

Independent Assessment Process Oversight Committee

Meeting of November 5, 2013
Vancouver, BC

Minutes

Members present

Mayo Moran	Chair
Mitch Holash	Church representative
David Iverson	Church representative
David Paterson	Claimant counsel representative
Diane Soroka	Claimant counsel representative
Line Paré	Government of Canada representative
Orest Wasarab	Government of Canada representative (alternate)
Les Carpenter	Inuit representative
Paul Favel	Assembly of First Nations representative

Also present

Kaye Dunlop	Deputy Chief Adjudicator; Chair, Technical Subcommittee <i>present for items 1 and 2 only</i>
Michael Mooney	Court monitor, Crawford Class Action Services
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS
John Trueman	Senior Policy and Strategic Advisor, IRSAS (recorder)

Regrets

Caroline Clark	Government of Canada representative
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1. Introductions

Mayo Moran welcomed Diane Soroka, who has joined the Oversight Committee as a claimant counsel representative, replacing Kerry O'Shea.

Mayo Moran also welcomed Kaye Dunlop, Deputy Chief Adjudicator, who is now chairing the Technical Subcommittee, and Orest Wasarab, who is attending in Caroline Clark's place.

2. Report of the Technical Subcommittee

Kaye Dunlop reported on a meeting of the Technical Subcommittee held November 4, 2013.

The main agenda item was the management of student-on-student abuse claims. Canada has reviewed almost 2200 pre-hearing IAP application forms that contain allegations of student on student abuse, and identified 647 cases where there are allegations of staff knowledge of the abuse. These cases might lead to new admissions of staff knowledge that would assist the remaining 1535 cases whose application forms do not contain information about staff knowledge. Canada has also compiled a colour-coded timeline indicating, for each school, the time periods where admissions already exist.

The Technical Subcommittee has asked the Adjudication Secretariat to develop proposals for managing the student-on-student caseload so that those cases that could lead to new admissions can be held before those that need admissions from other cases. The Adjudication Secretariat will return to the December 9 meeting of the Technical Subcommittee with recommendations.

The role and purpose of the Technical Subcommittee was also discussed. The general consensus was that it would continue to operate in the same way, with issues being brought forward by subcommittee members, or referred by the Oversight Committee or the Chief Adjudicator. The subcommittee will explore different ways of meeting, including meeting in the afternoon before Oversight Committee instead of the evening.

Oversight Committee members observed that the Technical Subcommittee has been helpful in dealing with issues in depth and keeping the Oversight Committee agenda to a manageable length.

3. Approval of minutes

The committee approved the minutes of the September 16, 2013 meeting with minor amendments.

4. Key performance indicators

Shelley Trevethan discussed some key statistical indicators:

- Almost 32,500 claims have been admitted, leaving about 2,000 claims remaining in the admissions process. The number of claims not admitted is now 3,385, or 9.4% of all claims reviewed – an increase from 8.9% in August.
- The number of admitted claims waiting for mandatory documents is 6,599, down from almost 7,200 in August. The rate of hearing-ready files has increased.

- 553 hearing-ready cases are presently available to schedule, which provides a large enough inventory to schedule full blocks of hearings.
- 18,780 hearings have been held to date. 856 were held in April-June instead of the target of 1,125, because of the lack of hearing-ready files. 1046 hearings were held in July-September, which was below target but higher than expected.
- 1,140 hearings are scheduled for the October-December quarter, and the Secretariat expects to reach the quarterly target of 1,125.
- Because of the low hearing numbers in the first two quarters, the 4,500 target will not be reached in 2013/14, but the number of hearings held will likely exceed 4,100, and may be close to the 4,200 held in 2012/13.
- About 1,877 cases are in the post-hearing stage. Events in this stage include production of transcripts, post-hearing document collection, alleged perpetrator research and hearings, and medical and expert assessments.
- 24,085 claims have been resolved, about 64% of all claims filed in the IAP. 13,799 claims remain in progress. The Secretariat continues to forecast Spring 2016 for the end of first claimant hearings.
- The total compensation paid to date is \$2.13 billion.
- The number of self-represented claimants has declined from 2,260 in August to 1,775 now, as claimants who applied close to the deadline hire legal counsel.

5. Executive Director's report

Shelley Trevethan reported on continuing work to increase the rate of production of corrections records. A Memorandum of Understanding is in place with Alberta Corrections to help address the backlog. As well, Saskatchewan Corrections is working the Secretariat to look for ways to prioritize the workload and address the backlog.

Line Paré reported on her discussions with the Correctional Service of Canada, which has received 9,000 IRS-related informal requests and presently has a two-year backlog. They are able to prioritize requests when a lawyer advises that their client's claim is otherwise hearing-ready. Corrections Canada has implemented a new internal policy of providing the easiest-to-obtain documents in the first instance, and providing additional documents if the claimant's counsel is not satisfied. They also have a problem of multiple lawyers requesting records on the same claimant.

Diane Soroka mentioned a problem with some northern hospitals, which don't have the personnel to photocopy medical records requested for the IAP. The Chief Adjudicator said that most health authorities charge a fee for copying of medical records, which can be set to recoup the costs of photocopier equipment and staff time. David Paterson suggested that the Secretariat contact these institutions and help them plan this work.

Dave Iverson asked whether an application deadline had been set for the 440 unfiled Blott claims identified by the Transition Coordinator, Ian Pitfield. The Chief Adjudicator replied that the Monitor will be bringing a Request for Directions but that it has not been filed yet.

6. Chief Adjudicator's report

Dan Shapiro reported on several recent activities:

- The Chief Adjudicator addressed a meeting of discipline counsel from law societies across Canada. He spoke about some of the legal practice issues encountered in the IAP and distributed a paper that cites the relevant court decisions orders.
- In October, the Chief Adjudicator announced new measures to protect IAP claimants, including revisions to the Expectations of Legal Practice in the IAP, a new fillable form for legal fee rulings, and a revised Guidance Paper on legal fee reviews. Among other things, the rules on assignment of funds and disbursements were clarified.
- The Chief Adjudicator participated in approximately 15 media interviews related to these materials. In these interviews he stressed that the vast majority of counsel do excellent and professional work, but a handful of lawyers have conducted themselves unconscionably.
- The Chief Adjudicator and Executive Director met with the Deputy Minister of Health Canada, and were pleased with their strong recognition of the continuing importance of health supports in the IAP.
- Since his appointment, the Chief Adjudicator has spoken at staff meetings in Adjudication Secretariat offices in Vancouver, Regina and Ottawa. A meeting in Winnipeg will be scheduled in the near future.
- This morning, the Saskatoon Star-Phoenix reported on the Law Society of Saskatchewan's disciplinary committee decision on Ronald Cherkewich, a claimant's counsel in Prince Albert. At a hearing, Mr. Cherkewich refused to provide the adjudicator with a copy of his retainer agreement. When advised that a Deputy Chief Adjudicator confirmed this was a requirement of the court order, told the adjudicator to "shove it [expletive deleted]." He left the hearing room and returned with a fee agreement

written on a piece of toilet paper. The discipline committee found him guilty of conduct unbecoming a lawyer. A decision on penalty will follow.

Members discussed situations where an adjudicator reduces legal fees below 15%. Line Paré said that Canada needs notice in advance if this will happen; otherwise, the claimant's counsel must return legal fees to general revenue. David Paterson suggested that the difference should benefit the claimant, not the government. It was pointed out that in these cases, the claimant is receiving 100% of his or her compensation award, so the question is whether Canada should pay the claimant a "bonus" in cases where their lawyer has not earned the contribution towards legal fees.

7. Interview questions for expert assessors

Dan Shapiro prepared some interview questions developed in his office to help gather information to assist the Oversight Committee in selecting experts to add to the roster. The proposed questions help identify the experience of the assessor and their knowledge and experience working with Aboriginal clients.

Concern was expressed that the questions might raise the standard so high that there are insufficient experts to meet the demand. It was agreed that if this should happen, the Secretariat would return with recommendations.

In response to a question about quality control of psychological assessments, the Chief Adjudicator explained that adjudicators complete a form after every expert assessment, which identifies any problems of quality, timeliness, or responsiveness. As well, a half-day training session was recently held in Montreal for three newly-appointed Francophone adjudicators. The Secretariat is looking to expand the training material for that session to be used for other newly appointed experts.

8. Research report for the Truth and Reconciliation Commission

Dan Shapiro provided the Oversight Committee with a copy of a research report prepared by the Adjudication Secretariat to assist the Truth and Reconciliation Commission in understanding abuse that took place in the residential schools. This was part of a commitment from the Oversight Committee to assist the TRC in its mandate, without breaching the IAP's commitment to confidentiality.

Dan Shapiro also said that the Adjudication Secretariat has finalized a protocol with the TRC's researcher for access to the decision database, which was approved by the Oversight Committee in April 2012. Decisions in the database are fully redacted and do not identify claimants or alleged perpetrators. In

response to a question, he agreed to provide a copy of the protocol to the Oversight Committee.

9. Proposed Oversight Committee meeting dates

Mayo Moran referred to a list of proposed meeting dates for July 2014 through March 2015 that was circulated before the meeting. She asked members to check their calendars and be prepared to finalize dates at the next meeting.

10. Next meeting

The next Oversight Committee meeting is scheduled for Tuesday, December 10, 2013, in Toronto.

Members agreed to invite Akivah Starkman, former Executive Director, to attend the meeting and discuss his paper titled "IAP [Reflections]."