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HEARING ISSUES

Apr 21, 2004 Issue:

Do stakeholders and lawyers representing claimants have a responsibility to inform their clients about all available options to address their claims, including the ADR process? Status: Even if stakeholders believe that the ADR process is a flawed or imperfect process, there is a duty on the part of all stakeholders to advise survivors about the ADR option. Lawyers who advise clients about the options available to them have an obligation to present the ADR option along with other choices especially where the elderly and the sick are involved.

Jun 16, 2004 Issue:

Claimants should be provided with options for hearing sites and be encouraged to choose a location and environment that is comfortable and suitable for them. Resolution: There was agreement that the Reference Group should send a letter to Plaintiff's Counsel encouraging them to inform Claimants that they may have hearings in their own community, or at any location where they feel most comfortable, including spiritual, ceremonial, or religious sites that have a special meaning to Claimants.

Jun 16, 2004 Issue:

There is a need to shorten the time frame of the four weeks that is required to get advance payments to unrepresented Claimants who may need funds to get to a hearing. Resolution: The turn around time may be less than 30 days to get advances to Claimants. In practice it may be 15 or 20 days. Cash advances were part of the old financial system, but IRSRC will consider how to get advance funds to Claimants, or the Adjudication Secretariat, so that unrepresented Claimants who need funds will receive funds to attend a hearing.

Aug 18, 2004 Issue: In some instances, Claimant's Counsel is determining the location of the hearing for the Claimant. Resolution:

- All parties must be consulted before the Adjudication Secretariat determines a location for a hearing.
- Adjudication Secretariat is to provide choices as to selection of the site.
- Due regard must be given to the Claimant and Claimant's counsel choices.
- Priority will be given to Claimant's wishes wherever possible.



Oct 13, 2004 Opening Prayer - This item will no longer be recorded.

Oct 13, 2004 Issue:

Consultation with all Parties Resolution: A sincere effort is being made, and will continue to be made by the Adjudication Secretariat, to secure the agreement of all parties to a hearing date.

Dec 15, 2004 Issue:

CARG approval of revised Observer's Paper Resolution: Final approval was given to the Observer's Paper which will be entitled "Guidelines for Observers." The final paper will be signed by the CARG chair and will be provided to Adjudicators.

Feb 16, 2005 Issue:

The safety of everyone at hearings is paramount including the safety of Adjudicators. Resolution: Resolution Managers could have a list of preferences for Claimants to indicate under what circumstances a hearing could be held in a claimant's home (i.e. mobility, illness). The Chief Adjudicator will forward the recommendation of the working group with respect to the claimant's preference of a hearing.

Apr 20, 2005 Issue:

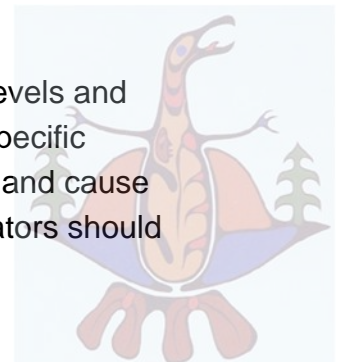
What if someone refuses to sign the confidentiality agreement? Resolution: No one is required to sign the confidentiality agreements (see Page 14 of the ADR Model.) It was never required for lawyers to sign confidentiality agreements.

Jun 22, 2005 Issue:

There is concern that some firms do not know the process, are not prepared for hearings, or have little contact with their clients before a hearing. Resolution: If a client is not adequately represented by their legal counsel the matter should be raised with the senior partners of law firms and/or the Law Society in the province they practice.

Jun 22, 2005 Issue:

In summation at hearings Plaintiff's Counsel not only identify harm levels and compensation levels for the benefit of their client but also propose specific compensation awards. This can create expectations for their clients and cause concerns where their expectations are not met. Resolution: Adjudicators should



indicate at the end of the hearing that any sum identified by Plaintiff's Counsel will not necessarily be the amount of the award they will receive.

Sept 21, 2005 Resolution:

It has been accepted by CARG that once the date for a hearing has been set and confirmed a Notice of hearing will go out to all parties, including directly to the claimant and also to his/her legal counsel when represented.

Nov 15, 2005 Issue:

Standards for conducting a hearing Solution: Hearings must be recorded in full (including submissions.). Evaluation standards need to be created. In the next year a process will be put into place on how to evaluate the Adjudicators before renewal of the contracts.

Apr 11, 2006

Request for Hearings Out of the Country Jurisdictional issues combined with legal and health issues prevent IRSRC from conducting ADR hearings outside of Canada.

Apr 11, 2006 Scheduling:

Members agreed that the Adjudication Coordinators will assign files to Adjudicators, reporting weekly to the Chief Adjudicator on the assignments. When claims are sent to the Adjudication Secretariat and identified by Resolution Managers as complex, the Chief Adjudicator will be consulted when assigning Adjudicators to complex files.

Nov 7, 2006

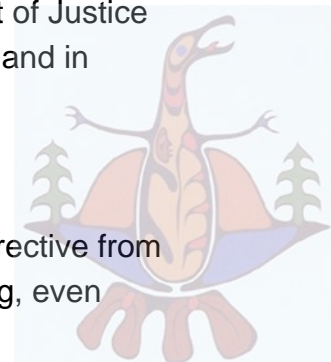
Use of Blackberries at Hearings Resolution: As a matter of respect they are not to be used during hearings. Cell phones should also be turned off.

Jan 23, 2007

Naming how the government is represented at hearings whether a DOJ lawyer or Resolution Manager Adjudicators are to be advised that Department of Justice lawyers and Resolution Managers should be referred to at hearings and in decisions as Canada's representative(s).

Jan 23, 2007

Model A hearing moving from a B The Model does not reflect the Directive from IRSRC asking that where Model A evidence is disclosed at a hearing, even



where allegations involve the same perpetrator as initially alleged, and no mandatory documents are required, the Adjudicator adjourn the hearing so that Canada may attend. The suggestion was made that IRSRC append the change to the Model. The Chief Adjudicator will see that all adjudicators are informed of the above.

Mar 20, 2007

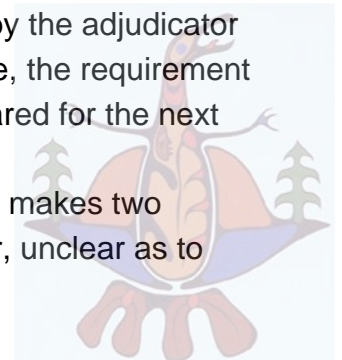
Variety in Scheduling Some counsel find a lack of variety in the scheduling of adjudicators and resolution managers for hearings. The same situation was raised at the last CARG meeting and action taken to vary scheduling. CARG discourages adjudicator or resolution manager shopping by any party. Decision: It will be brought to the attention of staff.

Mar 20, 2007 IRSAD Stats Decision:

It is important to know how long cases are overdue. This information will be added to the IRSAD stats.

Mar 20, 2007 Possible Amendments to the ADR Model

- a. Model B to A cases – The norm when moving a Model B hearing to an A is that there will be an adjournment in such situations with provision for exceptional cases. IRSRC will provide a contact person for exceptional cases who may agree to waive the need to adjourn.
- b. Student on student abuse – Clarification is required on whether compensation can be awarded for abuse that occurred before the staff became aware of a pattern. Decision: Abuse which occurred prior to knowledge of the pattern is not compensable. Final wording will be prepared for the next CARG meeting.
- c. Evidence by a POI - The Model needs to clarify that the statement from the POI who wishes to appear must arrive at the Secretariat two weeks before the claimant's hearing, not two week's before the POI hearing. Decision: The statement from the POI must arrive two weeks prior to the claimant's hearing. Final wording will be prepared for the next CARG meeting.
- d. Harm Level 4 reference to permanent physical injury and requirement for an expert – The Roster of Experts is not helpful in determining physical injury. When physical injury at H4 comes up the expert (medical professional) is to be selected by the adjudicator in consultation with the parties. If there is sufficient medical evidence, the requirement for the expert could be waived. Decision: Final wording will be prepared for the next CARG meeting.
- e. Limited jurisdiction for Review – The Model on page 13, section k, makes two references to defendants' request for review. The Model is, however, unclear as to



whether the second provision is meant to restrict the first provision. The 2nd bullet if strictly applied would limit Canada's right of review. If the adjudicator is not applying the Model correctly then it stands there should be a right of review. Decision: Final wording will be prepared for the next CARG meeting.

- f. Review issue -PCAN discussed the issue of the 5th bullet on page 13, section k of the Model. It refers to claimant's right to review a decision. PCAN is looking for endorsement that claimant's rights of review are broader, such as misapplication of the Model, in addition to overriding or palpable error of fact. Decision: CARG agrees with the broader interpretation. Final wording will be prepared for the next CARG meeting.

It is understood that once a final decision is made with respect to Item #8, a to f, that a new Appendix setting out the changes will follow.

Mar 20, 2007

Obtaining medical assessments Decision: The whole transcript is to go to the medical professional.

