

## Independent Assessment Process Oversight Committee

Meeting of January 15, 2013

Toronto, ON

### Minutes

#### Members present

Mayo Moran	Chair
Mitch Holash	Church representative
David Iverson	Church representative
Kerry O'Shea	Claimant counsel representative
David Paterson	Claimant counsel representative
Caroline Clark	Government of Canada representative
Aideen Nabigon	Government of Canada representative
Les Carpenter	Inuit representative
Paul Favel	Assembly of First Nations representative

#### Attending by teleconference

Daniel Ish	Chief Adjudicator <i>present for items 6 through 8 only</i>
------------	--

#### Also present

Michael Mooney	Court monitor, Crawford Class Action Services
Dan Shapiro	Deputy Chief Adjudicator; Chair, Technical Subcommittee
Akivah Starkman	Executive Director Emeritus, IRSAS
Shelley Trevethan	Executive Director, IRSAS
John Trueman	Senior Policy Advisor, IRSAS (recorder)

#### 1. In Memoriam: Randy Bennett, Court Counsel

Mayo Moran acknowledged the passing of Randy Bennett, Court Counsel for the Indian Residential Schools Settlement Agreement and a regular attendee of Oversight Committee meetings. His loss will be keenly felt by all parties at this challenging point in the life of the IAP.

The supervising judges have appointed Brian Gover of Stockwoods as Mr. Bennett's successor. Mr. Gover is a very experienced litigator and has worked with a number of commissions of inquiry.

## **2. Introduction: Shelley Trevethan, Executive Director**

Akivah Starkman introduced Shelley Trevethan, who started as Executive Director of the Indian Residential Schools Adjudication Secretariat on January 7. Ms. Trevethan brings a wealth of experience on two fronts: as executive director of a quasi-judicial, administrative tribunal, and a long history of involvement with Aboriginal issues.

## **3. Report of the Technical Subcommittee**

Dan Shapiro reported on the meeting of the Technical Subcommittee held January 14, 2013.

### Short form decisions in student on student cases

A claimant's counsel had asked whether there was a direction to adjudicators not to do short form decisions where the evidence in a case would support a new admission of staff knowledge of student on student abuse.

In June 2011, the Chief Adjudicator asked adjudicators not to write short form decisions in cases where staff knowledge of student on student abuse is an issue, unless there is a previous admission. If the case could lead to a new admission or expansion of an existing admission, the adjudicator should write a full decision.

Dan Shapiro agreed to draft a notice for the Chief Adjudicator's consideration to circulate to claimant and government representatives, reinforcing the message in place since June 2011.

### Resolution of incomplete files

The subcommittee continued its work on proposals to provide tools to assist adjudicators and the Adjudication Secretariat in dealing with claims that do not resolve in the usual way. The intention is to have a document for inclusion with the report to the courts in summer 2013. Court approval would be needed to empower adjudicators to dismiss cases without holding a full hearing, and also to revive certain claims in extraordinary cases.

Significant progress was made at the subcommittee meeting, and a new draft will be circulated shortly to the Adjudication Secretariat staff and Technical Subcommittee members for feedback. This will lead to a final draft submitted to the Oversight Committee in the near future.

## Review of the Over 65 pilot project

The Over 65 pilot project is essentially concluded, with only half a dozen claims remaining. A short statistical report was presented, and Dan Shapiro summarized the feedback received from project participants.

The feedback led to recommendations proposed by the Adjudication Secretariat for future work in this area. The primary focus of the recommendations is to build five-day 'blocks' of hearings in the same location with the same claimants' counsel, for maximum efficiency. To facilitate this, the Secretariat proposed a twice-yearly review of the caseload, looking at both hearing-ready and non-hearing-ready claims. When a 'partial block' of two or three claims is scheduled, the Secretariat will help identify one or two other claims that are not yet hearing ready, and employ case management approaches so that they become ready. In order to preserve hearing dates, a claim will go ahead even without all the documents in place; the hearing would then need to be adjourned until all the mandatory documents are complete.

The pilot project also attempted to schedule two hearings per day, an approach that was not universally well-received. Going forward, the recommendation is that this not be the norm; rather, the option would be available where claimants' counsel request it. Counsel would need to advise that their clients are well-prepared, in good health, and not in need of an interpreter. Two-hearing days would be alternated with one-hearing days to keep the workload at a manageable level.

The subcommittee agreed to proceed as recommended. The subcommittee also discussed the need to ensure that self-represented claimants and those with low-volume law firms not be lost, especially when elderly. Further work will be undertaken on this issue.

Dave Iverson asked if church representatives had attended the pilot project hearings and, if so, whether they had been provided with feedback forms. Dan Shapiro said the intent was that all hearing participants would be provided with the form, but that he would look into it.

David Paterson noted that the pilot project resulted in a number of hearing cancellations that could not be filled in with other hearings. He said that any approach to hearings and negotiated settlements had to add to the total number of cases processed. Akivah Starkman replied that the pilot project was put together quickly, and cases were scheduled for hearings with relatively little lead time; when a hearing could not proceed, there was not sufficient time to schedule another in its place. Going forward, a more regularized approach with a longer scheduling horizon could avoid leaving gaps in the schedule.

#### 4. Approval of minutes

The committee approved the minutes of the in camera teleconference held November 22, 2012, with minor corrections.

The committee approved the minutes of the December 4, 2012 meeting as presented.

#### 5. Key performance indicators

Akivah Starkman highlighted some key items in the reports distributed before the meeting:

- A total of 37,561 applications have been received, plus an additional 60 applications that were postmarked after the application deadline.
- The Adjudication Secretariat continues to work at full capacity to determine the total number of admitted claims. Based on a 90% admit rate, the Secretariat would have a full slate of hearings through to the end of the 2015/16 fiscal year, with post-hearing activities, legal fee reviews, decision reviews, and other activities continuing to 2018/19.
- Of the approximately 37,500 applications received, about 15,600 hearings have been held and a total of 18,900 claims resolved through hearings, negotiated settlements, non-admit decisions, and withdrawals. This leaves approximately 18,600 cases in progress.
- The Adjudication Secretariat's ability to schedule future hearings has been hampered by a decrease in the rate of hearing-ready files. To hold 4,500 hearings a year, claimants' counsel would need to submit a complete set of mandatory documents for 110 claims each week, but the actual rate is far below that.

In response to a question, Akivah Starkman outlined the timelines being applied in the admissions process when further information is required to determine if a claim is admissible. Claimants and their counsel are given 60 days to provide the requested information, after which the Secretariat will make a decision based on the information available. If a claim is not admitted, claimants have a further six months in which to provide additional information or appeal to the Chief Adjudicator.

Dave Iverson expressed concern that low hearing number trends might continue into the summer. Akivah Starkman pointed out that the Adjudication Secretariat is built to operate at full capacity: if hearings are lost in April and May, they cannot be picked up later in the year. Both the inventory of hearing-ready files, and staffing in the Secretariat, will need to move back up. There is a tendency to focus on one thing when, in fact, everything needs to be looked at in tandem.

David Paterson said that it is taking longer and longer to obtain Canada Pension Plan employment records, and that claimant counsel are now waiting up to a year. In many cases, CPP are the only records outstanding. Akivah Starkman said that the Secretariat has, in the past, worked directly with document-holding agencies where problematic situations arose, to the point of offering clerical assistance to the agencies if necessary. One of the purposes of the IFMS system was to track this sort of problem. The Secretariat's Client Services group, which assists self-represented claimants with mandatory document collection, is often able to identify problem areas as well.

*Dan Ish joined the meeting by teleconference.*

## **6. Executive Director's report**

Akivah Starkman reported on some key activities in the Adjudication Secretariat:

- The Adjudication Secretariat continues its work with the Truth and Reconciliation Commission to support their research agenda. Since the last Oversight Committee meeting, Secretariat staff have met with Kent Roach, the University of Toronto professor heading the TRC's legacy volume. A staff member has been assigned to conduct the information-gathering, on the understanding that any data produced will be anonymous, with no names, file numbers, or other identifiers provided.
- Over the coming months, Akivah Starkman will be writing a work-in-progress look at the IAP. While not an after-the-fact evaluation or assessment, it will attempt to capture the knowledge and information of many of the key players in getting this far. There is as much work ahead of us as we have accomplished, so it is not too late to take lessons from the work thus far. He indicated that he would be following up with most if not all members of the Oversight Committee for their views.

Mayo Moran thanked Akivah Starkman on behalf of the Oversight Committee for his work as Executive Director since September 2010.

Shelley Trevethan reported on her first week on the job:

- She has held a number of meetings with Dan Ish and Akivah Starkman, with the Adjudication Secretariat's management team and with officials at Aboriginal Affairs and Northern Development Canada.
- Her impression of the Adjudication Secretariat is that it is staffed with strong, dedicated, excited staff. She will be meeting staff in Winnipeg and Regina in the coming weeks, and in Vancouver in the last week of

February when the Oversight Committee meets there. A management retreat for planning purposes is also scheduled in February.

- Challenges include human resources and procurement, and Shelley Trevethan has already begun meetings and work on these issues.

Mayo Moran welcomed Shelley Trevethan on board.

## **7. Chief Adjudicator's report**

Dan Ish expressed his regret for being unable to attend the Oversight Committee meeting due to a family medical commitment.

The supervising courts have appointed Brian Gover as court counsel, and Dan Ish met with him the previous week. He looks forward to working with Mr. Gover .

The hearing of the Truth and Reconciliation Commission's litigation against Canada took place in December. We were able to obtain undertakings that IAP documents would not be the subject of discussions at the hearing, and as a result our counsel, Will McDowell, did not attend. John Trueman from the Adjudication Secretariat attended and provided a thorough report.

A significant issue in the hearing was whether the TRC had the legal capacity to bring litigation, and whether it had standing as a non-party to bring a request for directions under the Settlement Agreement. Canada's position was that the TRC had neither capacity nor standing, so the issue will be decided by the judge. This issue is significant for the IAP, because it may affect the Oversight Committee's ability to bring an application in the future. The situation of the Chief Adjudicator is a little more ambiguous, especially because he has already been in court on legal fees and other issues.

The substantive issue was the definition of relevant records. This took two forms: (a) whether records held by Library and Archives Canada were included under Canada's obligation to produce records, and (b) the extent of the TRC's "legacy" mandate. While the decision will not explicitly deal with IAP records, it will be closely watched by all concerned.

The Chief Adjudicator's request for directions regarding certain form fillers in Manitoba has not been set for hearing. It is expected that this will be scheduled soon.

The Chief Adjudicator continues to monitor adjudicator capacity carefully, and things appear to be in good shape. Over time, some adjudicators come off the roster for positive reasons, such as being appointed to the bench, and for

unfortunate reasons, including two who were recently afflicted with serious medical conditions.

Kerry O'Shea expressed concern about a large number of cases becoming hearing ready at the same time, and the possibility of an overwhelming number of cases to be heard. Akivah Starkman said that the Adjudication Secretariat has funding and staffing plans to hold 4,500 hearings per year, a number that is greater than the current rate of hearing readiness. Any increase in capacity beyond that would need to occur on all fronts, including the availability of claimant counsel to attend hearings.

In response to a question about priorities, John Trueman noted that the Adjudication Secretariat already prioritizes hearing scheduling according to the five priorities set out in the Settlement Agreement. Additionally, as the Secretariat implements the pilot project recommendation of five-day blocks, case selection would be based on age and health status of claimants. There was also a commitment to do further work on the issue of elderly claimants who are self-represented or with low-volume legal counsel.

## **8. Next meeting**

The next Oversight Committee meeting is scheduled for Tuesday, February 26, 2013, in Vancouver.

Caroline Clark announced that Alison Molloy, former representative of Canada on the Oversight Committee, would be officially retiring on March 1, 2013. Her colleagues are organizing a goodbye party for 4:00pm on February 26 and invite Oversight Committee members to attend after the meeting.