

Independent Assessment Process Oversight Committee

Meeting of March 1, 2017

Teleconference

MINUTES OF THE OVERSIGHT COMMITTEE MEETING APPROVED

Members present

Mayo Moran	Chair
Karen Cuddy	Government of Canada representative
Mitch Holash	Church representative (Catholic entities)
David Iverson	Church representative (Protestant Churches)
David Paterson	Claimant counsel representative (National Consortium)
Tara Shannon	Government of Canada representative
Diane Soroka	Claimant counsel representative (Independent Counsel)

Also present

Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS
Russell Vallee	Recorder, IRSAS

Absent

Les Carpenter	Inuit representative
Paul Favel	Assembly of First Nations representative

1. Welcome

Mayo Moran thanked everyone for taking the time for a follow-up discussion from the January 31, 2017 Oversight Committee meeting.

2. Completion Strategy Update

Shelley Trevethan described the Completion Strategy Update, noting that it is a fuller version than the outline discussed at the January 31, 2017 meeting. It includes progress on the IAP, improvements to claim resolution, challenges and risks to claim resolution, and information on moving forward. Shelley noted that, based on some of the identified risks, it is possible that the Secretariat may need to close later than the forecasted spring 2020 date. The document will be sent to the NAC, and Mayo Moran, the Chief Adjudicator and Shelley Trevethan will meet with the NAC in April 2017.

Shelley discussed the timelines, which were similar to what the Oversight Committee had seen previously, but with the addition of timelines for the Teulon Article 12 application and Student-on-Student admissions. In addition, as per the last discussion with the Oversight Committee, the potential for Article 12 applications to go to the Supreme Court of Canada was added.

Canada representatives asked for additional time to review the Strategy. It was agreed that Oversight Committee members would provide comments by March 8, 2017, and another teleconference would be organized before the Strategy was shared with the NAC.

3. Time to file Reviews/Extensions (30-day Review Period)

The Oversight Committee unanimously approved revisions to its policy regarding *Time to File Reviews / Extensions* adopted at its September 9, 2008 meeting, as set out in Annex "A", forming part of these minutes.

4. Update on Administrative Split

Tara Shannon provided an update on the administrative split issue, noting that the Chief Adjudicator sent a letter to legal counsel with his intention to lift the hold on administrative split files on March 6, 2017. For both pre- and post-decision claims, Canada is offering to negotiate settlements with claimants whose IAP claims were affected by Canada's administrative split argument.

Canada indicated that it will explore options for recourse for IAP claims withdrawn on the basis of Canada's administrative split argument, and anticipates offering to negotiate settlements with these claimants. Canada also noted that it is open to look at Jurisdictional Pre-hearing teleconference (JPHT) claims where there's a record of decision which includes the administrative split argument, as well as claims withdrawn before a decision where it appears the administrative split argument was raised. Shelley noted that the Secretariat shared a list of files with Canada that included unfiled Blott claims, non-admitted claims, and withdrawn claims.

The Chief Adjudicator asked what the mechanism will be for post-decision claims. Tara noted that, to date, Canada has made 11 offers to claimants with post-decision claims, 6 of which have been accepted. They are also working on 2 post-hearing claims. Canada will provide the file details to the Secretariat.

Dan Shapiro asked about legal fees for admin split cases, as this may impact on adjudicator and Secretariat workload. He expressed concern for gaps in protection for claimants regarding legal fees unless Canada included stipulations regarding legal fees in its settlement offers. Canada noted that it has tracked claims where an adjudicator decision is in place documenting the administrative split issue and will look into the question of legal fees, keeping in mind the advisability of remaining consistent with the IAP.

Tara also noted that, for self-represented claimants whose IAP claims have been affected by the acceptance of Canada's administrative split argument, Canada will offer

to fund health supports and provision of independent legal advice while Canada pursues negotiated settlements. In addition, Canada will use the same process to locate lost claimants as they did to locate Persons of Interest.

5. Update on Estate claims

Tara Shannon provided an update on estate claims. Canada has been working on getting contracts in place for third party administrators, and although they were not put in place in February as projected, it is believed that they will be in place very soon. Tara committed to let the Oversight Committee know when the third party contracts are in place.

Canada noted that they have found that 7 individuals who were identified as deceased are not in fact deceased. Shelley Trevethan noted there are 6 of these cases, due to a mistake in file numbers provided by an adjudicator that was corrected the day after it was provided, a couple of coding errors by Crawford which have been fixed, and information provided by legal counsel that their claimants were deceased. Shelley mentioned that, similar to other tribunals, the Secretariat does not do additional verification that claimants are deceased when informed by claimant counsel or family members.

6. Future Meetings

Mayo Moran noted that Diane Soroka suggested the need to have additional meetings and indicated that a revised schedule for Oversight Committee's consideration has been prepared.

Shelley noted that at the last Oversight Committee meeting David Iverson suggested the Oversight Committee hold some meetings where they could hear from survivors or visit areas relating to residential schools. It was agreed that Shelley Trevethan and Russell Vallee would provide some options at the April meeting.

Time to File Reviews/Extensions

Going forward, the policy of the IAP Oversight Committee regarding reviews/extensions adopted on September 9, 2008 is replaced with the following policy:

Reviews must be initiated within 30 days of the receipt of the adjudicator's decision by a party or by counsel or other representative of the party.

Provided notice of the review is given within the allowed timeline, the Chief Adjudicator may authorize additional time for the written submissions of the party seeking the review.

Such written submissions shall be forthwith submitted to the other parties, who must provide their written response within 30 days of their receipt thereof or within such further time as the Chief Adjudicator may allow.

The Chief Adjudicator may in his discretion grant leave to seek a review or re-review beyond 30 days after the receipt of the adjudicator's decision or review adjudicator's decision, where upon notice to the participating parties, the requestor has demonstrated that an arguable case (including but not limited to whether the proposed review or re-review seeks to re-visit an issue for which there is a re-review decision or other IAP decision significantly on point that has not been overturned by a court decision) exists for the review or re-review to be allowed to proceed. In exercising his discretion as to whether or not to grant leave, the Chief Adjudicator may consider the following additional factors:

1. Whether the requestor has demonstrated a continuing/bona fide intention to seek a review (or re-review) before the 30-day review period expired;
2. Whether the requestor has provided a reasonable explanation for the delay;
3. Whether, if an extension were granted, the other parties would suffer a greater prejudice than if the request for review had been filed on time; and
4. Whether, if leave is granted for an extension in a case that could result in a new hearing being ordered, the case may still be dealt with while there is adequate capacity in the IAP to so do.

The Chief Adjudicator may in his discretion request affidavit evidence and/or submissions from the requestor, and submissions from the responding party/parties, as the Chief Adjudicator deems appropriate to assist in his consideration of the request to extend time.

[Approved by IAPOC 01-March-17]