

## Independent Assessment Process Oversight Committee

Meeting of November 8, 2016

Vancouver, British Columbia

### MINUTES

#### Members present

Mayo Moran	Chair
Les Carpenter	Inuit representative
Karen Cuddy	Government of Canada representative
Paul Favel	Assembly of First Nations representative
David Iverson	Co-Chair, Church representative (Protestant Churches)
David Paterson	Claimant counsel representative (National Consortium)
Tara Shannon	Government of Canada representative
Diane Soroka	Claimant counsel representative (Independent Counsel)

#### Also present

Brian Gover	Court Counsel (for item 2 only)
Rodger Linka	Deputy Chief Adjudicator; Chair, Technical Subcommittee (for item 3 only)
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS
Russ Vallee	A/Senior Policy and Strategic Advisor, IRSAS (Recorder)

#### Absent

Mitch Holash	Church representative (Catholic entities)
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#### 1. Welcome

Mayo welcomed everyone to the meeting. She noted that David Iverson would help to chair the meeting because she's unable to speak for long periods of time due to a cold.

Shelley introduced Russ Vallee who is the acting Senior Policy and Strategic Advisor and is the recorder for the Oversight Committee meetings.

#### 2. Court Counsel's Report

Court Counsel, Brian Gover, provided an overview of the appeals and RFDs currently before the courts.

#### 3. Technical Subcommittee Report

DCA Rodger Linka reported on the meeting of the Technical Subcommittee (TSC) held on November 7, 2016.

#### Targeted Approaches

The Targeted Approaches are effective in resolving claims. The results to date demonstrate that cases referred to Targeted Approaches are flowing back into the regular hearing process. DCA Linka thanked the Secretariat staff and the adjudicators working on these cases.

#### Student on Student Admissions

Canada reported that, as of November 4, 2016, 28 Priority 1 and 0 Priority 2 cases remain. Canada has indicated that it and the Secretariat are doing everything they can to move these cases forward.

Canada is looking at all cases adjourned for admissions and matching them with admissions as they come out. The Secretariat is sending files to adjudicators as soon as they are available so that additional decisions can be written. However, the September 30<sup>th</sup> deadline to complete Priority 1 cases which was provided to Oversight Committee at the last meeting was not met.

Priority 3 and 4 cases which are dependent on Priority 1 and 2 cases are currently being examined. It was agreed that Canada would prepare a graphic showing the flow of SOS cases.

#### Estate claims

Canada is undertaking a review of estate claims to determine those under its jurisdiction. As discussed at the TSC meeting, although Canada has made progress, the review was not completed by the October 31<sup>st</sup> deadline. This item will be discussed further at today's meeting.

#### Administrative Split

The TSC discussed the administrative split issue. Rodger noted that there is still confusion between Years of Operation and Administrative Split cases. Canada will discuss this issue during the Oversight Committee meeting today.

#### 30-day Review Policy

Oversight Committee approved a policy in September 2008 that reviews must be initiated within 30 days of the receipt of an adjudicator's decision, with the Chief Adjudicator having the discretion to authorize a further 21 days for the submission of written arguments, provided notice of the review is given within 30 days. However, requests are often made beyond the 30 days identified in the policy. This item will be discussed further at today's meeting.

## **4. Approval of Minutes**

The committee approved the minutes of the August 30, 2016 Oversight Committee meeting with minor amendments.

## 5. Key Performance Indicators

Shelley Trevethan provided performance indicators as of October 11, 2016. She noted that the Targeted Approaches have been very successful, leading to more claims being admitted and more claims that require a hearing. As a result, the Secretariat is now projecting 50 more hearings this fiscal year than the 200 projected in July. Other key performance indicators:

- 38,094 applications have been received
- 33,774 claims have been admitted to date, with 21 claims awaiting an admissions decision (excluding lost or deceased claims)
- 4,263 (11%) claims have been non-admitted to date
- 36,006 claims (95%) have been resolved to date
- 2,088 claims (5%) remain in progress
  - 977 are post-hearing
  - 1,111 are unheard – of these, 74 may move to hearing and the remainder are expected to be resolved without a hearing (e.g., deceased, lost claimants, withdrawals)
- The postponement rate is 24%
- The median Adjudicator decision writing time for standard track regular form decisions is 50 days, up from 38 days in July - the reason for the increase is because many older files are now being resolved (e.g., those placed on hold for student-on-student admissions, files re-assigned to another adjudicator)
- Post-hearing files continue to decline – a 26% decrease since July
- The number of post-review decisions increased—90 reviews in progress (up from 65 in July); 15 re-reviews in progress
- 396 legal fee rulings (down from 502 in July)
- 9 legal fee appeals (down from 17 in July)
- Awards and settlements (excluding NSP, legal fees and disbursements) are \$2.07B, with overall compensation amounts at \$3.07B
- 1,006 (41%) of the claims in progress are self-represented – however, only 90 (10%) of these are actively participating in the hearing process, 7% are post-hearing, and 83% are non-active (e.g., estate, deceased, lost claimant, in IFR, withdrawal)

## 6. Executive Director's Report

### Targeted Approaches

- 24 claims are in the Jurisdictional Review process (down from 31 in July)
- 1 claimant struggling to self-represent (down from 2 July)

- 16 claims are non-responsive self-represented claimants (up from 4 in July) - this category goes up and down
- 88 estate claims (down from 102 in July) and 66 pre-hearing deceased claims (down from 76 in July) – a number of these are waiting for Canada to determine if they have jurisdiction
- 183 claims are currently in the Lost Claimant Protocol (down from 281 in July):
  - Some are Blott claims
  - Overall, 409 cases have been located
- 3 claim has seen a withdrawal of Claimant Counsel (up from 1 in July)
- Incomplete File Resolution (IFR): there are 223 claims in progress in IFR Step 1 working with staff or an adjudicator (down from 369 in July); 94 in progress in Step 2 (down from 103); 227 pending a Resolution direction (down from 204 in July); 107 cases have been dismissed to date (down from 9 in July)

Some blockages in moving claims to resolution, including estate claims, SOS claims, claims on hold for administrative splits, and some lost claimant files where we are waiting for step 3 information.

## **7. Chief Adjudicator’s Report**

### National Administration Committee (NAC)

Dan Shapiro provided a debrief on the meeting that Mayo Moran, Shelley Trevethan, Russell Vallee and he had with the NAC on Monday, November 7, 2016. It had been over a year (May 6, 2015) since such a meeting had taken place. The NAC was provided with an overview on the status of the IAP, including completing almost all first claimant hearings by the spring of 2016 as set out in the Completion Strategy. The trickle of hearings taking place at this point for the most part represent cases returned to the regular hearing stream as a result of the Lost Claimants Protocol and the Incomplete File Resolution (IFR) procedure. Successful interventions were reported on, such as Law firm visits, the Accelerated Hearing Process, developing a list of lawyers for self-represented claimants, initiatives to assist government organizations to address blockages with mandatory documents, and Targeted Approaches such as the Lost Claimant Protocol and IFR.

Shelley Trevethan provided a statistical update on the IAP to the NAC and discussed the targeted approaches. Dan discussed risks to completing the IAP as identified in the Completion Strategy occurred, and Dan agreed to come back to the NAC once additional information is compiled. The information was well received by the NAC and they noted that they appreciated the efforts to date on the targeted approaches.

The NAC was provided with an update on the Disposition of Records case and, in particular, progress on the Notice program.

Finally, the NAC was provided with an update on the IAP Final Report and asked how they would like to provide input to the report.

#### Risks to the Completion of the IAP

Dan Shapiro identified for the Oversight Committee a number of risks to the completion of the IAP. These include: estate claims that are on-hold waiting for Canada to determine if they have jurisdiction and to identify administrators; student-on-student claims waiting for other admissions in order to move forward; those on hold while awaiting Canada's review of the Administrative Split issue; and some Lost Claimant claims where it is difficult getting organizations to help us in Step 3. Other risks to resolving claims in the timeframe we had identified to the Court include the possibility of other Article 12 schools being admitted and the numerous ongoing RFDs, including the Disposition of Records RFD. The Secretariat is currently identifying the risks to completion in order to determine if there is a need to revise the deadline dates associated with the IAP (such as the reconsideration deadline), as well as to plan future staff reductions. An update to the Completion Strategy will be prepared for discussion with the Oversight Committee.

#### **8. 30-day Review Period**

Dan Shapiro mentioned that, as noted during the debrief on the TSC meeting, the Oversight Committee approved a policy in September 2008 that reviews must be initiated within 30 days of the receipt of an adjudicator's decision. However, requests are quite often made beyond the 30 days identified in the policy, and sometimes 3 or 4 years after the decision is rendered. The Chief Adjudicators' approach has been to assess each request on an individualized basis, and typically consult with the parties before determining whether to accept late requests.

Dan asked for advice from the Oversight Committee as to whether the policy should be revised to give more flexibility to the timeframe. It was agreed that the TSC will review the wording of the 30-day Review Policy and bring the issue back to the Oversight Committee at the January meeting.

#### **9. Proposed Additions to the "Correctness" Review Adjudicators**

Dan Shapiro brought forward proposed additions to the list of "correctness" review adjudicators. The Oversight Committee unanimously approved adding the following adjudicators to the list: Donald Murray and Ruth Campbell.

#### **10. Update on Administrative Split**

Tara Shannon provided an update on the status of the Administrative Split review that the Minister announced in February 2016. She indicated that Canada will get back to the Oversight Committee by November 18<sup>th</sup> with a further update.

Dan Shapiro indicated that these claims have been on hold since February 2016 and this is impacting on the Secretariat's ability to resolve claims.

### **11. Update on Estate claims**

Tara Shannon provided an update on the progress that Canada is making in identifying which estate claims they have jurisdiction for. She noted that, although the October 31<sup>st</sup> deadline was not met, she feels that Canada has made substantial progress - there are currently 119 claims where Canada's jurisdiction still needs to be determined, down from 665 in July. The issue with the remaining claims is that Saskatchewan Vital Statistics is not willing to provide the required information. Canada and the Secretariat meet bi-weekly to try to ensure this movement on these files.

As per statutory requirements, Canada is seeking family members to be administrators on estate files for which they have jurisdiction. However, if no one is identified, Canada will need to assign a third-party administrator. Canada is seeking interested legal counsel to be third-party administrators. Canada prepared a letter and, as agreed by the Oversight Committee at the August meeting, on November 4<sup>th</sup>, the Secretariat sent the letter on behalf of Canada to the list of counsel willing to accept self-represented claimants.

Shelley Trevethan asked Tara Shannon how long it will take for Canada to determine if they have jurisdiction for the remaining files, and how long it will take to put in place family members or third-party administrators, as these files have been on hold since March 2016, as requested by Canada. Tara Shannon did not have information on timelines for completion. The Oversight Committee asked Canada to prepare a timeline for completion of this work for discussion at the next meeting. It was also agreed that Holly Beaton from the Estates Unit at INAC will attend the next TSC meeting to provide an update on the progress on estates files.

Shelley Trevethan asked whether there is additional work relating to resolved estate files. Karen Cuddy responded that these are simply compensation issues that Canada needs to address. However, Tara Shannon noted that there are some claims that were withdrawn that may need to be reinstated so a third-party administrator can decide how to address them. Canada will provide these file numbers to the Secretariat and Karen Cuddy will confirm that there are no other resolved claims that require additional work on the part of the Secretariat.

### **12. Next meeting**

The next Oversight Committee meeting is currently scheduled for Tuesday, January 30, 2017 in Toronto, Ontario.