

Independent Assessment Process Oversight Committee

Meeting of February 25, 2014

Toronto, ON

Minutes

Members present

Mayo Moran	Chair
Les Carpenter	Inuit representative
Karen Cuddy	Government of Canada representative
Paul Favel	Assembly of First Nations representative
Mitch Holash	Church representative
David Iverson	Church representative
Line Paré	Government of Canada representative
David Paterson	Claimant counsel representative
Diane Soroka	Claimant counsel representative

Also present

Kaye Dunlop	Deputy Chief Adjudicator; Chair, Technical Subcommittee <i>present for item 1 only</i>
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS
John Trueman	Senior Policy and Strategic Advisor, IRSAS (recorder)

1. Report of the Technical Subcommittee

Kaye Dunlop reported on a meeting of the Technical Subcommittee held February 24, 2014. She welcomed Deanna Sitter, who has replaced Orest Wasarab as one of Canada's two representatives on the subcommittee.

An issue was raised by claimants' counsel about the amount of information provided to alleged perpetrators, and the possibility that more information was being shared than permitted by the Settlement Agreement. It was unclear whether the concern arose from Canada or the Adjudication Secretariat. Diane Soroka provided some specific examples for further investigation.

A small concern was raised related to legal fee reviews. Kaye Dunlop reminded members that concerns about specific cases are best referred to the relevant Deputy Chief Adjudicator, with a copy to the other parties in that case.

An issue arose about ex parte communications with the Chief Adjudicator's Office on reviews and appeals. On some occasions, a party does not notify the other parties when seeking an extension of time to file a review request. The

CAO forwards these requests to the other party, but there is sometimes a delay. In the short term, parties will be reminded that they must copy the other party when requesting a review or time extension. In the long term, the Adjudication Secretariat will investigate whether the Electronic Document Interchange system can be adapted to accommodate review requests from counsel and Canada.

Kaye Dunlop also provided a brief update on the management of student on student claims project and said that she would start working in Spring 2014 to support the implementation of the Incomplete File Resolution procedure.

2. Approval of minutes

The committee approved the minutes of the January 14, 2014 meeting with minor corrections.

3. Key performance indicators

Shelley Trevethan discussed some key statistical indicators:

- Almost 38,000 applications have been received, including 531 received after the September 19, 2012 application deadline. Of these:
 - 81 were accepted because they were postmarked before the deadline;
 - 262 were accepted under the terms of the court order for the transition of Blott and Company;
 - 14 were accepted under the terms of the court order covering Mistassini Hostels;
 - 146 were received after the deadline and not accepted; and
 - 28 are still under review.
- 32,817 applications have been admitted to the IAP to date. 3,519 have been not admitted, a number that continues to increase with 40-45% of claims remaining in the admissions process being ultimately not admitted. 1,591 claims remain in the admissions process and may not receive an admit decision until Fall 2014, because of missing information.
- 5,137 claims are awaiting mandatory documents, a number that continues to decrease.
- Over 20,000 hearings have been held. The postponement rate is approximately 11.5%.
- Only 350 cases are available to schedule, which is down somewhat, and a little worrisome: a continued decline in hearing-ready files will make it

difficult to meet hearing targets in 2014-15. The Accelerated Hearing Process may need to be employed to help ensure a steady stream of hearings.

- Presently, the Adjudication Secretariat expects to hold up to 4,160 hearings in the 2013-14 fiscal year, after postponements. As well, 721 negotiated settlements are anticipated for the year.
- Almost 2,000 cases are awaiting decisions after hearings. There are some delays due to low staffing in this area.
- Presently, 176 decision reviews and 46 re-reviews are in progress.
- 25,735 claims have been resolved, representing 68% of all claims filed. About 12,200 remain in progress.
- \$2.26 billion in compensation has been paid.
- Claimants are self-represented in about 13% of active claims.
- 29% of active claims are in Saskatchewan; this is where the bulk of the remaining hearings will be held.

Dan Shapiro said that the number of hearings for the January-March 2014 quarter, 1,232, is a record number for the IAP. The number of negotiated settlements is also terrific.

Line Paré said that if the Accelerated Hearing Process is used to record claimant testimony, it will be equally important to ensure that any affected alleged perpetrators are heard as well. She said that Canada has the capacity of Resolution Managers and Department of Justice counsel to meet the demand, and that she has approved the hiring of further RMs to ensure sustained capacity over time.

4. Executive Director's report

Shelley Trevethan reported on work underway to improve the quality of interpretation at hearings. The Adjudication Secretariat is completing a code of conduct for interpreters and a handbook for interpreters, including a glossary of technical terms. An employee has been appointed to act as a dedicated liaison with interpreters, and work is underway to develop a roster of interpreters. Work continues to find contracting vehicles that would allow quality interpreters to be paid at a more appropriate rate.

The English DVD for claimants on the hearing process has been completed, with all revisions made. The French DVD was filmed the week of January 20 and is presently being edited. Both DVDs will be shown at the Truth and

Reconciliation Commission event in Edmonton in late March. A communications strategy is underway to distribute the DVD, including posting on YouTube with a link from the Adjudication Secretariat's web site, and distribution to Resolution Health Support Workers, Oversight Committee members, and many others.

5. Chief Adjudicator's report

Dan Shapiro congratulated Mayo Moran on her appointment as Provost and Vice-Chancellor of Trinity College at the University of Toronto effective July 1, 2014, which was announced the previous day. She will stay on as Chair of the IAP Oversight Committee.

Work continues to support adjudicators in maintaining security of personal information in the IAP. The Adjudication Secretariat has drafted a comprehensive security manual for adjudicators, which will be reviewed by Deputy Chief Adjudicators the next day. Support will also be provided to adjudicators to encrypt their portable computers properly. The Adjudication Secretariat provides adjudicators with government-standard encrypted USB keys and audio recorders, but adjudicators use their own computers which must be encrypted to protect the contents.

The Chief Adjudicator has been in discussions about a list of claimant counsel that the National Administration Committee is to maintain under the Settlement Agreement. He has provided the NAC with a list of lawyers who have cases in the IAP, and suggested that the NAC review it to ensure that it is current. At the Chief Adjudicator's urging, NAC is prepared to look at possible improvements, such as requiring counsel to sign an undertaking to comply with the Chief Adjudicator's *Expectations of Legal Practice in the IAP*, the Canadian Bar Association guidelines, and the Implementation Orders. The resulting list will be helpful when referring self-represented claimants to lawyers.

In a previous discussion of adjudicative capacity, there was discussion about whether retired adjudicators could continue to do some work. The Chief Adjudicator has been in touch with several adjudicators who recently announced their retirement. One has reconsidered altogether, one wants to keep her name on the list to do expedited hearings, and a third plans to retire but will be available for the occasional expedited case. Contracts are already in place for these adjudicators.

The 2014 adjudicator regional meetings will be held in April. The focus this year is on gathering evidence in a way that is more sensitive to Aboriginal cultural perspectives. There will be a discussion of the therapeutic aspect of hearings. It is important to maintain those elements even as the legal issues become more extensive.

The Chief Adjudicator is also convening focus groups for Aboriginal adjudicators, which will be chaired by Delia Opekokew and himself. Topics will include retaining and recruiting Aboriginal adjudicators, as well as opportunities, mentoring, support and development. Adjudicators can raise issues important to them, as well.

Regarding the completion strategy, the National Administration Committee was unanimous in supporting the Incomplete File Resolution procedure and the Lost Claimant protocol. The members are looking at whether these could be dealt with through a consent order. This would be straightforward for the IFR and more complicated for the Lost Claimant protocol because of the number of agencies across the country who may be impacted. The Chief Adjudicator has asked his counsel to prepare and circulate draft orders.

The Chief Adjudicator was recently made aware of a court decision regarding the IAP application deadline. Four applicants had filed Requests for Direction to apply to the IAP after September 19, 2012. In each case the applicants provided good explanations for not meeting the deadline through no fault of the claimants. However, the Court decided there was no ability to extend the deadline.

6. St. Anne's IRS

Dan Shapiro provided an update on the Request for Directions regarding St. Anne's IRS. He said that the applicant's counsel has persisted in asserting in court that the Oversight Committee was not aware of the case, although it was first reported at the November 2013 meeting and at every Oversight Committee meeting since.

The decision was issued on January 14, while the Oversight Committee was meeting. The Chief Adjudicator sent the decision and a summary of it to committee members a few days later. As well, the committee received a Notice to Counsel prepared by the Chief Adjudicator advising of guidance provided to adjudicators on how to proceed.

The applicant's counsel was asking for all St. Anne's IRS claims to be stopped until Canada met its obligations under the order. The Chief Adjudicator is concerned about the implications of that. His guidance encouraged hearings to process and ensure that evidence is gathered from claimants. If, after hearing the evidence, a party felt that they were prejudiced by the provision of insufficient information from Canada, they could ask the adjudicator to postpone submissions, and even recall the claimant if necessary. The Chief Adjudicator acknowledged that this is not acceptable to the applicant's counsel in the RFD but said that, in his judgement, this was the best balance that could be struck to minimize disruption to the IAP but give people the benefit of the court's

decision. He stressed that this is guidance, not direction, and adjudicators are free to accept or reject the guidance.

A publication ban remains in effect that covers the names of all participants in the IAP. There was a question of whether there would also be a sealing order. The Chief Adjudicator's Office reviewed the materials, and the final assessment was that the information filed in the RFD was gathered through processes other than the IAP, so the Chief Adjudicator did not seek a sealing order.

There has been a request that all Department of Justice counsel be prevented from appearing in any IAP hearings involving St. Anne's IRS. The Chief Adjudicator replied saying that this request needs to be directed to the Minister of Justice, and that if there were concerns about particular lawyers, the Law Society is available to them.

In his decision, Justice Perell indicated that there may be a right to re-open IAP decisions, on a case by case basis on application to the supervising courts. The Chief Adjudicator noted that of the 170 St. Anne's IRS cases that have been decided, only a handful resulted in no award. However, if claimants can show that they were prejudiced by a lack of disclosure from Canada, they can ask the courts to re-open the case by filing a Request for Directions.

Diane Soroka said that the decision raised a number of issues that go beyond St. Anne's IRS, and asked what Canada is going to do regarding disclosure for other schools.

Dan Shapiro said that one part of the decision, where Justice Perell speaks about Canada narrowly interpreting its disclosure obligations in terms of timing, clearly applies across the board. He said that he had assigned adjudicators to file to case manage them, and avoid people arriving at hearings and asking to adjourn them. The case management process will help people prepare for hearings, and if information is missing, it can be addressed at that time. He also noted that the Adjudication Secretariat's Client Services group assists self-represented claimants and ensures that they have the same information that claimant counsel has.

7. IAP Final Report

Shelley Trevethan recalled that discussions started about a year ago about doing some kind of evaluation of the IAP, and the Oversight Committee approved doing a final report rather than a formal evaluation. In preparation for this project, the Adjudication Secretariat conducted a number of focus groups, which were summarized in a report distributed before the meeting.

In total, 20 focus groups were held involving staff, adjudicators, claimants participating in a Group IAP project, the Assembly of First Nations, Inuit

organizations, Canada's representatives, church organizations, claimant counsel, and health support workers. The focus groups identified the main objectives of the IAP as: settling litigation through reparation; offering a claimant centred and holistic approach; acknowledgement of wrongdoing and harms done; awareness and outreach; and healing and reconciliation.

It was suggested that the term "compensation" be used instead of "reparation," and that the "awareness and outreach" objective be principally centred on awareness of the claims process, rather than education about residential schools generally.

Les Carpenter asked whether the report would contain a statement for the future, in terms of the government's relations with Aboriginal people. Paul Favel suggested that the report contain some context about how the IAP fits into a much larger picture, even as it focusses primarily on how the IAP was implemented. Mitch Holash said that all stakeholders entered into the Settlement Agreement with their own background, and that it would be important to produce a document that could be supported by those stakeholders as an important contribution to the IAP's legacy.

Shelley Trevethan said that she welcomed further comments as the Adjudication Secretariat begins work to determine how to measure progress towards the identified objectives. Work is also beginning on the claimant profile. She said that she expected a draft report would be available for review by committee members in approximately two years.

8. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, April 1, 2014, in Edmonton.