

**Independent Assessment Process Oversight Committee  
Meeting of November 21, 2017  
Vancouver, BC  
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**

Rodger Linka	Deputy Chief Adjudicator (present for item 2 only)
Daniel Shapiro	Chief Adjudicator
Akivah Starkman	Acting/Executive Director, IRSAS
Russell Vallee	Recorder, IRSAS

**Regrets**

Brian Gover	Court Counsel
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**1. Welcome**

Chair Mayo Moran welcomed everyone to the meeting, acknowledging the return of Akivah Starkman as Acting/Executive Director while Shelley Trevethan is off on French language training and working on the IAP final report.

**2. Report of the Technical Subcommittee**

Rodger Linka reported the minutes on the meeting of the Technical Subcommittee held on November 20, 2017.

**Targeted Approaches**

Claims continue to progress smoothly through the targeted approaches. At this time, no issues have been identified for discussion by the Subcommittee. IRSAS staff are monitoring closely to ensure the June 1, 2018, Reconsideration Deadline is met. To date, 424 cases have been dismissed through the Incomplete File Resolution (IRF) process. The files in both Step 1 and 2 should be completed by the Reconsideration Deadline. The number of files remaining to be assigned to an adjudicator currently sits at 6.

### Student on Student (SOS) Admissions Update

Canada reported that the current number of claims in the Student on Student project at the pre-hearing stage is down to 74 files. Canada's report was broken down by IRS where only a few presently have a significant number of claims left to review. Deputy Chief Adjudicators have requested adjudicators to review their on-hold files which have resulted in adjudicators drilling down into the other competing claims to successfully move these files. The Subcommittee recognized that there is some risk that an admission may arise.

### Definition of a Completed File

The Technical Subcommittee discussed the draft *Definition of a Completed File* paper related to Justice Perell's Court Order of August 6, 2014. The Order directed that the Chief Adjudicator shall destroy IAP Retained Documents on the expiry of their 15-year Retention Period, which is 15 years from the completion of the relevant IAP claim, including the exhaustion of review or appeal rights or other legal proceedings in respect of the claim. Those retained documents being:

- Applications for compensation;
- Hearing transcripts of the claimant's evidence;
- Audio recording of the claimant's evidence from hearings;
- Adjudicator compensation decisions.

The Ontario Court of Appeal added the Alternative Dispute Resolution (ADR) documents. The courts have also ordered the destruction of non-retained documents immediately upon the completion of the relevant IAP Claim, including the exhaustion of review or appeal rights or other legal proceedings in respect of the claim. The Subcommittee discussed providing clarity as to when a file is considered to be completed. The 15 year retention period for IAP retained documents for some ADR decisions is fast approaching. A challenge with Justice Perell's order is the need to develop a 15 year retention period for each individual file.

### Incomplete File Resolution

Currently, 99.8% of all files have been assigned to an adjudicator with 6 left to assign. If more Estate files are added to the IFR it will have an impact on limited resources as well as established timelines. Previously there had been difficulty with a number of Estate files going through IFR with no representative present. Canada advised that those claims in Canada's jurisdiction should not go into IFR unless the family representative was unable to complete the requirements. The claims should all go through the Estate Pre-Hearing Teleconference. Canada cannot do much for those claims where it does not have jurisdiction. Canada was not certain how many Estate claims will enter the IFR but the total would be very low.

### Estate Administration

Canada reported that 88% of Estate claims where Canada has jurisdiction have been assigned an Estate Administrator by Canada. The plan for these claims is that once counsel is appointed, and where there is an IFR resolution, they enter the Estate Pre-Hearing Teleconferences (EPHTs). There are 13 post-hearing files left for which an Estate Administrator needs to be appointed. There are 11 claims left where Canada needs to determine jurisdiction, 7 of which have a decision and 4 of which are post-hearing. There are another 56 claims that have not been admitted in the IAP and will not be eligible, given the claimant died prior to May 30, 2005, settled in litigation, or attended a school not on Schedule E or F.

### Administrative Split

Canada has now made 122 offers. Of these, 103 have accepted. Total compensation paid to date is \$8M. There are approximately 96 claims left in the process which includes 41 interviews already set up. No one has turned down an offer to this point.

### Blott—Did Not Qualify (DNQ) Files

The Subcommittee reviewed the briefing note on outstanding issues concerning the Blott DNQ files. The Subcommittee discussed Mr. Pitfield's decision, communicated via Court Counsel, not to examine the files. It was suggested by the Subcommittee that the Chief Adjudicator request the DNQ files and review them. However, it was also noted that this was not the role of IRSAS staff—to review and decide whether they should move forward—this is a lawyer's role. Members agreed to revisit this discussion at the January 2018 Subcommittee meeting.

## **3. Approval of Minutes**

The Committee approved the June 20, 2017 and September 11-12, 2017 regular minutes before them subject to minor amendments.

## **4. Key Performance Indicators**

Akivah Starkman discussed some of the key statistical indicators.

- All admissions of claims are completed, with no outstanding matters left to address.
- 98% of all claims are resolved; this includes Adjudicator decisions, NSPs, not-admitted, non-admitted, and withdrawn.
- There are 769 claims remaining in the process. This represents a 22% decline from the last report.
- A total of 78 claims will likely have a hearing, while 326 claims may be resolved without a hearing.
- The number of claims in progress within IFR has decreased by 35% since the last report. A significant number of claims are on the verge of being complete.
- \$3.1B has been paid out in total compensation. \$2.117B directly to claimants. The average per claimant is \$91,713 where there's been compensation awarded.
- 365 files are at the post-hearing stage (including on-holds) and many of these have been there for about a year. Most on-holds are for SOS admissions or have passed away before the decision.
- The total number of SOS claims continues to decline—only 280 remain, while 74 have been adjourned.

## **5. Executive Director's Report**

Akivah provided his general observations on what has been done since he left the IRSAS four years ago. There have been changes in personnel but the one thing that remains constant is the commitment of staff. In the past, Akivah was concerned about case management; specifically, those files that potentially could fall through the cracks. In terms of coming back, the level of granularity on the files is impressive.

The current challenges from the IRSAS perspective are:

- Implementing the Records Disposition order and the related Notice Program, which involves a lot of technical aspects and costing.
- The number of RFDs. There are presently 20 active cases.
- Ensuring the IRSAS is prepared to process the last IAP files to completion with the same level of fairness and respect. Some of the remaining claims are very complex but we need to ensure they are handled like those that came before them.

There is also the fact that the IRSAS is a sunset organization. Given that staff reductions will be ongoing, it is important to support staff through this downsizing and maintain our required staff. It was asked if there are resources available for retaining staff at the IRSAS. The answer was no as Government has no mechanism to provide incentives. The only thing that can be done is make the Secretariat a place that people want to stay. We are providing additional training to build individual capacity and have wellness activities but we nonetheless lose good people. Members noted that the staff at the IRSAS have continued to perform at a high level even after the reductions. Their commitment should be reflected in the IAP Final Report.

## **6. Chief Adjudicator's Report**

The Chief Adjudicator explained that within days of the Supreme Court decision, his legal counsel was advised that the ONSC wanted to hold the hearing on the Notice Program as early as late February 2018. Work on the Notice Program RFD to be submitted to the court is under way. On the definition of a completed file, the Chief Adjudicator stated that neither he nor IRSAS staff need to see Negotiated Settlement Process (NSPs) information held by Canada but will require a list with dates the NSP were completed. The Secretariat has no information on when DR files were concluded with a claimant release and has asked that Canada provide the Secretariat with the dates on which such releases were finalized, although not the releases themselves. Canada noted that there was a joint working group made up of Canada and IRSAS staff that arranged to meet to discuss the needs of the IRSAS and that it may be necessary to seek guidance from the Court on issues relating to the interpretation and implementation of the decision.

Discussion also touched on claimant digital records, which are subject to court ordered retention in the case of IAP Retained Documents, or destruction in respect of other claim records. The Chief Adjudicator discussed the issue of tombstone information within the database shared between Canada and the IRSAS and whether this information may need to be destroyed as well. This would impact on the Secretariat's data reporting capabilities.

One Oversight Committee member raised a concern over the completion date of a claim, the difficulty of managing thousands of cases claim-by-claim, and the risk of accidentally destroying documents. The Chief Adjudicator acknowledged the concerns but noted that neither of the issues raised at Subcommittee or by the OC member were challenged either at the Ontario Court of Appeal or the Supreme Court of Canada and he did not plan to pursue an RFD from the Ontario Superior Court (ONSC). Nevertheless it may make sense to approach the Court via Court Counsel regarding the idea of retaining key information within the SADRE database in order to maintain statistical reporting capabilities that were essential for reporting, policy-making and planning. Examples of where the data is necessary include special processes such as those to address claimants who are lost or deceased and claims impacted by the student on student admissions project. Other parties will have to deal with their own records according to the Records Disposition Order.

## **7. Article 12**

Tara Shannon shared with the Committee the following information on the two remaining Article 12 requests before the courts:

- Kivalik—appeal case Feb 13, 2018.
- Fort William—decision expected soon.