted at residential schools. Dan Shapiro said that this issue has not arisen specifically in IAP hearings, but that if it came before adjudicators they would adjudicate upon it based on the Settlement Agreement.

5. Chief Adjudicator's report

Dan Shapiro reported that Chief Adjudicator Ish has graciously made himself available for transition advice and assistance as necessary. He also has several decisions still in progress. Dan Shapiro also thanked Shelley Trevethan and Adjudication Secretariat staff for arranging briefings and meetings in his first few weeks as Chief Adjudicator.

The Chief Adjudicator and his deputies met the previous week and, among other things, redistributed his adjudicators to others. An RFP process is currently underway to select a new Deputy Chief Adjudicator to replace Dan Shapiro.

Work is proceeding on the Accelerated Hearing Process and 12 files have been scheduled for hearings in November. This small group should help test what approaches will be successful. It appears that the AHP will be helpful in managing the 'ebb and flow' between having too many and not enough hearing-ready cases.

In order to gauge adjudicative capacity, the Chief Adjudicator's Office has sent out a survey to adjudicators.

Canada is on target to meet the August 30 objective of making the master list of admissions of staff knowledge of student-on-student abuse available to claimants' counsel. Once completed, the list will be uploaded to the decision database, and a communications package will be sent out.

A security concern arose recently at a hearing held at Stony Mountain Institution, a federal penitentiary in Manitoba. The claimant attacked his lawyer on the way to the hearing room with a cell stick. Counsel suffered some injuries and the hearing was adjourned. Going forward, in order to improve safety at hearings held in prisons, the Adjudication Secretariat will not rely on claimants' counsel to

make arrangements. Rather, the Secretariat is talking with the Correctional Service of Canada in order to utilize rooms designed for Parole Board of Canada hearings wherever possible.

6. Report to the courts on Completion of the IAP

Dan Shapiro outlined the purpose of the draft report, which is to form part of the material to go before the court in the Chief Adjudicator's application this fall. The application has three prongs: this report, the Incomplete File Resolution procedure, and the Lost Contact policy. The objective is to give the court enough information on the overall plan, the challenges and variables that may affect success, and the tools proposed to address those variables. The report would be appended to an affidavit sworn in support of the request for directions.

Mitch Holash raised a concern about the wording of section 6.14, on the disposition of IAP records. After discussion, the Oversight Committee agreed on more neutral language.

Line Paré requested that section 6.4, on human resources requirements, be revised to refer to the "Deficit Reduction Action Plan" instead of "cuts."

In response to a question, Dan Shapiro said that it would be best not to share the report with constituents until it has been finalized and filed with the court.

Oversight Committee members discussed the next step, which involves providing the draft report to the National Administration Committee for their review and comment.

7. Expert assessment roster

Dan Shapiro referred members to the three resumes submitted by the Adjudication Secretariat, as part of its ongoing approach to address identified needs, where there is a shortage of experts in particular specialties or regions.

Members discussed how it would be helpful to have additional information on the proposed expert's experience with Aboriginal people and their experience conducting assessments.

Dan Shapiro pointed out that some assessors started out with very little experience with Aboriginal people, but became quickly attuned to these realities. He said he would pass along the comments to staff.

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

8. Claimants' counsel representation on the Oversight Committee

Mayo Moran announced that she had received Kerry O'Shea's resignation as a member of the Oversight Committee.

The Chief Adjudicator and others thanked Kerry O'Shea for her years of service to the committee, and to claimants as their legal counsel.

Les Carpenter presented Kerry O'Shea with a handmade keychain and card holder in thanks for her service.

9. Next meeting

The next Oversight Committee meeting is scheduled for Monday, September 16, 2013, in Vancouver.