

Independent Assessment Process Oversight Committee

Meeting of December 8, 2015

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 (by telephone – items 1-5)
Mitch Holash	Church representative
David Iverson	Church representative
David Paterson	Claimant counsel representative
Tara Shannon	Government of Canada representative
Diane Soroka	Claimant counsel representative

Also present

Stacey Lambert	Senior Policy and Strategic Advisor, IRSAS (recorder)
Rodger Linka	Deputy Chief Adjudicator; Chair, Technical Subcommittee
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS

1. Report of the Technical Subcommittee

Rodger Linka reported on the meeting of the Technical Subcommittee, held on Monday, December 7, 2015.

Student on Student Admissions

Deanna Sitter reported to the TSC on the status of the student-on-student admissions noting that there are currently 9 priority 1 and 2 claims that are not yet scheduled and an additional 219 claims under review.

Canada requested that adjudicators identify details of student-on-student admissions directly in their decisions, as Canada otherwise has to search transcripts. Rodger Linka committed to communicating this request to Deputy Chief Adjudicators to ensure this is being done in all cases.

Rodger Linka reported that decisions for claims with student-on-student abuse have been adjourned until December 31, 2015 pending new admissions and noted that another adjournment will be required.

Oversight Committee members discussed next steps for the student-on-student admissions in order to ensure that claims are resolved while staff and adjudicators are still in place. Tara Shannon indicated that Canada is putting more resources towards this project to advance it more efficiently and ensure student-on-student admissions are completed. Tara Shannon and Shelley Trevethan committed to holding a joint meeting with Canada and Secretariat staff to ensure the project is moving as quickly as possible.

DECISION: The Oversight Committee unanimously agreed to extend the adjournment date for student-on-student claims to June 30, 2016.

Rodger Linka requested the advice of the Technical Subcommittee on a proposal by the Secretariat to have Adjudicators write provisional decisions pending the completion of student-on-student admissions in order to prevent a new adjudicator having to re-do the claim if adjudicators leave the IAP. These decisions would only be released once all admissions were complete for the applicable school and the decision was confirmed. Where new admissions come forward, the decision would be retracted back to the adjudicator and be rewritten.

Canada and Claimant Counsel disagreed with this proposal at Technical Subcommittee. Canada expressed concern that the Settlement Agreement doesn't provide for provisional decisions and indicated that this could create additional research work should claims of corporate knowledge be asserted. Claimant Counsel indicated that while adjudicators are able to write draft decisions at any time, these procedures should not be formalized. Tara Shannon indicated that Canada would review this issue and advise further at the February meeting.

Rodger Linka indicated that this advice would be taken into consideration by the Chief Adjudicator when making a decision on possible procedures. Mayo Moran noted that this item will be added to the February agenda.

Claimants Unable to Obtain Legal Counsel

Rodger Linka described a new targeted approach for self-represented claimants who are having difficulty retaining legal counsel, in order to ensure these claims are moving to resolution. In instances where claimants have tried to obtain legal counsel but have not been successful, specific adjudicators have been identified to engage in one-on-one calls with claimants prior to the scheduled pre-hearing conference calls. Adjudicators will discuss the various options available to the claimant such as moving through the hearing process as a self-represented claimant, withdrawal, or additional attempts to obtain counsel.

Complex track adjudicators have been identified for these calls, as the majority of the files in this targeted approach fall under that track.

Incomplete File Resolution

Canada inquired as to its participation in the Incomplete File Resolution Process. Rodger Linka clarified that at Step 1, the parties would only be involved in the event of a Jurisdictional Pre-Hearing Teleconference, or where the claim is moved back into the normal file stream and is scheduled for a hearing. At Step 2, the parties are only involved in oral submissions. Rodger Linka committed to providing a summary of the process to the parties.

Section 25 of the Incomplete File Resolution procedure requires the Oversight Committee determine a “reconsideration deadline” that is six months before the last practical date to hold first Claimant hearings.

Rodger Linka reviewed the forecasts provided by the Secretariat showing the potential length of time it would take for a claim to be resolved after being brought back into the hearing stream following a reconsideration of a dismissal within the Incomplete File Resolution Procedure. He brought forward the recommendation of the Technical Subcommittee that the reconsideration timeline for the Incomplete File Resolution Procedure be enacted as follows:

Reconsideration deadline: August 1, 2017

Last practical date to hold first Claimant hearings: February 1, 2018

It was emphasized that the last practical date to hold first Claimant hearings is applicable only to claims dismissed under Step 2 of the Incomplete File Resolution Procedure that return pursuant to applications to the Chief Adjudicator for reconsideration. It is expected that other first claimant hearings will be concluded by the spring of 2016, in accordance with the IAP Completion Plan.

DECISION: For the purposes of defining the Incomplete File Resolution reconsideration deadline as required by s.25.6.1 of the Incomplete File Resolution Procedure, the Oversight Committee unanimously approves August 1, 2017 as the reconsideration deadline, and February 1, 2018 as the last practical date to hold first claimant hearings.

Rodger Linka provided a template to members of the Technical Subcommittee for a Step 2 dismissal direction under the Incomplete File Resolution Procedure. The template endeavours to create a substantial record of the steps taken by the Secretariat, the File Management Adjudicator, and the Special Resolution Adjudicator to attempt to move the file to a hearing. Parties requested additional time to review the template and committed to providing comments by email by December 11th.

Instructions by Chief and DCAs on claims where documents not complete

Rodger Linka reported that where a claim has stalled due to outstanding mandatory documents, future care plans or research, adjudicators have been asked to proactively move files to resolution.

The Chief Adjudicator indicated that this direction was provided to all adjudicators in the last Chief Adjudicator update.

2. Approval of Minutes

The committee approved the minutes of the October 29, 2015 meeting with minor amendments.

The committee also approved a letter to be sent by Mayo Moran to Deputy Chief Adjudicator Catherine Knox, congratulating her on her retirement and thanking her for her considerable contributions to the IAP.

3. Key Performance Indicators

Shelley Trevethan reviewed significant performance indicators since the October meeting.

- 37,985 applications have been received, 33,699 of which have been admitted and 4,007 not admitted. 38 claims are awaiting an admissions decision (excluding those not active), primarily consisting of claims where the claimant has been found through the Lost Claimant Protocol. Approximately 115 unfiled Blott claims are expected to make their way to the Admissions Unit.
- 33,443 claims (88%) have been resolved to date. The number of resolved claims is slowing down, as more claims are referred to targeted approaches.
- Short form decisions are down to 26% for this year and continue to slow down due to the increased presence of claims in the Accelerated Hearings Process.
- In 2015-16 to date, 2,126 claims have been resolved. 256 claims (12%) have been completed under the Negotiated Settlement Process.
 - Tara Shannon indicated that Canada's target remains 450. She noted that, to date 325 interviews have taken place and 283 settlements have been paid out. No Negotiated Settlements are expected in fiscal year 2016-17 but Canada will advise if this changes.
- 4,542 claims (12%) are still in progress. Of these, 2,585 are unheard, and 1,957 are awaiting decision after a hearing.
 - Of the unheard claims, 500 have been set down for hearing, 20 are in the scheduling queue, and 466 claims have not yet been set down.

- Claims that can be moved forward are set down without delay. Where issues are identified, claims are moved to targeted approaches.
- The Secretariat is forecasting that 1,561 of the remaining claims may resolve without a hearing, with the majority of these being withdrawals or deceased and lost claimants files dealt with through the Incomplete File Resolution processes.
- Mandatory Setting down of Hearings has been a success and has allowed a large number of claims to move to resolution. Files have been set down into January, with some files being set down in February and March on a case-by-case basis.
- 1,765 claims have been heard/scheduled from April 2015 to March 2016. Taking into account claims that may be resolved without a hearing, there are fewer than 500 claims that remain to be scheduled.
- The overall postponement and cancellation rate is 24.4%. The net postponement rate is at 12.5%, up from 11% in September (higher for self-represented). Approximately 56% of postponements are occurring within 7 days of the scheduled hearing date, with about one-third of these being for reasons outside of the Secretariat's control. It is too soon to see the effects of the changes to the postponement policy reflected in the statistics, but the Scheduling Unit has noted a positive impact.
- 24% of the active claims remaining are self-represented claimants. Of approximately 1,000 self-represented claimants, 450 are active, while approximately 600 are in targeted approaches such as Estates, Lost Claimant Protocol, or Incomplete File Resolution.
- Average writing time has increased for adjudicators to 99 days; however, this number is inflated as Adjudicators are now dealing with claims that have been on hold for a long period of time.
- The Secretariat is reviewing the status of all claims in targeted approaches and considering whether efficiencies can be found within the approaches. Resources are now moving from hearings to targeted approaches and other resolution streams.

4. Executive Director's report

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

- 107 claims are undergoing Jurisdictional Review, down from 111 in October.
- 3 claims with Claimants Struggling to Self-Represent (down from 4 in October).
- 45 claims are in the self-represented claimants who cannot obtain legal counsel (a slight increase from 43 in October, and claims continue to be identified).
- 40 non-responsive self-represented claimants (up from 38 in October). The majority of these will likely move to the Incomplete File Resolution process.

- 684 pre-hearing deceased claims and 113 pre-hearing estate claims. Approximately 50 deceased claims have moved into the Incomplete File Resolution process and others will be making their way there shortly.
- 558 claims are at pre-hearing stages of the Accelerated Hearings Process (down from 616 in October). Most active claims move through this process.
- 336 claims are with the Lost Claimant Protocol (down from 369 in October). Following Level 1 and 2 searches, 157 have had new or different contact information found. Approximately 100 claims are waiting for Step 3 searches, which continue to be a struggle to implement. The Secretariat is working with Health Canada, the RCMP, and First Nations Police to determine whether new contact information can be located.
- 16 claims are in the process of a withdrawal (down from 17 from October). As claims move to hearing through Mandatory Setting Down of Hearing, counsel are coming forward to withdrawal on claims that have been sitting for long periods of time.
- 108 claims are in Step 1 of the Incomplete File Resolution Procedure and 16 are in Step 2. 10 Step 2 decisions are ready to be released once the reconsideration deadline is set. 247 claims have come into the Incomplete File Resolution Procedure and been resolved in some way.

The Secretariat is continuing to analyze claimant counsel capacity. Only 4 law firms (with a total of 20 claims) are showing as completing hearings after March 31, 2016, however, these firms all show completion in May or June. Good working relationships with law firms have enabled firms to come forward with issues.

Discussions are underway on how to reduce the 8-week hearing logistics window for self-represented claimants. While the 8-week window is important for booking of venues, travel arrangements, and sign off on hospitality, the Secretariat is considering reducing that window in situations where self-represented claimants have already provided preferences and where no travel advance is required.

The Post Hearings Unit is developing an escalation strategy to move claims to a Deputy Chief Adjudicator where they have been sitting with an adjudicator and not moving to resolution. The Chief Adjudicator noted that Deputy Chief Adjudicators are meeting with adjudicators to assist with case management and ensure claims are moved to the Incomplete File Resolution or targeted approaches where appropriate.

Meetings have been held with a number of Indigenous organizations to request assistance with claimant interviews for the IAP Final Report. To date, the organizations have been enthusiastic about working with the Secretariat. Claimant feedback for the report will be gathered in a variety of ways to ensure flexibility: in-person interviews, focus groups, telephone interviews, and written comments. The Secretariat will also be approaching Claimant Counsel in particular areas to ask if they can help identify claimants who are interested in participating in the interviews.

Focus groups for the IAP Final Report will be held in the coming months with adjudicators, staff, Resolution Health Support Workers, and Canada representatives. Feedback will also be sought from Claimant Counsel, Churches, Oversight Members, the National Administration Committee and others. Oversight members discussed the possibility of seeking input from court counsel, the court monitor, the Truth and Reconciliation Commission, former staff and former Oversight Committee members.

Stacey Lambert has been confirmed in the role of Senior Policy and Strategic Advisor in the Executive Director's Office and as the Secretary to the Oversight Committee.

5. Chief Adjudicator's Report

Guidance Paper 10 is now in place regarding attendance at teleconferences. This completes the suite of updates to postponement procedures.

Secretariat staff have been working with the Blott Transition Coordinator to contact potential lost claimants from the Blott files that were deemed to have been submitted but not admitted. These outstanding Blott files will be making their way to the Admissions Unit for review and for assistance from the CAR Unit in locating lost individuals, and a Request for Direction is expected from the Transition Coordinator on other categories of files.

While attempts were originally made to distribute the remaining hearings equitably among adjudicators, the increased frequency of one-off hearings has increased costs and staff has now been directed to focus on the location of the adjudicator when scheduling hearings. The majority of the remaining claims are in British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario.

Regarding administrative split issues, Canada had previously provided 17 narrative updates, and provided an additional 5 for Western Schools in November. In order to disseminate the updates, they have been posted to the Decisions Database.

The Chief Adjudicator noted that the Truth and Reconciliation Commission is delivering its Final Report in Ottawa on December 15, 2015. Members noted the efforts being made by parties, law schools, and researchers to respond to the Calls to Action.

The Chief Adjudicator and Oversight members also acknowledged with sadness the passing of Bill Wuttunee and his many contributions while serving as AFN representative on the Oversight Committee.

Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, February 2, 2016 at the Listel Hotel in Vancouver. The Technical Subcommittee meeting will be held in the same location on Monday, February 1, 2016.