

**Independent Assessment Process Oversight Committee
Meeting of April 11, 2017
Vancouver, British Columbia
MINUTES OF THE OVERSIGHT COMMITTEE MEETING APPROVED**

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 (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

Brian Gover	Court Counsel (for item 2 only)
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS
Russell Vallee	Recorder, IRSAS

1. Welcome

Mayo Moran welcomed the Committee members to the meeting. She noted that this would be Karen Cuddy's last Oversight Committee (OC) meeting and thanked her for her contributions to the Committee.

Mayo noted that she, Dan Shapiro, Shelley and Russell Vallee had met with the National Administrative Committee (NAC) on April 10th. The NAC were impressed with the level of data presented by Shelley and were very interested in the targeted approaches, such as the Lost Claimant Protocol.

2. Court Counsel's Report

Brian Gover provided an overview of Requests for Direction (RFDs) and appeals before the Courts as of March 31, 2017.

3. Approval of Minutes

Members discussed the minutes from January 31st, March 1st and March 20th meetings. It was agreed that the minutes would be revised to provide a more concise description of the meetings.

Action: the OC Secretary will circulate revised minutes for the meetings of January 31st, March 1st, and March 20th

4. Key Performance Indicators

Performance Indicators

Shelley Trevethan provided performance indicators as of March 6, 2017:

- Applications received: 38,096
- Claims admitted: 33,799
- Claims not admitted: 4,269
- Claims awaiting admission: 38, only 17 active
- Claims resolved to date: 96%, 261 since the last meeting
- Claims in progress: 1,432
 - Post-Hearing: 658
 - Unheard: 774 – project that about 50 claims will make it to a hearing while approximately 720 will resolve without a hearing
- Awards/NSPs to date: \$2.097B
- Self-represented claimants: 605 (42% of active claims) – this percentage continues to rise
- The majority of the remaining claims are in Saskatchewan and Alberta
- Claims on hold: 466, comprised of estate claims waiting for Canada to confirm jurisdiction, SOS claims waiting admissions, administrative split claims (note: this is down from 550 in January)

Adjudication Secretariat Statistics

Shelley noted that the OC requested changes to the Adjudication Secretariat Statistics at the last meeting and a mock-up has been provided for this meeting. She presented the revised document. The following comments were received:

- Need to determine who the audience is – this report is primarily provided at OC meetings, and OC members may provide it to others. It is no longer on the website
- The terminology should be reviewed to ensure it is clear for the intended audience
- Add a footnote as to why there are more claims resolved than admitted
- Suggestion to add % of successful claims, % of zero awards, and average compensation

A revised document will be brought back to the next meeting.

Action: *the Secretariat will revise the Adjudication Secretariat Statistics for the next meeting*

5. Executive Director's Report

Targeted Approaches

Shelley provided an update on the Targeted Approaches, which continue to progress as files return back into the process:

- Claimants who struggle to represent themselves: completed
- Self-represented claimants seeking legal counsel: completed
- Withdrawal of claimant counsel: completed
- Jurisdictional reviews: 17 (down from 20 in January)
- Non-responsive self-represented claimants: 12 (down from 15)
- Deceased/Estates: 27 (down from 55); 92 (up from 78)
- Lost Claimants Protocol: 20 (up from 10) – of 771 lost claimants in total, 481 have been located
- Incomplete File Resolution: 84 at Step 1 (down from 128); 155 at Step 2 (down from 191); 246 with a resolution decision pending (down from 262); 282 dismissed (up from 194)

Members commented that the targeted approaches have been very effective, claimant-centred and compassionate. The process identified issues that no one thought would occur. It was noted that it would be important to talk about the targeted approaches in the IAP final report, in particular that they were claimant-centred.

Post-Hearing Activities

Shelley updated the OC on the post-hearing activities in the IAP. IRSAS staff are focusing on identifying where these claims are in the post-hearing process and any blockages that should be addressed.

6. Website Statistics

Shelley led the discussion on revised website statistics and messages noting that, at the last two meetings, the OC discussed how the website can be revised to provide a fuller picture of what the IAP has accomplished. The Committee provided the following comments on the proposed website statistics and messages:

- OC members liked the proposed messages

- Importance of providing clear and transparent messages that demonstrates the progress made, without too much data
- It is difficult to describe such a complex process
- Are definitions included in the website – yes
- Suggestions to separate NSPs from legal fees/disbursements. It was noted that the Canada would need to provide this information to Secretariat – and Canada agreed to provide this information on an ongoing basis to the Secretariat
- Can we add summary of payments prior to 2012?
- Do ineligible/withdrawn include JPHT dismissals?
- Should information on the cost of the IAP be included?
- Can awards be broken down by type of abuse?

Action: *the Secretariat will revise the website statistics/messages for discussion at the next meeting*

The OC discussed information that should be considered for the IAP Final Report. This included:

- Interviewing representatives from Law Societies
- Talking to academics relating to Indigenous Legal Tradition (e.g., John Borrows) or therapeutic/transitional justice to provide a broader context on how the IAP fits into various theories
- Get information from other countries with similar processes to the IAP – Shelley noted that she has been examining information from other countries
- Need to discuss issues with lawyers
- Should information on the cost of the IAP be included?
- Were there net savings by doing legal fee reviews?
- Positive results due to the IAP/IRSSA – such as adoption of curriculums that includes information on residential schools; greater public education; more healing centres)
- Compensation wasn't the most important thing – it was the opportunity to talk about the abuse and acknowledgement of the harm done

The OC also discussed the Secretariat's role in educating the general public about the IAP. Shelley noted that, as discussed at previous meetings, the Secretariat has provided information packages to colleges/universities, and has begun to give presentations on the IAP to college/university students. She said she would provide this information to the OC.

Action: *the Secretariat will provide information to the OC on presentations provided to colleges/universities*

The OC discussed the idea of maintaining the IAP database, administrative documents and websites once the IRSAS closes. Discussion focused on the information contained in the database and the importance of maintaining privacy of the information.

7. Chief Adjudicator's Report

Completion Strategy Update

Dan Shapiro highlighted the previous day's meeting with the NAC. The intention of the meeting was to seek input from the NAC into the Completion Strategy Update. At the meeting, Shelley provided an update on the IAP statistics and targeted approaches which helped set the stage for the discussion on the completion strategy. NAC members were impressed with the Secretariat's efforts to resolve the remaining claims and complete the IAP. Dan outlined the update to the Completion Strategy, indicating that the Oversight Committee had provided input. Comments from the NAC included:

- Appreciation for the amount of work that went into creating the timelines and the update to the Completion Strategy
- Questions on the administrative split issue: what definition did Canada use; whether Canada's approach to address the administrative split issue will include claims that have been withdrawn or not filed
- Questions regarding whether SOS claims that received \$0 awards early in the process were disadvantaged due to lack of admissions available regarding staff knowledge, and whether this would be addressed, possibly by a RFD
- Canada's use of third party administrators for estate claims and whether counsel who agree to take on these claims risk not getting paid - it was noted that Canada is paying third party administrators
- Questions regarding the status of Article 12 litigation regarding Kivalliq Hall – it was noted that Canada is appealing the decision

Canada's member on the NAC noted that they may submit a response to the courts regarding the Completion Strategy update.

Court Counsel Brian Gover was in attendance at the meeting with the NAC, and indicated that the Courts have asked the NAC to prepare a report to the Courts which would then inform an RFD to the courts.

Shelley described the IAP Final Report to the NAC and asked if they would be willing to do interviews in order to capture their knowledge and experience relating to the IAP. The NAC agreed to get back to the Secretariat as to how they would like to provide input.

Mayo noted that the meeting went well. The NAC asked for time to further review the strategy and provide their collective comments. Dan indicated that he will circulate NAC comments and the revised strategy.

Action: the Chief Adjudicator will send the final Completion Strategy update to the OC

Disposition of Records Appeal / Notice Program

The Chief Adjudicator's SCC factum is near completion. Canada has already submitted its materials, and three intervention applications were shared with OC. Canada's stay application was approved by the court, with the exception for the planning of the Notice Program.

To date, three meetings have been held "without prejudice", with the Chief Adjudicator, IRSAS staff, the NCTR, Independent Counsel, AFN, Inuit participating. There was participation in the first two meetings by counsel representing a Catholic Church entity. Canada attended as an observer. The intention of these meetings is to try to reach agreement on the consent form, aspects of the notice program and administration of the records, in the event that the Supreme Court determines that the Chief Adjudicator should lead a notice program. The next meeting is scheduled for May 1, 2017 in Winnipeg at the NCTR's office. The University of Manitoba's Privacy Officer will present on the NCTR's privacy policy as well as on the latest version of the consent form.

Chief Adjudicator's 2016 Annual Report

The Chief Adjudicator shared his 2016 Annual Report with the Oversight Committee. The report sets out the activities undertaken by the Chief Adjudicator and the IRSAS in fulfilling the mandate to deliver the IAP. This has been a year of achieving ambitious goals. Among these initiatives were: the successful implementation of the Lost Claimant Protocol and dedicated efforts to reactivate stalled claims at various stages including the Incomplete File Resolution Procedure, all leading to additional files entering the hearing queue. Only a handful of first hearings remain to be heard and the focus of the process has turned to post-hearing activities and the resolution of remaining claims. New challenges and risks have arisen, such as the numerous RFDs before the Courts, Article 12 applications that remain to be determined, and other external factors impacting on the completion of the IAP.

It was agreed that members would provide their feedback to the Secretary of the OC by April 18, after which it would be finalized and posted on the website.

Action: OC members will provide comments on the 2016 Chief Adjudicator's Report by April 18th

8. Update on Administrative Split

Tara Shannon provided an update on the progress of Canada's Administrative Split project. To date, Canada has made 28 offers for pre-decision claims, 19 of which have been accepted. Some pre-decision claims have other issues which will mean they cannot be resolved through

NSP, and will continue to hearing with Canada not making the administrative split argument. Canada has asked the Secretariat's Claimant Support Officers to make the initial contact with self-represented claimants. There was no update at this point on progress regarding post-decision files. Canada continues to review the list of potential Administrative Split files identified by the IRSAS, including pre-admit Blott, non-admitted, and withdrawn claims.

Shelley Trevethan provided the OC with an update on the 132 claims that were put on hold in February 2016 as a result of the administrative split issue. On February 8, 2017, Canada provided the IRSAS with two lists of files affected by the Administrative Split: one with 49 pre-decision files, the other with 174 post-decision files. On March 3, 2017, Canada provided another list of 40 pre-decision files, 29 of which were on their initial list of 49, but some claims were added and others removed. Canada has asked the Secretariat to keep 40 claims of the 132 claims on hold in February 2016, and the remaining 92 were released on March 6, 2017.

The OC discussed:

- Why Canada's list of administrative split claims has changed? Canada provided a list in February and a revised list in March.
- What options are available to claimants who reject Canada's offer? Canada advised that this has not happened to date
- How will Canada deal with claimants who continue to represent themselves who are post-decision? Canada indicated that they would encourage self-represented claimants to obtain legal counsel and would pay for independent legal advice
- How will Canada address claimants who did not apply to the IAP due to an administrative split issue; non-admitted claims; withdrawn claims – Canada indicated that they are looking at these issues
- How will Canada deal with deceased or estate claims – Canada indicated that they would deal with these in the same way as other estate claims
- How will Canada deal with lost claimants – Canada indicated that they have not found any yet and have not yet decided how to address this issue

The OC noted that it will be important to include additional compensation provided by Canada to claimants into the total compensation awarded for the IAP. This would be significant where a claimant received a zero dollar decision by an adjudicator, therefore this compensation outside the IAP should be noted. Canada committed to sharing this information with the Secretariat.

Action: Canada will provide the Secretariat with compensation provided for all claims impacted by the administrative split issue (pre- and post-decision)

9. Update on Estate Claims

Tara Shannon provided an update on Canada's progress on estate claims. As of March 29th, there were 70 claims for which Canada is continuing to determine if it has jurisdiction. There

are approximately 200 additional claims where Canada has determined it has jurisdiction, and is trying to find a family member to appoint as the estate administrator. There are 54 claims where Canada is hiring a third party administrator from a list of claimant counsel who have said they are interested in doing this work.

In light of the upcoming August 1, 2017 IFR reconsideration deadline, the Chief Adjudicator asked if Canada is considering asking him to release the hold on these claims. Canada has not made a decision about this yet and it would be the INAC Estates unit to make the decision.

10. Future Oversight Committee Meetings

At the January 31, 2017 meeting, the OC discussed moving the June 20, 2017 meeting to Brantford so that the OC could visit the cultural centre at the Mohawk Institute. Unfortunately, the Mohawk Institute is closed until June, so it was agreed to reschedule the tour to September 2017. It was also agreed that the November OC meeting would be moved to Vancouver Island where the committee could visit the Nuu-chah-nulth community centre and see its cultural programming for IRS survivors. Shelley and Russell will follow-up with the Mohawk Institute and Nuu-chah-nulth cultural centre contacts to make arrangements for the two dates.

Action: *the Secretariat will try to organize tours of the Mohawk Institute and Nuu-chah-nulth*

The next meeting will be held on June 20th in Toronto.