

Independent Assessment Process Oversight Committee

Meeting of April 12, 2016

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
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 (by telephone for item 1 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 by teleconference on April 11, 2016.

Student on Student Admissions

Deanna Sitter reported to the TSC on the status of the Student on Student Admissions project. The Secretariat and Canada have continued to work together to move claims forward. Rodger Linka noted that 645 cases remain in the Student on Student Admissions project, down from 792 in January. The Secretariat has worked extensively with Adjudicators to prioritize decisions that may affect other claims. The project continues to look towards the June deadline as a target. At the current time, 18 decisions were expected on priority 1 and 2 cases, with the ability to create admissions for 30 additional decisions.

Deanna Sitter addressed the issue of continuity of Canada's representatives in order to ensure consistent representation from hearing to final submissions, and expressed a desire for Canada to be consulted on availability for final submissions. Shelley Trevethan agreed to seek more information from the Secretariat regarding current processes.

Rodger Linka committed to sharing claim numbers with Canada where Student on Student claims are on hold pending reasonable steps admissions in order for Canada to search potentially linked claims.

Deadline for Non-Admit Appeals

Rodger Linka presented a proposal by the Chief Adjudicator to create an appeal deadline for non-admit appeals. The general background is that the Admissions Unit scans applications when they come in and exercises a low threshold for admission. Claims are non-admitted where they do not meet that threshold. A Claimant is then given 180 days to respond to the non-admit decision and supply any new information for the Admissions Unit to consider. At the end of the 180-day period, the non-admit decision is final, with the Claimant retaining a right to appeal the non-admit decision to the Chief Adjudicator.

Absent from the process is a deadline for non-admit appeals to occur in order to ensure that any claim that is granted a non-admit appeal and is successful, then has time to proceed through the IAP. The Chief Adjudicator has proposed a January 31, 2017 deadline for non-admit appeals.

The January 31, 2017 deadline received the general support of the Technical Subcommittee, with a suggestion by David Paterson that the Chief Adjudicator also be given the authority to extend that deadline in individual cases where the Claimant is able to demonstrate that, if admitted, the claim would not affect the orderly windup of the IAP. This authority is consistent with other review periods where the Chief Adjudicator is able to extend deadlines in appropriate circumstances.

DECISION: The Chief Adjudicator undertook to circulate Chief Adjudicator's Directive 11 – Deadline to Appeal Decision Denying Admission of Claim/ Notification for Non-Admitted Lost Claimants and Deceased Claimants With No Estate Identified" to Committee member. Following the meeting committee members unanimously voted to approve CAD-11 as circulated.

Nominal Role Database

David Paterson raised a question regarding Canada's assertion in a claim that information from the Nominal Role Database was not created for the purpose of proving attendance. Karen Cuddy explained to the TSC that the Nominal Role Database is a database of students that were anticipated to enrol in a given school for a particular year for budgetary purposes and that it is not indicative of actual enrollment. As a result

it is only used when other evidence is not available. Karen Cuddy indicated that this information can nevertheless be useful and that Canada is looking into why it was not provided in this instance. It was agreed the item would be added to the June TSC agenda for follow-up.

Guidance Paper 8: Withdrawal of IAP Claims

The TSC considered proposed amendments to the Guidance Paper on the Withdrawal of IAP Claims (GP-8). The amendments proposed are made to reflect the newly shortened window relating to the setting down of hearings, where claimants may give notice of withdrawal within 2 weeks of the Hearing Set Notification being issued. The amendment received general support. Diane Soroka question whether section 2 of GP-8 should read “name and file number” as opposed to “name or file number”; however, Rodger Linka suggested that this may create operational difficulties if both pieces of information are not provided on the request to withdrawal, and that this could be dealt with internally through guidance provided to the adjudicators and the Secretariat.

DECISION: The Committee approved the proposed revisions to GP-8.

2. Approval of Minutes

The committee approved the minutes of the February 2, 2016 Oversight Committee meeting with minor amendments.

3. Key Performance Indicators

Shelley Trevethan reviewed performance indicators since the February 2, 2016 meeting:

- 38,085 applications have been received. Numbers have increased since the December meeting due to the arrival of some Blott claims, of which 109 have been received. 33 claims await an admissions decision, all of which are Blott claims or those that have returned from the Lost Claimant Protocol.
 - David Paterson asked whether the 38,085 is a global figure of settled claims from all residential school files, including ADR, the ADR pilot projects and litigation. Shelley Trevethan responded that this includes only IAP claims and those ADR files that were moved into the IAP.
- 34,393 claims (90.3%) have been resolved to date. With 3,168 resolved in the 2015-16 fiscal year (as of March 4, 2016). Claims resolution is slowing as many claims are in targeted approaches such as estates, the student-on-student admissions project and the Lost Claimant Protocol.
- Short form decisions are at 528 (24%), where the number has typically been at approximately 50%. This is due in large part to the Mandatory Setting Down of

Hearings, where document collection and final submissions may not occur until after the hearing.

- 408 claims have been resolved through the Negotiated Settlement Process.
 - Tara Shannon indicated that this was less than the 450 targeted. Canada continues to review open claims, including those in the post-hearing phases, to assess eligibility for negotiated settlement.
- 3,692 claims remain in progress. Of these, 1,705 are in post hearing awaiting a decision, and 1,987 are unheard.
 - Of unheard claims, 11 claims are in Scheduling, 167 have been set down for hearing.
 - Out of the 317 hearings still anticipated, 85 are set down for March, and 230 are expected to occur in early 2016-17 for claims that may return to the hearing stream from targeted approaches.
 - 1,670 claims are forecasted to resolve without a hearing.
- Postponement rates have not noticeably lowered. Net postponement rate is at 13.8%, with a combined postponement and cancellation rate at 26.9%. Over half of postponements are occurring within 7 days of a scheduled hearing, with approximately 30% occurring for reasons outside the control of the hearing participants, such as illness, family emergency or weather conditions. Adjudicators denied 1.4% of postponement requests.
- Post hearing files have reduced substantially from 1,931 in December to 1,705. The Secretariat and DCAs have been working to identify issues and move post hearing files to decision. Reductions in caseloads for adjudicators have also allowed for additional decision writing time.
- The average Adjudicator decision writing time is 82 days, down from 86 in December, and 99 in October.
- 80 Decision Reviews are in place, down from 101 in December and October. 27 Re-reviews are in progress, down from 41 in December and 53 in October.
- Legal fee reviews are at 618, down from 650 in December, and 635 in October. Legal fee appeals sit at 17, down from 20 in December and 19 in October.
- The overall compensation amount is at \$2.010B, awards and settlements at \$2.463B, and overall compensation (including awards, negotiated settlements and disbursements) at \$2.985B.
- 1,159 claims are in progress (31% are self-represented). Only 109 of these claims are currently active and moving to hearing. The vast majority of remaining self-represented claims are in targeted approaches based on non-active status (Lost Claimant, IFR, or withdrawal). Claimant Support Officers have been engaging in extensive work with Claimants to identify reasons why a claim is not moving forward.

4. Executive Director's Report

Targeted Approaches

- 47 claims are in the Jurisdictional Review process, down from 78 in December. Staff members have been actively identifying potential issues and adjudicators have been prioritizing these claims.
- Claimants Struggling to Self-Represent is at 3 (up from 2 in December).
- 20 claims are the “self-represented claimants who cannot obtain legal counsel” approach, down from 39 in December. Claims continue to move in and out of this targeted approach, but Secretariat staff have now made contact with all self-represented claimants who could benefit from this approach.
- 25 claims are non-responsive self-represented claimants, down from 29 in December.
- There are 336 pre-hearing deceased claims, down from 641 in December, due to movement into the Incomplete File Resolution (IFR) process. Estate claims have risen from 92 in December to 102, indicating that some estate representatives have been identified for deceased claimants and increasing the potential of the claim moving forward to hearing.
- 371 claims are currently in the Lost Claimant Protocol (up from 317 in December). Claims move in and out of this category, with some claims moving in and out of this targeted approach more than once. 59 claims in the Lost Claimant Protocol are Blott claims recently received by the Admissions Unit.
 - Overall, 260 claimants have been located.
 - Claims are beginning to move to Step 2 of IFR where reasonable searches have been exhausted at Level 3 of the Lost Claimant Protocol.
- 476 claims are IFR Step 1 (up from 139 in December). The majority of these are deceased claimants with no estate administrator. 52 claims have moved out of IFR to targeted approaches, and 221 have returned to the regular hearing stream following intervention by staff or adjudicators. 15 claims are at IFR Step 2, and 76 claims are pending Resolution Directions under Step 2, though many are on hold pending information from Canada regarding estate representation.

Claimant Counsel Capacity

There are no major issues identified with claimant counsel capacity. Only three law firms representing a total of 27 claims show as completing after spring of 2016; however, the majority of claims being scheduled after July 2016 are instances where the firm has recently taken on previously self-represented claimants.

IAP Final Report

Progress continues to be made on the IAP Final Report. The Secretariat has met with national Indigenous organizations to discuss the project and ways to work in collaboration. The Chief Adjudicator, Shelley Trevethan and Deputy Chief Adjudicator Delia 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.

The first set of claimant interviews and focus groups with stakeholders for the IAP Final Report took place in Vancouver with the Indian Residential School Survivor Society (IRSSS), with very successful collaboration. Claimant interviews are scheduled for Montreal, Winnipeg, Lethbridge and Yellowknife, and discussions are ongoing for interviews in Ontario and the North. Stakeholder focus groups/interviews have been conducted with adjudicators, Secretariat staff, and Resolution Managers/Department of Justice Representatives, and others are planned in the coming months.

Emerging themes to date are:

- The importance of outreach and awareness to ensure consistent messaging;
- The requirement for health supports throughout the process;
- Challenges associated with geographical differences;
- Value inherent in the IAP hearing and the claimant telling their story.

5. Chief Adjudicator's Report

2015 Annual Report

The Chief Adjudicator presented the 2015 Annual Report of the Chief Adjudicator to the Independent Assessment Process Oversight Committee. The Report summarizes the key statistics and the targeted approaches, such as the Mandatory Setting Down of Hearings, developed by the Secretariat to move the remaining caseload to completion while supporting and reaching out to Claimants.

The Report provides an overview of the legal matters affecting the work of the IAP, such as the Disposition of Records, and Requests for Direction regarding particular residential schools and legal fees.

Lastly, the Report covers plans for the wind-down and completion of the IAP and outlines priorities for the 2016-17 fiscal year.

The Report will be available on the IAP website once translated.

Administrative Split

Media articles regarding administrative splits and jurisdictional issues appeared in the Globe and Mail in February. The articles referenced situations where Canada argued in IAP hearings that the administration of various Indian Residential Schools had changed.

In August 2012, Chief Adjudicator Ish issued a ruling in a claim involving jurisdictional issues at Grouard IRS in Alberta. This claim was appealed to the Supervising Courts in Alberta. The issue was the mandate of the adjudicators in determining whether the

abuse arose from or connected to the operation of the IRS in question. Dismissals did not preclude a remedy outside of the IAP where abuse occurring in a day school was found not to have arisen from or connected to the operation of an IRS and a valid Schedule P release was executed.

Claims involving jurisdictional issues at several schools were placed on hold at the re-review stage, pending the supervising court's decision on Grouard. While Justice Nason expressed concerns with Canada's conduct, she ruled in April 2015 that it was within the adjudicator's responsibility to look behind Schedule E or F of the Indian Residential Schools Settlement Agreement to see whether the school was an IRS at the time of the assault. The ruling in Grouard was not appealed and thus Justice Nason's interpretation of the IAP is binding on adjudicators.

Media reports indicated that thousands of claims were dismissed due to administrative splits. The Secretariat is aware of 69 claims involving administrative splits at the re-review stage with 63 re-review decisions denying compensation having been issued.

In response to questions, the Minister of Indigenous and Northern Affairs Canada advised Parliament that an urgent review would be conducted to determine the reach of this issue.

The Chief Adjudicator indicated that claims have been placed on hold at the decision stage pending the results of the review by the Government of Canada.

Tara Shannon noted that Canada is continuing with the review as promised in Parliament. Canada has provided memoranda on 22 schools used in IAP claims. Canada is casting a wide net when reviewing claims that could be affected by the administrative split and has looked generally at changes in operation of a school. Canada recognizes the importance of this issue and a report is anticipated within the month. Canada will provide an additional report to the Committee at the June 21, 2016 meeting or earlier if necessary, in order to seek the observations of the Committee members.

Shelly Trevethan indicated that the Secretariat has looked into claims that could be affected by the administrative split issue where Canada would not have access to the claim information.

Members of the Oversight Committee expressed a willingness to assist with reviewing the feasibility of options. Tara Shannon noted that the National Administration Committee expressed a similar willingness to contribute.

Remaining Blott Claims

Many former Blott Claimants do not have contact information listed within the Blott databases, resulting in the Secretariat being unable to contact these Claimants to complete the admissions process. In an effort to reach these individuals, on April 7,

2016, a notice was posted to the IAP website, encouraging Claimants who have not heard from the Secretariat regarding their claim to contact the IAP Info Line.

The Chief Adjudicator expects the Blott Transition Coordinator to file a Request for Direction regarding the conclusion of transition responsibilities. The Secretariat continues to work closely with the Transition Coordinator and is employing the tools available under the Lost Claimant Protocol. The Secretariat will ensure information on Secretariat procedures is provided for any potential Request for Direction.

Supervising Courts

A new Supervising Judge, Justice James Edmond, has been appointed in Manitoba, replacing Justice Perry Schulman. Justice Edmond was previously a lawyer with Thompson Dorfman Sweatman LLP, and was appointed to the Court of Queen's Bench of Manitoba in 2013.

6. Estate Claims

Tara Shannon reported on the issue of the real or perceived conflict of interest for Canada where the Minister has responsibility for administering estate claims where the deceased Claimant was ordinarily resident on a reserve at the time of their death.

Canada is considering a Request for Direction to the court to seek clarity on how to dispose of obligations as both administrator and defendant. Canada is also looking at how Canada can meet its representation obligations in searching for eyewitnesses on behalf of deceased persons while taking into account privacy concerns.

The Chief Adjudicator noted that the particular adjudicators dealing with estate issues are aware of the issue and requests for additional time to bring a witness will be handled on a case-by-case basis.

Canada is working with the Secretariat and identifying files where it does not have jurisdiction and those for which it is the default administrator. Canada has confirmed that it is the administrator in 21 cases, and is aware of over 200 cases where Canada would be the administrator but other estate representatives are present. In these instances, Canada would become the default representative and be compelled to act were the estate representative to remove themselves or choose not to participate in the IAP.

Shelley Trevethan noted statistics showing approximately 600 claims currently on hold. She asked Canada about the timing of a Request for Direction and when these claims can move forward to resolution given that there are currently adjudicators with estate expertise; however, this could cease to be the case as the Secretariat winds down

operations. Tara Shannon responded that there is no current timeframe for a potential Request for Direction.

Mitch Holash questioned at what point Canada would become engaged should a claim have an estate administrator who does not take overt action on the claim. Shelley Trevethan noted that generally where no action is taken on a claim it is moved forward to the Incomplete File Resolution where adjudicators make attempts to involve the representative.

Tara Shannon noted that Canada may request to reopen some claims where INAC administrators had previously requested withdrawals.

7. Other Business

Oversight Committee members agreed to communicate best wishes to former Truth and Reconciliation Commissioner Murray Sinclair on his appointment to the Canadian Senate.

8. Meeting Dates for 2017/2018

The Oversight Committee approved four meeting dates for 2017/2018 fiscal year, noting that additional meetings can be scheduled if required.

<u>Technical Subcommittee</u>	<u>Oversight Committee</u>	<u>Location</u>
April 10, 2017	April 11, 2017	Vancouver, BC
June 19, 2017	June 20, 2017	Toronto, ON
October 2, 2017	October 3, 2017	Vancouver, BC
January 29, 2018	January 30, 2018	Toronto, ON

9. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, June 21, 2016 in Whitehorse, Yukon.