

Independent Assessment Process Oversight Committee

Meeting of June 21, 2016

Whitehorse YT

MINUTES

Members present

Mayo Moran	Chair
Les Carpenter	Inuit representative
Karen Cuddy	Government of Canada representative
Mitch Holash	Church representative
David Iverson	Church representative
David Paterson	Claimant counsel representative
Tara Shannon	Government of Canada representative
Diane Soroka	Claimant counsel representative

Also present

Stacey Lambert	Senior Policy and Strategic Advisor, IRSAS (recorder)
Rodger Linka	Deputy Chief Adjudicator; Chair, Technical Subcommittee (for item 1 only)
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS

Regrets

Paul Favel	Assembly of First Nations representative
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1. Technical Subcommittee Report

Rodger Linka reported on the meeting of the Technical Subcommittee (TSC), held on June 20, 2016.

Student on Student Admissions

Canada is on target to complete the majority of Priority 1 and 2 claims by June 30, 2016. All Priority 2 claims have been completed. 73 Priority 1 claims remain in the process and are either being scheduled or being dealt with through targeted approaches, the Lost Claimant Protocol, or the Incomplete File Resolution procedures.

Work on the Student on Student Admissions project will continue with the Priority 3 and 4 claims. Canada is now able to ensure admissions are provided in advance of service standards and will be providing lists of cases by June 30th for which decisions can be written as no further admissions are identified.

The Technical Subcommittee agreed to extend the adjournment date for any claims not yet complete to September 30, 2016.

Nominal Role Database

Karen Cuddy provided follow up to an issue raised at the April 2016 Oversight Committee meeting regarding the provision of documents from the Nominal Role Database. Canada has committed to providing the documents as well as the summary information in every claim where the Nominal Role Database is used.

Incomplete File Resolution (IFR)

Karen Cuddy requested clarification on the involvement of Canada's representatives with the IFR. Rodger Linka responded that Canada is involved where required, but that a representative of Canada is not necessary for Lost Claimant files. Canada has requested involvement where substantive issues are being discussed at Step 2. It was noted that where Canada is not involved in a claim decision, it may limit Canada's ability to ensure it has fulfilled its role and to speak to any issues raised later on a claim.

60 dismissal directions have been signed off and will be released shortly. Karen Cuddy asked whether Canada is made aware when IFR dismissals occur and when a claim is moved from Step 1 to Step 2. Shelley Trevethan confirmed following the Technical Subcommittee meeting that dismissal directions are provided to Canada through the Electronic Document Interchange.

Distribution of External Memoranda and Supporting Documents

Karen Cuddy reported that all external memoranda and supporting documents were provided to the Secretariat in Fall 2015 but that only the memoranda were initially posted to the Decisions Database. The issue was corrected when discovered in the Spring of 2016; however, the uploading of the supporting documents triggered notification by the Secretariat to the parties, leading to the appearance that Canada had not provided the supporting documents until that point. Karen Cuddy noted that all supporting documents were provided in individual claims but were not available on the Decisions Database for general use during the intervening period.

Downsizing of Adjudicators and Canada's Representatives

Rodger Linka reported that 17 adjudicators have moved on to new work, while others reduce their workloads. The majority of remaining adjudicators are up to date in their work. However, in order to ensure that priority rests with the Claimant receiving a timely decision, the Chief Adjudicator has notified adjudicators with decision writing backlogs that overdue decisions must be complete by the end of August 2016. Where decisions are not complete the claim may be reassigned.

If reassigned, notice is given to the parties to choose whether the claim can continue with a new adjudicator on the strength of the transcript, is restarted with a new hearing, or moved into the Negotiated Settlement Process. Approximately 60 reassignments

have occurred to date, largely due to the movement of adjudicators to new employment, with only 2 Claimants choosing a full re-hearing upon reassignment.

Deanna Sitter noted that where Canada's representatives change on a claim, Canada now updates the claim information immediately with the details of the new representative. An email is also sent to all parties providing notification of the change.

Rodger Linka raised issues where new Canada's representatives assigned to claims raised different positions on credibility and reliability to those raised at the hearing. Canada confirmed that its position on credibility and reliability will not change unless new evidence is raised or a sound basis is provided.

2. Approval of Minutes

The committee approved the minutes of the April 12, 2016 Oversight Committee meeting with minor amendments.

3. Key Performance Indicators

Shelley Trevethan reviewed performance indicators as of May 16, 2016:

- 38,090 applications have been received.
- 33,755 claims have been admitted to date, with 22 claims awaiting an admissions decision (excluding lost or deceased claims).
- 34,790 claims (91%) have been resolved to date. Claim resolution has slowed as many claims are on hold and being worked on through targeted approaches.
- 225 claims have been resolved in 2016-17 to date, 167 of which are IAP decisions and 28 have been resolved through the Negotiated Settlement Process. Tara Shannon reported that Canada is looking at claims where post-hearing NSPs may be possible.
- 3,300 claims (9%) remain in progress. Of these, 1,748 claims are unheard.
 - 1,552 are post-hearing
 - 1,748 are unheard – of these, it is estimated that 158 may move to hearing and 1,590 may resolve without a hearing (e.g., deceased, lost claimants, withdrawals).
- The postponement rate is at 25%, with the majority of postponements occurring for reasons beyond the participant's control, such as family emergency, illness, and inclement weather. Very few postponements have resulted in legal fee adjustments to reflect costs thrown away.
- The median Adjudicator decision writing time for standard track regular form decisions is down to 40 days, from 66 in March 2016.

- Awards and settlements (excluding NSP, legal fees and disbursements) sits at \$2.027B, with overall compensation amounts at \$3.013B.
- 1,145 (35%) of the claims in progress are self-represented. Only 49 of these are actively participating in the hearing process, with the remainder in targeted approaches.

4. Executive Director’s Report

Targeted Approaches

- 41 claims are in the Jurisdictional Review process (down from 47 in March).
- Claimants Struggling to Self-Represent is at 2 (down from 3 in March).
- 0 claims are “self-represented claimants who cannot obtain legal counsel”, down from 20 in March.
- 2 claims are non-responsive self-represented claimants (down from 25 in March).
- There are 116 estate claims (up from 102 in March), and 267 pre-hearing deceased claims (down from 336 in March).
- 335 claims are currently in the Lost Claimant Protocol (down from 371 in March).
 - Overall, 304 claimants have been located.
 - Level 3 searches have been difficult because it has been hard to get organizations to assist. The Secretariat has been successfully working with some Regional Health Support Workers. Lost claimant files are beginning to move to IFR.
- 3 claims have seen a withdrawal of Claimant Counsel (down from 9 in March).
- Files are beginning to make their way to Incomplete File Resolution, with 485 claims in IFR Step 1; 88 in Step 2; 94 pending a Resolution direction; and 9 dismissed.
 - Where deceased/estate files reach “Resolution Direction pending” stage, and may be claims where Canada also acts as the administrator, they are being held in order for Canada to resolve representation.

IAP Final Report

Meetings, interviews and focus groups continue with stakeholders. Claimant interviews have taken place in Vancouver, Montreal, Winnipeg, Yellowknife, Lethbridge, and Saskatoon. Sessions are being organized for Ontario and the North. Focus groups have been held with Adjudicators, Secretariat staff, Resolution Managers/Department of Justice representatives, Resolution Health Support Workers, Elders, Cultural Support Workers, and Community Leaders. Interviews have also been conducted with various partners/stakeholders or those involved in the drafting and implementation of the Settlement Agreement. Additional focus groups or interviews will be organized with church representatives, claimant counsel, and Oversight Committee members.

5. Chief Adjudicator's Report

Closure of the Winnipeg Hearing Centre

The Chief Adjudicator reported on the closing of the Winnipeg Hearing Centre. The Secretariat hosted an event on June 7, 2016 to acknowledge the 1,200 hearings held at the centre, which closed at the end of May. The event was an opportunity to honour the many former students who testified at the Centre and to acknowledge the contribution of staff, adjudicators, Canada's representatives, Claimant Counsel, and the Churches, as well as to highlight the centre as a culturally appropriate, safe, and respectful environment for hearings.

Chief Adjudicator's Directive (CAD) 11

CAD 11 (Deadline to appeal decision denying admission of claim/notification for non-admitted lost claimants and deceased claimants with no estate identified) was approved following the April 12, 2016 Oversight Committee meeting. Numbers for 229 claims have been posted to the Independent Assessment Process (IAP) website in an attempt to locate Claimants lost at the admissions stage. The CAD is now available on the IAP website at <http://www.iap-pei.ca/legal/directives-eng.php?act=cad-11-eng.php>.

Success Rate of Claims

IAP claims continue to have high success rates, with 89% of claims receiving compensation, and an average successful claim of approximately \$115,000 inclusive of disbursements and fees.

Biography of Ted Hughes

The Chief Adjudicator noted that a biography is being written about former Chief Adjudicator Ted Hughes.

Passing of Len Marchand, Sr.

The Oversight Committee noted the recent passing of Len Marchand, Sr., acknowledging his extensive accomplishments and expressing condolences to the family.

6. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, August 30, 2016 in Toronto, Ontario.