

Independent Assessment Process Oversight Committee

Meeting of September 9, 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 <i>absent for item 8</i>
Diane Soroka	Claimant counsel representative

Also present

Kaye Dunlop	Deputy Chief Adjudicator; Chair, Technical Subcommittee <i>present for items 1 and 2 only</i>
Michael Mooney	Court Monitor, Crawford Class Action Services
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS
John Trueman	Senior Policy and Strategic Advisor, IRSAS (recorder)

1. Approval of minutes

The committee approved the minutes of the June 10, 2014 meeting with minor amendments.

2. Report of the Technical Subcommittee

Kaye Dunlop reported on meetings of the Technical Subcommittee held September 8 and 9, 2014.

Canada reported on its examination of lost quarterly returns from St. Philips IRS and Beauval IRS, which had been located at Library and Archives Canada by the Truth and Reconciliation Commission's researchers. After a thorough analysis, Canada determined that no IAP claimant had been affected by the missing

records. The Technical Subcommittee was satisfied with Canada's assurance that no claim was affected.

Canada has indicated that, to date, no further missing claimant attendance documents have been located by the TRC.

The committee agreed that Mayo Moran would write a letter to Justice Murray Sinclair, who had raised the issue with the Oversight Committee in March.

The student on student project has seen mixed success, dependent largely on the voluntary participation by claimant counsel. Generally speaking, it is the lawyers with the largest number of student-on-student cases who are not participating.

The Technical Subcommittee has decided to take a somewhat different approach, and focus on those individual claims that appear likely to generate admissions that would benefit the largest number of other cases. Canada is undertaking further analysis of its data and will be meeting with Kaye Dunlop later in the month.

In any event, the number of cases in the project is dwindling as cases become hearing-ready in the normal course. There are only 335 cases remaining where knowledge is alleged, and 566 cases where knowledge is not alleged.

Claimant counsel on the Technical Subcommittee suggested that once priority files are identified, perhaps the Adjudication Secretariat should go ahead and schedule them for hearings, without the consent of counsel. This option will be discussed further.

The Incomplete File Resolution procedure was approved by the supervising courts by consent order on June 19, 2014. Implementation of step one is proceeding nicely, and the Secretariat has developed a procedures manual for handling these cases. The Case Analysis and Resolution Unit is functioning, and two adjudicators have been designated to assist in cases where a file management adjudicator is required.

Step two of the IFR may need to be activated, but it requires approval by the Oversight Committee, hopefully at the next meeting. Kaye Dunlop will prepare a memo on the types of cases proposed for step two, and circulate it to the Oversight Committee in advance of the meeting.

Estate claims have been on hold since early 2013 while a series of reviews and re-reviews take place. Two final re-review decisions will be completed shortly, and sufficient direction is now available to help estate representatives determine whether to pursue their claims. Kaye Dunlop and John Trueman will be

preparing guidance for parties and adjudicators, and will report back at the next meeting.

Presently, there are 173 cases where an estate representative has come forward, and an additional 393 deceased claimants where no executor or administrator is identified.

A claimant's counsel had requested that Canada disclose any school yearbooks in its possession. Canada looked into the issue and advises that it has very few yearbooks in its possession, but where they exist they can be helpful, especially if the yearbooks have pictures.

Canada sought legal advice and has agreed to provide unredacted disclosure of yearbooks that are already in the public domain, such as those found in libraries. When yearbooks are not in the public domain, Canada will provide redacted disclosure if the yearbook is relevant to an issue in the case.

Canada has agreed to consider further whether it can provide a list of yearbooks in its possession, and will report back at the Technical Subcommittee's next meeting on October 27. David Paterson had also suggested a process in which an adjudicator could be asked to review an unredacted yearbook to determine if it contains any relevant evidence.

Kaye Dunlop said that she would draft a communication to adjudicators, advising that if identity or years of attendance of either the claimant or an alleged perpetrator are at issue, the adjudicator should ask Canada if it has yearbooks that would assist with an issue.

Mitch Holash asked that Canada consult with the church representatives as it develops its position on redaction of yearbooks.

At the February 28, 2012 meeting, Canada agreed to disclose staff lists and also to add school narratives to the decision database, although neither was implemented at that time. Canada will now proceed immediately to work with the Secretariat to have all school narratives available on the decision database for reference.

The issue of staff lists has to do with student-on-student claims and the concept of corporate knowledge of abuse. For example, if a principal had knowledge of abuse in 1940, and a claimant alleges abuse in 1950, the claimant's counsel will be wanting to know whether there were any staff at the school at both times, who would have had knowledge of the abuse.

Canada says that it does not have comprehensive staff lists, but that it will provide all documents about adult employees in cases where there is a "gap period" between the last admission of staff knowledge and the time the claimant

attended the school. The adjudicator will be able to determine how long the person was there and whether staff knowledge existed.

The Electronic Document Interchange pilot project, to allow claimant counsel to securely send mandatory documents and other items to the Secretariat and other parties, commenced August 4 and will continue to October 3. So far, 47 packages have been transmitted by two of the three firms that agreed to participate.

The Technical Subcommittee has endorsed the Secretariat rolling out EDI capability to all claimant counsel following the conclusion of the pilot. Once implemented, the Secretariat will no longer receive confidential documents by email, which is not secure. (The Secretariat has used EDI to send documents securely since 2010.)

The subcommittee continued its discussion on school narratives. The subcommittee agreed that the only types of documents that should ever be removed from an existing narrative are duplicate copies, variants of the same document, or the replacement of a copy that is not legible.

Another issue that arose with narratives for Dauphin IRS and Bishop Horden IRS were statements in the narrative that there were no criminal convictions at the school, even though this information was disclosed in Person of Interest reports from the school. Canada has acknowledged these errors, and has undertaken to review all the school narratives and correct them.

Many school narratives have been updated since 2012, especially with regard to 'years of operation' issues. Canada is working to find the best way to identify to the adjudicator and the parties what documents have been added or removed. The subcommittee discussed a number of options in this regard, and has received comments from David Paterson and Kaye Dunlop.

The subcommittee discussed errors in student-on-student admissions. In one blatant error, the admission was ten years off from the time period in the decision. Canada has agreed to review whether any cases were affected by that error, and will report back to the Technical Subcommittee at its October 27 meeting.

Canada has a dedicated email account (IAPAdmissions-AveuxduPEI@aandc.gc.ca), which parties can use to ask questions or make suggestions.

The subcommittee discussed a letter from claimant counsel Eric Lepine, as well as some cases identified by Kaye Dunlop. In most cases, no errors were

identified. The subcommittee also discussed how admissions are made, Canada's timelines for making them, and issues of quality control.

Finally, the subcommittee discussed the redaction of documents related to St. Anne's IRS, which Canada has produced in accordance with the January 2014 decision of the Ontario Superior Court of Justice. Kaye Dunlop had prepared a memorandum on the issue based on discussions with adjudicators hearing the cases.

Canada has agreed to consider providing staff names that are currently redacted in the school narratives and supporting documents, in unredacted form. The Technical Subcommittee will meet by teleconference on September 30 to hear Canada's position on the issue.

Canada has also agreed to look at potentially unredacting witness names at the request of claimant counsel, although Appendix VIII of Schedule D says that witness names should be redacted.

Finally, Canada will consider unredacting criminal transcripts and civil trial documents. Claimant counsel argued that these are already public documents that do not need to be redacted.

Kaye Dunlop has proposed a solution of how to deal with these issues going forward, which Canada will consider and the Technical Subcommittee will discuss at its teleconference on September 30.

3. Key performance indicators

Shelley Trevethan discussed some key statistical indicators:

- 33,399 applications have been admitted, with only about 770 awaiting an admissions decision. A fair number of the remaining claims involve deceased claimants, and nothing can be done until an estate representative comes forward.
- 3,755 claims have been not admitted, representing 10.1% of applications received.
- 594 applications have been received since the September 19, 2012 application deadline. 337 have been considered because of the court order in the Blott case, 74 were accepted after review because of postmark issues, and 13 were received by the later deadline set by the court for the Mistassini Hostels. 170 applications were not accepted because they were delivered after the deadline.

- 3,272 admitted cases remain in the pre-hearing document management stage. The median time required to receive mandatory documents and complete the evidentiary package remains stable at 360 days.
- Since September 2007, 22,336 hearings have been held.
- A total of 4,148 hearings were held in 2013-14.
- The number of cases ready for scheduling is 298, which is lower than the 400 cases necessary for efficient block scheduling.
- In the April-June 2014 quarter, 1,096 hearings were held, which was 97% of the target of 1,125. However, in the July-September quarter the Secretariat struggled, particularly in August where claimant counsel had very low availability to attend hearings. The Secretariat worked to fill the gap by scheduling accelerated hearings for claimants over age 80, as well as utilizing accelerated hearings in order to capture claimant testimony, but uptake from claimant counsel has been poor.
- Thus far in 2014-15, 2,832 hearings have been held or scheduled.
- Already, 46 hearings have been scheduled between April 1 and May 22, 2015. These are cases that are ready to be heard now but claimant counsel has requested a much later date. This raises concerns about meeting hearing targets for 2014-15.
- 2,178 cases have had a hearing and are waiting for decision. The Secretariat has put in place some mechanisms to expedite expert assessments, which are making a difference.
- 28,750 claims have been resolved, 76% of all claims received.
- One-third of the remaining cases are in Saskatchewan, and several law firms there have very large caseloads.

4. Executive Director's report

Shelley Trevethan reported that the shortage of hearing-ready files is one of the Secretariat's biggest operational challenges. Several initiatives are underway to deal with this:

- More intensive case management by Secretariat staff is helping to identify issues and resolve them in order to move the case forward.
- The Secretariat's work with Alberta and Saskatchewan corrections has largely eliminated their backlogs in producing mandatory documents.

- The Accelerated Hearing Process is being used not only to fill out complete blocks of hearings, but also to identify cases that are nearly hearing ready and bring them before an adjudicator.

Shelley Trevethan and senior Secretariat staff have commenced visits with legal counsel who, from the analysis of file information, appear that they will not bring their full caseload to hearing by the completion of IAP hearings in March 2016. Secretariat staff are also meeting with law firms with large caseloads. She has met already with most of the identified law firms in Regina, Saskatoon and Manitoba; a visit to Alberta is planned for the following week; and visits in other provinces are being planned. At each meeting, which lasts about 90 minutes per firm, the Secretariat staff review the data, discuss challenges, and provide more information about some of the initiatives underway to help move claims forward. After each meeting, the Secretariat follows up with a letter identifying what claimant counsel have agreed to do.

From the visits to date, it appears that most claimant counsel were not aware of the Completion Strategy or other initiatives in place. It appears that the Secretariat's regular Notices to Counsel are not being read.

In discussions, Shelley Trevethan has broached the idea of simply scheduling the remaining cases for hearings. There are pros and cons of this approach, including the risk of postponements.

Dan Shapiro said that he had asked a Deputy Chief Adjudicator to meet with two firms having very serious capacity issues. Neither firm appeared especially interested in increasing their capacity so their clients' claims can be dealt with by the end of IAP hearings.

Dan Shapiro said that he was considering what assistance the supervising courts could provide to ensure that claimant counsel hire sufficient staff so their clients can have hearings in a timely way.

Diane Soroka expressed scepticism that a court would take action that interferes with the solicitor-client relationship.

David Paterson mentioned a British Columbia class action where the court ordered class counsel to farm out cases to other lawyers in order that they be completed more quickly.

Dan Shapiro mentioned that issues of claimant counsel capacity are presently before the Supreme Court of British Columbia in the Williams Lake matter.

Shelley Trevethan discussed work to implement the lost claimant protocol. One of the first steps is the general notice program, to encourage claimants who

haven't heard about their claims to contact their lawyer or call the Secretariat's 1-800 number. The Secretariat is planning a poster campaign to be distributed through stakeholders and is evaluating the cost and effectiveness of other mediums.

The project to improve quality of interpretation at hearings is mostly complete, and the final step has been to find a way to pay a more competitive rate in order to attract higher-quality interpreters. At present, AANDC policy restricts the rate to a \$250 honorarium, but going forward the Secretariat will use purchase orders in order to pay a higher rate.

All staff and adjudicators have received training on security, and the security manual for adjudicators has been finalized. The Chief Adjudicator has asked all adjudicators to sign an agreement acknowledging the specific guidelines in the manual; all but one have now signed. The number of inquiries from adjudicators indicates that they take their responsibility to safeguard confidential information very seriously.

Work is underway to move contracts for adjudicators, Oversight Committee members, and legal counsel to the Chief Adjudicator from AANDC to Public Works and Government Services Canada in order to make use of higher funding authorities available through PWGSC.

In response to a question about staffing, Shelley Trevethan reported that a number of staffing processes have been completed, especially at the critical lower levels. A staffing process for positions in Hearings Management and Post-Hearings resulted in about 50 eligible candidates in a pool for hiring. However, the Secretariat is still experiencing a large staff vacancy rate.

5. Chief Adjudicator's report

Dan Shapiro reported that since his appointment as Chief Adjudicator, over 6,100 cases have been resolved. He has written two decisions (from hearings held while a DCA), 21 review decisions, 2 decisions on leave to access the court, and 22 non-admit appeal decisions. Two re-review decisions on the issue of eyewitness evidence in estate claims, are presently waiting to be written.

Dan Shapiro reported on the work done to improve the security of confidential information held by adjudicators, including the security manual, security

agreement, and briefing at adjudicator meetings held in Vancouver and Montreal.

The Honourable Ian Pitfield was appointed by the supervising courts as Independent Special Advisor on June 30. To date, the Chief Adjudicator's Office has referred seven complaints to Mr. Pitfield for review. In two cases involving a single law firm, loans were arranged for claimants with criminal interest rates, ranging from 60 to 100%. In another case, the claimant's lawyer appears to have ignored the legal fee ruling and to have charged fees above those approved by the adjudicator, and proposed to take additional fees, ostensibly to satisfy a debt incurred by the claimant's son, or if the claimant did not agree to this, to release funds to the claimant and then commence legal action against the claimant. Regrettably, the Chief Adjudicator has 8 or 10 further complaints that have not yet been referred.

Mayo Moran said that she was planning to meet with Mr. Pitfield before the next Oversight Committee meeting, and asked members to let her know if they wished her to convey any messages on behalf of the committee.

6. St. Anne's IRS

Dan Shapiro recalled that at the time of the June 10 meeting, a Request for Directions was pending before Justice Perell about two medical reports from a criminal trial involving the effect of forcing children to eat their own vomit. The testimony of these experts was already included in material that Canada was ordered, in January 2014, to provide. The Chief Adjudicator's counsel argued that this further RFD was unnecessary; Justice Perell agreed and dismissed it.

Dan Shapiro referred to a letter he had received the day before from Member of Parliament Charlie Angus.

David Paterson recalled that this issue came up in the first few months of the IAP, and the Oversight Committee took a stand against dealing with letters from politicians. The IAP is not a government body that needs to respond to MPs, and a Court would not respond to such letters. He said that the Oversight Committee should be very careful about not defending adjudicative processes to Members of Parliament.

Karen Cuddy said she shared the concerns about responding as the head of an independent adjudicative tribunal to members of the public, when matters are before adjudicators.

Dan Shapiro said that he was comfortable providing information that is publicly available, but that no special access should be provided to reporters or politicians.

Dan Shapiro also mentioned that a notice has been sent to self-represented claimants about the St. Anne's decision, encouraging them to obtain legal advice, and advising that the records ordered produced by Justice Perell are available, but only to legal counsel.

7. Disposition of records

Dan Shapiro reported on the decision of Justice Perell released August 7, 2014. He acknowledged the strength of the written materials, especially the affidavits produced by Independent Counsel from Phil Fontaine and other claimants. He also thanked DCA Susan Ross and John Trueman for their work on the case.

The Chief Adjudicator's legal counsel have circulated a draft order to the parties, which fills in some of the blanks required to make the decision operational.

Three notices of appeal have been received, from the 22 Catholic entities, the 9 Catholic entities, and the Sisters of St. Joseph of Sault Ste. Marie. It remains to be seen whether there are any cross-appeals. The case may go on for several more years, especially if a further appeal is brought to the Supreme Court of Canada.

Dan Shapiro referred to the draft order that had been circulated in advance to committee members. No comments have yet been received from the other parties.

8. List of legal counsel willing to accept referrals of self-represented claimants

David Paterson left the meeting for discussion of this issue to avoid any conflict of interest. Diane Soroka indicated that she had no interest in being included on any list, so no conflict of interest existed.

Dan Shapiro said that many claimants are still self-represented and in need of lawyers, but the inability to provide suggested names has been a significant barrier. He had asked the National Administration Committee to carry out its role under the Settlement Agreement to maintain a list of counsel, but it has declined and asked that the list of counsel be removed from the court web site.

Peter Grant has provided a list of Independent Counsel who are prepared to certify that they have the capacity to take on additional claims and undertake to comply with the Chief Adjudicator's Expectations, the Canadian Bar Association's guidelines, and the Blott decision. The Chief Adjudicator asked the Oversight Committee for advice on how to proceed in offering a list of lawyers to claimants.

Committee members discussed facets of the issue, including who should administer the list, how to accommodate lawyers who are not members of the Independent Counsel or the National Consortium, whether to include lawyers

presently under investigation or review, and whether to include lawyers who have insufficient capacity to serve their current clients.

- Decision: The Oversight Committee agreed in principle to maintain a list of lawyers willing to accept referrals of self-represented clients.

9. Completion action plan

Shelley Trevethan said that while about 78% of IAP claims have been resolved, there is still a long way to go. Meanwhile, however, it is also necessary to begin planning for the smooth wind-down of the Adjudication Secretariat, even as the Secretariat continues to staff up.

The Secretariat expects to see declines in staff numbers beginning in 2016. Retention of staff remains an important priority, however, and the Secretariat is focussing on good communication and staff training.

The Secretariat has developed a Completion Action Plan developed around several key themes: governance, communications, caseload resolution, staffing, staff training, wellness, outreach and partnership, information management, accommodations, reporting, adjudicators, and litigation. Each theme has specific activities under it.

10. Appointment of Deputy Chief Adjudicators

Dan Shapiro reported that the Request for Proposals for Deputy Chief Adjudicators was productive. Four candidates were interviewed which has led to the selection board recommending two strong Aboriginal candidates for DCA appointments.

Wes Marsden has extensive experience in the Aboriginal legal community and 19 years at the bar. He has been an adjudicator since 2010, and lives in Ontario.

Lisa Weber has a wide range of experience and is an excellent writer. She has a B.A., L.L.B., and L.L.M., and has been an adjudicator since 2011. She lives in Edmonton, and would be the first DCA from Alberta.

- Decision: The Oversight Committee unanimously approved the appointment of Wes Marsden and Lisa Weber as Deputy Chief Adjudicators.

11. Meeting dates

- Decision: The Oversight Committee approved the following dates and locations of future meetings:

Tuesday, October 28, 2014 Vancouver

Tuesday, December 9, 2014	Toronto
Tuesday, January 20, 2015	Vancouver
Tuesday, March 3, 2015	Vancouver
Tuesday, May 5, 2015	Toronto
Tuesday, July 7, 2015	Yellowknife
Tuesday, September 1, 2015	Toronto
Tuesday, October 27, 2015	Vancouver
Tuesday, December 8, 2015	Toronto
Tuesday, January 26, 2016	Vancouver
Tuesday, March 15, 2016	Toronto

12. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, October 28, 2014, in Vancouver.