

**Independent Assessment Process Oversight Committee
Meeting of January 31, 2017
Vancouver, British Columbia
MINUTES OF THE OVERSIGHT COMMITTEE MEETING APPROVED**

Members present

Mayo Moran	Chair
Les Carpenter	Inuit representative
Karen Cuddy	Government of Canada representative
Paul Favel	Assembly of First Nations representative
Mitch Holash	Church representative (Catholic entities)
David Iverson	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 (Via Teleconference - for item 3 only)
Nicole Hansen	Recorder, IRSAS
Rodger Linka	Deputy Chief Adjudicator; Chair, Technical Subcommittee (for item 2 only)
Wes Marsden	Deputy Chief Adjudicator (for item 2 only)
Daniel Shapiro	Chief Adjudicator
Shelley Trevethan	Executive Director, IRSAS

1. Welcome

Mayo welcomed everyone to the meeting. She introduced Deputy Chief Adjudicator Wes Marsden to the Oversight Committee.

Shelley Trevethan introduced Nicole Hansen who works at the Secretariat and is the recorder for this Oversight Committee meeting as Russ Vallee is ill.

2. Technical Subcommittee Report

DCA Rodger Linka reported on the meeting of the Technical Subcommittee (TSC) held on January 30, 2017.

Targeted Approaches

There has been a significant movement of files through the Targeted Approaches. In particular, the Incomplete File Resolution (IFR) Procedure, approved by the Courts in 2014 to resolve claims that were unable to proceed to a hearing, is working.

Student on Student Admissions

The SOS Admissions project identifies and expedites decisions that might produce new admissions that other claims can rely on. Despite the fact that relatively few cases remain that could result in new admissions, the project remains well behind when it was originally forecast to be complete.

The TSC discussed how to bring the SOS Admission Project to its conclusion, and related issues, but no decisions were reached.

Estate claims

DCA Wes Marsden described the difference between Estate claims and Deceased claimant files. Estate claims may proceed in the IAP where the claimant passes away, and the Estate Administrator can produce either past sworn testimony or eyewitness evidence to support the claim. Estate claims proceed in the Estate Procedure. If no Estate Administrator can be found, or if the Estate Administrator does not wish to pursue the claim, the claim can be dismissed in the IFR Procedure.

Holly Beaton, Director of Indian Monies, Estates and Treaty Annuities provided an overview of how INAC locates and appoints Estate Administrators to the TSC. When a family member or friend cannot act as Estate Administrator, Canada attempts to appoint a third-party administrator to represent the interests of the claimant. This item will be discussed further at today's meeting (see item #10).

30-day Review Policy

The TSC reviewed the draft text for revisions to the 30-day Review Policy, and referred the item to the Oversight Committee. This item is discussed under item #8.

Completion Strategy

Shelley Trevethan discussed the update to the Completion Strategy with the TSC, including timelines for some risk areas that could impact on the completion of the IAP by 2020. Canada requested more time to provide comments on the report and timelines. This item is discussed under item #6.

3. Approval of Minutes

The Oversight Committee approved the minutes of the November 8, 2016, December 19, 2016, and January 13, 2017 Oversight Committee meetings with minor amendments.

4. Key Performance Indicators

Shelley Trevethan provided performance indicators as of January 3, 2017. 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 277 hearings by March 2017, and 33 April 2017 or later. Other key performance indicators include:

- 38,096 applications have been received
- 33,794 claims have been admitted to date, with 39 claims awaiting an admissions decision (excluding lost or deceased claims)
- 1,815 claims have been resolved this fiscal year, 265 of which are non-admits, and 113 are negotiated settlements.
- 36,403 claims (96%) have been resolved to date
- 1,693 claims (4%) remain in progress
 - 777 are post-hearing
 - 916 are unheard – of these, 70 may move to hearing. Included amongst the 831 claims that may resolve without a hearing are 196 IFR dismissals that are on hold because the claimant is deceased and an Estate administrator has not yet been identified by Canada.
 - Only 69 of the active unheard caseload are self-represented claimants, and another 60 files in the post-hearing stage are self-represented.
- The average Adjudicator decision writing time for standard track regular form decisions is 90 days, about the same as it was at last report. However, a small number of long overdue decisions drove up the average.
- Of the 777 post-hearing files, 241 are active, 144 are pending final submissions, and 127 are pending a decision. The remaining 257 are on hold for student-on-student admissions, administrative split or pending appointment of Estate Representative. In the 2014 Completion Strategy we advised the courts that all post-hearing activities would be complete by 2018. The files now on hold, and the possibility of adding another IRS, could cause the Secretariat to fail to meet that timeframe.
- In total, there are about 550 claims on hold. Most are on hold post-hearing, or deceased/estate claims. There are a number of small holds (such as claims on hold pending scheduling) that could be released from their hold shortly. There may be an increase in files on hold for next report as administrative split cases move through all active stages, and are put on hold pending a decision.

Oversight Committee members offered suggestions on improvements to the statistical report for discussion at the next meeting. The Chief Adjudicator provided an update on the revisions to the website already completed, and Shelley described the proposed changes to messaging on the website that will better tell the story of the IAP. The changes will be brought to the Oversight Committee at the next meeting.

Tara Shannon offered to share the responses to a Parliamentary Question regarding the Independent Assessment Process tabled in Parliament. Mayo Moran asked her to send it to the Secretary of the Committee for distribution.

5. Executive Director's Report

Shelley provided an update on targeted approaches:

- Targeted approaches have seen some dramatic shifts since last report, as there are no longer any claims remaining in the 'claimants who struggle to self-represent', 'self-represented claimants who cannot obtain counsel' and 'withdrawal of claimant counsel' categories. As such, they are removed from the report.
- Jurisdictional Procedure: there are 20 claims remaining, down from 24 reported at the November meeting.
- Non-responsive self-represented claimants: 15 (down slightly from 16 reported at the November meeting).
- Deceased: 55 deceased (down from 66 in November) and 78 estate claims (down from 88 in November).
- Lost Claimant Protocol: only 19 claims remain (down from 188 in November) – the number has dropped dramatically because many of the remaining claimants have not been located, and their file has been referred to the Incomplete File Resolution Procedure. To date, of 766 LCP files, 478 have been located.

Shelley provided an update on the IAP Final Report, and provided a preliminary summary of the results from claimant Interviews. The IAP Final Report will look at the objectives of the IAP, and consider how well those objectives were met. The Secretariat is in the information-gathering phase of the report, and has interviewed 180 claimants, including 15 focus groups with claimants. Initial findings from the claimant interviews include:

- Claimants indicated that there was confusion between the IAP, CEP and the TRC, and that information should have been better coordinated.
- Most said they needed more information about the process. Only half felt that they received any information about the IAP leading up to the hearing (typically, the information they received was from their lawyer).
- About two-thirds said that they did not choose the location of their hearing, or the gender of the adjudicator at their hearing. They did not realize that they had a choice.
- Two-thirds of claimants had a Resolution Health Support Worker (RHSW) at their hearing, and almost all who did were satisfied with the RHSW. However, most were unaware that they could have received assistance from an RHSW in advance of their hearing.

- Most claimants were satisfied with the hearing itself including the physical location, cultural aspects and length of the hearing. Many emphasized the importance of having time to speak about their experiences, and being heard.
- About three-quarters were satisfied with the adjudicator at their hearing. Even those that received no compensation tended to say they felt heard and respected by the adjudicator. Most claimants noted that being heard and respected was more important than the money received in compensation.
- In general, claimants who received an apology at the hearing said they were pleased with it. The spectrum of response to written apologies was wide: some did not receive a written apology, and some who did said that it didn't make a difference.
- Future care plans were not well-understood by claimants. Only half said they had submitted a plan. Those that said they submitted a future care plan said that it made a difference to their healing.
- About two-thirds of claimants felt that the hearing and participating in the IAP overall assisted in their healing.
- Some claimants said they know people who didn't apply because they didn't know about the IAP, or weren't ready to proceed.

Shelley noted the gaps in claimant interviews to date include self-represented claimants and claimants from the North. She also noted that interviews with Oversight Committee members and NAC members will be conducted. She noted that the interviews to date have been a great experience, and some claimants expressed that participating in the interviews or focus group contributed to their healing.

6. Completion Strategy

Shelley Trevethan discussed the update to the Completion Strategy which was prepared following discussion at the November 8, 2016 Oversight Committee meeting. She noted that the IAP is mostly on target with the hearing milestones in the December 2013 Completion Strategy provided to the Courts and, save for the high number of claims on hold, would likely meet the post-hearing completion milestone in 2018. However, there are a number of risks that the IAP is facing. The greatest risk is the addition of new schools through Article 12. Estimated timelines were provided to the Oversight Committee should Kivalliq, Timber Bay and Fort William Article 12 schools be added. The Oversight Committee were also provided 'best estimate' timeframes for claims impacted by the administrative split issue and estate claims. The most extreme case is if Fort William is added which could have the Secretariat closing in July 2022. She noted that the deadline for non-admit appeals, the IFR reconsideration deadline, and the last possible first claimant hearing may all be at risk in the scenarios presented.

The Chief Adjudicator noted that the purpose of the timelines is to allow the Secretariat to determine human and financial resources required, and to provide information to

update the court on the Completion Strategy and risks impacting on completion and resource requirements. In the meeting with the NAC in November, the NAC requested an update and it is important to discuss the Completion Strategy with them. Shelley referred to the risks of potentially letting staff go, then having to staff back up if more schools are added to the IRSSA. The Chief Adjudicator noted that for now, the Secretariat has staff and adjudicator capacity to support additional hearings. However, the longer it takes to resolve the outstanding Article 12 school issues, the less capacity will exist. It was noted that, regardless of class size, a notice program needs to be done if new Article 12 schools are added.

The Committee discussed that the original Completion Strategy was accompanied by two procedures that required court approval: the Incomplete File Resolution (IFR) Procedure and the Lost Claimant Protocol (LCP). The Chief Adjudicator noted that this update to the Completion Strategy would not require approval since the original Completion Strategy was brought to the courts for information only. It was further noted that the timelines are important and indicate due diligence because they provide detailed explanations as to why the caseload could take up to another five years to complete.

There was some discussion as to why it was important to update the courts now. Committee members indicated that it is important to be transparent with the parties in regard to the risks to completion, and that it's important to inform the parties about what could prevent the Secretariat from completing claims as planned. It is also important that the Oversight Committee explain why certain cases (e.g., those on hold for administrative split or estates) might result in costing the Canadian taxpayer more than expected.

Oversight Committee members provided input on specific points on the timelines and in the assumptions document. It was agreed that timelines on SOS and Teulon Article 12 should be included. It was agreed that the Oversight Committee would provide comments on the documents by February 13, 2017, and a follow-up teleconference would be set in six weeks to discuss any further modifications and what the package to the NAC will contain. The Chief Adjudicator will try to set a meeting with the NAC for mid-March.

7. Chief Adjudicator's Report

The Chief Adjudicator provided an update on pending RFDs, court decisions and court actions.

Dan announced that Deputy Chief Adjudicator Cathy Knox has finished her work with the Secretariat. She had remained on to assist with transition after Kaye Dunlop's

departure. The Oversight Committee thanked her for her willingness to step in and continue to serve as a DCA over the last year and a half.

8. Time to file Reviews/Extensions (30-day Review Period)

The Chief Adjudicator noted that the IAP Model does not contain a deadline for reviews. In 2008, the Oversight Committee set a 30-day deadline from the date of the decision for review applications to be submitted to the Chief Adjudicator. He has received a number of review applications that are far over the 30-day timeframe. In the past, individual requests that exceeded the 30-day deadline were handled as one-offs, with consultation with Canada before a late review application was approved. Given the high volume of late requests, the Chief Adjudicator is seeking advice from the Oversight Committee on whether the 30-day deadline should remain, or whether it should be revised. A draft altering the timeframe was provided to the Technical Subcommittee, but they did not reach agreement.

The Committee discussed various perspectives regarding the revision to the 30 day deadline.

The Oversight Committee agreed that Canada would provide a revised version of the proposed text and submit it to Russell Vallee to distribute to the Oversight Committee by February 20th.

9. Update on Administrative Split

Canada provided an update on the status of the Administrative Split review that the Minister announced in February 2016. Tara Shannon indicated that Canada wrote to the National Administration Committee with the results of the review on January 30, 2017. Mayo asked Canada's representative to send the letter to the Secretary of the Oversight Committee to distribute to its members.

10. Update on Estate claims

Canada indicated that the appointment of third party administrators to deal with Estate claims where Canada is the Administrator is proceeding and they expect to appoint Administrators starting in February 2017.

Once a death certificate is received, INAC attempts to locate all potential heirs to see if any heir can act as Estate administrator. Locating all potential heirs can be time consuming. Once all heirs have been found, they are provided with up to 45 days to become the Estate administrator. Should no family member agree to be the administrator, Canada will appoint a third party administrator. Canada has put in place a

new process whereby all family members are being contacted at once – this should help expedite the process.

11. Court Counsel's Report

Court Counsel, Brian Gover, provided an overview of the appeals and RFDs currently before the courts. Mr. Gover also noted that he is aware of a number of RFDs expected to be filed in advance of the February 27, 2017 deadline set by Justice Brown.

12. Future meetings

The next Oversight Committee meeting is scheduled for Tuesday, April 11, 2017 in Vancouver, British Columbia.

It was agreed to explore moving the June meeting to Brantford so that the Oversight Committee could visit the cultural centre at the Mohawk Institute.

A teleconference will be held shortly after February 17, 2017 to discuss the Completion Strategy. Russ will canvas the Oversight Committee for availability, and will also canvas availability to add an in-person Oversight Committee meeting in September.