

Independent Assessment Process Oversight Committee

Meeting of March 3, 2015

Vancouver, BC

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 the meeting of the Technical Subcommittee held March 2, 2015.

The student on student admissions project is on track to finish hearings for all student-on-student cases by September 2015.

In cases where the claimant's evidence does not establish staff knowledge of abuse, adjudicators are instructed to place the claim on hold to wait for admissions arising from other cases. Canada has instructed its representatives not to agree to adjournments beyond September 2015, although adjudicators have authority to adjourn even in the absence of consent. Kaye Dunlop has asked Canada to reconsider this instruction because there will likely be student-on-student claims that have not concluded by that date.

Shelley Trevethan reported on projects underway in the Secretariat to support self-represented claimants in moving their claims forward.

Kaye Dunlop reported that preparations for implementation of step two of the Incomplete File Resolution procedure are underway, with adjudicator training planned for mid-May.

The initial response to the restart of the estate claims process is slow. Letters were sent to 147 estate representatives with a response deadline in mid-March. As well, the Secretariat will work on options for the approximately 691 claims where the claimant has passed away but no estate representative has come forward.

Canada has provided a list of yearbooks in its possession. Canada has always produced redacted information from yearbooks in individual cases where the claimant's attendance is an issue. Canada has now agreed to produce unredacted copies of yearbooks which are in the public domain. Work is underway to determine which of the 141 yearbooks in Canada's possession are in the public or private domain.

Canada has agreed to provide suggested wording for a notice to counsel outlining what information is available and how to obtain it.

Two issues related to changes to school narratives were discussed at Technical Subcommittee. On the first, Canada stated that to the best of Canada's knowledge, it has disclosed all documents in its collection related to years of operation. If new relevant information becomes available, Canada will bring it into the narrative.

Diane Soroka asked what collection of documents was being referred to, and whether it includes church documents. Canada is not in a position to discuss this as the matter is before the courts in the Bishop Horden RFD.

The second issue related to indicating additions and changes to school narratives in a user-friendly way. David Paterson, Deanna Sitter, and Kaye Dunlop have agreed on a format that will be implemented on a go-forward basis. Any updates to school narratives will be provided to the Secretariat for posting on the Decision Database.

Line Paré advised the Technical Subcommittee that researchers at Library and Archives Canada had located 24 missing quarterly returns from 7 different residential schools. In most cases, only a single quarter was found, but two years from Fort Vermilion (Alberta) and one year from Kenora (Ontario) were found.

As in previous cases of missing quarterly returns, Canada has undertaken to review IAP decisions from the relevant schools and time periods to ascertain whether claimant attendance was an issue, and will report back to the next meeting.

The Technical Subcommittee reviewed proposed amendments to the Transcript Distribution Policy and members agreed to provide comments by March 16, 2015.

In response to a question, Dan Shapiro said that all transcripts are produced unredacted, except in the case of a transcript provided to the claimant for memorialization purposes. Transcripts provided to lawyers are provided on undertakings that the transcript is for counsel's use only.

Canada advised the Technical Subcommittee that it was ending the practice of disclosing non-claimant student attendance records in situations where claimant attendance is an issue. In some cases, although the practice was inconsistent, a claimant who did not appear in attendance records would name fellow students, and Canada would research those individuals and confirm their attendance to the adjudicator. Canada has ended this disclosure, for privacy reasons. It will continue to disclose information about staff, because the *Privacy Act* does not protect the name of a federal employee.

Claimant counsel have urged Canada to find a solution to this issue, for example by researching the named students but not disclosing their personal information. Canada has undertaken to consider this issue further.

Canada has now indicated that on a go-forward basis, it will disclose civil trial judgements in school narratives, to the extent that Canada was a party and has the document in its possession.

The Technical Subcommittee reviewed a draft Guidance Paper on postponement of assessments. This is a continuing problem that carries financial costs, delays in resolving claims, and the risk that experts may decline to conduct assessments in the future. The proposed paper mirrors the Postponement Policy by giving adjudicators control over postponements. Members are to provide comments by March 16, 2015.

The Technical Subcommittee considered proposed amendments to Chief Adjudicator's Directive 9 (Procedures for Jurisdictional Review in the IAP), to address situations where a self-represented claimant fails to attend a Jurisdictional Pre-Hearing Teleconference. If the claimant does not have a lawyer, the claimant's attendance is required so that the claim is not decided on an *ex parte* basis. The subcommittee members discussed a number of barriers that claimants encounter in the JPHT process, and made suggestions for policy changes. A new version will be considered at the next meeting.

2. Approval of minutes

The committee approved the minutes of the January 20, 2015 meeting with minor amendments.

3. Key performance indicators

Shelley Trevethan discussed significant performance indicators since the January meeting:

- Only 2,618 claims are awaiting mandatory documents.
- There are 224 claims in the scheduling queue, a substantial improvement over 150 claims in December. The Accelerated Hearing Process and Setting Down Claims projects are allowing more cases to be scheduled.
- 24,044 hearings have been held since implementation.
- The total hearings held and scheduled in 2014-15 is 3,641, or 86% of the target. The numbers are particularly low in the October-December 2014 and January-March 2015 target, because of a shortage of hearing-ready files.
- 476 files are scheduled, so far, for April 1, 2015 and later.
- There are 2,165 post-hearing files waiting for decisions, a decrease from December.
- 30,939 claims have been resolved, including 4,477 in the 2014-15 fiscal year.
- There are approximately 7,000 claims in progress. Of these, 4,847 have not been heard, including 929 scheduled for a later date, 3,437 admitted, and 481 awaiting admission. Some of these claims may be withdrawn or otherwise not proceed to hearing.

- \$2.215 billion has been paid to claimants in adjudicators' awards and negotiated settlements.

Line Paré said that by the end of February 2015, Canada had conducted 458 interviews and completed 435 negotiated settlements. By March 31, Canada expects to have concluded 500 interviews and 450 settlements.

Members discussed approaches to the remaining caseload, including alternatives to hearings, setting down all remaining claims for hearings, measures to locate lost claimants, and the Secretariat's work to assist self-represented claimants.

4. Executive Director's report

Shelley Trevethan reported on initiatives underway in the Secretariat.

- Twelve law firms have agreed to set down their remaining claims for hearings. The Secretariat is approaching other firms to encourage broader participation.
- Participation in the Accelerated Hearing Progress is up significantly – 319 claims have been set for hearing and another 129 are to be scheduled.
- Implementation of the Lost Claimant Protocol is underway, although the Canada Revenue Agency is unable to provide claimant contact information because of provisions in the *Income Tax Act*.

David Paterson suggested that the Declaration in the IAP Application Form may constitute sufficient individual consent for CRA to provide information.

- The Secretariat is working to distribute adjudicator workload in an equitable manner. The low flow of hearing-ready files means that adjudicators can expect as few as three hearings per month.

In response to a question, Dan Shapiro said that over the long term the timeliness of decisions, among other factors, would play a role in the assignment of cases to adjudicators.

- The Secretariat's staff complement will be reduced by 10 full-time-equivalent positions in 2015-16, as part of the natural wind-down of the IAP. Where possible, reductions are attempted through elimination of vacant positions or redeployment of existing staff into existing positions.
- Kim Murray, Executive Director of the Truth and Reconciliation Commission, will be leaving the TRC at the beginning of April to become Assistant Deputy Attorney General of Aboriginal Justice for Ontario. The TRC's final closing event is planned for May 28 through June 2.

5. Chief Adjudicator's report

Dan Shapiro reported that Justice Perell issued his final order in the records disposition case on February 10. In most respects it matches the Chief Adjudicator's proposals.

Several next steps are anticipated. Canada has advised that it will be seeking a stay of the Order. The Sisters of St. Joseph of Sault Ste Marie will seek a stay and an order expediting the appeal. Independent Counsel have indicated they will be applying for security for costs.

The applicants' counsel in the Bishop Horden IRS request for directions have sought an order to compel the Executive Director of the Adjudication Secretariat to be cross-examined. The Chief Adjudicator has filed material opposing the request, and is waiting for a decision from the court.

The RFD itself is scheduled to be heard in Toronto on May 20, 2015. Among other things, the issues include whether the Secretariat should be required to contact IAP claimants who indicate that they witnessed abuse of others, to ask if their contact information can be provided to claimants who indicate they were victims of abuse.

A further request for directions related to St. Anne's IRS is expected to be heard in June 2015. The main issue on the RFD is whether Canada has appropriately redacted the documents it produced following the January 2014 court decision. The Chief Adjudicator will not be participating.

6. Future meeting dates

The Oversight Committee agreed to change the venue of the September 1, 2015 meeting from Toronto to Montreal.

7. Notice of Motion

Line Paré indicated that Canada had some concerns about a notice to counsel recently sent by the Chief Adjudicator regarding jurisdictional pre-hearing teleconferences on 'years of operation' cases. She asked that an item be placed on the agenda for the May 5, 2015 meeting.

8. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, May 5, 2015, in Toronto.

Dan Shapiro noted that Court Counsel Brian Gover will join the Oversight Committee for the morning of May 5.