

Independent Assessment Process Oversight Committee

Meeting of September 1, 2015

Montreal, QC

Minutes

Members present

Mayo Moran	Chair
Mario Brilliant	Government of Canada representative
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
David Paterson	Claimant counsel representative
Diane Soroka	Claimant counsel representative

Also present

Stacey Lambert	A/Senior Policy and Strategic Advisor, IRSAS (recorder)
Rodger Linka	Deputy Chief Adjudicator; Chair, Technical Subcommittee (Present only for items 1 and 2)
Daniel Shapiro	Chief Adjudicator
Deanna Sitter	Government of Canada representative (alternate)
Shelley Trevethan	Executive Director, IRSAS

1. Introduction to new members

The Committee welcomed Mario Brilliant, Director of Settlement Agreement Operations Resolution East, as a Government of Canada representative.

Stacey Lambert was introduced as the Acting Senior Policy and Strategic Advisor in the Executive Director's Office of the Secretariat. Stacey is replacing John Trueman as Secretary to the Oversight Committee.

Special thanks were offered to Les Carpenter for hosting the July Oversight Committee meeting in Yellowknife.

2. Report of the Technical Subcommittee

Rodger Linka reported on the August 31, 2015 meeting of the Technical Subcommittee.

Student on Student Admissions Update:

Deanna Sitter reported to the subcommittee, noting that a batch of admissions was being completed and would be delivered to the Secretariat that week. As of the meeting date, the majority of claims had been scheduled for hearing. 2607 hearings have taken place, 1707 of which may result in new admissions. 288 claims remain to be scheduled with only 24 of these falling into the priority 1 or 2 categories. Where claimants may be difficult to locate, parties encouraged use of the Lost Claimant Protocol.

The Secretariat is identifying schools where no further admissions are expected in order to move forward with hearings on files from those schools. Canada is working with the Secretariat to create a master list to identify all remaining claims and when they might be expected to complete.

In subcommittee, Diane Soroka had asked for clarification of whether adjudicators had been instructed to dismiss claims after the September 30, 2015 adjournment date. The Chief Adjudicator indicated this is not the case and agreed that further adjournments may be required in order to allow for new admissions to become available. The parties discussed a date of December 31, 2015 for additional adjournments; Canada agreed that it would consent to adjournments until that date. The Subcommittee will continue to monitor progress on student-on-student files and discuss next steps as required.

Incomplete File Resolution (IFR):

Rodger Linka reported that approximately 2200 claims currently sit in the various targeted approaches. Thus far, 55 claims had been referred to IFR. The Chief Adjudicator is urging that claims move in a more substantial way to the IFR. Rodger Linka noted that while there may be concern that the process is used primarily for dismissal, this had not been his experience and is not the purpose of IFR.

Mitch Holash enquired about the capacity of the assigned adjudicators. The Chief Adjudicator noted that the group is being kept small to begin with. Once the assigned adjudicators gain expertise in the area they will be able to assist with training additional adjudicators.

Mitch Holash also asked about the expectation in terms of timelines for the claims in the targeted approaches that will be coming to the IFR. Shelley Trevethan noted that the majority of the 936 deceased or estate claims would likely be moving to IFR in the next couple of months, with the exception of those withdrawn or that move to a hearing. Claims in the Lost Claimant Protocol that yield no results following the Level 3 search will also be referred directly to Step 2 of IFR. Non-responsive claimants are more

difficult to plan timelines for. Rodger Linka added that the number of claims in the targeted approaches will continue to fluctuate.

Claims in Scheduling and Post Hearing Stages:

Rodger Linka reported that the Deputy Chief Adjudicators are working with adjudicators on moving approximately 200 claims in the Scheduling and Post Hearing Stages that are assigned to adjudicators but not currently moving. Deputies will review claims with adjudicators to determine the reasons for the inactivity and set deadlines for action. Where no solution is reached, claims may be reassigned to other adjudicators or referred to the IFR where appropriate.

Estate Claims:

Mario Brilliant requested that claim numbers for the approximately 900 estate claims be provided to Canada in order to more readily assess liability.

ACTION ITEM: Secretariat will provide a list of estate files to Canada.

Missing Quarterly Returns:

Canada has completed the review of the missing quarterly returns. All returns were examined and in every case a claimant identified on the missing returns had already been identified on other returns that were previously available. No IAP claims were affected by the absence of the returns.

Postponement Policy:

The Postponement Policy returned to the subcommittee for a final time in order for members to comment on the proposed revisions. Minor amendments were made. The revised policy will now be submitted to the Chief Adjudicator for approval and implementation.

Guidance Paper on Attendance at Teleconferences:

Rodger Linka advised that the proposed Guidance Paper referred to all teleconferences, not only to Jurisdictional Pre-Hearing Teleconferences. The subcommittee had previously reviewed the Guidance Paper and made minor amendments. The proposed Guidance Paper will now be submitted to the Chief Adjudicator for approval and implementation.

St. Phillip's School at Fort George:

Diane Soroka raised an issue in subcommittee regarding 52 documents that had previously been produced for one hearing held for a claimant who attended St. Phillip's, but that had not been included in the new narrative. In response to the question of when the narrative will be complete, Canada indicated that the 52 documents were from an external memorandum and committed to providing an answer at the October subcommittee meeting about whether those documents will be included in the narrative.

3. Approval of minutes

The committee approved the minutes of the July 7, 2015 meeting with minor amendments.

4. Key performance indicators

Shelley Trevethan reviewed significant performance indicators since the previous meeting:

- Nearly 38,000 claims have been received to date, with 32,647 resolved (86%).
- 33,676 claims have been admitted and 3,987 non-admitted (10.5%). Only 59 active claims are awaiting an admissions decision.
- For the fiscal year to date, 1,315 claims have been resolved, 157 of which are negotiated settlements. Canada noted that there was a small dip in negotiated settlement interviews in August but that Canada remains committed to completing 500 negotiated settlements this fiscal year.
- 5,325 claims are still in progress. Of these, 1,966 are awaiting a decision at the post-hearing stage, and 3,359 remain unheard. Of those 3,359 unheard claims, 799 claims have a hearing date already set, 253 are in the scheduling queue, and 612 have not yet been sent for scheduling.
- The Secretariat anticipates that approximately 1,366 claims may resolve without a hearing, such as negotiated settlement, some targeted approaches, some lost claimants, and some deceased claimants. Some of these will go to IFR for resolution.
- Based on assumptions that 100% of claims already set will result in a hearing, and approximately 75% of those not yet set down for hearing, and 10% of claims returning to the hearing process from the targeted approaches, approximately 1,680 claims will still have a hearing.
- 1,493 claims are scheduled for hearings prior to March 2016. Schedulers are attempting to set hearing dates prior to December 31, 2015; however, some claimant counsel are now scheduling into January, and it is likely that a small number of hearings will be heard in the new fiscal year.
- Postponements continue to be a large issue, with a rate of 23.3% for this fiscal year. Self-represented claimant postponement rates are approximately 30%. Postponement rates are increasing due to the Accelerated Hearings Process, the Setting Down of Hearings project, and the number of self-represented claimants. One large concern is postponements occurring that will delay the hearing until after March 2016. With the revised postponement policy, the window for rescheduling will now be changed to a 2-week period following the Hearing Set Notification.
- 20% of claims remaining in progress are self-represented claimants.
- Since June, decision-writing time has reduced from 87 days to 65 days.

- Awards (excluding legal fees, negotiated settlements, and disbursements) are \$1.93 billion.

Other Statistics:

- 55 claims are currently at Step 1 of the Incomplete File Resolution (IFR) procedure. Further, approximately 135 non-participating estate files and 9 non-participating self-represented claims are moving to IFR. In addition, notifications are being sent out on all deceased claims to the last known address of the claimant. Where no response is received, the claim will be referred to IFR.
- 139 claims have moved from IFR Step 1 back into the regular hearing process. Another 65 have moved to other targeted approaches.
- Level 3 of the Lost Claimant Protocol will involve going to local community contacts to help locate individuals. Searches are currently being conducted by the Secretariat to determine whether there is enough information in each Lost Claimant application to proceed to a Level 3 search.

Shelley Trevethan indicated that the Secretariat's analysis shows that most claimant counsel will be able to complete their clients' hearings by March 2016. There are only 8 firms representing 39 claims that appear at risk of not completing hearings by this date.

Mario Brilliant asked if there is information on how many files come back to the regular hearing stream from the targeted approaches. Shelley Trevethan responded that there is information on which files return to the regular stream from IFR, but not currently from other targeted approaches because some files jump between different targeted approaches.

Mitch Holash remarked that the reports were interesting and commendable and showed a shift in the claims, noting the advance planning and strategies by the Secretariat and the Parties to move into the completion phase. Mayo Moran also noted the success of the Secretariat's visits with legal counsel in bringing down the number of claims that may otherwise have not been ready for hearing until the 2016/2017 fiscal year.

David Paterson noted that the number of claims awaiting a hearing is now lower than the number of claims heard but not yet decided, and that focus for adjudicators could switch to completing outstanding decisions. The Chief Adjudicator confirmed that the Deputy Chief Adjudicators were meeting and discussing playing a more active role in supporting adjudicators in completing their files.

5. Executive Director's report

Shelley Trevethan reported that pamphlets on health support services, future care plans and post hearing processes, as well as a new stakeholder guide, have been sent to counsel, parties and stakeholders. Copies of the pamphlets were distributed.

Shelley Trevethan reviewed the targeted approaches underway to support the resolution of claims:

- There are 936 claims where the claimant has passed away. In January, notifications were sent to estate representatives, where these are on file with the Secretariat. In August and September, notifications were sent to the last known addresses of deceased claimants where no estate representative has come forward. A very small number of estate claims are proceeding to hearing.
- The Accelerated Hearings Process is being used for Mandatory Setting Down of Hearings where claims are not hearing ready. Mandatory Setting Down of Hearings is working very well. Where hearings have not been scheduled, specific reasons have been identified. 1,126 claims have moved through AHP since it began, with some of those files becoming hearing ready.
- There are 388 claims currently in the Lost Claimant Protocol. This number is fluctuating because other cases are being identified, and some are being moved back into the regular stream because we have re-established contact. To date, the Lost Claimant Protocol searches have found new contact information for 231 files. If no information is located using the Lost Claimant Protocol the claim will be referred to Incomplete File Resolution. At this point, online searches have been done on claims received. Level 2 searches are complete for the majority of claims and are now being done on files recently referred. The implementation of Level 3 searches has been more difficult. The Chief Adjudicator and Shelley Trevethan are meeting with senior officials of the respective organizations to try to move this forward.
- Jurisdictional Pre-Hearing Teleconferences have reduced to 122 from 140.
- The number of claims with claimant counsel withdrawals in progress has reduced to 18 from 42.
- The number of self-represented claimants who cannot obtain legal counsel have increased as more legal counsel are withdrawing services.
- As discussed at previous meetings, an attempt was made to host an information session for claimants not ready to move to a hearing. This session did not occur because, after reaching out to these claimants, some agreed to AHP, some retained legal counsel, and others were not reachable or did not want to participate. The Secretariat may host sessions in other regions.

Shelley Trevethan presented the Secretariat's Completion Action Plan and reviewed its central focus on the claimant, communication and wellness. Leads have been identified for each of the theme areas. Staff resources are being reallocated gradually to post

hearing work where possible and planning for wind down is underway. Connections are also being made with other government departments to look for opportunities for staff following wind-down. Committee members congratulated the Secretariat on advance planning and indicated a potential need for a completion strategy for the Oversight Committee.

The Secretariat is implementing Information Management changes, including an electronic file management system. This is a major, cross-government initiative. The Secretariat's work in this regard takes into account the Records Disposition Order and possible outcomes of the present appeals.

Shelley Trevethan presented an update on the IAP Final Report. In its initial stages, the report currently contains three sections, including background information, a focus on the objectives of the IAP, and lessons learned. Work is ongoing to develop a methodology and questions for interviewing partners and stakeholders. Oversight Committee members discussed ways in which to involve claimants in the Final Report, including opportunities for one-on-one interviews, focus groups and written questionnaires. It was agreed that the Secretariat would develop an info sheet and ask claimant counsel and Aboriginal organizations to distribute it to claimants. The Oversight Committee provided possible suggestions for the report:

- gender differences;
- claimants whose hearings were dismissed and zero awards;
- remote areas vs. urban areas;
- effects on future care plans;
- connections with non-Aboriginal business communities;
- reactions on short form and full form decisions;
- differences between complex issues track, standard track, negotiated settlement;
- experience of Francophone individuals;
- experience with Government of Canada representatives being divided operationally into East and West;
- long term impact on relationships and experiences with Canada, churches, educational systems, legal counsel, etc.;
- impact of any financial benefit, health supports, etc.;
- examples such as the Six Nations Council campaign to restore the Mohawk Institute as a campaign to save the evidence of what occurred at the school; and
- overview section, looking beyond the IAP to settlement and reconciliation as a whole.

6. Chief Adjudicator's report

The Chief Adjudicator welcomed the new participants at the table and thanked Les Carpenter for providing a tour of Yellowknife at the last Oversight Committee meeting.

Following the July meeting, the Chief Adjudicator followed up with adjudicators with advice and guidance on postponement and for Student on Student claims. A number of new materials are also being posted to the website such as the Chief Adjudicator's Directive 7 (Transcript Distribution Policy) and the Annual Report.

7. Next meeting

The next Oversight Committee meeting is scheduled for Thursday, October 29, 2015, in Toronto. The Technical Subcommittee meeting, if required, will be held on October 21st by teleconference.