

**Independent Assessment Process Oversight Committee
Meeting of June 20, 2017
Toronto, Ontario
APPROVED MINUTES OF THE OVERSIGHT COMMITTEE MEETING**

Members present

Mayo Moran	Chair
Les Carpenter	Inuit representative
Juliet Donnici	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 (Via Teleconference - for item 3 only)
Rodger Linka	Deputy Chief Adjudicator; Chair, Technical Subcommittee (for items 2 and 9 only)
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS
Russell Vallee	Recorder, IRSAS

1. Welcome

Tara Shannon introduced Juliet Donnici as Canada's new representative on both the IAP Oversight Committee as well as the Technical Subcommittee. Ms. Donnici replaces Karen Cuddy and has been involved in the Residential Schools file from the very beginning, going back to the Blackwater case.

On behalf of all the Oversight Committee members, Mayo Moran welcomed Ms. Donnici.

2. Technical Subcommittee Report

DCA Rodger Linka reported on the meeting of the Technical Subcommittee (TSC) held on June 19, 2017.

Targeted Approaches Update

A total of 323 files have returned to the hearing stream from Step 1 and another 58 in Step 2. There are currently 365 files remaining in step 2, over 200 of which have a resolution direction but are being held awaiting an estate administrator.

Student on Student Admissions

Much of the discussion on the SOS project surrounded how the log-jam regarding admissions of staff knowledge could be resolved. While SOS admissions project claims are being resolved, many claims are adjourned pending expert assessments or mandatory documents. An analysis provided by the Secretariat showed a total of 60 files that could potentially have their adjournments lifted. Canada's analysis shows a total of 97 files, 17 of which could be released for decision, subject to adjudicator input. Additional analyses are necessary.

IFR Reconsideration Deadline

The IFR Reconsideration deadline of August 1, 2017 is quickly approaching, with over 400 files currently in progress in IFR. With six weeks to the deadline, the TSC agreed that the deadline needed to change. There was consensus that the reconsideration deadline be moved to January 1, 2018. However, this date may not be realistic. The current pace is 30 decisions a month but this could improve as an adjudicator has recently been added to the project. Much of the discussion centred on why decisions are proceeding at such a slow pace. The TSC recommended that the Oversight Committee have a conference call to finalize a date once more detailed information could be provided by the Secretariat on the methodology for the projections. This topic is discussed further under item 9.

Future TSC meetings

Members discussed future TSC meetings. Most agreed that it was not useful to attend a meeting only to review the same two or three reports. The Committee agreed to discuss agenda items a month in advance and if there are no other issues requiring a meeting other than updates, then there may be no need to hold an in-person meeting.

3. Court Counsel's Report

Brian Gover provided an overview of Requests for Direction (RFDs) and appeals before the Courts as of June 15, 2017.

4. Approval of Minutes

The Oversight Committee approved the minutes of the January 31, 2017 and the in-camera April 11, 2017 Oversight Committee meetings with minor amendments, subject to one member undertaking to provide language on further suggested amendments.

5. Key Performance Indicators

Adjudication Secretariat Statistics

Shelley Trevethan noted that at the last meeting the Committee requested that the Secretariat revise the mock-up version of the Adjudication Secretariat Statistics, including the addition of definitions. A revised version was presented to the Committee for comments. Committee members approved of the revised draft, with minor revisions.

Key Performance Indicators

Shelley Trevethan provided performance indicators as of May 15, 2017:

- Applications received: 38,098
- Claims admitted: 33,802
- Claims not admitted: 4,272 (11.2%)
- Claims awaiting admission: 24 (only 5 active)
- Claims resolved to date: 96.8% (36,895)
- Claims in progress: 3.2% (1,203)
 - Post-Hearing: 536
 - Unheard: 667 – project that about 65 claims will make it to a hearing (an increase from the 50 that was projected in March); while approximately 602 will resolve without a hearing
- The Lost Claimant Protocol continues to be very successful in returning claims to the hearing stream. It is projected that about 30 LCP claims will move to a hearing.
- Self-represented claimants: 498 (41%) - only 17 of these are active. It is projected that self-represented claims will be completed within the next 6 months.
- Awards/NSPs to date (excluding legal fees & disbursements): \$2.58B

Members asked what information is available about claimants, such as breakdowns of claimants by region, date they attended the residential school, and success rates/compensation by gender. Shelley Trevethan noted that some of this information will be included in the IAP Final Report and agreed to provide information on what data are available.

6. Executive Director's Report

Targeted Approaches

Shelley Trevethan provided an update on the Targeted Approaches, which have been very successful, leading to more claims being admitted and more claims that require a hearing. Key performance indicators include:

- Jurisdictional reviews: 11 (down from 17 in March)
- Deceased and Estates claims: 28 deceased (up from 27); 95 estate (up from 92)
- Non-responsive self-represented claimants: 6 (down from 12)
- Lost Claimants Protocol: 13 (down from 20)
- Incomplete File Resolution: 64 at Step 1 (down from 84); 140 at Step 2 (down from 155); 225 with a resolution decision pending (down from 246); 325

dismissed (up from 282). There have also been 4 requests from claimants to have their dismissal direction reconsidered (2 are in the process of having the Dismissal Direction reconsidered; 2 were returned to the hearing stream)

Post-Hearing Activities

Shelley noted that there are currently 536 claims at the post-hearing stage (down from 658 in March):

- Active Post-Hearing Claims: 179
- Final Submissions Pending: 130
- Decisions Pending: 84
- On Hold: 143 (32 awaiting estate documents; 3 administrative split; 108 SOS admissions.

Oversight Committee members commented on the good progress that the Secretariat has made in moving files to resolution.

Claims On Hold

Shelley noted that, as of May 15th, there are 386 claims on hold (down from 466 in March). Of these:

- IFR awaiting decision: 205 (down from 227)
- Adjourned pending SOS admissions: 108 (down from 121)
- Deceased: 55 (down from 58)
- On Hold – other: 12 (down from 29)
- Administrative split: 3 (down from 21)
- INAC Request (INAC administrator): 3 (down from 10)

7. Website Statistics

Russ presented the Secretariat's new-look IAP website. New content to the website has been designed to help visitors locate information and better understand the IAP. A new section called "the IAP Story" (within the "About" tab) describes the success of the IAP to date. IAP Statistics (under the "About" tab and the "Media" tabs) now includes additional data on the percentage of successful claims in the IAP, the average amount of compensation, total awards by adjudicators and the total of payments made by Canada. The statistics page is updated on a monthly basis, usually near the middle of each month.

The revised website, along with the addition of information for visitors, was very well received by the Committee. A member asked if there is a counter capturing the number of hits and unique visitors.

8. Chief Adjudicator's Report

The Chief Adjudicator provided an update on pending RFDs, court decisions and court actions.

Records Disposition

The Supreme Court of Canada heard oral arguments on the Records Disposition case on Thursday, May 25th. There was a seven member bench consisting of Chief Justice McLachlin and Justices Karakatsanis, Wagner, Gascon, Côté, Brown, and Rowe. Joseph Arvai, Q.C., Catherine Boies Parker and Deputy Chief Adjudicator Susan Ross formed the legal team and John Trueman also played a key role. The Chief Adjudicator's factum is still available on the Supreme Court of Canada website.

Related to the Records Disposition case, the Chief Adjudicator, with support of key leads from the Secretariat, continues to meet with the parties regarding the notice program. The plan is to meet in early September, possibly for the last time before the Supreme Court of Canada releases its decision, in order to seek consensus on those areas identified as issues, so that in the event that the Supreme Court upholds the Ontario Court of Appeal decision, an RFD to establish the terms of a notice program can move forward as expeditiously as possible. Shelley Trevethan and some of her staff are holding focus groups on how to best reach IRS survivors to communicate the Supreme Court of Canada's decision and what will happen with their records at the NCTR. It is important that all messaging to IRS survivors be culturally appropriate and that they have the necessary supports.

9. IFR Reconsideration Deadline

The IFR procedure requires the Oversight Committee to determine a reconsideration deadline that is six months before the practical date to hold the last first claimant hearings. The Committee members agreed that the upcoming deadline of August 1, 2017, needs to be revised.

In order to develop a projection for the revised IFR Reconsideration Deadline, the Secretariat analyzed the caseload currently moving through the IFR procedure alongside a review of the average processing times for various stages within the IFR. Based on this, it was recommended that the IFR Reconsideration Deadline be revised to June 1, 2018. Concern was raised with extending the deadline by nearly a year. Shelley Trevethan advised that the initial date recommended to the Chief Adjudicator was August 2018; however, some files are moving faster than originally estimated, so the June date seems feasible. It was also noted that, of the more than 350 dismissals to date, there have only been 5 or 6 requests for reconsideration. Therefore, it is not anticipated that the new deadline will result in a flood of requests.

Members asked if there are blockages that could be addressed, such as assigning more adjudicators to the IFR. The Chief Adjudicator responded that he did not believe that the issue is with adjudicators. Shelley Trevethan added that the issues seem to be related to Canada identifying administrators for estates, as well as external organizations who provide mandatory documents for files. It was asked whether certain types of claims could have different deadlines. It was noted that having different deadlines would cause

significant confusion for claimants and their counsel and it is not clear that the IFR Procedure allows for different dates for the reconsideration deadline.

Shelley Trevethan agreed to provide additional information on the methodology used to identify the Reconsideration Deadline. The Oversight Committee agreed to change the IFR reconsideration deadline to June 1, 2018.

APPROVED by the Oversight Committee: Change the IFR Reconsideration Deadline from August 1, 2017 to June 1, 2018

10. Update on Administrative Split

Tara Shannon provided an update on the progress of Canada's Administrative Split project. To date, there have been 69 offers and 51 claimants have accepted for a current total of approximately \$4.8M in settlements. Of the 40 pre re-review decision files that Canada requested IRSAS to keep on hold following announcement of Canada's approach, 24 have been successfully settled; 17 of these are post hearing but pre-decision (NSP process within the IAP); 7 are post decision.

Canada's representatives continue to reach out to adjudicators who have administrative split files. The list provided to the Chief Adjudicator and the Secretariat in March has been updated and will be shared with the Secretariat shortly.

At the last Oversight Committee, Canada was asked what it would do concerning Blott claims. Canada indicated that it has contacted Mr. Pitfield for assistance and he has been very helpful in finding successor counsel; some claims have already been successfully resolved.

Shelley Trevethan noted that information as to compensation at any stage would have an impact on statistics relating to compensation awarded to claimants. She also noted that the absence of information relating to settlement of each individual claim poses challenges for the Secretariat, as these files are not closed administratively until after settlement or until re-review processes have been exhausted.

Canada noted that some of the settlements are essentially ex gratia payments made outside the IAP. However, it anticipated that it could provide the Secretariat with sufficient information to respect both the Secretariat's needs and that, from Canada's perspective, payment is ex gratia.

The Chief Adjudicator asked if there had been a decision on withdrawn claims. Canada responded that each is being considered on a case by case basis. The challenge is to know why the claim was withdrawn. Canada was not sure if any withdrawn claims have proceeded through its administrative split process. Canada was asked how un-submitted,

non-admitted, lost and deceased claimant files would be addressed. With respect to self-represented claimants, Canada will pay fees for independent legal advice.

11. Update on Estates Claims

Tara Shannon provided an update on Canada's progress on estate claims. Canada believes there are 38 files requiring Canada's attention: 13 where jurisdiction still needs to be determined; and 25 where an administrator needs to be appointed.

Shelley Trevethan noted that these numbers do not include the 110 claims where Canada is looking for a family member to be the administrator, nor the 132 pre- and non-admit files, which cannot be resolved until Canada has identified administrators. Tara Shannon will go back to discuss this issue with INAC's Estate group.

The roadblock for some of the estate files remains with receiving Vital Statistics documents from Saskatchewan. The Estate group within INAC is now taking a different approach, whereby third party administrators will be appointed at the same time as relatives are asked if they want to be the administrator.

12. Future Oversight Committee Meetings

The next meeting will be held on September 11th and 12th in Brantford, Ontario, with a visit to the Six Nations Reserve.