

**Independent Assessment Process Oversight Committee
Meeting of January 30, 2018
Toronto, ON
MINUTES OF THE OVERSIGHT COMMITTEE MEETING APPROVED**

Members present

Mayo Moran	Chair
Les Carpenter	Inuit representative
Juliet Donnici	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

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

Note: Assembly of First Nations position vacated with appointment of Paul Favel to Federal Court. New AFN representative not yet in attendance or appointed

Regrets

Brian Gover	Court Counsel
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1. Welcome

Chair Mayo Moran welcomed everyone to the meeting including Trinity College where she has been Provost since 2014. Trinity is composed of an undergraduate Faculty of Arts that is part of the University of Toronto Faculty of Arts and Science, and a postgraduate Faculty of Divinity that is part of the Toronto School of Theology.

2. Report of the Technical Subcommittee

Rodger Linka reported the minutes of the meeting of the Technical Subcommittee (TSC) held on January 29, 2018.

Targeted Approaches Update

There are presently 6 Incomplete File Resolution (IFR) files remaining in Step 1, all of which are self-represented claimants, and, 142 IFR files remaining in Step 2. In order to minimize the risk of extending the reconsideration deadline, Secretariat staff have found creative ways to speed up the process for claims that have experienced issues.

There are currently 5 or 6 files remaining to enter the Lost Claimant Protocol (LCP). It is anticipated that the LCP will come to an end in the near future.

Student on Student (SOS) Admissions Update

Canada reported that there are currently a total of 231 pre-decision SOS claims, 59 of which are adjourned for SOS admissions.

Estate Administration Update

Canada reported that there are currently 276 claims at the pre-admit stage, 121 pre-hearing claims, 74 claims at the post-hearing stage, and 38 claims on hold in IFR waiting for an administrator to be appointed. Canada noted that there are about six months of work left to address outstanding issues with some remaining claims. This isn't exact as there may still be some post-hearing work to do with lost claimants, document management, estates, as well as pre-hearing claims that need to get to a hearing, all of which will impact the timing.

Administrative Split Update

Canada has made 123 offers. 110 offers have been accepted for a total of \$8.3M in compensation paid. Canada has not had an offer refused to date.

Lost Claimants – Unpaid Expense Claims

To date over 7,000 travel requests have been resolved. However, 2,280 requests remain unresolved with respect to 1,046 claimants. The Secretariat wants to ensure, to the best of its ability, that claimants are compensated for travel expenses incurred to attend their hearings. To this end, the Secretariat is proposing to use the Lost Claimants Protocol (LCP) to locate "lost claimants" (not support persons) in order to ask if claimants with approved travel expense requests intend to submit hearing expenses for reimbursement.

A member of the TSC noted that in his experience, he had seen claimants whose travel expense requests were pre-approved but the expense was not actually incurred. For example, some may have requested two support persons to attend the hearing but one or both did not attend.

Some committee members had questions relating to contacting claimants directly. This was left on the basis that from the Secretariat's perspective this is a reporting/administration issue for the Secretariat.

BC Supreme Court Decision on Canada's Procedural Fairness RFD

The TSC discussed the paragraph 100 in Justice Brown's decision released on January 17, 2018:

"The goal of finality was contracted for and built into the IRSSA. Use by the Chief Adjudicator and his designates of procedural fairness as a means of re-opening IAP claims **or holding them in abeyance pending the potential receipt of future relevant SOS Admissions would compromise or defeat that important goal.** Most SOS Admissions are made on the basis of decided IAP claims. Applying the reasoning of the Chief Adjudicator and his designates, every claim subsequently decided in a claimant's favour could beneficially impact on previously dismissed claims. Claims that were dismissed could result in awards and claims where lower awards were made initially could result in higher awards. If the approach propounded by the Chief Adjudicator and his designates is permitted to prevail, finality would be either impossible or very difficult to achieve." (Emphasis added)

The TSC members were invited to provide their interpretation of Justice Brown’s wording “or holding them in abeyance” and if or how this could affect SOS claims currently in abeyance for potential admissions. It was noted that the paragraph goes beyond what Canada requested in its RFD. The issue is what if any impact paragraph 100 of Justice Brown’s decision had on the 59 claims on hold pending potential future admissions. One TSC member suggested that placing claims in adjournment does not affect the finality of the IAP. For example, the remaining 59 SOS cases should be completed within six months and thus not affect the finality of the IAP.

Canada noted that it was still within the appeal period, and that now the concern and views of TSC members had been brought to its attention, further internal discussions would take place, following which Canada’s interpretation would be shared with TSC and OC.

3. Approval of Minutes

The Committee approved the November 21, 2017 regular minutes before them, subject to minor amendments.

4. Key Performance Indicators

Akivah Starkman discussed some of the key statistical indicators as of January 2, 2018.

- 134 cases have been resolved since the last OC meeting for a total of 98.3% of all claims resolved. This fiscal year also marks the first time where more claims were resolved than the number that remain in the process. 760 claims were resolved since March 31, 2017 versus 635 claims still in progress.
- Of the 635 claims in progress, about half are post-hearing (323) while the remainders are pre-hearing (312).
- The Secretariat is now predicting that 52 pre-hearing claims will progress to a hearing. This is more hearings than previously projected. 24 claims will have a hearing in the remainder of this fiscal year and another 28 claims will have a hearing in 2018-2019.
- Of the 323 post-hearing claims, most are active. About 40% are waiting for a decision. Approximately 60 claims are pending SOS admissions, however, in the last few weeks, adjudicators have been moving their SOS adjourned cases forward. The volume of legal fee rulings has fallen. By January 2, 2018 Legal Fee Rulings and Appeals in progress were down 14% compared with the last report. Reviews and re-reviews are both declining in line with the falling number of decisions.
- The average time for adjudicators to write their decisions – between Final Submissions and the date the Secretariat receives the decision – has dropped to 45 days. This is a sharp decrease from the average of 131 days in September 2017. It should be cautioned that this is likely an anomaly as December tends to be a low volume month for decisions.
- 2 claims are pending a decision for reconsideration by the Chief Adjudicator under the IFR Procedure.
- There are no remaining Non-Responsive claimants.
- 556 claimants were found through the LCP, another 268 have not been found. The remaining cases in the LCP (10) should be completed next month.

- There are currently 115 estate claims, down from 143 since the last OC meeting. A number of these cases have a resolution direction on hold. The Secretariat has a concern with the numbers presented at TSC yesterday and this will be discussed at the working group level. The Secretariat is also trying to resolve the issue of estate claims on hold.
- There are currently 35 former Blott claims in the IAP - 15 at pre-hearing and 20 at post-hearing.
- Overall, there may be one or two matters that the Secretariat will need to focus on, however, we are on track for our completion timelines.

5. Executive Director's Report

Akivah provided his general observations on the following activities:

Notice program

Since the Supreme Court of Canada's decision, a lot of work needed to occur; consulting, developing the materials, and drafting an RFD with supporting affidavits for submission to the Court. Individuals who worked on this focused on the claimants' privacy while ensuring their informed consent. The Chief Adjudicator will speak more about the Notice Program in his report.

Records disposition

Secretariat staff are working in collaboration with Resolution and Individual Affairs (RIA), located within INAC, on how both groups can share specific information for completeness of records. For consistency, both RIA and the Secretariat will need to review each other's list of reports on ADR and IAP files. A working group was established to ensure that this could be completed in an orderly and timely fashion. A draft Memorandum of Understanding has been circulated for approval identifying which lists of reports RIA and the Secretariat will provide each other. A draft Transfer Agreement is also near completion. Discussions between the two groups have been very cooperative. Secretariat Staff are also working on an overall plan regarding the destruction and retention of documents in order to comply with the Court's decision. The Chief Adjudicator has submitted his RFD regarding who will be responsible for the retention of the four categories of retained documents post-IAP. As of yet, the Secretariat has not destroyed any documents. Part of the reason is that the Secretariat's records are incomplete and RIA and Secretariat staff have been meeting in order to complete the Secretariat's records. Destruction will occur by block; for example, disposition of records will first occur with ADR claims completed in 2003, followed by claims completed in 2004, etc.

A member raised the need for some sort of coordination between the parties as no party wants to be in a position of having destroyed the wrong documents. The Chief Adjudicator noted that there are protocols in place for the destruction of servers. The Secretariat will implement something similar for the destruction of the records. Included in the RFD submitted to the Court is a request to maintain SADRE, the data management system for claims used by both Canada and the Secretariat for claims management but also used for reporting. Included in the RFD submitted to the Court is a request to maintain SADRE until it is no longer needed by the Secretariat. It is hoped that Canada and the Chief Adjudicator can work together to explain SADRE and its importance to both groups.

The IAP Final Report

The report has been drafted but is still a work in progress. A comprehensive review has yet to be completed. Akivah has asked the unit working on the development of the report to finalize costing and the timing of future milestones.

6. Chief Adjudicator's Report

The Chief Adjudicator began his report with a reminder of the notice to the Oversight Committee announcing Shelley Trevethan's retirement earlier this month. As Executive Director of the Secretariat for almost 5 years, Shelley deserves acknowledgement for her role in the implementation of some of the key processes that have gotten us to this point in the IAP. Mayo Moran echoed this sentiment and will write a letter to Shelley to express the Committee's gratitude and best wishes in her future endeavors.

Akivah Starkman, on contract as Interim Executive Director, will occupy this position until the middle of May, 2018, at which time, it is anticipated that his replacement will be in position, hopefully with some overlap.

Paul Favel was appointed to the Federal Court and the Chief Adjudicator was fortunate to attend Paul's swearing in. Also in attendance were a number of residents from Paul's home community of Poundmaker Cree Nation. With the retirement of an Indigenous judge, Paul will be the only Indigenous Federal Court judge. The Assembly of First Nations has yet to announce who will be appointed as its representative on the Oversight Committee. Discussions with the AFN will continue in the hope of having a representative in place for the next meeting.

As a general observation, in the recent past Canada has produced approximately 50 Student-on-Student admissions every two months. The last batch released by Canada contained only 10 admissions. This can be viewed as a positive step and it appears that the project is winding down.

7. Article 12

The Chief Adjudicator provided the following update on the two remaining Article 12 applications before the courts:

- Kivalliq Hall - appeal to be heard on February 13, 2018.
- Fort William Sanitorium—application was dismissed. Waiting to see if there will be an appeal launched. A proposed Class Action suit was launched yesterday regarding Indian Hospitals and it remains to be seen whether former students of Fort William may join that class action.