

**Independent Assessment Process (IAP) Oversight Committee (OC)**  
**Meeting of June 26, 2018**  
**Toronto, ON**  
**APPROVED MINUTES OF THE OVERSIGHT COMMITTEE MEETING**

**Members present**

Mayo Moran	Chair
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)
Karen Turcotte	Government of Canada representative
Diane Soroka	Claimant counsel representative (Independent Counsel)

**Also present**

Daniel Shapiro	Chief Adjudicator
Roger Tetreault	Executive Director, Indian Residential Schools Adjudication Secretariat (IRSAS)
Russell Vallee	Recorder, IRSAS

**Absent**

Les Carpenter	Inuit representative
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Assembly of First Nations (AFN) position vacated with appointment of Paul Favel to Federal Court. New AFN representative not yet in attendance or appointed

**1. Welcome**

Chair Mayo Moran welcomed everyone to the meeting and introduced Karen Turcotte, newest member of the Committee, replacing Tara Shannon as Director General of Resolution and Individual Affairs (RIA) as well as Roger Tetreault in his position as Executive Director, IRSAS.

Mayo Moran noted that it was unfortunate that for the second meeting in a row there are no representatives for survivors in attendance. There was no contact from Les Carpenter leading up to the present meeting and Russ Vallee was unable to get in touch with Les. Being aware that Les Carpenter has had recent health problems, further efforts will be made to reach out to him. There is still no replacement from AFN following Paul Favel's appointment to the Federal Court; OC members discussed their concern with the lack of survivor representatives on the Committee. The Chief Adjudicator reached out many times to the General Counsel for AFN starting shortly after Paul Favel's appointment.

Mayo Moran recently sent a letter to National Chief Perry Bellegarde and General Counsel Stuart Wuttke inquiring into AFN's intentions regarding naming a representative. No response was received.

OC members noted that it was important that a representative from AFN participate on the Committee. It was recommended that Mayo Moran write to the Chair of the National Administration Committee (NAC) asking them to work with the AFN or appoint a survivor representative and alternate. As per Appendix XIII of the IAP, the NAC is responsible for making the appointment should the AFN fail to appoint one. A member noted that an alternate to Les Carpenter should also be considered. The Chief Adjudicator volunteered to reach out to Inuit Counsel requesting that an alternate to Les Carpenter be appointed.

## **2. Approval of Minutes**

The Committee approved the May 1, 2018 regular minutes before them, subject to minor changes.

## **3. Key Performance Indicators**

Roger Tetreault presented some of the key statistical indicators as of June 4, 2018:

- There are 326 claims in progress. Down 26% or 112 claims since the May 1, 2018 OC meeting;
- Since the Incomplete File Resolution (IFR) Reconsideration deadline passed on June 1, 2018, no claims remain in the IFR process or any other targeted approach. Some residual claims remain in the Estate procedures;
- The number of unheard claims that may be resolved without a hearing has reduced 73% over the last 12 months. This is mostly due to the success of the targeted approaches;
- 78% of the remaining caseload are estate/deceased claims or in the student-on-student (SOS) admissions project or both;
- The number of post-decision files has declined by more than 20% since the last OC meeting. Only 65 claims are in the review/re-review stage or undergoing a legal fee ruling or appeal;
- The number of self-represented claims has reduced 41% since the last OC meeting and now account for 23% of all claims in progress.

Asked how the percentage of self-represented claims could decrease by more than 40% in a few months, Roger Tetreault responded that most have retained legal counsel. Canada raised a point on the timelines for the estate and SOS claims in the "Remaining Independent Assessment Process Caseload Summary" document, noting that these are median rather than recent "averages". The SOS definition on the second page should be clarified as the project was expanded significantly in 2017. Canada and IRSAS are now monitoring all original claims that remain. Lastly, the word "approximately" should be added before the sentence that reads: "The 240 SOS claims that Canada has identified for post-decision."

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

Roger Tetreault provided his observations on the following activities:

## Notice Program and Records Disposition

The Court Order regarding the Notice Program remains outstanding. There is a chance that the court will add information regarding independent legal advice. The Notice Program will run for 2 years, projected to conclude on December 31, 2020. Three months after that will be required for a “transition period” to wind down the IRSAS administratively and to transfer the retained records to the Records Agent. Once the Court Order is received, everything will be in place in time for the January 2019 launch date.

The disposition of records will run concurrently with the Notice Program. Staff at the IRSAS have completed a pilot involving 200 Alternative Dispute Resolution (ADR) and IAP completed files which resulted in 30 boxes of physical non-retained documents set for destruction later this month. The disposition of records process includes reviewing, sorting, filing, scanning, and destroying (both electronic and physical records) found on shared drives, systems, databases, personal drives, and email. Staff are first reviewing claimant documents to ensure electronic versions of the “retained” documents are stored in the Retained Document Collection (RDC) for eventual transfer to the Records Agents. We are now proceeding with the second round of 200 ADR and IAP completed claims identified for destruction of non-retained documents. Over the next few months this will increase to 1000 per month.

## Student-on-Student Project

There has been a decrease of 43 files since the last meeting. Currently, there are 130 pre-decision SOS claims in the project divided into various priorities. Of these, 24 claims are expected to have their decisions received within 30 to 60 days. These 24 claims will also have the potential to create admissions that may assist other claims. There are also 45 claims in the post-hearing stage which could result in further admissions and assist 10 other claims.

## Estates

There are presently 62 claims that require further steps to be completed by Canada. There are 33 files in the EPHT stage awaiting the appointment of an administrator. To meet the December 1, 2018 hearing deadline, the Chief Adjudicator has set September 30, 2018 as the deadline for adjudicators to render their decisions as to whether the estate case is dismissed or a witness hearing will be required.

## **5. Chief Adjudicator’s Report**

The Chief Adjudicator began his report by welcoming Roger Tetreault into his new role as Executive Director of the IRSAS as of May 16, 2018.

### Update on IAP Final Report

We had hoped that the contract for Akivah Starkman would be in place by May 15, 2018 so OC members could have been provided with a proposed index, a summary of the methodology, and a chapter or two by now. Despite the support of the Deputy Minister, the contract has yet to be finalized for signature by the company Akivah will contract through. It is anticipated that Akivah will be able to focus on this important project shortly.

### Article 12 Applications

There is no word on when a decision for Kivalliq Hall is expected from the appeal heard in February 2018. The application for leave to extend the time to appeal the Saskatchewan Court of Appeal decision regarding Timber Bay is still pending before the Supreme Court of Canada (SCC).

### Reviews on Hold

Presently, there are 14 re-reviews on hold; down one since the last report. Of these, 7 involve procedural fairness, 6 involve SL 1.4, and 1 is on hold involving Canada's disclosure obligations. These holds will remain in place until the release of decisions in the Supreme Court of Canada (SL1.4) and British Columbia Court of Appeal (Procedural Fairness) appeals.

### IFR Reconsideration Requests

By the June 1, 2018 Reconsideration deadline, a total of 26 requests for reconsideration were received. Of these, 18 were granted, 3 were denied, 1 was considered abandoned as the required Estate Administrator Appointment documents were not forthcoming prior to the deadline, 2 were withdrawn, and 2 are pending.

### Non-admit Appeals

One was filed in April 2018 and has since been decided. Subject to any potential Blott DNQ (Did Not Qualify) and/or Article 12 files, this should conclude all admissions activities and non-admit appeals.

## **6. Chief Adjudicator's Annual Report to OC**

The Chief Adjudicator provided a summary of his 2017 Annual Report to 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. The report includes updates on Canada's administrative split process, the SOS project, estate claims, Deputy Chief Adjudicators who have finished their work, adjudicator capacity, activities related to completion, records disposition, human resources within the IRSAS, the IAP Final Report, and new issues and challenges.

## **7. Draft Update to IAP Completion Strategy**

The Chief Adjudicator provided a summary of the proposed Update to the IAP Completion Strategy, indicating that he is open to receiving input from OC prior to submitting it to the Courts. The draft Strategy will need to be revised based on developments with the DNQ files. In previous versions, the strategy presented identified risks to completion; the latest update speaks to the issues that have been addressed and those that remain. The EPHT deadline of September 30, 2018 was necessary in order to provide direction to adjudicators as to steps necessary in order to meet the December 1, 2018 hearing deadline.

The proposed timelines as set out in the updated Strategy are achievable. Although two years have been set aside for files to be completed post-hearing, this is a worse-case scenario, as few files will take that long. Barring the addition of any Article 12 schools, all work by Adjudicators will need to be completed by the end of December 2020 to meet the March 31, 2021 administrative closure date. In addition to the risk of new Article 12 schools coming to the IRSAS, the *Scout* case still languishes and there is a new dispute over fresh evidence proposed by the Appellant. The section on the Notice Program concludes by saying that we can complete the Notice Program without impacting on the completion timeline. The Chief Adjudicator believes that it is important to get the revised completion dates out to the public and hopefully get support from other parties to achieve this.

In the past, changes to the strategy came back to the OC for review and then the NAC. The NAC next meets in the fall, which is too late to have the strategy approved by the NAC. Mayo noted that when she and the Chief Adjudicator met with the NAC in the past, the NAC provided important feedback into the strategy. However, not much is new here beyond a report on progress and key dates.

The Chief Adjudicator will circulate revisions to the strategy to OC members with a deadline for feedback and share with the NAC as an update.

#### **8. Update on Administrative Split**

Karen Turcotte reported there are 54 files left to be completed.

#### **9. Update on Estates Claims**

Karen Turcotte reported that progress continues to be made regarding estate claims. She confirmed that there are presently less than 50 files remaining to appoint counsel for. A new contract for administrators will be in place in a couple of weeks from this meeting. Karen meets with the Estate team on a regular basis as estate claims represent the highest risk area for Canada. She will convey the message to the Estate team that the September 30, 2018 EPHT deadline and December 1, 2018 hearing deadline are firm.

#### **10. Update on SOS Claims**

Karen Turcotte provided an update on the various projects involving SOS claims.

##### SOS Negotiated Settlement Process (NSP) Post-decision Process Administered by Canada

Notices to counsel were sent out in May 2018 to start negotiating the 242 claims identified as potentially undercompensated or not compensated due to a lack of admissions. Canada has already heard back from some counsel.

##### SOS Project

Of the more than 2700 SOS claims that entered the project, 130 remain and of these 34 are currently adjourned. The Chief Adjudicator noted that at the last Technical Subcommittee, Canada reported that the project should be completed by August, 2018. Could Canada

provide further information whether that date would be met? Karen replied that Canada is still planning to achieve that date but issues always arise. There are always roadblocks but IRSAS staff, adjudicators, and Canada have a good working relationship to overcome issues as they arise. Karen agreed to get back to the Chief Adjudicator on achieving the August completion date.