

Independent Assessment Process Oversight Committee

Meeting of October 29, 2015

Toronto, ON

MINUTES

Members present

Mayo Moran	Chair
Les Carpenter	Inuit representative
Karen Cuddy	Government of Canada representative
Mitch Holash	Church representative (by telephone for items 1-3 only)
David Iverson	Church representative
David Paterson	Claimant counsel representative
Tara Shannon	Government of Canada 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 (By telephone for items 1-3 only)
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS

Regrets

Paul Favel	Assembly of First Nations representative
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1. Approval of minutes

The committee approved the minutes of the September 1, 2015 meeting with no amendments.

2. Introduction of new members

Mayo Moran asked Karen Cuddy to introduce Tara Shannon. Tara Shannon is the new Acting Director General for Settlement Agreement Branch with Aboriginal Affairs and Northern Development Canada (AANDC).

3. Report of the Technical Subcommittee

Rodger Linka reported on the meeting of the Technical Subcommittee, held by teleconference on October 21, 2015.

Student on Student Admissions

Deanna Sitter provided a report to the TSC that 166 claims remain to be scheduled that may produce student-on-student admissions - 11 of these claims are priority 1 or 2 cases. Canada is reviewing the remaining claims to determine how many of the remaining claims are in estate or Lost Claimant protocol claims.

Of SOS claims, 1,762 have resulted in a decision with allegations that need to be reviewed for SOS admissions; 277 have completed final submissions and are awaiting decisions; and 634 claims have had a hearing but have not yet had final submissions. Rodger Linka noted that it is a priority for adjudicators to complete SOS decisions.

Claims with pending admissions have been adjourned until December 31, 2015. The Oversight Committee expressed concern that admissions may not be complete by December 31, 2015. The TSC will need to discuss a potential date for extension.

Incomplete File Resolution (IFR) and Targeted Approaches

Rodger Linka reported that training was held for the IFR adjudicators on unrepresented non-participating claimants and on the Lost Claimant Protocol.

There are currently 53 claims in Step 1 of the IFR and 6 claims in Step 2. A further 163 cases have been moved back into the regular hearing stream and 76 to other targeted approaches, suggesting that this process is working well. Rodger Linka noted the excellent work by Secretariat staff in achieving these results to date.

Shelley Trevethan is meeting with Health Canada and the RCMP to work on the establishment of Level 3 searches through the Lost Claimant Protocol.

IFR Reconsideration Timeline

Rodger Linka reviewed the provisions in the Incomplete File Resolution procedures requiring the Oversight Committee to set a final date for claimants to apply for reconsideration of dismissed claims. The procedures state that the date must be set 6 months prior to the last practical date to hold a first claimant hearing.

The Technical Subcommittee discussed a potential timeline provided by the Secretariat, outlining Quarter 3 of fiscal year 2017-18 as the last possible date to hold a hearing, given the end date of 2019-20 for Secretariat operations. Taking into account the 6 months required by the IFR policy, Quarter 1 of 2017-18 was recommended as the final timeline for reconsideration. Rodger Linka suggested that this could be April 1, 2017. The proposed timeline assumes that a reconsidered claim may have only just been admitted and may require the full amount of time for completion of each step in the case management, hearing, decision, review and appeal processes. It is unknown how many claims will be reconsidered.

The following points were raised:

- The legal fee ruling timeline was set to allow for a full Schedule 2 ruling to be completed in order to ensure functional operations for the entire time period required to complete a reconsidered claim.
- Whether other parties beyond those represented at the Oversight Committee table would be canvassed for feedback. Mayo Moran indicated that this is a technical matter and that further feedback was not being contemplated.
- Whether the 138 day period for mandatory document collection is the average timeline. Shelley Trevethan noted that the average for 2015-16 has been 6-12 months, making this a tight timeline.
- Whether mandatory document collection could occur during the 6 months prior to the last practical date for a hearing, which would shorten the timeframe. Shelley Trevethan committed to reviewing the timeline in light of this comment and bringing it back to the meeting in December.
- Whether adjudicator numbers would stay constant. The Chief Adjudicator responded that, although adjudicator numbers will continue to decline as adjudicators move onto new work, there is an adequate number of adjudicators to carry out the work until the end of the IAP.

The Chief Adjudicator noted that Step 2 IFR decisions cannot be released until the reconsideration timeline is set, as claimants need to be advised of their rights should their claim be dismissed. Therefore, a final decision is needed at the December Oversight Committee meeting. It was agreed that a revised timeline will be brought back at the December 8, 2015 Oversight Committee meeting.

Nation-wide administrative split cases

Karen Cuddy reported back on several questions regarding nation-wide administrative split cases. She noted that Canada has identified 17 schools in the east and 5 in the west where there are additional documents that address the administrative split. Canada has instructed its representatives not to raise administrative split issues for 4 schools: Guy, Lebret, St. Anthony's, and St. Philips. Karen noted that if Canada receives a request, generally originating at a hearing, Canada would do that research and provide a memo in response.

Karen Cuddy indicated that, of the 17 schools in the east, external memos have been completed for all that report on what the additional documents are. For the 5 western schools, there is an appendix that lists the relevant documents. In the past, these documents were provided to adjudicators and claimant counsel and as of October 6th, 16 of the external memos have been posted on the schools narrative section of the Decisions Database. The 17th memo is for Fort George, which was posted on October 1st, and the appendices from the 5 western schools will be placed on the Decision Database shortly. Canada will be revising the school narratives to reference the memos.

4. Key performance indicators

Shelley Trevethan reviewed significant performance indicators since the September meeting:

- 37,975 applications have been received – of these, 33,688 have been admitted; 3,993 not admitted (11%); 30 are awaiting admission.
- 33,103 claims (87%) have been resolved to date.
 - For the 2016-17 fiscal year to date, 1,767 claims have been resolved, 1,222 through adjudicated decisions and 213 through negotiated settlements. Tara Shannon reported that Canada is forecasting 450 negotiated settlements for this fiscal year, down from 500.
- 4,872 claims (13%) are still in progress. Of these, 1,937 have completed their hearing and are awaiting a decision; and 2,935 remain unheard.
 - Of the unheard claims, 649 have been set down for hearing; 118 are in the scheduling queue; and 557 that look like they will get to a hearing have not yet been set down (some in targeted approaches, some complex track). In addition, the Secretariat is forecasting that 1,581 claims may resolve without a hearing (i.e., withdrawal, dismissed).
 - Taking into account the claims that may resolve without a hearing, it is estimated that there are only about 700 files left to schedule.
- The postponement and cancellation rate is 24.3%, with the postponement rate itself at 12% for represented claims and 24% for self-represented claims. A revised postponement policy was put into effect on September 22, 2015, with the largest change being that the policy is now applicable to self-represented claimants. While it is too soon to see the results of the changes, it is hoped that the new policy will reduce the postponement rate.
- Adjudicator writing time is generally improving.
- 22% of remaining claims are self-represented claimants. The Secretariat is focusing a lot of attention on developing dedicated processes to move these files to resolution. Of the 1,000 self-represented files remaining, more than half are non-active. Of the remaining 500 active self-represented claims, the majority are going through one or more targeted approaches.

The Oversight Committee acknowledged the work of the Admissions Unit. When asked about the goal of completing all first hearings by the spring of 2016, Shelley Trevethan responded that this remains the target, although a small number of claims will be scheduled afterwards, such as claims returning from the Lost Claimant Protocol or Incomplete File Resolution, possible Blott claims, and unavoidable postponements.

5. Executive Director's report

Shelley Trevethan reviewed the Targeted Approaches underway to support claim resolution:

- 111 claims undergoing Jurisdictional Review (down from 122 in July, although new cases are still being identified).
- 4 claims with Claimants Struggling to Self-Represent (down from 8 in July).
- 43 claims with self-represented claimants who cannot obtain legal counsel (an increase from 30 as the Secretariat is identifying more).
- 38 non-responsive self-represented claimants (down from 57 in July).
- 739 pre-hearing deceased claims and 104 pre-hearing estate claims. Deceased claims with no estate representation are now being referred to the Incomplete File Resolution process; however, work is continuing to attempt to confirm Estate representation prior to referral.
- 616 claims are at pre-hearing stages of the Accelerated Hearings Process - all claims now move through this process unless they are going through another targeted approach.
369 claims are currently in the Lost Claimant Protocol (down from 388 in July). Following Level 1 and 2 searches, 288 claims have had new or different contact information found, with 175 claims located and returned to the hearing stream. Additional rounds of Level 2 searches have begun with partner organizations and the Secretariat is working on establishing the processes for Level 3 searches under the Lost Claimant Protocol.
- 17 claims are in the process of a withdrawal.
- 53 claims are in Step 1 of the Incomplete File Resolution process. More deceased, estate, and non-participating claims are starting to move into Step 1. 6 claims are in Step 2.

The Secretariat continues to monitor the capacity of law firms and whether they are on track to complete first hearings by March of 2016. Mandatory Setting Down of Hearings has allowed for extensive movement of files, with only 8 out of 212 firms showing as completing hearings after March 31, 2016. The 8 firms represent only 17 claims and all are expected to complete within Quarter 1 of 2016-17.

Shelley noted that the Secretariat is moving forward on conducting claimant and partner/stakeholder interviews/focus groups for the IAP Final Report. Meetings with a number of Indigenous organizations are underway in order to have them assist in the claimant interviews and focus groups. A poster will also be developed to invite interested claimants to participate and Claimant Counsel will be asked to send it to their claimants. Tara Shannon committed to getting more information on issues regarding scheduling of Complex Track claims and ensuring that Canada representatives are available. Tara Shannon also noted that there are no hearings that have not proceeded because of Canada.

In response to questions about the availability of Canada representatives for hearings, Tara Shannon noted that she is analyzing attrition rates and staffing requirements in the

context of the legal obligations to be met. Tara noted that Aboriginal Affairs is working with the Department of Justice to ensure there is no impact on the IAP due to staffing.

Shelley Trevethan noted that the Secretariat is doing similar planning for staff, balancing workforce adjustment provisions with ensuring adequate staffing to complete claims.

6. Chief Adjudicator's report

The Chief Adjudicator acknowledged the work done to bring the targeted approaches into place, commenting particularly on the success of the Lost Claimant Protocol.

The Chief Adjudicator reported that a new package of postponement materials has been made available. Revisions to the policy on postponement of hearings, and a new guidance paper on medical assessments were posted in September. While it is too soon to see changes in the statistics in postponements as a result, it is hoped that they will be seen over time. A policy on Failure to Attend Teleconferences is also in the process of being approved.

The Chief Adjudicator reported that conversations are taking place with the Transition Coordinator regarding the remaining Blott claims that were deemed submitted but not admitted by the Supervising Courts.

7. Other Business

Canada alerted members that a Claimant Counsel continues to write to Canada's representatives on the Technical Subcommittee expressing general concerns not relating to individual claims. Canada has communicated to Counsel that the better avenue is to go through the counsel representatives of the Oversight Committee.

Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, December 8, 2015 in Toronto. The Technical Subcommittee meeting will be held on Monday, December 7, 2015 in the same location.