

Independent Assessment Process Oversight Committee
Meeting of July 7, 2015
Yellowknife, NT
Minutes

Members Present:

Mayo Moran	Chair
Les Carpenter	Inuit Representative
Karen Cuddy	Government of Canada Representative
Mitch Holash	Church Representative
Dave Iverson	Church Representative
Nicole Ladouceur	Government of Canada Representative
David Paterson	Claimant Counsel Representative
Diane Soroka	Claimant Counsel Representative
Deanna Sitter	Government of Canada Representative

Also Present:

Daniel Shapiro	Chief Adjudicator
Rodger Linka	Deputy Chief Adjudicator; Chair, Technical Subcommittee <i>(present for Items 1 and 2 only)</i>
Shelley Trevethan	Executive Director, IRSAS
John Trueman	Senior Policy and Strategic Advisor, IRSAS
Helen Harrison	Policy Analyst, IRSAS (recorder)

Regrets:

Paul Favel	Assembly of First Nations Representative
------------	--

1. Welcome

- Special thanks were offered to Les Carpenter for arranging to host the meeting in Yellowknife.
- Rodger Linka was introduced as the new Chair of the Technical Sub-Committee. Linka is a Deputy Chief Adjudicator who has served as an Adjudicator since 2003.
- Helen Harrison was introduced as a new Policy Analyst in the Executive Director's Office at the Secretariat. Harrison will serve as temporary secretary in place of John Trueman who will be leaving for law school in September 2015.
- ACTION: Oversight Committee to send letter of congratulations to Deputy Chief Adjudicator Kaye Dunlop, who has been appointed a Justice of the Manitoba Court of Queen's Bench.

2. Technical Subcommittee (TSC) Report:

- Rodger Linka reported on the meeting of the Technical Subcommittee, held July 6th 2015.
- Student on student (SOS) admission updates:

- TSC noted that as the IAP starts to wind down, some adjudicators will find new opportunities elsewhere. As a result, the original adjudicator in an SOS claim may not be available to resume the claim once the admissions are released. To avoid a costly and time-consuming second hearing, TSC recommended that the original adjudicator prepare a detailed report with findings as to credibility and reliability. Provided there are no concerns over credibility or reliability, a second adjudicator should be able to write a decision based on the report, without calling a second hearing. For the sake of consistency, it was further recommended that the Chief Adjudicator identify a group of adjudicators who can specialize in these types of claims.
 - The TSC deferred the matter of an end date for the adjournment of SOS cases. Canada has agreed to report on the number of admissions waiting to be prepared, as well as SOS cases that are still waiting for decisions from adjudicators. Deputy Chief Adjudicators will remind adjudicators to prioritize SOS cases that could lead to new admissions.
- Incomplete File Resolution (IFR):
 - Adjudicators were given IFR training June 19, 2015.
 - Additional step by step training may still be required.
 - IFR Step 2 is likely to begin receiving cases in September.
 - The search for lost claimants is ongoing; 74 lost claimants have been found to date.
- Estate claims
 - Estate claims are progressing where an estate representative is identified and participating. Some have had hearings. Others have withdrawn. In several cases, parties have been contacted and the Secretariat is waiting for a response .
- Missing quarterly returns:
 - Following the Truth and Reconciliation Commission's discovery of several new quarterly returns at Library and Archives Canada, Canada determined that most were duplicates or predated the period during which claims are alleged.
 - Canada reviewed all IAP cases that were potentially affected by the newly found quarterly returns, and determined that no claims or decisions were adversely impacted.
- Canada's document disclosure:
 - Canada reiterated that, due to privacy, it will no longer confirm the attendance of third party students who are named by claimants as having attended a school with them.
 - During the ensuing discussion, it was noted that in situations where a claimant does not appear on an existing enrolment record, the claimant's detailed memories of school staff and/or school layout may help to confirm the claimant's attendance.
 - Canada committed to providing guidance to its representatives on the position they will adopt on student attendance when it cannot be confirmed in the records.

- Transcript distribution policy:
 - Document: *Revisions to CAD-7, Transcript Distribution Policy* [July 2015] was approved by TSC and submitted to the Oversight Committee for approval.
 - The TSC proposed revisions to bring the Transcript Distribution Policy up to date. The present document addresses concerns voiced at the previous Oversight Committee meeting that transcripts might be circulated too broadly to parties who may not need or wish copies.
 - Motion to approve the document (Mitch Holash/Dave Iverson): CARRIED.
- Postponement of Expert Assessments:
 - TSC considered a proposed Guidance Paper on the Postponement of Medical/Expert Assessments for situations where a claimant repeatedly fails to attend an appointment.
 - Document to be amended based on TSC feedback and then submitted to the Chief Adjudicator for approval.
- Postponement Policy:
 - TSC considered proposed updates to Guidance Paper 7, Failure of Hearings to Proceed (the postponement policy), which was implemented in November 2011.
 - Proposed updates included a recommendation for adjudicators to consult with their DCA prior to granting a postponement.
 - During the ensuing discussion, it was noted that a requirement to consult with DCAs might appear to undermine the independence of the adjudicator. It was recommended that adjudicators convey the substance of the consultation to the parties so that the parties can make submissions on the advice given.
- Attendance at teleconferences:
 - The Secretariat had proposed a policy on Attendance at Teleconferences, an issue initially sparked by a small number of self-represented claimants who repeatedly failed to attend a Jurisdictional Pre-Hearing Teleconference (JPHT) teleconference. These teleconferences are held pursuant to Chief Adjudicator Directive 9 (CAD-9), Procedures for Jurisdictional Review in the IAP.
 - The proposal was to proceed with the JPHT in the absence of the claimant in cases of repeated non-attendance. However, claimant counsel objected as this might lead to dismissal of the claim.
 - TSC recommended that these claims, which number about 25 to date, move into the hearing stream or, possibly, IFR. Members noted the difficulties that self-represented claimants often have with teleconferences, including technical problems and privacy concerns.
- Jurisdictional issues raised at hearings:
 - TSC discussed a concern raised by claimant counsel that Canada sometimes raised jurisdictional issues at the hearing or in a review post-decision.

- Canada agreed to provide instruction to its representatives to give notice of a jurisdictional issue prior to the hearing. New documents cannot be introduced on a review.
 - Canada offered to investigate the specific case that prompted the discussion.
 - Document Disclosure for St. Anne’s IRS:
 - Claimant Counsel described a situation in which a claim from St. Anne’s IRS was reportedly dismissed based on a report that the POI wasn’t present at the school. Canada offered to review the details of case once the file number is provided.
 - This individual situation suggested a broader issue concerning the ability of claimants, whose claim was affected by the recent St. Anne’s RFD decision, to have their case re-opened. Claimant counsel noted that without proper notification, funding or representation, it was unlikely that these claimants would be able to seek a review or aware of their right to do so. Diane Soroka proposed that Canada review St. Anne’s cases to determine which, if any, might benefit from a re-opening.
 - Rodger Linka encouraged claimant counsel to provide specific case numbers to aid the discussion.
 - Instruction to adjudicators re. hearing management:
 - Canada has asked whether adjudicators had received new instructions on the management of hearings. Rodger Linka advised that he was not aware of any new instructions but would inquire.
 - Dan Shapiro noted that in his messages to adjudicators, he has been encouraging them to avoid postponements wherever possible.
3. Approval of Minutes:
- Regular minutes (May 5th 2015) – APPROVED
4. Key performance indicators:
- Shelley Trevethan discussed the recent performance indicators:
 - 94 claims waiting an admit/non-admit decision. This is down from 417 because lost and deceased claimants have been moved into other categories. The remaining 94 claims are still active and a decision on the admission of these claims is pending.
 - 1784 claims are waiting for mandatory documents. Of these 1405 are pre-hearing; and 379 are post-hearing. So far, there has not been a significant increase in post-hearings mandatory documents as was expected with implementation of the Accelerated Hearing Process.
 - The 1405 claims are awaiting documents in the pre-hearing stage, which is down significantly.
 - For the first time, case management is not where the biggest group of files is. There were 372 cases in the scheduling queue as of June 1.
 - 24,850 hearings have been held to date.

- The postponement rate in April and May was around 22%. Postponement rates in the Accelerated Hearing Process cases are at 30%.
- Roughly 65% of postponements occur within one week prior to the hearing; this significantly increases costs.
- 96% of postponement requests are granted by adjudicators.
- Factors leading to postponements include:
 1. 13% of claimants are ill or unfit to attend;
 2. 5% of claimants are not available for reasons other than illness;
 3. 9% of claimants fail to appear on the day of the hearing;
 4. 8% of counsel are not ready or is unavailable;
 5. 7% of postponements are granted because of issues on the file;
 6. 4% of claimants are incarcerated;
 7. 3% of claimants can't be located; and
 8. 16% where no reasons are reported by the adjudicator.
- 32,196 claims, or about 85%, have been resolved.
- 700 claims have been resolved, to date, this fiscal year (since April 1).
- 5772 claims are currently in progress. Of these, about 42% are going through targeted approaches, and about 21% are self-represented claims.
- 3763 claims remain unheard:
 1. 580 of these claims are scheduled for a later date and it is anticipated that all will be heard.
 2. 2795 of these claims have been admitted and are currently without a hearing date, but it is expected that 90% will eventually go to a hearing.
 3. 388 claims have not yet been admitted. It is expected that about 50% will be admitted.
 4. It is anticipated that a large portion of the estate claims will move into the Incomplete File Resolution procedure.
- Approximately \$2.3 billion in compensation including fees and disbursements has been paid.
- Nicole Ladouceur reported that Canada is on track to meet its target of 500 claims settled through negotiation. Since April 1, 156 interviews have been held and 117 negotiated settlements completed.

5. Executive Director's report:

- Shelley Trevethan outlined recent progress on the targeted approaches to IAP resolution.
- There a small number of claims where claimants with legal counsel are having difficulty proceeding due to mental health issues. Claimant counsel asked if they could be offered similar assistance to self-represented claimants, where a custom process with specially-qualified adjudicators is used. Dan Shapiro said that he did not disagree in principle, but it would depend on the availability of adjudicators.

- There are several claimants who are unable to obtain legal counsel. This is most often a problem when the claim is not strong. These claims will move forward to hearings, and adjudicators will be advised not to continually urge these claimants to hire a lawyer, or to inquire into the claimant's discussions with other lawyers.
- There are 60 claims where the claimant is non-responsive, meaning their whereabouts is known but they are unable or unwilling to assist in moving the claim forward.
- There are currently 760 deceased claimants where no estate representative has come forward. These are expected to move into Step 2 of the Incomplete File Resolution procedure toward the end of the summer.
- The number of Accelerated Hearing Process claims has increased to 645 as of June 1st.
- The number of "lost claimants" has increased. This is due, in part, to recent efforts by claimant counsel to inform the Secretariat about any clients they are unable to locate.
 - Recent strategies to locate lost claimants include posters at the TRC closing event, distribution of information cards, and public service announcements on radio/media.
 - Step One of the Lost Claimant Protocol involves a detailed web search. Step 2 is a collaboration with government departments to conduct database searches (i.e. Aboriginal Affairs and Northern Development Canada, provincial motor vehicle licensing offices, Service Canada, Health).
 - To date, 74 "lost claimants" have been located and new information has been uncovered on an additional 231.
 - Step 3 will involve reaching out to community based sources, such as local RCMP detachments and Resolution Health Support Workers. This will be done delicately to mitigate potential privacy risks.
 - Once a reasonable search effort has been completed, if the claimant has not been located the claim will move into the Incomplete File Resolution procedure.
- There were 42 claims interrupted by the withdrawal of claimant counsel from the case.
- The Secretariat found that some progress was achieved simply by issuing letters describing the consequences of having a claim move into the IFR process.
- The setting down of all claims for hearings has been positively received by claimant counsel, and has encouraged counsel to review the status of their outstanding claims.
- As of June 29th, 879 files moved through AHP to scheduling (100 moved in June alone).
- The Secretariat planned to hold a group information session in June in Saskatoon for self-represented claimants who don't feel ready to proceed to a hearing. Fourteen claimants were contacted to attend, but none agreed to participate. Of these, 3 agreed to move into AHP, 3 obtained legal counsel, 4 could not be contacted, and the remainder simply did not want to attend. The Secretariat is still trying to address this issue, perhaps with one-on-one calls.
- The Secretariat is on track for scheduling the remaining hearings by December 2015. It is expected that the January-March 2016 quarter will be taken up by postponements, and cases that were adjourned pending SOS admissions, etc.
- There are approximately 250 self-represented claims that are able to have a hearing scheduled under AHP. Support officers will continue to assist.

- The overall number of self-represented claims has decreased.
- There are currently 922 deceased claimants, from which there are 162 estate claims.
- Questions arose regarding the administration of estate claims. It was explained that the Secretariat begins by trying to identify an administrator for the estate (usually by contacting AANDC) and then working with the administrator to move the claim forward. If no estate representative comes forward, the claim will be referred to the Incomplete File Resolution procedure.

6. Chief Adjudicator's report:

- Dan Shapiro reported on a number of recent transitions including the appointment of Rodger Linka to replace Kaye Dunlop as TSC Chair, and the temporary appointment of Helen Harrison to replace John Trueman.
- A meeting with the National Administration Committee took place on May 6th. Members were interested to learn about the Secretariat's completion initiatives, estate claims, the student-on-student admissions project, St. Anne's IRS, and the status of Requests for Direction to the supervising courts. At the time of the meeting, there were 3 RFDs pending, of which one is still outstanding.
- The Truth and Reconciliation Commission closing events took place in Ottawa during the first week of June. The Adjudication Secretariat had a well located information booth which included the new "After Your Hearing" pamphlet and information for claimants on how to request their hearing transcript.
- The Chief Adjudicator described his efforts to reach out to lost claimants via YouTube, media interviews, publicity and public service announcements.
- The National Adjudicator Meeting took place in Winnipeg, June 8-10. All sessions were fully attended and prompted lively discussion. Elders were present throughout to provide prayers, consultation and healing. An opening event was held at the Canadian Museum for Human Rights which included a thoughtful speech by former National Chief Phil Fontaine and a guided tour of the Museum collection. Special guest Archie Zariski spoke on the role of "intuition" in the decision making process. At the Chief Adjudicator's Dinner, former Chief Adjudicator Ted Hughes delivered an inspiring talk reflecting on the links between the legacy of the residential school process and contemporary issues facing Aboriginal children and parents.
- The Chief Adjudicator reported on the status and issues of recent Requests for Direction associated with Bishop Horden IRS, and St. Anne's IRS. A new RFD regarding legal fees has been filed by REO Law, a Winnipeg firm.

7. 2014 Chief Adjudicator's Annual Report to the IAP Oversight Committee:

- The Chief Adjudicator tabled the document: *Indian Residential Schools Adjudication Secretariat 2014 Annual Report of the Chief Adjudicator to the Independent Assessment Process Oversight Committee*.
- The Chief Adjudicator identified highlights from the report including the new initiatives that were introduced in 2014, commitments to the courts, and key RFDs undertaken.

- The Report will be posted on the IRSAS website in French and English.

8. Scheduling of 2016-17 meetings:

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

- | | |
|------------------------------|-----------|
| ▪ Tuesday, September 1, 2015 | Montreal |
| ▪ Tuesday, October 29, 2015 | Toronto |
| ▪ Tuesday, December 8, 2015 | Toronto |
| ▪ Tuesday, February 2, 2016 | Vancouver |
| ▪ Tuesday, April 12, 2016 | Toronto |
| ▪ Tuesday, June 21, 2016 | Vancouver |
| ▪ Tuesday, August 30, 2016 | Toronto |
| ▪ Tuesday, November 8, 2016 | Vancouver |
| ▪ Tuesday, January 31, 2017 | Toronto |
| ▪ Tuesday, April 11, 2017 | Vancouver |

9. Next meeting:

- Tuesday September 1, 2015, in Montreal.

10. Conclusion:

- Thanks and well wishes were offered to Nicole Ladouceur who is retiring and John Trueman who is moving to a part-time schedule with the Secretariat at the end of August.
- Meeting Adjourned.