

**OVERSIGHT COMMITTEE**  
**JAN 6, 2009**  
**Listel Hotel, Vancouver**

Chair: Mayo Moran

David Iverson	Church Representative
James Ward	Department of Justice (Representative of Canada)
Luc Dumont	INAC (Representative of Canada)
William Wuttunee	AFN Representative
Len Marchand	Claimant Counsel (Attendance by conference call)
David Paterson	Claimant Counsel
Jeffery Hutchinson	IRSAS
Dan Ish	Chief Adjudicator
Irene Fraser	Recorder, IRSAS

Regrets:

James Ehmann	Church Representative
Rosemarie Kuptana	Inuit Representative

1. Additions and Approval of the Agenda

a) Update from the Technical Sub-Committee - Dan Shapiro

2. Approval of the Minutes

a. November 21, 2008 Minutes

- i. Page 3, first bullet is to read, “The criteria that the screening panel was using for adjudicator applications ...”
- ii. Page 3, second decision is to read, “David Iverson will be invited to attend future Network meetings, formerly PCAN.
- iii. Page 4, last bullet, is to read, “There are four types of communications that flow from the Chief Adjudicator: Practice Directions; Chief Adjudicator Directives which come through the Oversight Committee; Guidance Papers such as the ones on income loss and legal fees; and, Chief Adjudicator Updates. The first three are translated and available to Canada, to claimant’s counsel and to adjudicators. The Chief Adjudicator’s updates will not be published as they are specific to adjudicators.
- iv. Page 4, last bullet, add to the beginning of the bullet, “Concerns were raised regarding the timeliness of decisions.”
- v. Page 4, last discussion item is to read: “Canada is responsible for contact with alleged perpetrators. The OC discussed whether contacts should be made

through counsel who represent, or represented, alleged perpetrators through litigation, ADR and IAP.

- vi. Page 2, item 4, remove the first three sentences and add in their place, “The Committee discussed the issue of independence. Concerns were raised in areas other than decision making.”

Approved with the above changes.

b. November 21, 2008 In-Camera Minutes

- i. Last page, 3<sup>rd</sup> decision, Randy Bennett is to be identified as Court Counsel, not counsel for NAC.
- ii. Last page, 4<sup>th</sup> decision item. Replace the word “denied” with “on hold.”

Approved with changes.

3. Technical Sub-Committee (TSC) Report

Dan Shapiro reported for the committee.

a) Income loss claims

Rob Carson, an economist, was contracted to put together information for “a basket of defaults”, to assist in assessment of income loss claims based on educational attainment. Canada is not comfortable proceeding with it at this time; a streamlined approach will not be available. It may be possible to revisit this after a few decisions on income loss claims are received.

A list of experts for adjudicators to use to assist with individualized assessment of actual income loss is available.

b) Inconsistency in redaction of decisions

Decision: Dan Shapiro will draft a document on redaction based on comments from the TSC. The draft will be shared with OC members prior to the next meeting.

Discussion: Both self-represented and represented claimants should get a redacted decision.

c) Draft policy of claims of deceased claimants

The Oversight Committee recognized that although serious practical impediments may come forward there are no legal impediments to filing a claim on behalf of deceased claimants.

Decisions:

1) The Help Line staff should receive guidance on how to respond to inquiries about claims for deceased former residential school students.

Decision: Jeff Hutchinson will bring the OC a draft script for the Help Line staff as well as a draft of frequently asked questions and answers for possible posting on the website.

2) Early intervention in the process can be made through a teleconference with the parties.

Decision: Agreed.

3) A strong recommendation can be made for legal representation.

d) Delay in alleged perpetrator hearings

The possibility of scheduling alleged perpetrator hearings when scheduling the claimant's hearing was discussed. Discussion will continue at the next meeting.

Decision: Irene Fraser to gather relevant data and send to Daniel Shapiro.

4. Matters Arising From the Minutes

a) Alternates for Committee Members

Jeff Hutchinson reported that so far there seems to be no impediment to a contract for an alternate representative for OC members.

b) Alleged Perpetrators

A counsel for an alleged perpetrator is refusing to attend or have his clients attend hearings where the adjudicator has already heard a case in which the adjudicator made a finding against the alleged perpetrator

The Chief Adjudicator took the position that if there is a problem of actual bias counsel has to make the argument before the adjudicator. If the adjudicator feels the hearing can proceed without bias, it is to go ahead. In the initial case the counsel gave verbal notice of his intention not to show for the hearing but did not give written notice. The adjudicator was advised to show for the hearing. She did. Counsel did not. The adjudicator was advised to proceed with writing the decision.

c) Contacting Alleged Perpetrators Through Counsel

Canada is responsible for contact with alleged perpetrators. The OC discussed whether contacts should be made through counsel who represent, or represented, alleged perpetrators through litigation, ADR and IAP.

Discussion: Retainers are for compensation, not to defend people.

Decision: Canada is to continue to contact alleged perpetrators directly.

#### 5. Executive Director's Report

- Jeff distributed statistical reports on the progress of ADR and IAP.
- If applications continue at the current level then the Secretariat can expect an inventory of about 5500 to 6000 claims in 2009 which will be subject to a hearing. Around 4000 are expected to go forward to a hearing stage.
- Alberta and B.C. have the highest number of claims. A strategy is being developed to address this.

#### 6. Chief Adjudicator's Report

- Three French speaking adjudicators received training to do ADR cases. A fourth will be trained very shortly. The intent is to complete ADR cases by June 09.
- The Chief Adjudicator is responsible for admission appeals. He is seeking input from Canada and claimant's counsel on the releases which claimants were asked to sign as not all releases were identical. It may be that some releases will allow claimants to be admitted even though they received an award in litigation or ADR.
- Counsel has been retained for the Chief Adjudicator to take issues regarding legal fee assessments before the court.
- The first Chief Adjudicator ruling on an appeal of legal fees is done. It will be distributed to OC members and adjudicators and will be distributed to counsel on the CAO data base. The conclusion of the ruling is, if the right factors are taken into account the proper process is followed and the outcome is within the range of reasonableness then the decision of the adjudicator remains as is.
- A format for performance reviews of adjudicators is being developed.

#### 7. Survival of Claims

This was addressed in the report from the Technical Sub-Committee.

#### 8. Observers at hearings

A claimant recently asked for her hearing to be open to the community. After discussion with the CAO the final decision was left to the adjudicator. Future cases need to consider the following:

- There must be agreement from Canada before proceeding.
- A teleconference is to be convened by the adjudicator with the parties.
- There must be understanding that the adjudicator has to be in control of the hearing and prepared to clear the hearing room if necessary.

- The TRC is an option for the claimant for public disclosure.
- Schedule D says hearings are closed to the public.
- A hearing with a self-represented claimant would present more issues than one with a represented claimant.

#### 9. Expert Roster

There is a draft protocol for adding and removing experts from the roster which needs to be finalized.

Decision: There is a procurement issue to be considered with adding experts to the roster. Jeff Hutchinson will develop options for adding to the roster and will bring a report to the next meeting.

#### 10. Student on Student Abuse Reopeners

Decision: Jeff Hutchinson will have a report forwarded to the Technical Sub-Committee and Deputy Chief Adjudicator Kaye Dunlop.

#### 11. Third Party Representation

Moved to an in-camera discussion.

#### 12. ADR & NSP

Decision: Luc Dumont will forward a plan for comment on how to address the DR cases, represented and self-represented, which are presently on hold.

Luc Dumont distributed statistics on the Negotiated Settlement Process. More staff have been hired for this process.

#### 13. Request for Proposals

Jeff Hutchinson reported an anticipated need over the next two years for more adjudicators, particularly adjudicators of Aboriginal ancestry and adjudicators from the West.

Decision: Jeff Hutchinson will bring two options for RFPs to the next meeting.

Three or four interviews will be offered to candidates from the last call for proposals for adjudicators as the criteria for screening was applied more stringently than expected.

An RFP for a French speaking deputy chief adjudicator will have to go out soon. There was discussion on the previous RFP criteria for the French deputy chief position.

Decision: Dan Ish will incorporate the results of the discussion into a revised RFP and distribute it to members.

14. Staffing and Resources

Staffing for the Secretariat is being delayed but staffing needs are not. Jeff Hutchinson will keep OC posted.

15. Next Meetings

February 3, Toronto

March 24, Calgary

May 5, Toronto

June 16, Regina

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Chairperson Mayo Moran

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Date