

**Independent Assessment Process (IAP) Oversight Committee
Meeting of May 1, 2018
Vancouver, BC
APPROVED MINUTES OF THE OVERSIGHT COMMITTEE MEETING**

Members present

Mayo Moran	Chair
Juliet Donnici	Government of Canada representative
Mitch Holash	Church representative (Catholic entities)
David Iverson	Church representative (Protestant Churches)
David Paterson	Claimant counsel representative (National Consortium)
Louis-Alexandre Guay	Government of Canada representative
Diane Soroka	Claimant counsel representative (Independent Counsel)

Also present

Brian Gover	Court Counsel (present for item 3 only)
Rodger Linka	Deputy Chief Adjudicator (present for item 2 only)
Daniel Shapiro	Chief Adjudicator
Akivah Starkman	Interim Executive Director, Indian Residential Schools Adjudication Secretariat (IRSAS)
Roger Tetreault	Director of Operations, IRSAS
Russell Vallee	Recorder, IRSAS

Regrets

Les Carpenter	Inuit representative
Karen Turcotte	Government of Canada representative (Louis-Alexandre Guay attended in her place)

Assembly of First Nations (AFN) position vacated with appointment of Paul Favel to Federal Court. New AFN representative not yet in attendance or appointed

1. Welcome

Chair Mayo Moran welcomed everyone to the meeting and began with a number of introductions. Juliet Donnici introduced Louis-Alexandre Guay who is attending for Karen Turcotte, who recently replaced Tara Shannon as Director General of Resolution and Individual Affairs (RIA) and could not attend the meeting. Akivah Starkman introduced Roger Tetreault, Director of Operations for IRSAS since 2010, who has been at the forefront of the targeted approaches. Roger will be appointed as Executive Director of the IRSAS following Akivah's departure on May 15, 2018.

2. Report of the Technical Subcommittee

Rodger Linka reported the minutes of the meeting of the Technical Subcommittee (TSC) held on April 30, 2018.

Targeted Approaches Update

The report continues to demonstrate that the processes have been highly successful. There is one outstanding Incomplete File Resolution (IFR) claim remaining that should be completed by May 9, 2018. Thus, the TSC sees no need to extend the June 1, 2018 IFR Reconsideration deadline.

Student on Student (SOS) Admissions Update

Canada reported that there are 46 cases adjourned for SOS admissions. The remaining caseload of SOS claims going through the process should be completed possibly in late July.

Estate Administration Update

Roger Tetreault reported that there is now a plan in place to lift the on-holds estate files where Canada will have an administrator appointed before June 1, 2018. Roger noted that all IFR directions presently in place will be null and void once the administrators are in place.

Transcript policy with regard to self-represented estate administrators

Canada made a request to change the transcript policy reported for a specific issue concerning self-represented estate claims. Canada provided the following example:

A daughter of a self-represented claimant does not want to know what happened to her father at residential schools. She also has a witness. Right now, the parties have to wait four months for the transcripts. This is about the third time this has happened.

Canada is asking for an exception in these circumstances to shorten the timeframe for receipt of the transcripts. The hearing could have been wrapped up immediately should the transcripts be obtained in advance. With precious few claims left, a request for an exemption in exceptional circumstances could be made to the Chief Adjudicator.

The following motion was approved by Oversight Committee:

Oversight Committee confirms that in exceptional cases the Chief Adjudicator has the discretion to order production of transcripts before the four month waiting period from the adjournment of a hearing.

Lost Claimant Protocol (LCP)

The process has been highly successful. Only one claim remains in the LCP. Rodger noted that it is no longer practical to maintain the protocol and advised that the adjudicators will be expected to deal with remaining cases through their normal procedures. There might be exceptional circumstances in the future where it would be beneficial to use the LCP again.

TSC

Rodger noted that the TSC was a necessary and successful process in the past but the time has come for the TSC to shift from a standing committee into one used on an *ad-hoc* basis. Members noted that the purpose of the TSC was to review complex issues at the request of the OC. It has done just that and run its course.

Mayo expressed the Committee's gratitude to all those who have participated and the work done on the TSC.

3. Approval of Minutes

The Committee approved the January 30, 2018 regular minutes and March 2, 2018, teleconference mins before them, subject to minor amendments.

4. Key Performance Indicators

Akivah Starkman presented some of the key statistical indicators as of April 3, 2018.

- 99% of all the claims received have now been resolved;
- Since the last OC meeting, 207 additional claims have been resolved;
- This means that as of now, only 438 claims remain in progress: that is, not resolved through an adjudicator decision, claimant withdrawal, or negotiated settlement. Of those, it is expected only 25 will require a hearing, and of these 25, the majority have had hearings scheduled or are actively proceeding towards scheduling;
- The number of cases at the post-hearing stage has declined by 18% since January, now down to 264. 41% of those cases are expected to get a decision soon;
- The post-decision caseload had declined by two-thirds since the January OC meeting; only 81 claims are in the review/re-review process or undergoing a legal fee ruling or appeal;
- Last year, 46.3% of all decisions were dismissals. This compares to only 4.1% dismissal rate from implementation to now. To some extent, this reflects the high number of IFR dismissals that came last year, but it also reflects a more general trend reflective of the types of cases.

Akivah presented a new document entitled "Remaining Independent Assessment Process Caseload Summary," noting that it provides OC with an excellent summary of the IAP caseload that remains to be addressed prior to completion. The new summary will be the focal point moving forward as it focuses more on what claims are left in the process, rather than historical data. Currently, 519 claims remain. Analysis of the 438 claims in progress reveals that two-thirds involve estate and SOS claims. Generally these claims take the longest to resolve. The summary is a good indication of what remains to be done.

OC members found the summary to be really helpful. Canada noted that they calculate the time for an estate claim to be resolved differently than using the median average as used in the summary. Akivah stated that he was open to suggestions.

Some OC members noted that the average compensation in the IRSAS Statistics document did not include Negotiated Settlement Process (NSP) figures even though the total number of decisions included adjudicator decisions and NSPs. In the interest of the process, care should be taken not to understate the overall compensation awarded to claimants. Akivah committed to look into including NSP compensation totals. Canada also stated that it will look into providing the IRSAS with the figures for the report.

5. Executive Director's Report

Akivah provided his general observations on the following activities:

Notice Program

The Request for Directions on the Notice Program to inform claimants of their rights and choices regarding their "Retained Records" was heard by Justice Perell in Toronto last week. The Chief Adjudicator will be providing more information on that in his report.

Over the past few months, IRSAS staff have been preparing to deliver the Notice Program as will be directed by the Court. In the meantime, Secretariat staff have been working on the printed, recorded, and visual materials that will provide information on claimants' choices regarding the disposition of their records. A draft of the consent form that will be used to provide the basis for all of the other materials was prepared and put before the Court, and it is expected that it will be adopted with some minor changes. Internally, the Secretariat has been putting together the plans and procedures to deliver the program over the next two years, including working with Health Support Workers, Hilsoft and Crawford. With this advanced work, the Secretariat will be in a position to launch the Notice Plan on receipt of the Court's decision.

At the same time, the Secretariat also has a team that has started the substantial task of disposing of the non-retained documents. As a first step, the Secretariat launched a Pilot Project for records disposition that includes 200 of the earliest Alternative Dispute Resolution (ADR) and IAP claims. A subject matter specialist has been identified within each business unit in the Secretariat to review claims, identify retained and non-retained documents, scan and file physical and electronic retained records, and prepare a list of those records eligible for disposition. That list will then be reviewed by the Business Line and the Executive Director, following which the destruction of Non-Retained Documents will begin. The pilot is scheduled to be concluded in the next few days, following which, staff will prepare a report that will guide us in developing and implementing the broader exercise of record retention and destruction. The Secretariat is aware not only of the magnitude of the task of Records Disposition, but also of its importance. Staff are applying considerable diligence in ensuring that this is done in accordance with the Court's directions and claimants' choices.

Canada asked if the records involved in the Pilot Project would be part of the strategy for the final destruction of all the documents. Akivah replied that they would and in fact would inform the overall strategy for the process to dispose of the non-retained documents. The Chief Adjudicator noted that on April 24, 2018, Perell J. provided an Endorsement allowing Canada to maintain its records until IAP sunset or prior order. Perell J. allowed both Canada and the Secretariat to maintain the Single Access to Dispute Resolution Enterprise (SADRE) database until IAP sunset. It was asked if disposition of the non-retained documents could impact on future RFDs. The Chief Adjudicator replied that if an RFD should be brought forward, Canada will have such documents available. Asked if the court had provided further direction for the churches, the Chief Adjudicator noted that the original records disposition order still applies to the churches, which means immediate destruction of the documents. The only exemptions were for Canada and some for the Secretariat. Canada explained that despite this recent Endorsement, Canada continues to prepare for the IAP sunset.

Completion Planning

While the Records Disposition initiatives are and will be a significant aspect of the Secretariat's work over the remaining years of its mandate, there is also considerable work underway on planning for the completion of Secretariat and the IAP. In March, all senior managers of the Secretariat met for a three-day session that dealt with all aspects of completion strategy and preparations, including operational matters, risk management, communications, litigation support, data analysis and reporting and, of course, employee wellness, morale, and retention. Also discussed were those issues that will, out of necessity, outlive the Secretariat itself, and how to prepare for such matters to be addressed and handled post-Secretariat: things such as who will answer questions or deal with issues related to IAP claims; what will happen to our intranet and internet sites; how will the workforce adjustment procedures for the last staff at closure be handled, and by whom; who will handle access-to-information requests and security procedures for remaining non-IAP related files, etc. There is a plethora of considerations not only for the orderly completion of the Secretariat's work, but also for the residual administrative matters that will extend beyond that date. This is now part of the active work of the IRSAS management team which has developed a comprehensive and robust planning process and tools for meeting those challenges.

As to resources, as previously mentioned at the OC, the Secretariat has been working with the Department in the preparation of a submission to Treasury Board to ensure that sufficient resources are allocated to carry through to the culmination of the IAP.

IAP Final Report

Since the last Oversight Committee meeting, staff have been working to conduct the remaining interviews that were necessary to fill in some gaps to complete the information-gathering for the IAP Final Report: notably, with Francophone claimants, claimants from Northern Canada, and interpreters who worked at IAP hearings. These are now wrapping up, and that information will be added to the draft of the report that has already been prepared. The report will then be ready for final review and editing for submission to Oversight Committee within the next few months.

It was agreed that as a next step Oversight Committee would be provided with the proposed framework and methodology for the report, some key messages, an idea of the length of the report and possibly one chapter.

Concluding Comments

This will be Akivah's last Oversight Committee meeting. Akivah expressed his appreciation to those around the table for their commitment to helping residential school survivors and addressing this hugely important part of the history of Canada and Canada's Indigenous peoples and for the opportunity for him to have been part of this endeavour.

Akivah was pleased to report that, following his departure, Roger Tetreault will be appointed as Executive Director. Roger has acted in this position in the past, both for Shelley Trevethan and Akivah. Roger has been with the Secretariat almost from the outset and as Director of Operations has spearheaded many of the initiatives that have enabled the IAP to undertake the huge volume of hearings and manage the complexities of many cases, and the implementation of several of those initiatives that have come to this table and the TSC. Akivah noted that he relied heavily on Roger's skills at directing the Secretariat's operations

and more generally on his advice on all issues and that the IAP will be well-served by having him at the helm of the Secretariat.

Mayo expressed the Committee's gratitude for Akivah stepping in for the interim and thanked him for his great work.

6. Chief Adjudicator's Report

The Chief Adjudicator began his report by welcoming Roger Tetreault to his new role. Dan noted that Roger is well known and respected by the Deputy Minister and by Secretariat staff in all locations. To get the IAP to the finish line, in-depth knowledge of operational issues is key and Roger's knowledge of the oddities of the IAP, from IFR to estates and the complexity of human resources issues in a federal employment setting, uniquely qualify him to play a key role in the shrinking and ultimate windup of the IRSAS.

The Chief Adjudicator also thanked Akivah for agreeing to return to assist during the transition. He recognized that it was a sacrifice for Akivah to come back and greatly appreciated the opportunity to work closely with him once again.

General Observations

The DCAs met for likely for the last time in person on April 30, 2018, and will probably meet via teleconference from now on.

Review requests are down to approximately one every two weeks, a significant reduction from up to 10 reviews a week in the past. The assignment of review adjudicators has been streamlined in order to maximize consistency. There are presently 15 reviews on hold: some are waiting for a decision on the Procedural Fairness appeals and others are awaiting the outcome of the appeal to the Supreme Court of Canada on the sexual touching RFD. Two of the current topics of review by Canada are: (a) whether estate representatives can sign the application or whether the application must have been signed by the former student, as Canada contended. The Chief Adjudicator recently released two decisions that supported Canada's position. ; and (b) issues related to corporate knowledge in SOS cases.

The Chief Adjudicator has received 18 IFR reconsideration requests: 17 of which were allowed back into the IAP; three have resulted in an award to date. A not-admit appeal was received from a legal counsel estate administrator recently appointed by Canada. There have been no legal fee appeals in 6 to 8 months.

7. Update on Administrative Split

Louis-Alexandre Guay reported that as of April 25, 2018, there are still 209 claims affected. Canada has made 150 offers. 135 offers have been accepted for a total of \$10.2M in compensation paid.

8. Update on Estates Claims

Canada noted that the Reconsideration Deadline of June 1, 2018 is not an issue. Canada is to appoint administrators on 43 estate claims shortly and as such, they will not be subject to the deadline.

9. Update on Post-decision SOS claims

Canada's review of SOS files identified 242 claims potentially either undercompensated or not compensated due to a lack of admissions. As part of its SOS NSP plan, Canada will begin notifying claimants' legal counsel today, May 1, 2018, of the external negotiation process. The question was raised whether this process would be quicker than the Administrative Split process. Louis-Alexandre Guay replied this was his understanding.

10. June 5, 2018 OC Meeting

The committee members discussed possibly changing the June 5th meeting to a teleconference toward the end of June rather than canceling the meeting.

Russ was asked to circulate potential June 2018 dates to members.