

Independent Assessment Process Oversight Committee

Meeting of September 16, 2013
Vancouver, BC

Minutes

Members present

Mayo Moran	Chair
Mitch Holash	Church representative
David Iverson	Church 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)

Regrets

Diane Soroka	Claimant counsel representative
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1. Report of the Technical Subcommittee

Dan Shapiro reported on a meeting of the Technical Subcommittee held by teleconference on September 13, 2013.

In an effort to address the backlog in producing corrections records in Alberta and Saskatchewan, the subcommittee agreed to a list of certain categories of documents that would not be required for claims from those provinces.

Canada has provided a worksheet identifying student on student cases where the claimant has provided information on the application form that, if accepted by the adjudicator, could lead to an admission of staff knowledge of student on student abuse for use in other cases. The subcommittee discussed a project to identify five schools with significant gaps in admissions, and sequence hearings so that claimants without evidence of staff knowledge of abuse can benefit from admissions made based on cases that have gone before. Dan Shapiro said that he

hoped that the parties could discuss the schools and process at their next meeting.

Following discussion of lost claimants at the previous meeting, the Adjudication Secretariat developed a “protocol” containing steps to be taken by claimants’ counsel or the Secretariat to attempt to locate lost claimants. Step three in the protocol, which involves obtaining contact information from government databases, and step four, which involves enlisting the assistance of local organizations, would require court orders to implement. The subcommittee examined the protocol with a view to ensuring that risks to claimant privacy are minimized.

Oversight Committee members discussed several aspects of this issue:

- Dave Iverson suggested that church organizations may be helpful in locating some claimants.
 - Les Carpenter suggested adding hunter and trappers associations/committees would be helpful in locating northern claimants who may be out on the land.
 - Paul Favel suggested that the Assembly of First Nations be added, and said that the AFN had amassed an extensive database while the Settlement Agreement was being negotiated. Line Paré cautioned that privacy considerations would need to be explored where political organizations are involved.
 - In response to a question about timing, Dan Shapiro said that the Lost Claimants protocol is designed to dovetail with the Incomplete File Resolution procedure.
- Decision: The Oversight Committee approved the Lost Claimants protocol, and asked the Chief Adjudicator to pursue the necessary court orders for its implementation.

The subcommittee considered a policy proposed by the Adjudication Secretariat that would allow the substitution of claimants in the event of a hearing postponement. In cases where an adjudicator has approved the postponement of a hearing, the same claimant counsel can come forward at least two weeks before the hearing date with the name of another claimant whose file is hearing-ready, can be heard in the same location, and who meets other criteria in the policy. In some cases, the Secretariat may ask the claimant’s counsel to make travel arrangements, which would be reimbursed if they have been pre-approved by the Secretariat.

Canada had indicated that it required time for further consultations, and undertook to provide an answer by September 20.

In response to a question about interpreters, it was clarified that the Secretariat will not be locating an interpreter for a hearing scheduled on short notice under this policy. However, if an interpreter had been arranged for the postponed hearing, with the same language or dialect required for the substitute hearing, that interpreter could be retained.

Dave Iverson requested that the policy be clarified to ensure that all participating parties, including a participating church organization, be notified.

- Decision: The Oversight Committee approved the Policy on Claimant Hearing Substitutions, subject to Canada's agreement.

David Paterson had proposed that jurisdictional pre-hearing teleconferences in 'years of operations' cases be adjourned while his Request for Directions on this issue is heard by the court. At the Technical Subcommittee meeting, Canada advised that it opposed the adjournment of JPHTs for this reason. The Chief Adjudicator indicated that he was uncomfortable with this as well, and that it risked grinding cases to a halt for a year or longer. He indicated to the subcommittee that he would not be prepared to advise adjudicators to adjourn JPHTs at this time.

2. Approval of minutes

The committee approved the minutes of the August 20, 2013 meeting with minor amendments.

3. Key performance indicators

Shelley Trevethan discussed some key statistical indicators:

- As of August 25, a total of 37,847 applications have been received. About 270 applications have arrived since the application deadline, including some former Blott claimants covered by the court order, and 18 applications from former students of Mistassini Hostels.
- Over 32,000 claims have been admitted so far. The percentage of non-admits has gone up slightly, from 8.5% to 8.9%. About 2,300 files are still in progress at the admissions stage; most of these arrived with very little information.

- The number of cases in the case management stage – mostly waiting for mandatory documents – has decreased substantially, from about 8,000 to a little over 7,000.
- Just over 18,000 hearings have been held. The postponement rate, which was 13% last year, is declining, reaching a low of 6.6% in July.
- The number of hearing-ready cases is increasing, and it looks like about 4,100 first claimant hearings will be held in 2013/14. This is lower than the 4,500 that were planned, largely because it is impossible to make up for the shortage of hearings in the first two quarters of the year. Canada is on track with negotiated settlements, so the total number of claims 'processed' should reach 4,800 for 2013/14.
- 95% of hearing-ready files are offered a hearing date within nine months.
- One of the biggest issues for scheduling is the availability of female adjudicators in some areas. There is high demand in Saskatchewan and the Secretariat is bringing in adjudicators from other provinces as required.
- About 2,000 files have had hearings but not decisions. These are waiting for further mandatory document production, POI hearings, medical and expert assessments, scheduling of final submissions, and the adjudicator's decision.
- Just over 23,100 cases have been resolved, 61.1% of all claims filed. About 14,700 claims are left.
- 15.6% of claims are self-represented, which is much higher than a year ago (under 7%). The percentage has gone down slightly but this remains a significant issue.

David Paterson said that the postponement statistics should only include postponements requested within the last ten weeks before the hearing, when the postponement policy applies. Line Paré said that the postponement statistics did not match Canada's experience on the ground, and that they would follow up with Shelley.

Line Paré said that Canada needs to have a representative at every hearing, and may need to make decisions about whether to negotiate settlements or attend hearings. She said that Canada would monitor the situation going forward.

Members discussed the number of post-hearing files and some of the delays related to medical and expert assessments. Shelley Trevethan said that the Secretariat will be undertaking a more detailed analysis of these issues.

4. Executive Director's report

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

- Things are moving well with Alberta and Saskatchewan Corrections. The Secretariat is finalizing a Memorandum of Understanding with Alberta Corrections that will provide resources from October 1 to March 31, 2014. She is attending a meeting with Saskatchewan Corrections to help them look at better efficiencies, but they are not seeking resources at this time.
- The Secretariat is completing a survey of claimant counsel to try to identify the biggest issues for mandatory documents. The results should be ready in time for the next meeting.
- The first two Accelerated Hearing Process hearings are scheduled for November. Because of the increase in the number of hearing-ready files, few AHP hearings have been scheduled, but the Secretariat will continue to look at this as a way of scheduling full 'blocks' of hearings.
- The Secretariat has analyzed the active caseload by legal counsel, looking at the number of remaining cases for each firm and the number of hearings that firm has attended every month. At the current rates, most claimant counsel will be able to finish by September 2016. However, some will require significantly more than that. The Secretariat will need to communicate with those firms about the completion strategy, and work with them to develop plans to ensure all their cases are heard in time.
- As well, the number of outstanding self-represented claims is a concern. The Secretariat undertook a 'blitz' over the summer to call self-represented claimants and explain the benefit of having a lawyer, which has met with some success. However, a substantial number remains, along with some particularly difficult cases. The Secretariat is developing a strategy to help bring these claims to hearing.

Shelley Trevethan reported on other activities underway in the Secretariat:

- In order to improve safety of hearings held in prisons, the Secretariat has agreed with Corrections Canada that arrangements for these hearings will be made through the regional administrators of security. Normally, hearings would be held in the administrative wing in the same way as Parole Board of Canada hearings. Depending on the level of risk, the prison will decide whether a correctional officer should be present.
- Adjudication Secretariat staff are in Vancouver for the Truth and Reconciliation Commission National Event, to be held September 18-21.

- Preparations are underway for the IAP final report, with the goal of having an interim report complete by Spring 2015 and a final draft by Spring 2016. The Secretariat is starting to conduct focus groups to identify the objectives of the IAP and the types of information that would be useful to present in the final report. Focus groups are planned with Secretariat staff, representatives of Canada, claimants' counsel, church organizations, the Assembly of First Nations, and Inuit organizations. Discussions are needed on the best approach to include Aboriginal organizations, Resolution Health Support Workers, and adjudicators.

Committee members discussed several aspects of the IAP final report project:

- The focus groups are planned for this fall. In addition to gathering feedback, they will promote awareness of the project.
- Akivah Starkman is working on a report for the Deputy Minister of Aboriginal Affairs and Northern Development Canada, looking at the process and peoples' views on it. It will not include a statistical profile of claimants. It will likely be ready by fall or winter 2013, and is expected to contain really important background information that, can be used for the final report.
- The scope of the review needs to be determined. Will it be limited to how the process, as negotiated in the Settlement Agreement, was implemented? Or will it revisit the choices that were made in the negotiation?
- It was suggested that the "larger questions" might be better left to the academic community, while the Oversight Committee would be well-placed to oversee an evaluation of how the IAP was implemented.
- Different stakeholders may have come to the process with different visions, which may lead to contradictory outcomes from the different focus groups.
- Members discussed the possible role of the Truth and Reconciliation Commission in focus groups. The TRC has heard from thousands of survivors who have participated in the IAP. However, unlike the other stakeholders, the TRC is a creation of the Settlement Agreement for a specific purpose.
- The focus groups will also need to examine ways of including claimants in the review process. This is a delicate area considering the very high number of claimants and difficulties of privacy and solicitor-client relationships.

5. Chief Adjudicator's report

Dan Shapiro reported on several recent activities:

- The current request for proposals for a Deputy Chief Adjudicator has been structured so that two DCAs could be appointed from the process. The Chief Adjudicator has not yet determined whether to hire one or two. After discussion, he asked that the selection committee recommend up to two candidates for appointment at the November meeting.
- The Secretariat is finalizing a survey of adjudicative capacity to inform the Chief Adjudicator's recommendation of whether a further adjudicator RFP should be conducted. He hopes to have a decision in time for the November meeting.
- The master list of admissions of staff knowledge of student-on-student abuse is now available to claimant counsel through the decision database.
- David Paterson has filed his Request for Direction on years of operation issues, but it is not clear which judge it will be assigned to.
- Fay Brunning, a claimant counsel in Ontario, has filed a Request for Direction seeking release of Ontario Provincial Police records of a criminal investigation at St. Anne's IRS. Canada has also filed an RFD on this matter.
- On the Blott case, Mr. Pitfield has asked the Chief Adjudicator's Office to seek direction from the courts to set an application deadline for the former Blott Claimants protected by the June 2012 court order. About 440 claimants are in the Blott databases but have not yet submitted applications.
- The Chief Adjudicator will be speaking on September 20 to a conference of Law Society discipline administrators across Canada. This will be an opportunity to bring issues of lawyer conduct to the attention of all the regulators of the legal profession across the country.

6. Meeting with the National Administration Committee on the Completion of the IAP

Dan Shapiro discussed preparations for a meeting of the National Administration Committee, scheduled for the following day, September 17. The meeting will discuss three items. The first is the draft plan for completion of the IAP, which does not require court approval but which provides important context for the other two items. The other two items are the Incomplete File Resolution procedure, approved at the April meeting, and the Lost Claimants protocol, approved at this meeting. The Chief Adjudicator encouraged

Oversight Committee members to be in touch with their counterparts on the NAC to help address any concerns.

In response to a question, the Chief Adjudicator requested that Oversight Committee members not circulate the plan before it is filed with the courts.

7. DVD screening: *Telling Your Story: The Indian Residential Schools Independent Assessment Process*

Shelley Trevethen presented a rough cut of a DVD produced by the Adjudication Secretariat to help claimants prepare for their hearing. Oversight Committee members viewed the DVD over lunch.

Dave Iverson said that he liked the DVD, but was concerned about two areas. There was no mention of church attendance in caucus. This has been a recurring problem, and he has written both Chief Adjudicators Ish and Shapiro about adjudicators and Resolution Managers who will not allow the church into caucus. He was concerned that the DVD would reinforce this process. His second concern is that while a church representative is interviewed in the video, she is not seen sitting at the table.

Mayo Moran suggested that the voiceover in the video could be edited to clarify the church's presence at the hearing and in caucus.

Shelley Trevethan said she would look into how these issues could be resolved in the final edit.

8. Appointment of delegate to conduct reviews

Dan Shapiro said that his predecessor, Dan Ish, has been very helpful on transitional issues and remains on contract with the Adjudication Secretariat to provide assistance as required. Mr. Ish also indicated that he would be prepared to conduct reviews occasionally, if the Chief Adjudicator were to assign them. Dan Shapiro asked the Oversight Committee to add Mr. Ish to the list of approved delegates of the Chief Adjudicator to conduct reviews.

After discussion, the Oversight Committee agreed to the proposal, subject to an appropriate revision in Mr. Ish's letter of resignation.

- Decision: The Oversight Committee approved Daniel Ish, Q.C., as a delegate of the Chief Adjudicator to conduct reviews.

9. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, November 5, 2013, in Vancouver.