

Independent Assessment Process Oversight Committee

Meeting of February 2, 2016

Vancouver BC

MINUTES

Members present

Mayo Moran	Chair
Les Carpenter	Inuit representative
Karen Cuddy	Government of Canada representative (by telephone)
Paul Favel	Assembly of First Nations representative
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	DCA; Chair, Technical Subcommittee (items 1 and 2 only)
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS

1. Technical Subcommittee Report

Rodger Linka reported on the meeting of the Technical Subcommittee (TSC), held on Monday, February 1, 2016.

Student on Student Admissions

Deanna Sitter reported to the TSC on the status of the Student on Student Admissions project. Canada and the Secretariat have been working together to establish a detailed, searchable database that identifies each decision outstanding. Where an outstanding decision is identified, the Secretariat follows up with the Adjudicator and places a 15-day deadline for the Adjudicator to submit the decision. Once the decision is produced, Canada has committed to a 12-day service standard for priority 1 claims for processing that decision and identifying admissions. Where that decision has included an admission that is relevant to other claims, that admission is shared with the adjudicator and parties of the other claims so that a decision may be rendered in those claims.

Rodger Linka and the members of the Oversight Committee noted the excellent collaboration between the Secretariat and Canada and expressed thanks to Deanna Sitter for her work on this very important project.

Incomplete File Resolution

Rodger Linka reported that the advice provided at the previous Oversight Committee meeting regarding the Incomplete File Resolution (IFR) dismissal direction template was incorporated and the template is now in use. IFR implementation is ongoing, with many claims moving in and out of the process.

Rodger Linka created a document describing how adjudicators are working through each step of the IFR process. TSC members discussed Canada's view at Step 1 of IFR and Rodger Linka confirmed that much of the communication occurring at Step 1 is informal attempts by the adjudicator to re-engage the claimant in the process.

Complex Track Claims

Currently, for complex track claims, multiple teleconference calls are required prior to hearing, such as the Early Track Assessment and the Case Management Conference Call, resulting in scheduling difficulties and requiring claimants to attend calls on more than one occasion. TSC members approved combining the multiple teleconferences currently required for complex track claims into one teleconference.

2. Approval of Minutes

The committee approved the minutes of the December 8, 2015 meeting with minor amendments.

3. Key Performance Indicators

Shelley Trevethan reviewed significant performance indicators since the December meeting.

- 37,996 applications have been received, 33,721 of which have been admitted and 3,999 not admitted. 46 claims are awaiting admissions disposition; some are Blott claims that were deemed by the courts to be submitted by the deadline, some are lost claimants for whom new contact information has been found.
- 33,862 claims (89%) have been resolved to date, 2,537 in the 2015-16 to date.
- 313 claims have been resolved through the Negotiated Settlement Process.
 - Tara Shannon updated Canada's estimates regarding Negotiated Settlements, stating that Canada had conducted 359 interviews as of January 24, 336 of which are complete. Canada anticipates that the number of claims resolved in 2015-16 may be between 400-410, down from the projected 450. No Negotiated Settlements are currently

forecasted for next fiscal year; however, claims are assessed on a case-by-case basis.

- 4,134 claims (11%) remain in progress. Of these 1,931 are in post hearing awaiting a decision, and 2,203 are unheard.
 - Of unheard claims, 61 are in Scheduling and 234 hearing have been set down for hearing. Approximately 51 additional claims are expected to be set down prior to the end of the current fiscal year, and approximately 124 hearings are expected during 2016-17 as they return from targeted approaches.
 - The Secretariat is forecasting that 1,502 claims may resolve without a hearing.
 - In total, just over 2,300 claims are expected to be resolved in 2015-16.
- Postponement rates continue to be high. Net postponement rates are at 13%, with the combined postponement and cancellation rate at 26%. Adjustments to the postponement policies have eliminated indefinite postponements and more concrete reasons for postponement are being provided. The percentage of postponement requests denied has increased from 1.4% to 6.7%, with 1% of requests showing reasons for postponement outside the control of the hearing participants.
- We are considering implementing a shorter scheduling window for represented claimants. Currently, the window for represented claims is 8 weeks while self-represented claimants in the regular hearing stream are currently using a 4-week scheduling window, and those in the Accelerated Hearings Process are using a 6-week window.
- The median Adjudicator decision writing time has improved from 83 in October to 45 days.
- The Secretariat has resolved an issue with over-counting some compensation amounts in some reports. No statistics on the website were affected by the issue.
- 1,042 in progress claims are self-represented claimants, 64% of these claims are not active files (e.g., lost claimant, estate files), and approximately 100 are anticipated to move to hearing.

4. Executive Director's Report

Shelley Trevethan noted that there is a growing focus on the Targeted Approaches, as the remaining claims require more individualized approaches to move to resolution.

- Secretariat staff is proactively reviewing each claim in the Targeted Approaches in order to ensure that the Targeted Approaches are addressing the needs presented by the claims.
- The overall numbers of claims in Targeted Approaches is reducing, indicating that we are succeeding at moving claims to resolution.
- 78 claims are in the Jurisdictional Review process, down from 107 in October.

- 2 claims with Claimants Struggling to Self-Represent (down from 3 in October).
- 39 claims are in the “self-represented claimants who cannot obtain legal counsel” approach, down from 45 in October.
- 29 claims are non-responsive self-represented claimants (down from 40 in October). These are claimants who we have correct information for, but who are not responding to attempts to contact by staff.
- 641 pre-hearing deceased claims, of which:
 - 160 are pre-admission and therefore not eligible for IFR.
 - Approximately 160 have a potential estate representative identified who is deciding whether to pursue the claim.
 - Next of kin information has been provided on 260 claims by Indigenous and Northern Affairs Canada’s estates unit and are now being contacted regarding possible estate representation.
 - Based on past participation rates, it is expected that approximately 50 of the 641 deceased claims may be pursued by estate representatives.
- 92 pre-hearing estate claims. Of these, half are currently assigned to an adjudicator and all 92 are expected to move to a teleconference.
 - Tara Shannon updated the Committee on the status of claims where Canada is the default estate representative (in cases where the claimant had been ordinarily resident on reserve with no identified estate representative), in addition to being the defendant. In the interests of ensuring no conflict of interest, Canada is considering seeking direction on how to proceed with these claims. It was agreed that Canada and the Secretariat would meet to discuss this issue further.
 - Since January 2015 – 104 teleconferences have been requested, 22 estates have withdrawn, 2 estate hearings are pending, 6 estate hearings have been held, and 19 dismissal decisions have been issued.
- 317 claims are with the Lost Claimant Protocol (down from 336 in October). Numbers in this category continually fluctuate, with claims moving in and out of the process as contact information is located and contact is lost with other claimants. Where a reasonable search under the protocol has been completed, claims will move to IFR Step 2. The Lost Claimant Group is working with Resolution Health Support Worker groups and First Nations Police on Level 3 searches. Attempts are still being made to secure Level 3 searches from the RCMP.
- 139 claims are in Step 1 of the IFR, with 16 claims in Step 2 (up from 108 and 16 in October). 34 determinations have been made under Step 2. 78 claims have moved out of IFR to targeted approaches, and 185 claims have returned to the regular hearing stream. Members noted that contact with an adjudicator often leads claims to reactivate.

Reviews of claimant counsel capacity are ongoing but are not raising issues. Firms that may be completing after March 31, 2016 are generally doing so because they have taken on additional self-represented claimants in recent months.

Regarding the IAP Final Report, the Secretariat has been reaching out to Indigenous organizations to set up focus groups and interviews. The first round will occur the week of February 15, 2016 in Vancouver in collaboration with the Indian Residential Schools Survivor's Society. During that week, focus groups will also be conducted with Resolution Health Support Workers, Cultural Support Officers and Elders. The Chief Adjudicator, Shelley Trevethan and DCA Opekokew met with the Assembly of First Nations, the Native Women's Association of Canada, and the Inuit Tapiriit Kanatami to introduce the IAP Final Report process and engage input. The Metis National Counsel declined to meet.

Information is being released shortly on the IAP website describing the IAP Final Report process and additional dates for interviews and focus groups are being arranged throughout the country with both claimants and adjudicators. Claimant interviews will also be available by phone and the 1-800 line is being provided in website materials. The Secretariat is considering mail-out questionnaires to claimant counsel and potential focus groups with church representatives, as well as individual interview with past and current Oversight Committee members and others. Interviews have been conducted with Commissioners from the Truth and Reconciliation Commission, and retired representatives from the courts will be asked to do interviews. David Iverson committed to determining representatives for focus groups with the Anglican and Presbyterian churches. Tara Shannon noted that the report is to be focused on the IAP, rather than on the Settlement Agreement as a whole.

4. Chief Adjudicator's Report

Student-on Student claims have been adjourned until June 2016 to allow for the continued provision of Student-on-Student admissions.

The Lost Claimant Group has received several of the "deemed submitted but not admitted" Blott claims in order to attempt to locate contact information for the claimant. It is anticipated that the Transition Coordinator will be filing a Request for Direction to determine the next steps for individual claims that may not be resolving through regular processes.

The CBC has issued a story with respect to the amount of money spent by Canada on contacting alleged perpetrators. The report states that \$1.6 million has been spent on private investigators and that many of the alleged perpetrators will not receive criminal charges. The Chief Adjudicator noted that the Settlement Agreement focused on reconciliation and that the processes outlined in it do not play a role in prosecution.

Karen Cuddy reported that updated school narratives were provided to the Secretariat on January 29, 2016, which include any additional documents that were located with respect to criminal charges.

5. Possible 2017-18 dates for Oversight Committee Meetings

Members agreed to consider dates for 4 meetings to occur in the 2017-2018 fiscal year.

6. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, April 12, 2016 in Toronto.