BEPIKISH
DIBAAKONIWEWIN

MAAMAWIBII'IGAADEG

ISHKWAAWAACH WIINDAMAAGEWIN

Bebikish
Dibaakoniwewin Gaa-
Naagajichigewaan

2021

GIISHPIN GICHI-MAANENDAMAN OZAAM GAA-GII-GAGWAADAGI'IGOOYIN GII-IIZHAAYIN
GETE-GIKINO'AMAADIIWIGAMIGONG. GI-DAA-IZHI-GIIGID AANIIN IGO APII 1-866-925-4419

Zhingwaak Gikino'amaadiiwigamig imaa Baawiting gii-ayaawag gikino'amawaaganag 1878 biinish 1970. Noo-ngom dash ayaamagan imaa maawach bezhig emichaag gaa-izhi-ganawenjigaadegin mazinaakizonan gaye wiindamaagewin gaa-gii-izhiseg gii-ayaamagak.

Aapiji gii-zhiibendamowag igi gaa-gii-baatiinowaad gaa-gii-dazhindamowaad gaa-gii-izhi-gagwaadagi'indwaa gaye gii-nishiwanaaji'indwaa. Gichi-inendaagoziwag gii-zhiibendamowaad gaye gii-zoonganinig odizhitwaawiniwaa.[1]

Manoominigiizis 19, 2007 gii-inangizod, Gete-gikino'amaadiiwigamigoon Nakobii'igan (IRSSA gemaa Nakobii'igan) gii-achigaade. Iwe IRSSA gii-izhiseg, amii gii-okosemagak gaye gii-aanike-dazhiikigaadeg gaye gii-maajii-gagwe-miinosijigaadeg gaa-gii-izhi-maanzhichigemagakin ini Gete-gikino'amaadiiwigamigoon omaa Gaanada Akiing.[2]

Bezhig gegoon gii-onjiimagan imaa inenjiganing, mii iwe Bepikish Dibaakoniwe-win (IAP) ji-dazhiikigaadegin ini giiwe-diba'amaagoowinan gaa-gii-nishiwanaaji'indwaa gikino'amawaaganag, gii-miigaanindwaa, gaye godak gaa-gii-izhi-maanzhidoo-dawindwaa gii-izhaawaad Gete-gikino'amaadiiwigamigong. 13 daso aki gii-ani-izhiseg, awashime 26,700 gii-dashiwag gaa-gii-dibaajimowaad gaa-gii-doodawindwaa, awashime 27,800 awiyag gii-diba'amawaawag gaye $3.23 daso-minik biniyan daswaabik gii-diba'amawaawag.[3] Amii enaak niibiwa awiyag e-gii-maamawi-dibaakonigewaad ji-giiwe-diba'am-awindwaa gaa-gii-maanzhidoodawindwaa omaa Gaanada Akiing imaa Gete-gikino'amaadiiwigamigong gaa-gii-ozhichigaadegin.

Odaanaang – Ezhiseg gaye Eshkoseg Gikino'amaadiiwigamigong onji:

1883 gii-izhiseg Gaanada Ogimaawiwin gii-inaakonigewag ji-ozhichigaadegin gikino'amaadiiwigamigoon ge-izhaawaad anishinaabensag. Ini Gete- gikino'amaadiiwigamigoon gaa-gii-atood Gaanada Ogimaa igi dash Ana-mi'ewininiwag ji-naagajitoowaad – gii-izhichigaade ji-odaapinindwaa anishinaa-bensag ji-bakewinaawaad oniigi'igowaa' ji-booni-anishinaabewaadiziwaad.[4] 1900 gii-izhiseg, 61 gii-dasinoon gikino'amaadiiwigamigoon gakina akiikaan-ing gaawiin eta New Brunswick gaye Prince Edward Island. Apii ishkwaawaach iwe Gete-gikino'amaadiiwigamig gii-giba'igaadeg 1997 gii-izhiseg, awashime 150,000 Anishinaabeg Eshkiimeg gaye Wiisaakodewininiwag gii-izhaawag imaa 140 gikino'amaadiiwigamigoon.[5]

1 Gechi-inendaagozid Stephen Harper, Gaanada Ogimaa, "Niminjinawezimin gaa-gii-izhiseyeg gii-izhaayeg Gete-gikino'amaadiiwigamigong" *Wiindamaagewin (Hansard),* Gaanada Akiing, Onaakonigewigamigong, Ogimaawigamigong 39th Onaakonigewigamigong Abiwaad, maz. 142, agind. 110 (Aadaawaang, Gaanada Aki Onaakonigewigamigong, Ode'iminigiizis 11, 2008)

2 Gakina iwe gaa-ozhibii'igaadeg gaa-gii-izhiseg apii Gete-gikino'amaadiiwiga-migoon Nakobii'igan (IRSSA) bizaanigo daa-waabanjigaade: http://www.residentialschoolsettlement.ca/settlement.html

3 dago dash owe gii-inakamigak, iwe IAP gaye o-gii-bizindawaawaa' ini gaa-gii-waabangenid gaye ini gaa-gii-anaamimindwaa e-gii-maanzhichigewaad, gaye giiyaabi gii-noondawaawag gaa-gii-maanzhidoodawindwaa. Maamaw igi gaa-gii-diba'amawindwaa gaa-gii-inaakonigewaad igi dibaakoniwe-wininiwag (23,425) gaye igi gaa-gii-ondiziwaad NSP (4,144) minik. Iwe maamaw gaa-gii-diba'amawindwaa igi gikino'amawaaganag, giiwe-diba'am-aagoowinan gaye gaa-gii-diba'amawindwaa dibaakonigewininiwag Gaanada Ogimaawiwin gii-diba'igemagan.

4 Wawezhichigewin Ogimaa Hector Langevin, *Hansard,* Namebinigiizis 22, 1883 gii-izhiseg; Duncan Campbell Scott, Ogimaawid Zhooniyaa Ogimaakaang, (1920), Gaa-izhi-ganawenjigaadeg Gegoon Gaanada Akiing, Maamawichigan 10, maz. 6810, biskiiginigan 470-2-3, maz. 7, baakiiginigan 55 (L-3) gaye 63 (N-3), gaa-izhibii-iged John Leslie, *Ozhichigaadeg iwe Anishinaabe Inaakonigewin, 2nd maz.* (Aadawaang: Zhooniyaa Ogimaakaang gaye Giiwedin Ogimaa, Nakobii'iganan gaye Odaanaang gaa-gii-bi-izhiseg Nanaando-gikenjigewin, 1978) baak. 114.

5 Aazha bi-izhise e-ganawaabanjigaadeg aaniin gaa-gii-doojigemagakin ini Gete-gikino'amaadiiwigamigoon Gaanada Akiing: waabandan Debwewin gaye Gwayakosijigewin Izhichigewin Gaanada Akiing, *Gichi-inenjigaadeg Debwewin, Gwayakosijigaadeg Ge-ani-akiiwang. Gaa-maamawibii'igaadeg Debwewin gaye Gwayakosijigewin Izhichigewin Wiindamaagewin* (Toronto: James Lorimer & Co., 2015).

Zaka'igaade Eshkiime waasikwanenjigan

Awashime ngodwaak daso-biboon awashime ngodwaak Gete-gikino'amaadiiwiga-migoon gii-ayaagin, gaawiin naasaab gii-izhisesiiwag abinoojiiyag gaa-gii-izhaa-waad Gete-gikino'amaadiiwigamigong gaye gaa-gii-izhi-ayaagin. Mii dash wiinigo ezhi-gikenjigaadeg gaawiin gii-onizhishinzinoonan ini Gete-gikino'amaadiiwigamigoon e-gii-maanzhidoodawindwaa abinoojiiyag gaye odina-wemaaganiwaa' gaye odizhitwaawiniwaa'. Niibiwa gikino'amawaaganag gii-miigaanaawag, gii-gagwaadagi'aawag gaye gii-nishiwanaaji'aawag.

Amii dash gaa-gii-onji-dibaakonaawaad Gaanada Ogimaawiwinan gaye Anami'e-wigamigoon igi gaa-giizhaawaad Gete-gikino'amaadiiwigamigong. Jibwaa-ozhichigaadeg iwe Gete-gikino'amaadiiwigamigong Nakobii'igan, ngojigo 20,000 gii-dibaakonigewag gikino'amawaaganag gaye ngojigo midaaso-shi-niizh gete-gikino'amawaaganag gii-dibaakonigewag.[6] Gaawiin dash gii-inendaagosinoon owe dinookaan dibaakonigewin ji-onizhi-shinzinog ji-debinamowaad giiwe-diba'amaagoowin. Gii-aakoginde, ginwesh gii-dazhiikigaade, gaye gii-zanagan inaakonigewin.

Mii gegaa naasaab iwe gii-izhiseg, godak awiyag gaye maamawi-izhichigewinan gii-gagwe-mikigaade aaniin ge-minosegiban ji-nisidawinigaadeg gaye ji-gagwe-dazhiikigaadeg gaa-gii-doojigemagakin gete-gikino'amaadiiwigamigoon. Ginwezhiish dash aanind izhichigewinan gii-ikidowag e-minjinaweziwaad gaa-gii-izhi-dagwiiwaad gete-gikino'amaadiiwigamigong.[7] 1998 gii-izhiseg, Gaanada Ogimaawiwin o-gii-ozhitoonaawaa Anishinaabeg Ji-nanaando-gikenimindwaa Gaa-gii-bi-izhisewaad, iwe dash gaa-gii-izhi-dibaaji-moomagak "Gagwe-gwayakosijigaadeg gaa-gii-izhi-maanzhichigemagakin ini Gete-gikino'amaadiiwigamigoon niibiwa o-da-maamawi-dazhiikaanaawaa" amii dash gaa-ikidoomagak ji-ozhichigaadeg gichi-gagwedwewin, ji-giiwe-miinindwaa igi gaa-gii-maanzhidoodawindwaa ji-noojimowaad, gaye ji-diba'amawindwaa.[8] Gaanada Ogimaawiwin dash gii-nakwetam "ji-wiiji'aawaad ini gaa-gii-maanzhidoodawindwaa ji-noojimowaad ji-nisidawinigaadeg gaa-gii-inishkaago-waad maanzhidoodamowin Gete-gikino'amaadiiwigamigong" gaye "ji-dazhinji-gaadeg gaawiin wiin ji-dibaakonigeng".[9]

1998-99 gii-izhiseg, Ogimaawiwin enokiitamaagewaad gaye Anami'ewigami-gong enokiiwaad, gaye Anishinaabe izhichigewinan, gaye gete-gikino'amawaa-ganag "o-gii-maajii-dazhindaanaawaa" aaniin ge-gii-izhichigaaniwangiban ji-gagwe-gwayakosijigaadeg Gete-gikino'amaadiiwigamigoon gaa-gii-izhisegin.[10] Mii gaa-izhi-maajisegin oshki-izhichigewinan ji-gojitoowaad aaniin ge-gii-izhi-gwayakosidoowaad gaa-gii-maanzhidoodawindwaa, bakaan ji-gagwe-izhichi-gaadegin gaawiin wiin daabishkoo dibaakonigoowin. Gii-waabanjigaadegin ono oshki-izhichigewinan gii-onjisemagan ge-gii-biminizha-igaadegiban ji-izhichigeng ji-dibaakonigeng ani-akiiwang.[11]

[6] Jibwaa-ayaamagak dash iwe Nakobii'igan, bezhig eta inaako-nigewin gii-achi-gaade dibaakonigewigamigong: *Marlene Cloud gii-dibaakonaad Gichi-Dibaakoni-ge Ogimaa Gaanada Akiing (2004),* 73 O. R. (3rd) 401 (CA).

[7] Ogo gii-dagwiiwag Mekadewakwanayeg Oblates of Mary Immaculate (1991); Zhaaganaashii Anami'ewigamig Gaanada (1993); Presbyterian Anami'ewigamig Gaa-nada Akiing (1994); Maamaw Anami'ewigamig (1998); gaye Gaanada Zhimaaga-nishag (2004) 1998 gii-izhiseg, Zhooniyaa Ogimaa gaye Giiwedin Ogimaa gii-ozhibii'ige "Ji-gwayakosijigaadeg" iwe Gaanada Ogimaawiwin e-minjinaweziwaad gaa-gii-izhisewaad "igi gaa-gii-maanzhidoodawindwaa" gete-gikino'amaadiiwigamigong gii-miigaanindwaa gaye gii-nishiwanaaji'indwaa.

[8] Gaanada Aki, Anishinaabeg Ji-nanaando-gikenimindwaa Gaa-gii-bi-izhisewaad, *Owiindamaagewiniwaa Anishinaabeg Ji-nanaando-gikenimindwaa Gaa-gii-bi-izhisewaad* (Aadawaang: Ogimaa Gaa-naagajitood Ge-aabadakin gaye Wiiji'iwewinan, 1996).

[9] Gaanada Akiing, Zhooniyaa Ogimaa gaye Giiwedin Ogimaa, *Maamawinigaa-deg Zoongiziwin: Gaanada Aki enendag Ji-izhichigeng* (Aadawaang: Ogimaa Gaa-naagajitood Wawezhichigewin gaye Gaanada Aki Wiiji'iwewinan, 1998).

[10] Gii-maamawibii'igaadewan ono dazhinjigewinan Gaanada Zhooniyaa-ogimaa gaye Giiwedin Ogimaa, *Gwayakosijigewin gaye Noojimowin: Bakaan Ge-gii-izhichigeng ji-doodamowaad gaa-gii-izhaawaad Gete-gikino'amaadiiwigamigong* (Aadawaang: IAND, 2000).

[11] Thomas Kaufman & Associates, *Waabanjigaadeg Aaniin Ge-izhi-gwayakosiji-gaadeg gaa-gii-maanzhidoojigemagakin Gete-gikino'amaadiiwigamigoon: Ishk-waawaach Wiindamaagewin* (Toronto: Aaniin ge-izhi-gwayakosijigaadeg gaa-gii-maanzhidoojigemagakin Gete-gikino'amaadiiwigamigoon Gaanada Aki, Binaakwe-giizis 11, 2002.

2001 gii-izhiseg, Gaanada Aki ogii-ozhitoonaawaa Ozhibii'igewigamig Ge-izhi-dazhiikigaadeg Aaniin Ge-izhi-gwayakosiji-gaadeg gaa-gii-maanzhidoojigemaga-kin Gete-gikino'amaadiiwigamigoon (IRSRC) ji-maamawi-dazhiikigaadegin ini gaye aanjiike gaagiigidowinan, gii-maajichigaade dash Bakaan Gwayakosijigewin (ADR) izhichigewin 2003 gii-izhiseg. Gii-maajichigaade gete-gikino'amaadiiwigamigoon Dibaakoniwewin Ozhibii'igewigamig ji-dazhiikigaadegin ini gwayakosijigewinan, o-gii-niigaanish-kaan Ogimaa Dibaakonigewinini. Awashime 7,600 ADR dibaakonigewinan gii-dagoshinoomaganoon Gashkadino-giizis 2003 biinish Migiziwi-giizis 2007.

Niibiwa igi gaa-gii-anokiitamowaad ADR gii-inendamoog nawach ji-onizhishing owe apiich wiin geteya'll dibaakonigewin. Gaa-maamawiinowaad Anishinaabeg (AFN) gii-inendamoog iwe ADR nawach ji-onizhishing iwe, nawach wiiba ji-diba'amawindwaa Anishinaabeg gaye gaawiin da-agindesinoon, gaye ji-dagwiiwaapan Anishinaabeg izhichigaaniwang gegoon ge-izhi-mino-dazhinjigaadeg iwe. AFN dash gaye o-gii-wiindaanaawaan gaa-onizhishinzinogin daabishkoo ge-ina-gindeg, ginwesh ji-izhiseg ngoding, gaye bebakaan minik ji-ondizing bakaan on-jiiwaad awiyag, gaye dinookaanan anami'ewigamigoon gaa-gii-dagwiimagakin, gaye gaawiin aanind dinookaanan ji-bagidinigaadegin, gaye ozaam ji-ashijiing imaa Gaanada Ogimaawining.[12]

Amii naasaab gaa-inendamowaad igi gaa-gii-waabangewaad imaa Ogimaawiga-migong Gaa-Niibawiimagak Izhichigewin Anishinaabe Ogimaawiwin gaye Giiwe-dinong Ozhichigewin. Iwe Izhichigewin 2005 gaa-gii-ozhibii'amowaad wiindamaagewin gii-ikidoomagan ADR ji-boonichigaadeg.[13] Iwe Ogimaawigamig gii-inaakonigewag ji-naabishkigaadeg iwe ADR gii-inaa dash Gichi-Ogimaawiwin ji-ozhitoowaad oshki-izhichigewin niimidana dasogon izhisenig.


Phil Fontaine

Gete-gikino'amaadiiwigamigong Nakobii'igan:

Naagach dash Gaanada Ogimaawiwin Namebini-giizis gii-izhiseg 2005, gaye AFN o-gii-nakobii'aanaawaa Maamawi-inendamowin ji-debinamowaad ge-aabajichi-gaadeg ji-gashkichigaadeg dibaakonigewin ji-ondizing zhooniyaa. Gii-ishkwaa-gaagiigidowaad, Gaanada Ogimaawiwin gaye AFN gaye Eshkiimeg gaye gete-gikino'amawaaganag gaa-maamawiwaad gaye dibaakonigewininiwag gaa-ganootamawaawaad gikino'a mawaaganag gaye Anami'ewigamigoon, iwe Gete-gikino'amaadiiwigamig Nakobii'igan gii-nakobii'igaade Namebinii-giizis 10, 2006 gii-izhiseg. Gii-ishkwaa-minwaabandamowaad dibaakonigewigamigong gaa-anokiiwaad akiikaaning iwe nakobii'igan dago gaye 6 daso-giizis gaa-izhiseg, iwe IRSSA gii-izhisemagan ji-odaapinigaadeg, maawach mechaag Dibaakoniwewin omaa Gaanada Akiing – Manoominigiizis gii-bimangizod 19, 2007.

Iwe IRSSA gii-inwaade ji-debinamowaad gete-gikino'amawaaganag diba'amaa-goowin gaye gaawiin eta zhooniyaa gete-gikino'amaadiiwigamigong gii-onji-maanzhidoodawindwaa. Ono gii-dagwiimaganoon imaa Debwewin gaye Gwayakosijigewin Izhichigewin gaye zhooniyaa ji-aabadizid ji-mikwenjigaadeg gaa-gii-izhisewaad gikino'amaw-aaganag gaye Anishinaabe Noojimowin gaye Gaanada Aki Mino-ayaawin.

Miinawaa gii-dagwiimaganoon niizh izhichigewinan ji-diba'amawindwaa gaa-gii-zhaabwiiwaad Gete-gikino'amaadiiwigamigong. Owe Gikino'amawaagan Diba'amaagoowin gii-nisidawinigaa-de ji-diba'amawind-waa gakina gete-gikino'amawaaganag gaa-gii-izhaawaad Gete-gikino'amaadiiwi-gamigong jibwaa-izhiseg December 31, 1997, $1.6 biniyan minik daswaabik gii-miinaawag, ngojigo $20,457 endaso-gikino'amawaagan gii-miinaa.[14]

Iwe IAP gii-inwaade ji-diba'amawindwaa igi gaa-gii-nishiwanaaji'indwaa gaa-gii-miigaanindwaa gaye gaa-gii-maanzhidoodawindwaa bakaan inake gii-izhaawaad gete-gikino'amaadiiwigamigong. $275,000 ako minik gii-diba'amawaawag gikino'amawaaganag, nawach gaa-gii-nishiwanaaji'indwaa nawach niibiwa gii-diba'amawaawag.[15] Gii-odaapinigaadewan IAP mooshkinebii'iganan Manoomini-giizis 19, 2007 gii-izhiseg biinish Manoomini-giizis 19, 2012.[16]

[12] Gaa-maamawiinowaad Anishinaabeg, *E-wiindamaageng Gaanada Ogimaawi-win Gwayakosijigewin Ozhisijigewin ji-diba'amawindwaa igi gaa-gii-maanzhidoo-dawindwaa Gete-gikino'amaadiiwigamigong* (n.p.: Gaa-maamawiinowaad Anishi-naabeg, 2004) Waabandan gaye K. Mahoney, "Dibaakoniwewin: Enendamaan."

[13] Gaa-maamawibii'igaadeg gaa-gii-inaawaad Gaa-niibawiimagak Izhichigewin gaa-gii-waabangewaad, waabandan Paulette Regan odoozhibii'igan, *Ji-wiindama-wind Wemitigoozhi: Gete-gikino'amaadiiwigamigoon, Debwewin, gaye Gwayako-sijigewin Gaanada Akiing* (Vancouver: UBC Press, 2011), pp. 125-136.

[14] "Wiindamaagewin gaa-izhiseg Gikino'amawaagan Diba'amagoowin Manoomi-nigiizis 19, 2007 biinish Migiziwi-giizis 31, 2016," *Gaa-aginjigaadeg Gii-doodamo-waad iwe IRSSA Gete-gikino'amaadiiwigamigong,* Gaanada Akiing, Gaa-inaaban-diwaad Ogimaawining gaye Anishinaabeg, Gaanada Akiing, Gaa-dakwaasiged giizis 19, 2019, https://www.rcaanc-cirnac.gc.ca/eng/1315320539682/1571590489978. Owe minik $1.9 biniyan daswaabik gii-miinaawag CEP gikino'amawaaganag. Giishpin gaawiin deminik gaa-inenjigaadeg, nawach miinawaa daa-asaa. Giishpin ishkosed zhooniyaa, amii gaa-gii-izhiseg, gii-aabadizi awe zhooniyaa ji-miinindwaa CEP gete-gikino'amawaaganag gaye odinawemaaganiwaa ji-izhi-aabaji-aawaad gikino'amaagoowining inake.

[15] Iwe IAP gii-izhichigemagan bizaanigo gete-gikino'amawaagan nisweya'ii ji-izhi-dibaakoniged: e-gii-wanitood odanokiiwi-ondiziwin (AIL); giishpin izhinaag-wag nawach niibiwa gii-inaapaninaa ge-gashkitoosigiban ji-ondizid dibaakoniged imaa IAP onji; gemaa giishpin godak inake gaa-maanzhidoodawind awe gete-gikino'amawaagan, ozaam dash daa-zanagendaagwan ji-dibaakonigeng dibaako-nigewigamigong, nawach dash bakaan ji-izhichigeng ji-ondizid awe gikino'ama-waagan. Gaawiin daa-giishkinaasii minik ge-diba'amawindiban awe gikino'amawaagan. Ini AiL awashime $250,000 minik gaa-gagwe-ondizing imaa Dibaakoniwewin Nakobii'igan Izhichigewin daa-izhinizha'igaadewan.

[16] Igi gaa-anokiitamowaad dibaakonigewigamigoon gaa-ganawaabanjigemaga-kin gii-ikidowag IAP mooshkinebii'iganan gaa-dagoshinoomagakin Manoominigii-zis 2, 2013 giiyaabi bezhig gikino'amaadiiwigamig (Mistassini) e-gii-dagoshinoo-magaki Manoominigiizis 19, 2012 gemaa jibwaa-izhiseg iwe daa-inendaagwan. 2018 gii-izhiseg Kivalliq Hall gii-dagonigaade imaa gete-gikino'amaadiiwigamig-oon gaye gii-ikidom Gichi-manidoo-giizis 25, 2020 ji-odaapinigaadeg mooshkine-bii'iganan imaa gikino'amaadiwigamigong onji. Ini dibaakonigewigamigoon gaa-ganawaabajigemagakin gii-ikidowag mooshkine-bii'iganan ji-dazhiikigaadegin imaa Blott & Company (Gichi-dibaakonigewigamig Alberta, 2012) ji-odaapinigaadegin ini mooshkinebii'iganan jibwaa-izhiseg iwe.

Egagwe-debinigaadeg imaa IAP:

Iwe IRSSA niibiwa o-gagwe-debinaanaawaa imaa naasaab inendamowin aaniish naa bebakaan odizhi-andawendaanaawaa gaa-dagwiiwaad, gaye gaa-izhisemagak miziwe omaa, gaye dibaakonigewining. Gaye IAP gii-inendamoog ji-wiinjigaadegin gaa-gagwe-debinamowaad ji-bimini-zha'igaadegin dash imaa Gaa-Naagaji'iwewaad bimiwidoowaad iwe IAP.

Debinigaadeg Inaakonigewining: Amii gaa-inendamowaad ji-debinigaad endaw-enjigaadeg dibaakonigewining, IAP owe da-izhichigemagan:

- ji-mino-diba'amawindwaa igi gaa-gii-nishiwanaaji'indwaa gaye gaa-gii-gichi-inaapinanindwaa gaye godak gaa-izhi-maanzhidoodawindwaa gikino'amawaaga-nag gete-gikino'amaadiiwigamigong;
- ji-maamawiginjigaadegin gaye ji-giizhichigaadegin ini dibaakonigewinan gaa-gii-onjisegin gii-izhaang Gete-gikino'amaadiiwigamigong, gaye;
- ji-izhiseg ji-gikenjigaadeg debwe iwe e-gii-izhiseg, gaye ji-wiindamawind awe gaa-gii-maanzhidoodaaged gaa-inind e-gii-izhichiged ji-noondawind.

Maaminonendamowin: Gii-zanagan ji-gagwe-gwayakosijigeng megwaa gii-inindwaa gaa-gii-zhaabwiiwaad ji-gagwe-diba'amawindwaa e-izhichigaadeg dash ji-miigaa-damowaad iwe dibaakonigewin. Gii-ikidoomagan iwe Gaa-gii-naanaagadawaabanjigaadeg Ezhisewaad Anishinaabeg, "Gaawiin daa-bizaanendaagwazinoon gaa-gii-izhiseg giishpin gwayakosesinog."

Noojimowin – Gikino'amawaagan Imaa Nisaw Ayaa: Amii gaa-izhichigaadeg iwe IAP awe gikino'amawaagan nisaw ji-danakamigizid. Nitam gii-ozhibii'igaadeg iwe Wiindamaagewin, iwe IRSAS gii-ikidoomagan: "Iwe gii-noondawindwaa gikino'amawaaganag inwaade ji-nagishkodaadiwaad gakina gaa-dagwiiwaad ji-noojimong gaye gwayakosijigewin ji-debinigaadeg gaa-gii-inwaadamowaad igi gaa-gii-ozhibii'amowaad iwe Nakobii'igan."[17]

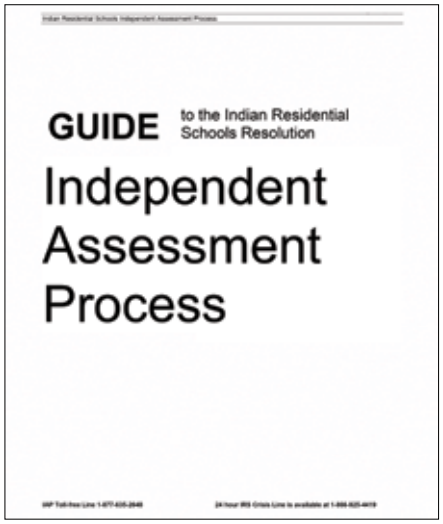
Awashime 26,000 bizindaagewinan gii-ayaawan IAP gii-ayaamagak.

Agindaason gii-achigaade ji-ziidonindwaa igi gaa-maanzhendamowaad gii-dazhindamowaad gaa-gii-izhisewaad gete-gikino'amaadiiwigamigong. Gikino'amawaagan gii-izhitamawaa ji-ziidonigod anokii'aaganan gaye ji-wiijiiwig-od gichi-ayaan, aanikanootamaagen, gaye inawemaaganan dibaakonigewining. Gikino'amawaagan gaa-inendanzig ji-anokii'aad dibaakonigewininiwan gii-izhita-mawaa Ziidoniwe-Anokiimaagan ji-wiiji'igod. Endaso-gikino'amawaagan bizaanigo aaniindi gaa-inendang ji-dazhi-dibaakoniged gaye giishpin ji-ikwewinid gemaa ji-ininiwinid ini dibaakoniwewinini. Bakesijiganing gii-dazhi-dibaajimo awe gikino'amawaagan, bizaanigo gaye giish-pin andawendang ji-nookwezod, ji-nagamong gemaa ji-anami'aang. Gii-gichi-inendaagwan owe gii-izhichigeng aaniish naa o-gii-gashkitoon awe giki-no'amawaagan ji-dibaajimod gaa-gii-izhised gaye dash ji-onji-dibaakonigeng iwe gaa-gii-inaajimod. Gii-ishkwaaseg dasing, igi Gaanada Ogimaawining gaye Anama'ewigamigong gaa-onji-dibendaagoziwaad ako gii-ikidowag enendamowaad e-minjinaweziwaad iwe e-gii-izhised awe gikino'amawaagan. Gaye, gii-miinaawag igi gaa-gii-debinamowaad diba'amaagoowin zhooniyaa ge-aabaji'aawaad aanjike ji-noojimowaad.

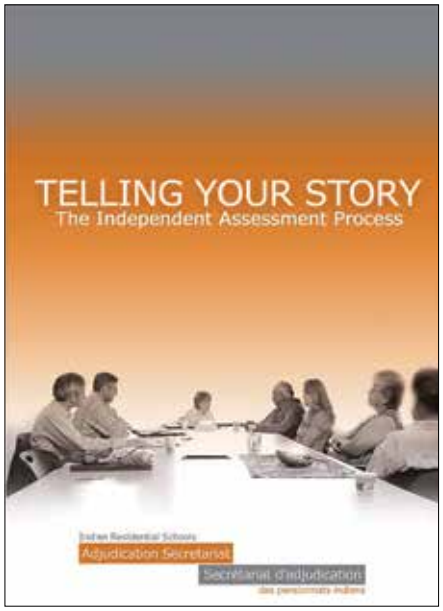
Gii-wiindamawaawag Gikino'amawaaganag: Iwe IRSSA gii-izhichigemagan ji-wiindamawindwaa gikino'amawaaganag iwe Nakobii'igan ezhiseg. Gii-dagonigaade Wiindamaagewin Niigaanendamowin, gaye agindaaso ge-izhi-giigidod ji-gikendang giiyaabi, gaye ji-gikendang aaniin apii ge-ishkwaaseg ji-mooshkinebii'iged gaye eyaamagakin ziidonigewinan.

E-gagwe-debinigaadeg Ge-izhichigeng: IRSSA gii-ikidoomagan ini IAP diba-akonigewinan ji-dazhiikigaadegin gaawiin dabazhiish 2,500 minik endaso-biboon. Gaye gii-ikidoomagan gikino'amawaaganag ji-noondawindwaa 9 daso-giizis gii-ishkwaa-maajinizha'amowaad mooshkinebii'igan "gemaa ngojigo iwe apii" gaye gakina dibaakonigewina ji-giizhichigaadegin ango-biboon gaa-ishkwaa-giishkiseg IAP mooshkinebii'igewin.[18] Gaye, gii-ikidoomagan dibaakoniwewininiwag ji-ozhibii'amawaawaad ini gikino'ama-waaganan enaakonigewaad 30 dasogon izhiseg Dibaakonigewin, gemaa 45 dasogon giishpin Nawach Zanagak dibaakonigewin.[19] Dibaakonigewigamigong gii-onjiimagan owe ikidowin zhooniyaa ge-andodam-aaged awe dibaakonigewinini gaa-giigidooamawaad gikino'amawaaganan da-ikido dibaakoniwewinini aaniin minik onizhishin ge-inenjigaadeg.[20]

[17] IRSAS, *Wiindamaagewin 2008* (Aadawaang: IRSAS, 2008), p. 11
[18] *IRSSA,* Ozhibii'igan 6.03
[19] *IRSSA,* Gaa-izhiseg D, Wegonen III (k) (ii). Nawach Zenagak gii-achigaade giishpin gikino'amawaagan gaa-ikidod e-gii-wanitood anokii-ondiziwin gemaa godak maanzhisewin iwe onji *IRSSA,* Gaa-izhiseg D, Wegonen III (b) (iii).
[20] *Fontaine edibaakonaad Gaanada Aki (Gichi-dibaakonige-ogimaa),* Dibaakoni-gewigamig biskiiginigan 00-CV-192059CP, ONSC, Migiziwi-giizis 8, 2007, paras. 18 zhigo 19.



IAP mooshkinebii'igan wiiji'iwe-mazina'igan o-gii-wiiiji-igowaa gikino'amawaaganag ji-nisidotamowaad giishpin IAP ji-izhichigewaad gaye o-gii-wiindamaagonaawaa aaniin ge-izhi-mooshkinebii'igewaad IAP mazina'igan.



Mazinaatesijigan "Telling Your Story" (Wiindamaageying Gidibaajimowin) gii-waabanda'aawag gikino'amawaaganag wegonen ge-waabandamowaad IAP bizindaagewining.

IAP Bebikish Dibaakoniwewin:

Iwe IAP gaye jibwaa-dibaakonigeng Ozhiitaawin: Iwe dibaakonigewin gii-maaji-chigaade gii-mooshkinebii'igeng e-ikidong gikino'amaadiiwigamig gaa-gii-izhaad gikino'amawaagan gaye gaa-izhi-maanzhidoodawind. Gii-inaaganiwi awe gikino'amawaagan ji-wiinaad gaa-gii-maanzhidoodaagod, ji-wiindamawindwaa e-gii-maajichigaadeg dibaakonigewin.

(Daa-onizhishin) ji-anokii'ad dibaakonigewinini gii-inaawag gikino'amawaaganag. Ini mooshkinebii'iganan gii-waabanjigaadewan ji-onisijigaadegin ji-odaapinigaa-degin aaniish gii-ikidowag IRSSA wegonen ge-ganawaabandamowaad. Nitam gii-odapinaawag gikino'amawaaganag gaa-aakoziiwaadiziwaad maagizhaa nibowaad gemaa gashkitoosigwaa ji-dibaajimowaad dibaakonigewigamigon.

Jibwaa-bizindawind, endaso-gikino'amawaagan gii-miigiwe ozhibii'iganan ge-zii-doshkaagod odibaakonigewining daabishkoo mazina'iganan Anokiiwining onji, Anokiiwin Daaksis, Gibaakowidiiwigamigong, gemaa andawi'iwewin. Gaanada Ogimaawiwin gii-miigiwe mazina'iganan gaa-ikidoomagakin debwe e-gii-izhaad imaa gikino'amaadiiwigamigong gaye wegonen wezhibii'igaadeg e-gii-maanzhidoodaagod awiyan(a').[21]

Ngoding, gii-gaagiigidowag giigidowining jibwaa-bizindawindwaa gikino'amawaaganag giishpin ji-debising IAP dibaakoniwewin, gemaa Gaa-zana-gakin Dibaakoniwewinan, gaye ngoding, giishpin wii-diba'amawind gaa-gii-ishkwaa-bimaadizid aazha gete-gikino'amawaagan.

Iwe IRSSA gii-ikidoomagan bizaanigo ji-dibaakonigeng gaawiin memwaach imaa Dibaakoniwewin Nakobii'igan Izhichigewin (NSP), giishpin minji-niizh gikino'amawaa-gan odibaakonigewininiiman gaye Gaanada Aki gaa-inendamowaad bizaanigo.[22] Giishpin gaa-gashkichigaadesinog ji-debinigaadeg diba'amaagoowin imaa NSP, ndawaach Gaa-dibaakoniweng Izhichigewin daa-aabadan.

Iwe IAP Bizindaagewin: Gikino'amawaagan gii-ikido aaniindi ge-dazhi-bizindawind, giishpin gaye ge-ininiiwid ikwewid awe ge-bizindaaged, gaye giish-pin ge-gashkitoowaad ji-ayaawaad gakina imaa, ji-izhiseg iwe bizindaagewin. Jibwaa-bizindawind gikino'amawaagan o-gii-ganawaabandaan gaa-mazinaateseg gaye o-gii-mazina'igan ji-gikendang ezhiseg imaa Bizindaagewin.[23]

Iwe Dibaakoniwewin Ozhibii'igewigamig gii-ozhiitaawag o-gii-diba'aanaawaa gaye ge-aabadaninig bizindawind gikino'amawaagan, bimi-ayaawin gaye niizh ako ji-ziidonigod awe gikino'amawaagan endawenimaad gaye gichi-ayaan giishpin inendang.[24] Nibewigamigong gii-danakamigan bekesijiganing, gaye endaawaad awiyag, gemaa gibaakowidiiwigamigong gemaa aakoziiwigamigong, gaa-inwaadegin iwe imaa Wiinibiigong gaye Vancouver gemaa godak (agwajiing gaye Gaanada Akiing) ezhi-izhised igo awe gaa-dibaakoniged.

[21] Owe gii-aanjibii'igaadeg 2013 gii-izhiseg apii Gaa-naagaji'iwewaad gii-ikidoomagak "Wewiibichigaadeg Dibaakonigewin" ji-aabajichigaadeg gaawiin memwaach ji-ondinigaadegin ini mazina'iganan ge-ziidoshkaagemagakin.
[22] Awe gikino'amawaagan dibaakonigewininiwan gaa-aabaji'aad NSP gii-miinaa. Gaawiin NSP gii-bagidinigaadesinoon giishpin awe gaa-gii-maanzhidoodaaged gaa-ikidod e-wii-dagwiid dibaakonigewigamigong.
[23] Gaawiin gii-ayaasinoon mazinaatesijigan gii-maajichigaadegin IAP baamaa naagach gii-ozhichigaade ji-wiiji'ind gikino'amawaagan ji-ozhiitaad odibaakonige-win gaye ji-ojaanimendanzig.
[24] Gakina gaa-inagindg ji-biiwijigaadeg iwe IRSSA daabishkoo ge-aabaji'aad awe Dibaakoniwewin Ozhibii'igewigamig Gaanada Ogimaawiwin gii-diba'igemagan.

Imaa bizinjigewining gii-ayaa gikino'amawaagan odibaakonigewininiiman (giish- pin gaa-aabaji'aad gaye Gaanada Ogimaawiwin gaa-ganootamaaged gaye dibaakoniwewinini. Giishpin gaa-inendang gikino'amawaagan gaa-ziidoshkaagod gaye Mino-ayaawin gaa-anokiitang gaye gichi-ayaa gemaa aanikanootamaagewinini gii-ayaawag. Gikino'amawaaganag gii-inaawag jibwaa-bizindawindwaa giishpin gaa-inendanzi-gwaa ji-dagwiid Anami'ewigamigong gaa-onjiid, gii-bizindawaa dash enendang. Amii gaa-izhiseg gaawiin awiya gii-gaagiigidosii megwaa gii-gaagiigidod awe giki-no'amawaagan, memindage Aname'iwigamigong gaa-onjiid, baamaa gaa-ishk-waa gaagiigidod gaa-dibaakoniwed, ji-onji-noojimod awe gaa-dibaakoniwed, giishpin goda gaa-inendang gikino'amawaagan.[25] Gaawiin gii-bagidinaasiiwag awenenigo ji-bizindang owe gii-inakamigak gaye gii-inaawag gakina imaa biindig gaa-ayaawaad ji-dazhindazigwaa gegoon.

Gii-ikidod gikino'amawaagan, gii-maajitaang bizaanigo gii-nagamom, gii-anishi-naabewichigewag, gii-nookwezowag, gemaa gii-anami'aawag jibwaa-maajiseg iwe dibaakoniwewin. Bizaanigo gikino'amawaagan Anami'emazina'igan gemaa migiziwi-miigwanan o-gii-aabaji'aan ji-ikidod ji-debwed.

Megwaa gii-bizindawind, gikino'amawaagan o-gii-dibaajimotawaan dibaakoniwe-winini. Imaa IAP gii-bizindawind gikino'amawaagan, dibaakoniwewinini eta gii-bagidinaa ji-gagwejimaad gikino'amawaaganan megwaa gii-gaagiigidonid, wiin eta. Gii-zanagendamoog gikino'amawaaganag, aaniin apii go wii-gibichiiwaad ajina gii-gibichiiwag, gemaa wii-ganoonaawaad gaa-gii-biizhaanid ji-ziidonigowaad, gemaa Mino-ayaawin Anokiimaaganag. Gii-ishkwaaseg ako, gii-andomaawag gaa-gii-ayaawaad imaa ji-ikidowaad emen-damowaad, miigwech e-inaawaad gikino'amawaaganan.

Moozhag ako gaa-zanagendaagosinogin ango-giizhig gii-izhise, gaa-zanagen-daagwakin dash niizhogiizhig gii-izhisewan ji-giizhikamigak.[26]

Niibiwa gikino'amawaaganag gii-nookwezowag jibwaa-bizindawindwaa.

Gikino'amawaaganag anama'aa-mazina'igan gemaa migizi miigwan o-gii-zaaminaawaan jibwaa-giigidowaad.

Gii-ishkwaa-bizindamong: Ngoding gegoonan giiyaabi gii-ishkosewan ji-dazhiiki-gaadegin gii-ishkwaa-bizindamong, daabishkoo ji-mikigaadegin mazina'iganan gemaa ji-wiindamaagewad mashkikiiwininiwag enendamowaad. Aana-gii-andawendaagosinog ji-ayaagin mashkikiiwininiwag odibaajimowiniwaan ngoding gii-onizhishin dibaakoniwewinini ji-ganoonaad, memindage giishpin gaa-wii-inaajimowaad ji-gichi-inendaagwaninig imaa dibaakonigewining. Gii-ganawaabanjigaadegin ezhiiyaad awe gikino'amawaagan odinendamowining, ginwesh gii-izhise ji-waawaabanjigaadeg iwe.

Iwe IRSSA gii-izhichigaade igi gaa-gii-wiinindwaa e-gii-maanzhidoodawaawaad ini gikino'amawaaganan gewiinawaa ji-dibaajimotawaawaad ini dibaakoniwewinini gaa-inendamowaad. Gaa-gii-ganawaabangewaad inenimaawag igi gaa-gii-maanzhidoodaagewaad. Gaawiin gii-bagidinaasiiwag ji-izhaawaad imaa gii-dazhi-dibaajimod gikino'ama-waagan gaa-gii-doodaagod, bizaanigo bakaan gii-inaa ji-dibaajimod gewiin.

[25] Giiyaabi wii-gikendaman gii-dagwiiwaad Anami'ewigamigong gaa-onjiiwaad, inaab in "Odagwiiwiniwaa Anami'ewigamigonn IAP Gii-izhiseg", *IAP Ozhibii'iga-nan: Bebikish Dibaakoniwewin Dibaajimowin,* Gete-gikino'amaadiiwigamigong Dibaakoniwewin Ozhibii'igewigamig, Migiziwi-giizis 12, 2014, http://www.iap-pei.ca/pub-eng.php?act=factsheets/church-role-eng.php.

[26] Ini dash wiin gaa-gii-ikidod gikino'amawaagan e-gii-wanitood odanokii-ondizi-win ngoijigo niiwigon biinish naanogon gii-danakamigiwag.

Inendamowin gaye Diba'amaagoowin: Dibaakoniwewinini ogii-ozhibii'aan enen- dang gii-ishkwaa-agindang odoozhibii'iganiwaan gaa-gii-dagwiiwaad. Gii-ate imaa gikino'amawaagan aaniin gaa-izhised, gaa-bi-bimaadizid, gaye gaa-gii-doodawind, odinaajimowin gaye enendang awe dibaakoniwewinini. (2009 gii-izhiseg gii-maajichigaade owe, "Gaa-dakwaagin inendamowinan" awe dibaakoniwewinini ji-dakosidood enendang iweni dibaakonigewin. Giiyaabi da-dazhinjigaadewan ini Gaa-dakwaagin Inendamowinan naagach.)

Aaniin minik ge-diba'amawind gikino'amawaagan gii-inenjigaade dash. Imaa IAP gaa-ganawaabanjigaadeg, gii-dibaabanjigaade ji-gii-waabanjigaadeg aaniin debwe gaa-izhiseg gaawiin wiin eta dibaajimowin, aaniin gaa-izhi-maanzh-ibimaadizid gikino'amawaagan gaye godag gegoonan, aaniin gaa-izhi-wanitood mino-bimaadiziwin iwe gii-maanzhidoodawind. Gii-bagidinaa awe dibaakoniwewinini wiin ji-inendang aaniin minik ge-diba'amawind awe gikino'amawaagan ganawaabanjigaadeg gikinawaajichigan. Gii-ikido gaye wegonen ge-izhichiged gikino'amawaagan ji-noojimod aaniin minik gaye ge-miinind ji-izhichiged iwe.

Gii-izhinizha'amawaa gikino'amawaagan gemaa odibaakonigewininiiman apii gii-giizhenjigaadeg, gaye awe Gaanada Akii gaa-dibendaagozid dibaakonige. Minji-niizh daa-ikidowag giishpin gikino'amawaagan ji-odaapinamogwen iweni diba'amaagoowin gemaa miinawaa ji-ganawaabanjigaadeg.[27] Giishpin wii-ganawaabanjigaadeg giiyaabi, awe Ogimaa- dibaakoniwewi-nini o-daa-inaan awiyan ji-naabishkaagod, ge-agindang mazina'iganan gaye ji-bizind-ang gaa-gii-ikidong imaa dibaakoniwewining. Giishpin awe oshki- dibaakoniwewinini aanjitood iwe inendamowin, bizaanig daa-ikidowag minji-niizh bakaan miinawaa dibaakoniwewinini ji-dazhiikang iwe. Miinawaa ganawaabanjigaadeg iwe inendamowin, amii imaa ge-onjiseg


IAP Bizindaagewin

ishkwaa-waach inendamowin; gaawiin daa-aanjichigaadesinoon IAP inendamowin.[28]

Apii gii-odaapinigaadeg inendamowin, Gaanada Ogimaawiwin gii-diba'ige iwe minik gaa-gii-andooshkigaadeg ji-diba'igeng. Giishpin awe gikino'amawaagan gaa-aabaji'aasig dibaakonigewininiwan gii-bizin-dawind, bizaanigo noongom o-daa-aabaji'aan, Gaanada dash daa-diba'ige, ji-wiindamawind gikino'amawaagan giishpin wenizhishing iwe diba'amaagoowin. Ngojigo naanodwaate izhise ji-dagoshinoomagak iwe diba'amaagoowin. Gii-diba'amawind gikino'amawaagan, Dibaakoniwewin Ozhibii'igewigamig owiindamawaan Aname'iewigamigong gaa-dibendaagozinid, ji-ozhibii'igenid ji-ikidowaad e-minjinaweziwaad gaa-gii-izhisemagak.

Gaanada dash gaye 15 endaso-ngodwaak daswaabik o-gii-saan zhooniyaa ji-di-ba'amawind gikino'amawaagan odibaakonigewininiiman. Gikino'amawaagan gii-inaa ji-diba'ang GST/PST/HST daaksis diba'amawind awe dibaakonigewinini.[29] Ngojigo 30% niswaabik endaso-midaaswwaabik gii-ondizi dibaakonigewinini minik gaa-ondizinid gikino'amawaaganan, mii iwe ako minik. Gikino'amawaagan gii-inaa ji-diba'iged giishpin awashime gaa-izhisenig ji-diba'a-mawaad dibaakonigewininiwan apiich minik Gaanada Ogimaawiwin deba'iged. Di baakonigewinini gaawiin bagidinaasii ji-diba'amawaad bakaan awiyan, ji-miigi-wed niigaan zhooniyaan gemaa godak metinigewinan e-dazhiikang iwe dibaako-nigewin ge-ondizid gikino'amawaagan.

Dibaakoniwewininiwag o-gii-ganawaabandaanaawaan gaa-diba'amawindwaa dibaakoni-gewininiwag debwe gwayak minik ji-diba'amawindwaa gaa-gii-ikidong imaa IRSSA gemaa ji-minoseg iwe minik deba'amawindwaa. Giishpin gaa-inendang dibaakoniwewinini ozaam niibiwa e-inagindamaaged awe dibaakonigewinini bizaanig o-gii-gashkitoon ji-niisinang.[30] Awe gikino'amawaagan gaye odibaakonigewininiiman daa-ikidowag e-inenda-zigwaa gaa-inendaminid dibaakoniwewinini bizaanigo dash godak dibaakoniwe-winini o-daa-ganawaabandaan iweni.

[27] Gaa-izhi-niizhigin ini dinookaanan bizindamowinan, awenenigo daa-andojige miinawaa ji-ganawaabanjigaadeg inendamowin IAP biminizha'igaadesinog. Gikino'amawaaganag eta o-daa-andooshkaanaawaa miinawaa ji-ganawaabanji-gaadeg Gaa-zanagak Dinookaan inendamowin giishpin gaa-maanzhisegwen. Gaanada Aki bizaanigo daa-gagwedwe ji-ganawaabanjigaadeg miinawaa giishpin gaa-maanzhisegwen inendamowin Gaa-zanagak Dinookaan eta.

[28] Ngoding eta izhise, daa-ayaamagan ji-izhaang dibaakonigewigamigong gii-ishkwaa-debinigaadeg ishkwaawaach IAP inendamowin, giishpin iwe inendamo-win izhinaagwak e-gii-izhichigaaniwanzinog iwe IAP diba'amaagoowin. Ji-debinigaadeg dibaakonigewin ge-gwayakosijigemagak gikino'amawaagan nitam daa-gojitoonaawaa gakina eyaabamagakin imaa IAP izhichigewining.

[29] Gaawiin gii-diba'igaadesinoonan daaksis giishpin dibaakonigewinini gaa-ano-kaadang iwe giishpin gikino'amawaagan gaa-izhi-dibendaagozid ishkoniganing.

[30] Ngoding, gaawiin nasine, giishpin gaa-inendang dibaakoniwewinini gaawiin gii-minochigesii awe dibaakonigewinini, nawach bangii ogii-miinaan apiich wiin iwe 15% minik ge-gii-diba'amaagopan Gaanada Ogimaawining.

Gichi-Dibaakonigewigamig Gaanada

IAP Gaa-gii-izhi-bimiwijigaadeg Ezhinaagwak:

Iwe IRRSA gaye gaa-gii-ikidoomagak Dibaakonigewigamig gii-izhinizha'igaade ge-izhichigeng gaa-gii-inindwaa awiyag ji-doodamowaad iwe IAP, ji-dibaabanji-gaadeg.

Dibaakonigewigamigoon: Dibaakonigewigamigoon o-gii-dibendaanaawaa ji-naa-gajitoowaad iwe Nakobii'igan.[31] Iwe dash Dibaakonigewigamig gii-ikidowag ji-bagidinigaadeg iwe ishkwaa-waach inendamowin. Gii-izhichigaaniwang iwe IAP, ningodwaaching wing eta gii-izhise gii-aanjichigaadeg iwe inendamowin gaa-gii-atood dibaakoniwewinini.[32] Iwe IRRSA Ji-izhichigeng Anookiiwin o-gii-asaan Dibaakonigewininiwan "ji-wiiji'aad ini Dibaakonigewigamigong anokiinid gii-ganawaabandamowaad iwe gii-dazhiikigaadeg iwe Naasaab Inendamowin".[33]

Dibaakonigewigamig Ji-naagadawaabanjigaadeg: Iwe Ji-izhichigeng Anookiiwin gii-achigaade Dibaakonigewigamig Ji-naagadawaabanjigaadeg (Crawford Maamawi-dibaakonigewin) ji-naagajitoowaad edoojigaadeg iwe IRSSA, memind-age go IAP gaye CEP. Dibaakonigewigamig Ji-naagadawaabanjigaadeg gii-maawadoonigemagan wiind-amaagewin gaye gii-wiindamawaawag Dibaakonigewininiwag edoojigaadeg IAP.

Gaanada Zagakibii'igewin Gaa-naagajitoowaad (NAC): Bepezhig Gaanada, Anami'ewigamigoon, AFN, Eshkiimeg, Merchant Law Group gaye dibaakonigewi-niniwag gii-dagwiiwag imaa NAC gaa-izhinikaadeg. Gii-inwaade ji-noondawindwaa gaa-wii-miigaadamowaad iwe Gakina Gaa-gii-izhi-sewaad Diba'amaagoowin CEP gaye dash bezhigwan ji-izhichigeng aabajichigaa-deg iwe IRRSA. Giishpin wii-aanjichigaadeg iwe IAP, nitam NAC gii-ikidoomagan aaniin wiinawaa enendaowaa jibwaa-ozhichigaadeg inaakonigewin.

Gaa-naagaji'iwewaad: Bezhig awiya gii-niigaanii, iwe dash IAP Gaa-naagaji'iwe-waad, gii-niizhiwag imaa: gete-gikino'amawaaganag (bezhig Anishinaabe bezhig dash Eshkiime), dibaakonigewininiwag (bezhig Gaanada Akiing Maamawibiwin bezhig dash gaa-bezhigowaad dibaakonigewininiwag), Anami'ewigamigong (bezhig Baakwaa'ishii bezhig dash Zhaaganaashii Anami'ewigamig, miinawaa dash Gaanada. Iwe IRSSA ogiimiinaa Gaa-naagaji'iwewaad owe ji-izhichigenid:

[31] Ini Ji-doodaming Anookiiwinan mii gaa-izhi-biminizha'igaadeg aaniin ge-izhi-chigewaad awiyag wii-gikendamowaad ge-izhichigewaad imaa Dibaakonigewi-gamigong.

[32] Gaa-gii-ikidong (ozhibii'iganens 15), iwe IAPing, bizaanigo gikino'amawaagan o-daa-gashkitoon dibaakonigewigamigong ji-izhaad, nising gii-izhichigaade imaa IRSSA, gaye ini AIL dibaakonigewinan awashime $250,000 gaa-izhisegin. Naaning, gikino'amawaaganag o-gii-gagwejimaawaan dibaakoniwewinini ji-bagidini-ndwaa ji-doodamowaad AIL dibaakonigewinan, niswe ini o-gii-debinaanaawaan.

[33] *Fontaine edibaakonang Gaanada Ogimaawiwin (2007)*, paras. 1, 2, 4, 12 gaye 13.

Ji-mikawaawaad ji-anokii'aawaad miinawaa ji-giishkinaawaad ini Ogimaa Dibaa-koniwewinini.

- Ji-mikawaawaad, ji-anokii'aawaad miinawaa ji-gikino'amawaawaad dibaakoniwe-winini.
- Gaa-ikidod awe Ogimaa Dibaakoniwewinini, ji-giiwe-anokii'aad gemaa ji-boonanokii'-aad dibaakoniwewininiwan.
- Ji-mikawaad gaye ji-anokii'aad gaa-nagajitoonid inendamowin mashkikii.
- Ji-naanaagadawendamowaad egowaad ini Ogimaa Dibaakoniwewinini doodamo-waad iwe IAP gaye ji-wiindamaagewaad aaniin ge-izhichigeng gegoo izhiseg.
- Ji-wiindamaagewaad aaniin eni-minosemagak imaa NAC.
- Ji-naagajichigaadeg bimiwijigaadeg iwe IAP.

Iwe Gaa-naagaji'iwewaad o-gii-ozhitoonaawaa godag Gaa-oko-dazhiikamowaad ji-dazhin-damowaad gaa-zanagakin gegoonan gii-dazhiikigaadeg iwe IAP gaye Naazhiya'ii Okobiwinens ji-dagwiimagak Gaanada gaye gikino'amawaagan ji-dazhiikamo-waad gegoonan gaa-inendamowaad.

Ogimaa Dibaakoniwewinini: Gaa-naagaji'iwewaad o-da-odaapinaan ini gaye Dib-aakonigewigamigoon da-inendamoog, amii dash awe Ogimaa Dibaakoniwewinini ge-izhi-naagajitood iwe IAP weweni ji-biminizha'igaadegin inaakonigewinan gaye gaa-inendang Dibaakoniwewin Ozhibii'igewigamig ji-izhisemagak. Ono da-ganawaabanjigaadewan:

- Ji-odaapiniind dibaakoniwewinini ge-inanokii'aad, ji-miinind anokiiwin, ji-maamiinomindwaa, ji-gikino'amawindwaa, gaye giishpin gwayak izhisesinog.
- Ozhichigaadeg gikino'amaagewin ge-izhi-minoseg IAP ge-ganawaabandamowaad igi Gaa-naagaji'iwewaad.
- Ji-ganawaabandang gaa-gii-inendang dibaakoniwewinini gagwedweng
- Ji-inaad aaniin ge-izhichigenid Dibaakoniwewin Ozhibii'igewigamig gaa-anokiinid.
- Ji-bizindawaad gikino'amawaaganag gaa-gii-inindaa omooshkinebii'iganiwaan gaawiin daa-odaapinigaadesiniwan.
- Ji-dibaajimotawind Dibaakonigewigamig gaa-ayaawaad gaye iwe Gaa-naagaji'iw-ewaad

Gaawiin IAP Izhichigan izhinikaadesinoon, Ogimaa Dibaakoniwewininiikaanag gii-asaawag ji-wiiji'aawaad Ogimaa Dibaakoniwewinini ji-anokiinid.

Gete-gikino'amaadiiwigamigong Dibaakoniwewin Ozhibii'igewigamig: Dibaakoniwewin Ozhibii'igewigamig o-gii-ogimaakandaan iwe IAP ji-mino-bimiwijigaadenig. Gii-wiindamaagemagan aaniin ezhiseg iwe IAP, gii-ganawaabanjigaadewan gaa-dagoshinoomagakin mooshkinebii'iganan; gii-wiiji'aawag igi gikino'amawaaganag gaawiin dibaakonigewininiwan gaa-gii-anokii'aasigwaa; o-gii-bimiwidoonaawaa iwe maamawi IAP izhichigewin; gaye ogii-dibaabandaanaawaa gaye gii-wiinda-maagewag ezhisenig iwe IAP. Gaa-niigaanishkang iwe Dibaakoniwewin Ozhibii'igewigamig o-gii-aanike wiindamawaan Ogimaa Dibaakoniwewininiwan ezhisenig IAP bimiwijige-win gemaa gegoon bakaan, gaye ini Ogimaan Gaanada gaa-ganootamawaad ezhisenid zhooniyaan gaye aabajichiganan.[34]

Dan Shapiro (namanjinikaaning, 2013-2021) gaye Dan Ish (2007-2013) Ogimaa-dibaakoniwewininiwag gii-inanokiiwag IAP. Ted Hughes (nisaw) gii-ogimaa-dibaa-koniwewininiiwi ADR (2003-07).

[34] Jibwaa Ode'iminigiiz 2008 izhiseg, Dibaakoniwewin Ozhibii'igewigamig gii-dagwii-magan imaa IRSRC Gete-gikino'amaadiiwigamigong Gwayakosijigewin Gaanada. Apii dash IRSRC gii-izhaamagak Zhooniyaa Ogimaakaang gaye Giiwedinong Ogimaakaang (DIAND), iwe Dibaakoniwewin Ozhibii'igewigamig gii-angwiimagan imaa DIAND. DIAND dash gii-ani-aanjinikaade Zhooniyaa Ogimaa gaye Giiwedino-Ogimaawiwin, miinawaa dash Anishinaabe gaye Giiwedin Gaa-anokiitaagemagak Gaanada. (INAC). 2019 gii-izhiseg, INAC gii-niizhwewaanagan, bezhig Dibaakoniwewin Ozhibii'igewigamig gii-ayaamagan ji-ganootamawaad Gaanadawan gii-ganoonaawaad Anishinaaben gaye Giiwedinong Gaanada (CIRNAC).

Gaanada Ogimaawiwin: dago gaye gii-dagwiid imaa IAP dibaakonigewining, Gaanada Ogimaawiwin o-gii-inigoon IRSSA ji-ondinang deminik aabajichiganan ge-aabajitoowaad IAP ji-gashkitoowaad odanokiiwiniwaa. Dibaakoniwewin Ozhibii'igewigamig gaa-anokiiwaad Gaanada Ogimaan odanokiitawa-awaan, Ogimaawiwin inaakonigewin obiminizha'aanaawaa. Amii dash aanawi Gaanada Ogimaawiwin gaawiin dibinawe gii-dagwiisii imaa dibaakonigwining, giiyaabi gii-naagajitoon ji-mino-aabadizid zhooniyaa gaye ji-anokii'indwaa awiyag ge-bimiwidoowaad iwe IAP.

Bimiwijigaadeg IAP: Gaa-gii-zanagak gaye Gaa-izhi-nakwetaageng

Gii-zanagan e-dazhiikigaadegin ini gikino'amawaaganag odibaakoniwewiniwaan ozaam e-baatiinadakin, oshkiya'ii gegoon e-izhiseg e-gii-gikendanzigwaa ji-izhise-nig gaye gaa-gii-izhisewaad gikino'amawaaganag, gii-zanagendaagwan. Amii dash gaa-izhi-anokiimagak iwe Gaa-naagaji'iwewaad Ogimaa Dibaakoniwe-winini gaye dibaakoniwewin Ozhibii'igewigamig gii-izhichigewag wegonen ge-minoseg.

Waakaa'iya'iing: Igi gikino'amawaaganag Naawiya'ii Gii-asaawag:

Iwe IAP gii-inwaade naawiya'ii ji-asind awe gikino'amawaagan ji-na'endang ji-ziidonind gaye anishinaabe izhitwaawin ji-aabajichigaadeg. Amii go apane gaa-inenjigaadeg gii-dazhiikigaadeg endaso-IAP awe gikino'ama-waagan nitam ji-minwenimind.

Jibwaa-maajiseg bizindamowin, awe gikino'amawaagan gii-ikido aaniindi ge-danakamigak; giishpin gaye ji-ikwewid, ji-ininiiwid ge-dibaakoniwed, giishpin gaye ji-ayaawaad gaa-ziidoshkigewaad, wiijiiwaaganag, gichi-ayaag, mino-ayaa-win gaa-anokaadamowaad gemaa anami'ewinini gemaa ge-aanikanootamaaged. Owe gii-izhichigewaad Dibaakoniwe Ozhibii'igewigamigong, amii gaa-izhi-dashki-toowaad awe gikino'amawaagan endawendang ji-izhisenig. Amii gaye gaa-izhiseg gaawiin memwaach awe gikino'amawaagan ji-gii-ozhisi-dood wiin obimi'ayaawin gaye ji-diba'ang ji-izhaad bizindamowining.

Igi Mino-ayaawin gaa-anokaadamowaad – Gaanada Mino-ayaawin o-gii-diba'aan – gii-ayaawag imaa bizindamowining giishpin gaa-inendang gikino'amawaagan. Igi iwe gaa-inanokiiwaad niibiwa gewiinawaa gii-izhaabaniing gete-gikino'amaa-diiwigamigong, gemaa odinawemaaganiwaa' gii-izhaawa', gii-anishinaabemowag gaye ogikendaanaawaa izhitwaawin gaye besho imaa gikino'amawaagan endaad gii-onjiiwag. Gaye, Gaanada Aki gii-izhitamaage ji-ayaamagak ge-izhi-giigidong aaniin igo apii ji-gaganoonaad gikeno'amawaaganan gaa-maanendaminid.

Imaa IAP bizindamowining, bizaanigo gikino'amawaaganag o-gii-ayaanaawaa anishinaabe izhitwaawin, gaye o-gii-biidoonaawaa gegoon ge-ziidoshkaagowaad. Gii-gagwe-izhichigaade iwe bizindamowin ji-onizhishing, awe gikino'amawaagan ji-namadabid imaa onjishkawiya'ii gaa-izhi-namadabid gewiin dibaakoniwewinini ji-minoseg ji-noondaadiwaad. Awe dibaakoniwewinini gii-michi-gagwedwe gaawiin wiin o-gii-gagwe-wawaanen-damimaasiin ini gikino'amawaagan egikendang e-gii-zanagendaagwaninig gaa-gii-bi-izhised awe gikino'amawaagan.

Mino-ayaawin Ziidoshkaage-anokiimaagan Debbie Cielen o-gii-wiiji'aa niibiwa gikino'amawaagana' IAP bizindaagewining.

IRSAS gaa-gii-anokiid oganoonaan Mino-ayaawin Ziido-shkaage-anokiimaagana' imaa London, ON.

IAP o-gii-anokii'aawaa' 100 dibaakoniwewininiwa' maawach gii-baatiinong apii.

Dibaadodeg iwe IAP:

2006 gii-izhiseg biinish 2012, gii-niiwinoon Ozhibii'igan Izhichigewin gaa-gii-inwaade-gin ji-wiindamaageng wegonen iwe IRSSA. Gii-wiindamaagemg wegonen iwe Nakobii'igan gaa-ijigaadeg; aa-niin apii gaye ge-odaapinanzigwaa awiyag iwe nakobii'igan, iwe gaye apii ge-booni-odaapinigaadegin CEP mooshkinebii'iganan gaye IAP mooshkinebii'iganan. Gaa-mazinaateseg gaye bizinjiganan o-gii-aabajitoonaawaa, Anishinaabe Ozhibii'-igewigamigong gaye Anishinaabewigamigong gii-izhi-wiindamaagewag gaye gaa-daataanginigaadeg gaye giigidowin agindaason ge-izhi-giigidong. Gii-aanakanootamaagaadewan ini mazina'iganan gaye gaa-bizindamang zhaaga-naashiimowin, baakwaa'ishiimowin/wemitigoozhiimowin, eshkiimemowin, anishi-niniimowin, anishinaabemowin, gaye ningodwaaso godak anishinaabemowinan. Maamaw, niiwin iwe Ozhibii'igan Izhichigewin gegaa miziwe 98% gii-izhi-dago-shinoomagan ngojigo 14 dasing.[35]

Dago gaye, iwe Dibaakoniwewin Ozhibii'igewigamig, gewiinawaa awashime 400 dazhiikewining gii-izhaawag, aaniindigo ezhi-okwiinowaad anishinaabeg. Ji-wiijitoowaad owe, Dibaakoniwewin Ozhibii'igewigamig o-gii-ozhitoonaawaan mazina'iganensan, dibaajimowinan, mazinaatesijigan e-wiindamaageng aaniin ge-izhiseg bizindawind gikino'amawaagan, aaniin gaye ge-izhi-ozhiitaad jibwaa-izhaad imaa bizinamowining.

Godag gaye oko-anokiiwinan o-gii-dibaadondaanaawaa IAP inakamigiziwin. Awe Dibaakonigewigamig Gaa-naagajitood o-gii-ayaan giigido-agindaason ge-izhi-giigidong wii-gik-endaman aaniin ezhiseg iwe IAP. Gaanada Aki ogii-ozhitoonaawaa Giigidootamaagewin gaye Wlindamaagewin Izhichigewin ji-wiindamaageng ezhiseg iwe IRRSA. Mino-ayaawin Gaanada gii-wiindamaagewag gaye ziidonigewag imaa anishinaabe dazhiikewining. Niibiwa dibaakonigewininiwag gaye o-gii-dibaadodaanaawaa iwe IAP, ishkonigan-ing e-izhaawaad e-ando-ganoonaawaad gikino'amawaagana'.

Minik gaye Gaa-ako-izhiseg:

E-gii-ozaamiinadakin mooshkinebii'iganan gaye bizindamowinan gii-onji-zanagise. Gaanada nitam gii-inendam 12,500 da-dasinoon mooshkinebii'iganan ge-dagoshi-noomagakin jibwaa-izhiseg Sept 2012 gii-giishkinigaadeg ji-odaapinigaadegin.[36] Jibwaa-ishkwaa-izhiseg 2009, awashime 12,500 mooshkinebii'iganan gii-dag-oshinoomaganoon, awashime 37,800 dash jibwaa-giishkinigaadeg gaa-izhiseg.[37] Gegaa naasaab IRSSA ji-aabaji'ind zhooniyaa 2,500 bizindamowinan ji-ayaa-gin endaso-gikinoonowin, ngojigo 9-giizis ji-izhiseg jibwaa-biindigajigaadeg imaa IAP "gemaa nojigo iwe apii" gakina dash dazhindamowinan ji-ishkwaa-dazhiiki-gaadegin Sept 2013 izhiseg. Awashime 12,500 bizindamowinan gii-ishkwa-dazhiikigaadewan 2012 gii-izhiseg amii dash gaye awashime 4,100 gii-gaashipoose iwe minik.[38] Amii dash gaa-inendaagwak nawach niibiwa zhooniyaa ji-asind imaa IAP gaye aanjiike ji-gagwe-minochigaadegin ini bizinamowinan ji-minoseg iwe gii-dazhiiki-gaadegin ini IAP dibaakoniwewinan.

Gii-zanagan ji-debisewaad Gaa-dibaakoniwewaad gaye aanind ji-ikwewiwaad gaye aanind ji-baakwaa'ishiimowaad/wemitigoozhiimowaad gaye ji-anishinaabe-wiwaad.[39] Maawach gii-ojaanimiziwaad, 100 gii-dashiwag gaa-dibaakoniwewaad, 8 igi gaa-wiiji'aawaad ogimaan, gaye bezhig Ogimaa Dibaakoniwewinini. Ji-gashkitoowaad owe, iwe Gaa-naagaji'iwewaad niiwing o-gii-gagiiginaawaa' dibaakoniwewininiwa' niiwin gikinoonowin gii-izhiseg.

[35] Gete-gikino'amaadiiwigamigong Dibaakoniwewin Ozhibii'igewigamig, *Gete-gikino'amaadiiwigamigong Dibaakoniwewin Ozhibii'igewigamig Nishike Dibaaban-jigewin Izhichigewin (IAP) Wedi Inake Wiindamaagewin Gaa-izhichigeng: Ji-gik-enjigaadeg iwe IAP gaye aaniin apii ge-ishkwaa-odaapinigaadegin IAP mooshki-nebii'iganan,* (Aadawaang: IRSAS, 2012, p. 4.; gaye Hilsoft Wiindamaage-win, "Gaa-ikidod Cameron R. Azario, Esq egiizhitood iwe IV Wiindamaagewin," gaa-gii-miinind Ontario Ogimaa-Dibaakoniwewigamig (2012).

[36] Iwe Anishinaabe oko-izhichigewin AFN gii-ikidowag jibwaa maajiseg iwe Nakobii'igan ngojigo 25,000 ji-dashiwaad gikino'amawaaganag ge-mooshkinebii'igewaad ji-ozhiitaang dash IAP izhiseg: waabandan ekidod Mahoney, "Nakobii'igan", P. 513.

[37] Godag mooshkinebii'iganan gii-biindigajigaadewad gii-ishkwaa-giishkinigaad-eg ji-odaapinigaadegin Inaakonigeng, 38,275 maamaw IAP mooshkinebii'iganan.

[38] Ngojigo 90% ini IAP bizindamowinan gii-giizhichigaadewan gii-inakamigan. Godag dash imaa Dibaakoniwewin Nakobii'igan Izhichigewin gaa-dazhinjigaadeg omaa.

[39] Igi gikino'amawaagananag bizaanigo gii-ikidowag giishpin endawenimaawaad ikwewan gemaa ininiwan ji-dibaakoniwenid; gaye izhigiizhwewin. Ji-ondinaawaad deminik Anishinaabe Dibaakoniwewiniwa', iwe Gaa-naagaji'iwe-waad o-gii-aabajitoonaawaa izhichigewinan ge-onji-debinaawaad Anishinaabeg ge-inanokiiwaad, gaye ji-ikidowaad Anishinaabe Dibaakoni-gewininiwag e-andawenimindwaa imaa Anishinaabe Dibaakoniwewinini Oko-izhichigewinin. Giiyaabi dash aana-gii-izhichigewaad iwe, giiyaabi gaawiin awashime 25% o-gii-ayaawaasiwaa Anishinaabe Dibaakoniwewininiwa'.

Gii-Dazhiikigaadegin Dibaakoniwewinan:

Amii gaa-inindwaa IAP gaa-dazhiikamowaad gakina ini dibaakoniwewinan ji-gii-zhitoowaad gaa-gii-dagoshinoomagakin. Niibiwa gaa-zanagiseg, ogii-dazhiikaanaawaan ji-gashkitoowaad iwe.

Gaa-gii-giizhichigaadesinog gemaa Gaawiin Gaa-gii-ayaamagazinog mazina'igan.

Ngoding ako, gaawiin gii-giizhichigaadesinoon dibaakoniwewin gaawiin gii-de-ozhiitaasiiwag gaa-dazhiikamowaad. Ngoding gaye gaawiin gii-gashkichigaadesinoon ji-debinigaadegin mazina'iganan. Gaa-daswewanagakin ogimaawining gaa-anokiiwaad gaawiin o-gii-ayaawaasi-waawaa anokiimaaganag ji-de-mikamowaad ini mazina'igan. Daabishkoo, gii-dagwaagig 2013, Gaanada Giba'odiiwigamigoon Gaa-izhi-dibend-aagokin gii-andooshkigaadewan 9,000 mazina'iganan, 2 biboon gii-azhese. Dibaakoniwewin Ozhibii'igewigamig o-gii-ozhibii'aanaawaa Naasaab Inendamo-win Ozhibii'igan Akiikaaning gaa-izhi-dibendaagokin giba'odiiwigamigoon Alberta gaye Saskatchewan gaye o-gii-wiidanokiimaawaan Gaanada Ogimaawiwin ji-izhi-chigeng wiiba ji-debinigaadegin ini mazina'iganan. Dibaakoniwe Ozhibii'igewigamig o-gii-anokii'aawaa awiya ge-wiiji'aanid ini gaa-aabaji'aasigwaa dibaakoniwewininiwa' ji-giigidootamaagowaad.

Dibaakoniwewin Ozhibii'igewigamig gaye o-giii-aabajitoonaawaa "Gichi-anokaa-degin Dibaakoniwewinan Izhichigewin" ji-ganawaabandamowaad gakina dibaakoni-wewinan gaa-giizhichigaadesinogin gemaa awashime 2 biboon gaa-michi-ategin; ji-ganoonaawaad gikino'amawaagan odibaakoniwewiniwan ji-wiindamaagenid aaniin wenji-dazhiikigaadesinog gemaa wenji-giishkinigaadeg. Nitam gii-anokaajigaadegin, 90% gegaa gakina gii-nakwetamoog igi dibaakoni-wewininiwag gikino'amawaaganan gaa-anokiitawaawaad.

Aanawi iwe gii-izhichigewaad, giiyaabi aanind gaawiin gii-giizhichigaadesinoonan ini dibaakoniwewinan. Imaa IRSSA, gaawiin o-gii-gashkitoosiinaawaa Gaanada

Niibiwa IAP dibaakoniwewinan gii-izhichigaadewan imaa British Columbia Gichi-dibaakonigewigamigong.

dibaakoniwewininiwag ji-gibitinamowaad ini gaawiin ji-bizinjigaazosig gikino'amawaagan, giishpin gaye gaa-gashki'aasig ji-ganoonaad gikino'amawaaganan gaa-gii-anokii'igod, gaye gaa-debinigaadesinogin mazina'iganan gemaa gaa-nibod awe jibwaa-dibaajimod. 2011 gii-izhiseg, Dibaakoniwewin Ozhibii'igewigamig gii-ikidowag ngojigo 1,000 – 1,500 gaawiin daa-giizhichigaadesinoonan imaa IAP.

Amii dash Dibaakoniwewin Ozhibii'igewigamig gaye Daataanginigan Okobiwinens gaye Gaa-naagaji'iwewaad gaye NAC gii-nanaando-gikendaanaawaa aaniin ge-izhichigeng gakina IAP dibaakoniwewinan ji-giizhichigaadegin. Gaa-naagaji'iwewaad gii-ikidowag bakaan ji-izhichigewaad gaye iwe NAC mii dash 2014 gii-izhiseg Ontario Gichi-Dibaakonigewigamig gii-ikidoomagan ji-ozhi-chigaadeg inaakoniwewin Mashi Gaa-giizhichigaadesinogin Dibaakoniwewinan (IFRP) ji-aabajitoowaad IAP "Ji-giizhichigaadegin Wiindamaagewin".

Iwe IFRP niizhing inake gii-izhichigewag ji-giizhitoowaad inin dibaakoniwewinan ge-gii-gibichisegibaniin. Nitam iwe Gichi-anokaadegin Dibaakoniwewinan gii-aabajichigaade. Giishpin minosesinog iwe, Dibaakoniwewinan Gaa-dazhiikigaadegin Dibaakoni-wewinini o-gii-gashkitoon ji-ganoonaad ini gaa-dagwiinid imaa, ji-izhichigewaad wegonen ge-minoseg ji-giizhichigaadeg iwe.

Giishpin dash iwe minosesinog, "Gichi-Wawezhichigewin Dibaakoniwewinini" gii-aabadizi ji-debinang ini ozhibii'iganan gaa-onjiiimagakin gaa-dagwiiwaad, ji-bizindawaad gikino'amawaaganan gaawiin memwaach mazin'iganan ji-ondinigaa-degin, "Wawezhichigewin Inake" ji-izhi-minoseg gemaa ji-gibitinigaadeg. Awe Ogimaa Dibaakoniwewinini o-gii-gashkitoon ji-ganawaabandang dibaakoni-wewin gaye ji-dibaakonigaadeg miinawaa.

Gegaa 60% dibaakoniwewinan gaa-gii-achigaadegin imaa IFRP gii-giiwemaga-noon ji-dazhiikigaadegin imaa daabishkoo ge-gii-izhisegiban gwayak.

Gaa-mikawaasindwaa Gikino'amawaaganag

Bezhig miinawaa gaa-gii-minoseg Giizhikamigiziwin Ge-izhichigeng Dibaajimowin ji-gikendamowaad aaniin ge-izhichigewaad wani'aawaad gikino'amawaagana'. Iwe apii gaawiin o-gii-gashkitoosiinaawaa ji-ganoonaawaad 300 gikino'amawaa-gana', maagizhaa aanind gii-nibowa' gemaa aakoziiwigamigong ayaawa' gemaa akiwenziiwigamigong, gemaa oodenaa, gemaa gii-aanjigoziwag.

Owe dash izhichigewin, Dibaakoniwewin Ozhibii'igewigamig o-gagwe-mikawaa' ini gaa-gashki'aasig ji-ganoonaad wegonen igo e-izhichiged ji-gagwe-mikawaad gikino'amawaagana'. Nitam daataanginiganing ako inaabiwag gaye aaniindi ezhi-ozhibii'igaadenig owii-nzowin awe gikino'amawaagan. Mii dash miinawaa gaa-daswewaanagakin ogimaawining izhi-gagwedwewag e-gagwe-mikawaawaad. Ishkwaawaach dash gagwejimaawag igi gaa-wiinzowaad gaa-ziidoshkaagewaad owiinzowiniwaan gaa-ozhibii'igaadenigin imaa gikino'amawaagan omazina'igan-ing, gaye Mino-ayaawin Ziidoshkaageg, dakoniwewininiwag gaye godag. Ji-gashkichigaadeg owe, Dibaakonigewigamigoon gii-ikidowag gakina izhichige-winan gii-ishpin gagwejimigowaad ini Dibaakoniwewin Ozhibii'igewigamigong gaa-ayaanid ji-wiindamaagewaad aandi eyaad awe gikino'amawaagan.

Giishpin dash gii-mikawind gikino'amawaagan, gii-giiwe-achigaadeni omazina'ig-an imaa gaa-izhi-ategin godag ini IAP mazina'iganan gaa-dazhiikigaadegin. Giishpin dash mikawaaganiwisig gikino'amawaagan, gaawiin nakwetanzig, gemaa inendanzig ji-dibaakoniwed imaa IAP, gii-odaapinigaadeni omooshkinebii'igan imaa IFRP ji-atening.

Manido-giizis 2019 gii-izhiseg, Gaa-wanisegin Gikino'amawaagan Dibaakoniwewin gii-aabajichigaade 841 dasing, 771 gikino'amawaaganag eganootamawindwaa.[40] Ogo 546 gikino'amawaaganag gii-mikawaawag amii dash odibaakoniwewini-waan gaa-izhi-dazhiikigaadenigin gemaa bakaan gii-izhi-dazhiikigaadewan. Godag IFRP gii-izhinizha'igaadewang gemaa gaawiin gii-biindigajigaadesinoonan.

Gikino'mawaaganag Gaa-gii-Gagwaadagi'iwewaad Dibaakoniwewinan:

Iwe IAP o-gii-diba'amawaawaa' gikino'amawaaga' gaa-gii-gagwaadagi'igowaad godag gikino'amawaaganag. Gii-inendaagwan dash ji-waabanda'iwewaad e-gii-gikendamowaad gaa-anokii-waad imaa gikino'amaadiiwigamigong enakamiganinig. Gii-zanagan owe gikino'amawaaganag ji-waabanda'iwewaad IRSSA gii-ikidooma-gan owe:

"Gii-gagwaadagi'aawaad wiiji-gikino'amawaaganiwaa', ogimaa o-da-gagwe-wiida-nokiimaa ji-mikigaadegin nanaando-gikenjigewinan, gemaa awiya ji-gii-waabang-ed, gaye gaagiigidowinan gemaa DR gemaa IAP dibaakoniwewinan ji-wiiji'ind awe gikino'amawaagan."[41]

Nitam, gii-ayaamagakin gaa-gii-izhibii'igewaad anokiimaaganag, Gaanada gii-on-dinamaage ini ozhibii'iganan ji-wiijitwaamagakin endaso-dibaakoniwewining.[42] Gaanada gaye gii-ikido ini ozhibii'iganan gaa-gii-ozhibii'igaadegin jibwaa-ayaad imaa gikino'amawaagan gaawiin gii-aabadasinoonan. Ginwezhiish igo Ogimaa Dibaakoniwewinini gii-ikido aaniin gedoojigaadegin ini ozhibii'iganan ji-aabajitoowaad igi dibaakoniwewininiwag gaa-anokiitawaawaad gikino'amawaaganan gaye giishpin bezhig gikino'amawaagan gaa-gii-doodang. Apii dash Waabigwanigiizis 2013 gii-izhiseg, Gaanada Ogimaawiwin ogii-ozhitoon Dibaajimowinan Niibidebii'igan ewiindamaagemagak aaniin ge-izhi-miinindwaa gikino'amawaaganag odibaakonigewininiimiwaa'.

Zhaagooch dash endaso-dibaakoniwewin gaa-gii-izhi-gagwaadagi'igod wiiji-gikin-o'amawaaganan, aazha gaa-gii-onashiwaadegin gii-aabadanoon. Gii-nisidawinigaade dash, ani-akiiwang, giiyaabi da-ayaawan ozhibii'iganan ge-wiiji'iwemagakin ani-dibaakoniweng. Mii dash gii-gichi-anama'egiizhiganigiizis 2013 gii-izhiseg igi Gaa-naagaji'iwewaad o-gii-bagidinaanaawaa "Wiiji-gikino'amawaaganan Gaa-gii-gagwaadagi'aad Izhi-chigewin" ji-aabadak Gaanada Aki ji-ondinang niibidebii'igan ini dibaakoniwewi-nan ji-onjiigin oshki-ozhibii'iganan ge-aabajichigaadegin ji-wiiji'iwemagakin. Gii-gaganoonidiwag dasah giigidowining ganage daa-bizinjigaadewan aanind di-baakoniwewinan jibwaa-giizhichigaadegin ozhibii'iganan.

Gii-ganawaabanjigaade owe biinish Manoomini-giizis 2017 Gaanada Aki gii-miigi-we Andooshkamowin Ge-izhichigewaad Dibaakonigewigamigong. Gaanada Ogimaa gii-ikido Ogimaa Dibaakoniwewinini gaye odanokiimaagana' gaawiin gwayak o-gii-izhi-aabajitoosiinaawaa ini e-gii-bagidinigaadegin dash ini ozaam gaawiin e-gii-ayaasinog gikino'amaadiiwigamigoo anokiimaaganag e-gii-gikendamowaad enakamiganinig, naagach gii-ikidowag – giishpin ayaawapan imaa gii-inaakonigeng daa-gii-wiiji'aa awe gikino'amawaagan. Gaanada gaa-inendang gaye British Columbia Gichi-Dibaakonigewigamig gewiin naasaab gii-inendam igi eta gaa-wiidookaagewaad Dibaakonigewigamigoon imaa Gete-gikino'maadiiwigamigoon Nakobii'igan ogashkitoonaawaa ji-baakinamowaad oshki-IAP dibaakoniwewin.

Migiziwi-giizis 2018, Gaanada gii-ikido ji-ganawaabandang miinawaa ini Wiiji-giki-no'amawaaganan Gaa-gii-gagwaadagi'igod dibaakoniwewinan ji-bagidinigaadegin ozaam e-ayaamagazinogin ozhibii'igan egii-gikendamowaad anokiimaaganag iwe apii, ji-wiiji'igod awe gikino'amawaagan odibaakoniwewining. Gaanada gii-ikido giishpin ezhi-minoseg, ono dibaakoniwewinan da-ganawaaban-jigaadewan agwaajiing imaa IAP izhichigewining.

[40] Ngoding gikino'amawaaganag gii-mikawaawag mii dash miinawaa gaa-izhi-wani'aawaad, miinawaa Gaa-izhi-wanisewaad e-aabajichigaadeg izhichigewin.
[41] *IRSSA, Ge-izhiseg D, Aanikebii'igan VIII. Imaa IAP izhichiganing gaawiin me-mwaach gaa-anokiiwaad gii-waabanda'iwesiiwag aaniin gaa-gii-izhi-gagwaadagi-iweng.*
[42] Gaanada Ogimaawiwin awashime 4,500 gii-biindigajigaadewan gaa-ishkwaa-ondinigaadegin ini ozhibii'iganan ge-aabajitoowaad igi dibaakoniwewininiwag.

Wiinibiigong Bizindaagewigamig

Bizhindaagewinan

Ji-gizhaatabi-dazhiikigaadegin gaye ji-gizhiisegin

Iwe IRRSA ikidoomagan mooshkinebii'iganan gaa-gii-biijinizha'amowaad gaagit-aadiziwaad gemaa gaa-aakoziwaad gikino'amawaaganag daa-nitamishkaawag. Gii-zanagichigemagan owe gii-gagwe-izhichigeng. Aaniin ge-izhi-gikenjigaadeg giishpin igi gikino'amawaaganag bwaatawi-izhisenig odibaakonigewininiwaa ji-zanaganisenig ji-doodamowaad. J-minoseg, mooshkinebii'igan gii-ozhichigaade awe gikino'amawaaga omashki-kiiwininiiman ji-izhibii'igenid ozaam e-aakoziiwaadizid awe gikino'amawaagan.

Gaye dash, aanind gaa-gitaadiziwaad gikino'amawaaganag ginwesh gii-bii'owag ji-bizindawindwaa ozaam ginwesh gii-izhise jibwaa-maawadoonamowaad gakina ozhibii'iganan gaa-andooshkigaadegin ji-ziidoshkaagemagakin. 2012 gii-izhiseg, iwe Gaa-naagaji'iwewaad o-gii-atoonaawaa "Awashime 65 daso-biboonewin" ji-wiiji'indwaa gikino'amawaaganag wewiib ji-doodamowaad. Jibwaa-bizindaageng, awe dibaakoniwewinini o-gii-dazhindaanaawaan mazina'ig-anan ge-aabadakin, gaye ji-onwaadeg aaniin apii ge-ikidowaapan ji-dibaakoni-weng gemaa Dibakoniwewin Nakobii'igan ji-aabajikaadeg. Gii-oko-bizindawaawag gikino'amawaaganag owe gii-maajichigaadeg ji-onji-wendag ji-aabadakin aabajichiganan. Ngodwaaso-giizis izhiseg, awashime 140 bizindaagewinan gii-ayaamaganoon imaa gojichigaade izhichigewin gii-izhichigeng.

Iwe Gaa-naagaji'iwewaad gii-izhichigewag ji-aabajichigaadeg iwe Gaa-gizhaatabinigaadeg Bizindaagewin (AHP), gaa-gitaadiziwaad gikino'amawaaganag gaye gaa-aakoziiwaadiziwaad, gemaa igi ginwesh gaa-bii'owaad ji-bizindawindwaa. Giishpin gikino'amawaaganag odibaakoiwewininiimiwaa' (gemaa wiinawaa gaa-ganootamaadizowaad gikino'amawaaganag) wii-aabajitoowaad AHP, dibaakoniwewinini o-daa-bizindawaa gaa-mazinaateseg ji-aabajichigaadeg. Mii dash ge-izhi-onwaadamowaapan aaniin apii dibaakoniwewin ge-ayaamagak. AHP daa-ayaamagan aana-ozhiitaasigwaa giishpin inendamamowaad igi ge-dagwiiwaad, ji-odaapinamowaad izhichigewinan ishkwaa-dibaakoniwewaad.

Gii-ani-ishwkaaseg, ji-giizhichigaadeg iwe IAP, iwe AHP gii-ani-aabadan, ji-bizin-dawindwaa gikino'amawaaganag; gii-dibaakoniwewag gikino'amawaaganag gii-shpin gaa-dagwiiwaad gaa-inendamowaad gemaa gaawiin gaye dash giishpin "ozhiitaasigwaa ji-bizindawindwaa" ayaasigwaa mazina'iganan.

Baamaa naagach ayaamagakin Bizindaagewinan gemaa Gibitinigaadegin:

Gii-waabanjigaade 2011 gii-izhiseg, 20% bizindaagewinan gaawiin gii-izhisesi-noonan, 40% ini gii-ayaamaganoon apii gaa-gii-izhising ji-ayaagin. Gii-ishkwaa-dazhindamowaad igi Gaa-naagaji'iwewaad, gii-izhichigewag ji-ayaamagakin ini bizindaagewinan apii ge-gii-ayaamagakin. Giishpin gibitinigaadegin 10 daso-dwaate daa-ayaamaganoon ini bizindaagewin-an, ji-ikidod awe dibaakoiwewinini gaa-niigaaniitang. Awe dibaakoniwewinini o-daa-wiidanokiimaa' ini gaa-dagwiinid ji-manaa-gibitina-mowaad iwe bizindaagewin, gaye o-daa-diba'ige'aawaan ini gaa-gashkitoosig ji-izhaad imaa bizinaagewining. 2013 gii-izhiseg, iwe Gaa-naagaji'iwewaad gii-ikidowag ji-inaakonigeng ji-dazhiikigaadegin ini gii-gibitinigaadeg bizindaagewin, aabajichigaadeg iwe Dibakoniwewin Nakobii'igan, gaye 2015 gii-izhiseg, gii-achigaade ozhibii'igan ji-dazhimindwaa igi gaa-atoosigwaa wiindamaage-ozhibii'iganan.

IAP bezhig iwe gaa-gii-ayaamagak imaa Nakobii'iganing.

Dibaakoniwewin gaye Diba'igewin Ji-debinigaadeg:

Gaa-dakwaagin Ikidowinan:

Iwe IRRSA gii-ikidoomagan aaniin ge-izhiseg ji-giizhichigaadegin ini dibaakoniwe-winan, bezhig maagizhaa 6 biinish 10 daso-baakiiginigan. Gaa-gii-inigokwaagin ini dibaakoniwewinan, mii Gaa-naagaji'iwewaad gaa-inendamowaad ji-onwaajigaadeg endaso-dibaakoniwewin ginwesh ji-dazhiikigaa-deg gaye ginwesh ji-bwaadiba'amawind gikino'amawaagan. Gii-nisidawinigaade aanind gikino'amawaaganag giishpin ondiziwaad gakina gegoo ji-miigiwewaad gakina mazina'iganan ge-dibaajimoomagakin gakina gegoo gaa-gii-izhisegd awe gikino'amawaagan ji-gashkitood gaye noojimowin. Godag gikino'amawaaganag maagizhaa daa-minwendamoog ji-ondiziwaad wiiba ji-giizhichigaadeg iwe diba'amaagoowin gaye ji-debinamowaad iwe diba'amaa-goowin. Gaye gii-ishkwaa-bizindaageng, awe dibaakoniwewinini gaye godag gaa-gii-dag-wiiwaad gii-ikidowag aaniin ge-doojigaadeg iwe dibaakoniwewin. Maagizhaa nawach ji-dakwaag iwe ikidowin gii-doojigaade, gaye gii-ozhibii'igaa-dewan wiinzowinan igi gaa-gii-dagwiiwaad iwe apii.

Gii-ishkwaa-gaganoonaawaad ini gaa-gii-dagwiinid gaye gii-ikidowaad igi NAC gaa-ayaawaad, iwe Gaa-naagaji'iwewaad eya gii-ikidoomagan ji-dakwaag (SFDs) ji-bimizha'igaadeg gaa-gii-maajii'aabadag January 2010 gii-izhiseg. Iwe SFD gii-ikidoomagan gaa-daswewaanagakin diba'amaagoowinan gaye gaa-apiitendaagwak diba'amaagoowin ge-miigiwed awe dibaakoniwewinini. Ini SFD gii-ayaawan gii-debinigaadegin daabishkoo gwayak gii-ayaamagak iwe mooshkinebii'igan, gakina gii-debinigaadegin mazina'iganan ge-ziidoshkaagema-gakin dibaakoniwewining, dibaajimowin, gaye ishkwaawaach achigaadegin diaajimowinan, gaye ge-ayizhiid gikino'amawaagan ji-noojimod; gaye gaa-dagwi-iwaad ji-ozhibii'amowaad e-aabajichigaadeg iwe SFD.[43] Iwe SFD gaawiin gii-ayaamagazinoon giishpin gikino'amawaagan gii-ganootam-aazod; giishpin gaa-gii-maanzhidoodaaged gaa-giigidod gaye gaa-ikidod e-gii-doodanzig; gemaa giishpin gaa-debwetawaasiwind awe gikino'amawaagan. Giishpin gaa-gashkitood jidebinang SFD, gikino'amawaagan o-daa-andooshkaan ji-dibaajimind gemaa godak gegoon/ Gakina gaa-dagwiiwaad o-gii-ayaanaawaa ji-ganawaabanjigaadeg iwe SFD bak-aan dibaakoniwewinini ji-waabandang gaawiin dash aapiji iwe gii-izhisesinoon.

Dibakoniwewin Nakobii'igan

Dago gaye dibaakoniwewinan gii-dazhiikamowaad dibaakoniwewininiwag bizind-aagewining, IRSSA gii-ikidowag Gaanada gaye gikino'amawaagan ji-dazhiikamo-waad dibaakoniwewin imaa Dibakoniwewin Nakobii'igan (NSP) Iwe NSP gii-aabajichigaade ji-waabanjigaadeg gaa-gii-izhised gikino'amawaagan gii-ganoonigod Gaanada gaa-ganootamaagod gaye gii-izhise awe gikino'amawaa-gan odibaakoniwewininiiman gaye Gaanada ji-onwaadamowaad diba'amaagowin.

Gii-ishkwaa-aabajichigaadegin ini nawach gaa-minosegin izhichigewinan, nawach gii-baatiinadanoon NSP 572 2011 gii-izhiseg biinish 742 e-ani-biboong. Awashime 4,400 gii-dasinoon ono dinookaanan dibaakoniwewinan, gemaa ngoji 13% gakina gaa-gii-biindigajigaadegin IAP mooshkinebii'iganan. Weweni gii-waabandamowaad igi gaa-dagwiiwaad gaa-gii-onji-gashkijigaadegin 99% dibaakoniwewinan NSP ji-debinigaadegin gii-gaagiigidong.

Ji-gashkichigaadeg Naasaab ji-izhi-dibaakoniweng:

Iwe IRSSA gii-ikidomagan: "Igi dibaakoniwewininiwag… da-gagwe-izhichigewag naasaag gii-dibaakoniwewaad gakina weweni ji-inaakoniwewaad."[44] Mii dash awe Ogimaa-Dibaakoniwewinini gaye gaa-wiiji'igod dibaakoniwewinini-wa' gii-gikino'amaagewaad gaye gii-maawaji'aawaad dibaakoniwewininiwa' ji-di-baajimowaad wegonen maawach gaa-minosenig, gaye ji-mino-wiijiindiwaad.

[43] Giishpin Aname'ogamig gaa-izhinizhawaasig awiyan ji-ganootamaagod bizindaa-gewining, Gaanada o-daa-atoon SFD ji-ganootamaagowaad.
[44] *IRSSA*, Dibinjigewin D, sec. III m (i) gaye (ii)

Ji-mashkawiimagak mikigaadeg ge-izhichigeng IAP doojigaadeg, awe Ogimaa-Dibaakoniwewinin gaye gaa-wiiji'igod dibaakoniwewininiwa' o-gii-wiidanokiimaa-waan ini Gaa-naagaji'iwewaad gaye Ozhibii'igewin Gaa-wiijitoowaad ji-ozhitoo-waad ge-izhichigewaad ji-gikino'amaagewaad aaniin ge-izhichigeng. Gii-dazhiikigaadegin ini IAP, awe Ogimaa-Dibaakoniwewinini 11 anookiiwinan, 10 gikino'amaage-mazina'iganan gaye 2 gagwejii-anookiiwinan gii-miigiwe.

Gaye dash, 2010 gii-izhiseg, gii-andooshkiged Gaa-naagaji'iwewaad, iwe dibaakonigewigamig gii-ikidoomagan ji-ayaamagak ge-onizhishing IAP wiindam-aagewinan ji-ozhichigaadegin ge-aabajitoowaad dibaakoniwewininiwag, gaye gi-gikino'amawaagan odibaakonigewininiiman gaye gaa-dagwiiwaad. Gaa-gichi-inendaagwakin IAP inendamowinan gii-agwa'igaadewan ji-gikenjigaa-deg aaniin enendaming ji-wiinjigaadesinogin gaye gikino'amawaaganag owiinzo-winiwaan, gaa-gii-doodaagowaad gaye gaa-gii-waabangewaad.

IAP gii-bagidiniwe awenen igo ji-waabandang mazina'igan giishpin dibaakoniwe-winini gaa-atoosign IAP izhichigan ji-dibaajimod gaa-mikang dibaakoniwewinini. Gikino'amawaaganag bizaanigo gaye o-daa-waabandaanaawaa iwe gaa-gii-izhi-chigeng giishpin gaa-maanzhichigaadegwen gegoon.

Gaa-mamaanzhiid Aanind Dibaakoniwewininiwag':

Aanawi IRSSA gii-ikidowag gikino'amawaaganag ji-ganootamaazowaad, gii-nisid-odamom dash IAP gikino'amawaaganag maawach daa-onizhishinini dibaakoni-wewininiwan j-ganootamaagowaad. Dibaakoniwewin Ozhibii'igewigamig gaa-gii-izhi-wiindamaaged gii-ikido "gakina igi gaa-dagwiiwaad gaa-gii-atoowaad owiinzowiniwaan Nakobii'igan gidigoo ji-anokii'ad dibaakoniwewinini ji-wiiji'ig IAP mooshkinebii'igan.[45]

2000 gii-izhiseg, iwe Gaa-okwiinowaad

British Columbia Gichi-dibaakonigewigamig o-gii-webaa-konaawaan dibaakonigewininiwan David Blott gaye odi-niniima' ji-giigidootamawaasig gikino'amawaagana' IAP gii-ishkwaaseg bizindaagewin 2012.

Gaanada Dibaakoniwewininiwag gii-ikido-wag "gete-gikino'amawaaganag moozhag gaawiin mashkawaadizisiiwag, daa-noojimowag, gaye o-daa-wiiji'igowaan dibaakoniwewininiwan" gii-ikidowag Diba-akoniwewin Izhichigewinan ji-aabajitoowaad ge-biminizha'amowaad inanokiiwin.[46] Gewiinawaa Dibaakoniwewinan imaa Ontario gaye Manitoba gaye Waasa Giiwe-dinong gaye Yukon Akiigaaning o-gii-aabajitoonaawaan ini gikino'amaagewinan.

Gii-ani-izhichigaadeg IAP, ngojigo niswaak dibaakoniwewininiwag o-gii-anokiita-wawaa' gikino'amawaagana', moozhag gii-minochigewag dibaakoniwewininiwag. Aanind dibaakoniwewininiwag gii-mamaanzhiiwag amiidash gaa-izhi-dagwiiwaad Gaa-naagaji'iwewaad Ogimaa-Dibaakoniwewinini gaye Gaa-okwiinowaad Dibaakoniwewininiwag, gaye Dibaakoniwe Izhichigewinan gaye Dibaakonigewi-gamigoon.[47]

Awe maawach gaa-gii-mamaanzhiid Calgary gii-onjiiwag Blott gaye Odininiima' awashime 5,600 gikino'amawaagana' o-gii-ganootamawaa'. Niizhing gii-giigidowag Dibaakoniwe Izhichigewinan, mii gaa-izhi-nanaando-gike-nimigowaad Dibaakoniwe-Naagajichigen, gaye gii-bizindawaawag Gichi-Dibaako-nigewigamigong Vancouverm 2012 igi Blott gaye Odininiima' gii-gibitina-awag ji-ganootamawaawaad gikino'amawaagana' imaa Nakobii'igan.[48]

Mii owe maawach gaa-michaag mamaanzhiiwin gaa-gii-izhichigewad dibaakoni-wewininiwag, gaawiin eta iwe bezhig. Naanigoding, Ogimaa-Dibaakoniwewinini gii-dibaajimo aanind gikino'amawaaga-nag gaa-ganootamaagowaad dibaakoniwewininiwan e-gii-maanzhidoodaagowaad gii-zaagijiwebinaawag igi dibaakonigewininiwag ji-dibaakonigesigwaa miinawaa. February 2013 gii-izhise, Gichi-Dibaakonigewigamig British Columbia gii-ikidowag ji-bakwadinaaganiwid dibaakonigewinini IAP ji-anokiisig miinawaa. Ogimaa-Dibaakoniwewinini gaye gii-ikido aanind dibaakoniwewininiwag e-wiidoo-kawaawaad gikino'amawaagana' e-diba'ige'aawaad dash gii-wiiji'aawaad ji-michi-mooshkinebii'igewaad. 2014 gii-izhiseg, Manitoba Dibaakonigewigamig Desabiwin gii-inaakonigewag gaawiin ji-diba'ige'aasiwindwaa gikino'amawaaganag ji-mooshkinebii'igewaad.

[45] Iwe Gete-gikino'amadiiwigamig Dibaakoniwewin Ozhibii'igewigamig, "Ndaa-aa-baji'aa na dibaakoniwewinini doodamaan iwe IAP mooshkinebii'igan?"
[46] Gaa-okwiinowaad Dibaakoniweg, Resolution 00-04-A, August 19-20, 2000.
[47] Gichi-Dibaakonigewigamig British Columbia. *Fontaine v. Gaanada (Gichi-Dibaakonige-ogimaa),* 2012 BCSC 839.
[48] *Fontaine v. Gaanada (Gichi-Dibaakonige-Ogimaa)* 2014 MBQB 113.

Apii gii-gibitinindwaa Blott gaye Odininiima' ji-dagwiisigwaa IAP dibaakoniwewi-ning, gete-dibaakonige-ogimaa gii-inaa ji-wiiji'aad ini gikino'amawaagana' ji-izh-aanid bakaan dibaakonigewininiiwigamigong. Gii-izhi-wiiji'iwe 'enwaazod ji-aanji'iwed" awenen dibaakoniwewinini ge-wiiji'aad gikino'amawaaganan ji-izhichiged egod Ogimaa-Dibaakoniwewininiwan. August 2012 gii-izhiseg, Ogimaa-Dibaakoniwewinini o-gii-ozhibii'aan mazina'igan ***Ezhibagozendaming Dibaakonigeng IAP*** ji-zoongichigaadeg ji-maanzhichigesig-waa dibaakonigewininiwag, gii-ikidong e-ani-akiiwang. Dibaakoniwewin Ozhibii'igewigamig gaye o-gii-ozhibii'aan Mazina'igan Ge-aabaji-toowad Dibaakonigewininiwag e-wiindamaagemagak aaniin ge-ayizhiing IAP da-zhiikigaadeg, aaniin maawach ge-onizhishing gaye ge-aabadakin.

Gaye dash Gaa-naagaji'iwewaad o-gii-ozhitoonaawaa "IAP Gwayak Izhichige-win" ge-waabanjigaadeg giishpin minwaabamaasiwind dibaakonigewinini gemaa awiya gikino'amawaaganan gaa-ganootamawaad IAP inake, ji-nanaando-gikeni-mind gaye ji-gwayakosind. 2014, NAC gii-ikidoomagan, British Columbia Gichi-Dibaakonigewigamig ji-miigi-wemagak Inaakonigewin ge-izhi-aabadak iwe Gwayak Izhchigewin gaye o-gii-on-asaan Bikish Ge-Ayaanid ji-wiiji'iwed Dibaakonigewigamig Gaa-naagajitoonid. Biinish gii-ishkwaaseg IAP, awe Bikish Gaa-Ayaanid Ji-wiiji'iwed o-gii-waabandaa-nan gaa-maanaabanjigaadegin daabishkoo gii-awi'indwaa gikino'amawaaganag zhooniyaan gaye noojigo gii-izhi-diba'ige'indwaa gikino'amawaaganag.

Iwe Gikino'amaadiiwigamigoon Dibaakoniwewigamig Ozhibii'igewigamig o-gii-maajinizha'aanaawaan niibiwa mazina'iganan ji-wiindamawindwaa anishinaabeg ishko-niganing, gaye godak gaye IAP gaa-wii-mooshkinebii'ig-ewaad aaniin ge-izhichigewaad IAP gemaa ADR wii-dagwiiwaad ji-debinamowaad ozhibii'iganan ge-ziido-shkaagowaad wii-dibaakoniwewaad.

Naagajichigaadeg gaye Ganawenjigaadeg IAP Mazina'igan Gakina:

Mazina'iganan Naagajichigaadegin:

Ozaam e-gii-baatiinadakin ini mooshkinebii'iganan, gii-onizhishin daataanginigan-ing ji-izhi-aa'aazhawinizha'igaadegin mazina'iganan gaa-dagwiiwaad ji-ayaawaad. Gaa-ishkwaa-ikidowaad igi Gaa-naagaji'iwewaad, iwe gaa-naagaji'iwemagak Dibaakonigewigamig 2010 gii-izhiseg gii-andojigewag Dibaakonigewigamigong Gaa-naagajitood ji-ozhitood ge-izhi-ganawenjigaadegin ini mazina'iganan. Niso-biboon gii-izhiseg, awashime 250,000 mazina'iganan gii-izhinizha'igaadewan owe inake daataanginiganing ji-izhisegin.

Mii dash gaye Dibaakonigewigamig Inaakonigewin gii-ozhichigaade 2011 gii-izhiseg ji-aabajichigaadeg Ge-izhi-aa'aazhawisegin Mazina'iganan: ge-izhi-gashki-toowaad gikino'amawaaganag odibaakoniwewininiimiwaa' ji-waabandamowaad aaniin ezhisenig odibaakoniwewiniwaa, gaye ji-atoowaad wiindamaagewin imaa. Gii-minose e-ondinigaadeg wenizhishing wiindamaagewin ji-gikendamong aaniin ezhiseg dibaakoniwewin, ji-odaapinigaadeg gegoon gaa-gibishkaagemagak.

IAP Wezhibii'igaadegin:

Iwe IRSSA gii-ikidoomagan IAP bizindaagewinan gaawiin awenen igo ji-waaban-danzig gaye IAP dibaajimowinan gaye gaawiin awiya odaa-waabandanziinan.[49] Naasaab iwe apii, gii-ikidom gikino'amawaagan "ji-gashkitood ji-de-binang wezh-ibii'igaadenig gaa-gii-ikidong [gii-bizindawind] ji-ganawenjigaadeg ngoji gaa-gii-ikidowaad Debwewin gaye Onashiwewin (TRC).[50]

Wiiba igo, iwe Gaa-naagaji'iwewaad gaye Dibaakoniwewin Ozhibii'igewigamg o-gii-dazhindaanaawaa iwe TRC gaa-gii-ikidoomagak ji-wiindamawindwaa IAP gikino'amawaaganag aan ge-izhi-ganawendamowaad IAP mazina'iganan. Gii-zanagan aaniish gaawiin mashi gii-onwaadesinoon aaniin ge-izhichigaadegib-an iwe ge-izhi-ganawenjigaadegin, daa-zanagan "ji-ikidong ge-ateg" imaa. Naagach, aapiji niibiwa bizindaagewinaning gikino'amawaaganag gii-ashodama-waawag gaawiin awiya ji-gikendanzig gaa-gii-ikidowaad, gaawiin gaye gii-debini-gaadesinoon ge-izhi-ganawenjigaadegin ini dibaajimowinan.

[49] *IRSSA*, Dibinjigewin D, sec. III 0 (i) gaye Aanikebii'igan II (iv)
[50] *IRSSA*, Dibinjigewin D, sec. III o (ii)

Iwe MyRecordsMyChoice.ca gii-ozhichigaade ji-wiiji'iwe-magak ji-wiindamawindwaa IAP gaye ADR gaa-wii-dibaakoniwewaad aaniin ge-gii-doodamowaad omazi-na'iganiwaan gaa-gii-aabajitoowaad ji-ziidoshkaago-waad gii-dibaakoniwewaad.

Gete-niigaanii Shelley Trevethan nitam ogaganoonaan gikino'amawaaganan Zepheria Joseph imaa Vancouver IAP Ishkwaawaach Wiindamaagewining.

2012 gii-izhiseg TRC gii-ikidowag ji-gagwe-maawadoonamowaad gakina ini IAP dibaajimowinan gikino'amawaaganag ji-ikidowaad gemaa gaawiin. Mii dash TRC gaye Ogimaa-Dibaakoniwewinini gii-andooshkigewag ji-wiindama-wind Gaa-naagajichiged Dibaakonigewigamig ji-wiindamaaged aaniin IAP dibaa-jimowinan ge-doojigaadegibaniin, ishkwaaseg iwe IAP.

Gaa-ishkwaa-inaakonigewaad Ontario Gichi-Dibaakonigewigamig gaye Ontario Dibaakonigewigamig Gagwedwewin, iwe Gaanada Gichi-Dibaakonigewigamig gii-ikidoomagan gikino'amawaaganag o-daa-dibendaanaawaan odibaajimowiniwaan.[51] Gichi-Dibaakonigewigamig gaye gii-ikidoomagan gakina ADR gaye IAP mazina'i-ganan gaa-ganawendangDibaakoniwewin Ozhibii'igewigamig ji-jaagizigaadegin ini eta mooshkinebii'iganan, gaa-gii-inaajimowaad gikino'amawaaganag gaye gaa-biindwewesegin, gaye dibaakoniwewinan IAP diba'amaagoowinan. Ini "IAP mazina'iganan" daa-ganawenjigaadewan baamaa September 19, 2027 izhiseg, bizaanigo gikino'amawaagan o-daa-andooshkaanan omazina'iganan gemaa ji-ganawenjigaadegin nepich, ji-aabajichigaadegin gikino'amaageng gaye imaa NCTR ganawenjigewigamigong.[52] Ishkwaaseg dash, giishpin gikino'amawaaganag andawendazig omazina'iganan gemaa ji-achigaadegin imaa NCTR, ini mazina'iganan daa-jaagizigaadewan.

Gii-ishkwaa-ikidong aaniin ge-doojigaadegin ini IAP dibaajimowinan, giiyaabi gaawiin o-gii-gikendaziinaawaa aaniin ge-izhi-webinamowaad IAP mazina'iganan. Gii-ikidom January 2020 gii-izhiseg, Ontario Gichi-Dibaakonigewigamig ji-inind Gaanada ji-ozhitood aaniin Dibaakonigewigamig ge-izhi-ganawendang dibaajimo-winan, Mazina'iganigamigong gaye Gete-ganawenjigewigamig Gaanada gaye NCTR. Megwaa gaa-ozhibii'igaadeg o'o IAP dibaajimowin, gaamashi Gaanada gaa-inaad Dibaakonigewigamig izhisesinoon, NCTR gii-nakwetaan iwe ikidowin.[53]

IAP Bizindaagewinan – Enendamowaad Gikino'amawaaganag, Godak awiyag, gaye Gaa-gii-dagwiiwaad

Gaa-inendamowaad gikino'amawaaganag gaye igi gaa-wiijitwaawaad ji-izhise-magak owe IRSSA dibaajimowin maawach nisawiya'ii ayaamagan IAP. Dibinawe ji-noondawindwaa igi gaa-dagwiiwaad imaa IAP, awe Dibaakoniwewin Ozhibii'igewigamig niizhwayag gii-izhichigewag ngojigo nisobiboon. 2013 gaye 2014, 23 gii-dasinoon okobiwinensan omaa miziwe Gaanada Akiing awashime 125 gii-dagwiiwag awiyag edazhindamowaad aaniin enwaadeg IAP gaye aaniin ge-izhi-dibaabanjigaadeg aaniin gaa-gii-izhi-minoseg. Mii dash Dibaakoniwewin Ozhibii'igewigamig o-gii-wiidanokiimaawaa Anishinaabe oko-izhichigewinan ji-okobiwinaawaad miinawaa 37 daswewaan gikino'amawaa-ganag ansihaabe oko-izhichigewinan, gaa-wiidookaagewaad, izhitwaawining gaa-wiidookaagewaad, aanikanootamaageg, anami'ewininiwag, Gaanada, dibaakoni-wewininiwag aye Dibaakoniwewin Ozhibii'igewigamigong gaa-anokiiwaad. 254 gete-gikino'amawaaganag gaye 72 igi gaa-gii-dagwiiwaad gaye igi gaa-gii-anokaadamowaad IAP gii-gaganoonaawag. Gaye Dibaakoniwewin Ozhibii'igewigamig o-gii-miinigowaa' mooshkinebii'iganan 24 dibaakoniwewininiwag gaa-gii-ganootamawaawaad giigikino'amawaagana'.[54]

[51] *Gaanada (Gichi-Dibaakonige-Ogimaa) v. Fontaine,* 2017 SCC 47 (CanLII), [2017] 2 SCR 205.
[52] Iwe NCTR gii-ozhichigaade ji-nepiji-ategin gaa-gii-maawadoonigaadegin dibaaji-mowinan megwaa TRC gii-izhichigewaad, amii dash enwaadeg ji-dibaajimong, jidebweng, gaye ji-gwayakisijigeng gaye ji-noojimong. Gichi-gikendaasoowigamigong Manitoba ayaamagan. Dibaakonigewigamigoon gaye gii-ikidoomaganoon awe Ogimaa-Dibaakoniwewi-nini ji-wiindamawaad IAP gikino'amawaagana' bizaanigo ji-ikidowaapan aaniin ge-izhisemagakin ini IAP dibaajimowinan: *Fontaine v. Gaanada (Gichi-Dibaako-nige-Ogimaa),* 2018 ONSC 4179.
[53] *Fontaine v Gaanada (Gichi-Dibaakonige-Ogimaa)* [Dibaakoniwewinan Ozhibii'iga-nan], 2014 ONSC 4585, aff'd 2016 ONCA 241, aff'd 2017 SCC 47.
[54] Gaa-dagonigaadegin omaa ikidowinan gii-onjiimaganoon imaa gaagiigidowining gaye mooshkinebii'iganing.

Gii-ayaamagan wiindamaagewin ji-debinamowaad gete-gikino'amawaaganag ji-gikendamowaad iwe IAP gaye aaniin ge-izhi-mooshkinebii'igewaad. Gegaa aabita (45%) gikino'amawaaganag Dibaakoniwewin Ozhibii'igewigamig gaa-gii-ganoonaawaad gii-ikidowag e-gii-noondamowaad IAP imaa onji. Aanind inawemaaganag, wiijiiwaaganag, anishinaabe oko-izhichigewinan, anishi-naabe ozhibii'igewigamigoon gemaa dibaakonigewininiwag gii-wiindamaagewag. Awashime aabita gaa-gii-dagwiiwaad gii-ikidowag e-gii-minwaabandamowaad ono dazhinjigewinan, e-gii-nisidotamowaad, e-gii-gitaabadak, weweni e-gii-ondi-namowaad wiindamaagewin gaye izhitwaawin e-gii-bizinjigaadeg. Gegaa gakina 80% gii-ikidowag iwe IAP gaa-gii-wiindamawindwaa e-gii-wiiji'igo-waad ji-mooshkinebii'igewaad gaye ji-dibaakoniwewaad, e-gii-minwendamowaad iwe IAP mazinaatesijigan. Giiyaabi dash, niibiwa awiyag gii-inendamoog nawach niibiwa ji-gii-gagwe-wiind-amawindwaaban Giiwedinong gaa-ayaawaad.

Amii gaye gaa-inendamowaad awiyag bebakaan e-onjiimagak wiindamaagewin Settlement Agreement e-gii-nisidotanzigwaa ngoding. Bezhig gikino'amawaagan odibaakoniwewininiiman gii-ikido owe:

"Aanind gikino'amawaaganag gaawiin o-gii-gikendanziinaawaa mayaa awenenag igi gaa-gii-dagwiiwaad gaa-inwaazowaad. Gaawiin ngikendaziin giishpin gaa-gaganoonidiwaagwen gaa-daswewaanagiziw-aad Gaanada Ogimaa gaa-igowaad ji-wiindamaagewaad iwe Nakobii'igan."

Gegaa gakina gikino'amawaaganag (94%) gii-ikidowag e-gichi-inendaagwak ji-wiiji'indwaa mooshkinebii'igewaad ezanagitaagwakin gaye ezanagendamowaad e-mikwendamowaad gaa-gii-izhi-nishiwanaaji'indwaa. Niibiwa gikino'amawaaganag dibaakoniwewininiwa o-gii-wiiji'igowaa'. Gikino'amawaaganag gaa-gii-anokii'aasigwaa dibaakoniwewininiwan o-gii-minw-aabandaanaawaa wiindamaagewin Dibaakoniwewin Ozhibii'igewigamig gaa-gii-miigiwed ji-wiiji'indwaa Gikino'amawaagan Ziidooshkige Anokiimaaganag (CSOs):

"[Ni-]CSO n-gii-wiiji'ig gakina mazina'iganan ji-maawadoonigaadegin. N-gii-gaganoonig; apane ngii-ig gaawiin awiya bakaan ji-gikendang. [Wiin] n-gii-ganoonig ako e-gagwejimid aaniin enamanji'owag."

Imaa dash bizindaagewining, gegaa gakina (78%) gikino'amawaaganag gii-ikido-wag e-gii-minwaabandamowaad gaa-gii-dazhi-bizindawindwaa. Igi gaa-gii-maanaabandamowaad, daa-gii-onizhishin nawach mangisagaagiban gemaa waaseyaagiban. Bezhig gii-ikido, *"Maawach ngii-zhiingendaan anaamisag gabeshiiwigamigong gii-danakamigak."* Gega gakina igi gikino'amawaaganag gii-ikidowag e-gii-minwaabandamowaad anishinaabe izhitwaawin gii-dagwiimagak. Bezhig gikino'amawaagan gii-ikido:

"Anishinaabe izhichigewinan gaye izhitwaawin gii-gichi-wiiji'iwemagan. Gaawiin ngii-gikendaziin; ngii-goshkwendaan niibiwa izhitaawin gidayaamin. N-gii-goshkwendaan niibiwa ngwana ngii-wanitoon anishinaabewichigewin."

Amii gaa-inendamowaad gaa-ziidoshkaagewaad gaye gichi-ayaag ji-gii-gikino'am-awindwaaban izhitwaawin igi gaa-gii-dagwiiwaad bizinaagewining. Bezhig gii-ikido:

"Gakina gaa-gii-dagwiiwaad daa-gikino'amawaawag IRS gaye ezhisemagak bimaadiziwin ishkoniganing."

Gegaa gakina gikino'amawaaganag gaa-gii-biinaawaad awiya' ge-ziidoshkaago-waad gii-minwendamoog, nawach gii-na'endamoog. Aanind dash gii-wii-nishike-izhaawag gemaa gaawiin o-gii-andawenimaasiwaa-waa odinawemaaganiwaa' ji-noondaminid gaa-gii-doodawindwaa. Bezhig gikino'amawaagan gii-ikido, *"ngoding gaawiin ginandawenimaasiig ji-gikendamowaad aaniin gaa-izhiseyin"*.

Awashime 90% gikino'amawaaganag gii-ikidowag e-gii-minwaabandamowaad e-gii-ayaanid gaa-ziidoshkaagewaad gaa-gii-wiiji'igowaad ji-nisidotamowaad. Awashime 75% gikino'amawaaganag gii-ikidowag gaa-ziidoshkaagewaad o-gii-wiiji'igowaa onoojimowiniwaang e-gii-gaganoonindwaa, e-ayaawaad gaye imaa.

"[Gaa-ziidoshkaaged anokiimaagan] gii-minochige. N-gii-wiiji'ig apane go gii-dibaakoniweyaan. Gewiin e-gii-izhaad gikino'amaadiiwigamigong, o-gii-nisidotaan gaa-idamaan. Nawach gii-onji-wendan. N-gii-debwetaan gaawiin ji-wiindamaagesig gaa-ikidowag."

Mino-ayaawin Ziidoshkaage-anokiimaagan Ray Thunder -child gaa-izhi-dibendaagozid imaa Anishinaabe Gikin-o'amawaaganag imaa British Columbia, dewe'ige meg-waa gii-bizindawindwaa gikino'amawaaganag imaa Vancouver.

Gikino'amawaaganag daa-wiiji'aawag ji-mooshkinebii'a-mowaad IAP Mooshkinebii'igan.

William Herney Eskasoniing gaa-onjiid gii-dagwii imaa gii-ganoonindwaa gikino'amawaaganag Nova Scotia.

Gikino'amawaagan Laurel Curley, Six Nations ishkoniga-ning gaa-onjiid Grand River FN, gii-dagwii gewiin egaga-noonind Ishkwaawaach Wiindamaagewining imaa Brantford, ON.

Niibiwa gikino'amawaaganag o-gii-minwaabandaanaawaa dibaakoniwewinini e-ayaanid obizindaagewiniwaang, e-gii-ozhiitaanid weweni (86%), gaye e-gii-nisi-dotaagwaad (76%), gaye e-gii-gagwedwed weweni, gaye e-gii-manaaji'igowaad (75%) apane go. Amii gaa-inendamowaad gikino'amawaaganag owe gaa-gii-izhichigeng maawach e-gii-inendamowaad wiinawaa e-bizindawindwaa weweni. Bezhig gikino'amawaaganag gii-ikido:

"Awe dibaakoniwewinini n-gii-manaaji'ig gii-gagwejimid gaa-gii-izhiseyaan gii-izhaayaan gikino'amaadiiwigamigong. Gaawiin nin-gii-ositaawendanziin gaa-gii-izhi-gagwejimigooyaan. N-gii-nakwetaanan gakina, dibinawe, edebweyaan, gwayak igo."

Aanind dash gii-ikidowag e-gii-inendamowaad e-zanagitaagwag wiinawaa eta dibaakoniwewininiwag ji-nisidotamowaad, e-gii-zanagitamowaad giigidowin.

Gii-waabanjigaadeg bizindaagewin, 90% minik gakina dibaakoniwewinan o-gii-gashkitoonaawaa gikino'amawaaganag ji-diba'amawindwaa Dibakoniwewin Nakobii'igan gii-izhichigeng. Bezhig Gaanada gaa-ganootamawaad owe gii-ikido:

"Niibiwa ini dibaakoniwewinan gii-gashkichigaadewan ji-diba'amawind awe giki-no'amawaagan gaye e-gii-diba'amawind gii-ishkwaakamigak. Gaawiin omaa apii daa-gii-gashkichigaadesinoon ji-diba'amawindwaa gikino'amawaaganag iwe minik gaa-gii-gashkichigaadeg."

Zhaagooch dash aanind gikino'amawaaganag gaye godak gaa-gii-dagwiiwaad gaawiin o-gii-minwaabandanziinaawaa gaa-gii-izhichigeng ozaam e-zanagak e-gii-inendamowaad gaa-gii-izhi-maanzhidoodawindwaa. Bezhig gikino'amawaagan gii-ikido:

"Gaawiin daa-gii-izhichigesiiwag ji-diba'amowaad minik gaa-gii-izhised awiya. Gaawiin o-daa-gii-aabajitoosiinaawaa iwe dinookaan dibaabanjigewin. Aaniin wiin ini gaa-nishiwanaajisewaad gaa-inawendiwaad? Iwe dash wiin maanendamowin? Gii-maajiiwinaawag abinoojiiyag, gii-biigonigaadewan inawenjigewinan. Gaawiin miziwezisiiwag ndinawemaaganag."

Ngoji go 60% gikino'amawaaganag gii-ikidowag e-gii-minwaabandamowaad gaa-gii-izhi-diba'amawindwaa. Iwe naasaab minik gii-ikidowag awe dibaakoniwewinini e-gii-wiindamaaged weweni gaa-gii-onji-inaakoniwed. Gegaa aabita gii-ikidowag e-gii-dibaakoniwewaad IAP wewiib, gaawiin ginwesh. Gegaa gakina o-gii-minwaabandaanaawaa minik gaa-izhiseg ji-diba'amawindwaa gaawiin ginwesh e-gii-bii'isigwaa.

Minik gaa-gii-diba'amawaawaad odibaakoniwewininiimiwaan aanind gaawiin o-gii-minwendaziinaawaa gikino'amawaaganag gaye godak. Niibiwa gii-ikidowag gaawiin awashime 15% minik daa-gii-diba'igesiiwag, gakina iwe Gaanada ji-gii-diba'ang. Bezhig gikino'amawaagan gii-ikido, "Amii niin enendamaan imaa IAP gaawiin 15% minik ndaa-gii-diba'igesii." Bezhig gikino'amawaaganag odibaakoniwewininiiman gaawiin gii-inendanzii gaa-wiin 15% minik deminik gii-izhisesinoon gaawiin gii-diba'igaadesinoonan aanind gegoonan gaa-gii-dazhiikang dibaakoniwewinini. Niibiwa bebakaan gii-inendamowag igi gaa-gii-dagwiiwaad gaa-inendaagwak ezhi-diba'amawindwaa dibaakoniwewininiwag, 74% minik gikino'amawaaganag o-gii-minwaabandaanaawaa.

Niibiwa gikino'amawaaganag gii-ikidowag maawach gaa-gichi-inendaagwak gii-izhaang imaa IAP gaawiin wiin aapiji diba'amaagoowin, iwe gii-gashkitoowaad ji-dazhindamowaad gaa-gii-izhisewaad maawach gaa-gii-gichi-inendaagwak. Bezhig gikino'amawaagan gii-ikido:

"Niin maawach nin-gii-wii-dibaadondaan e-gii-wanitoowaan ndizhitwaawin, nin-dizhigiizhwewin, eshkiime-mamaandaawiziwin, ombigi'aawasowin, gaye apii gii-nishiwanaaji'id mekadewikanawewikwe. Mii iwe dibaajimowin gaa-gii-wii-dibaajimo'aan. Gaawiin wiin aapiji awe zhooniyaa."

O-gii-gichi-inendaanaawaa niibiwa gikino'amawaaganag gii-dibaajimowaad gaa-gii-doodawindwaa gikino'amaa-diiwigamigong IAP izhichigewining.

Gaa-gii-gikenjigaadeg:

Gii-ani-ishkwaaseg iwe IAP, gichi-inendaagwan ji-waabanjigaadegin ini gaa-gii-gikenjigeying gaa-gii-izhisewaad gikino'amawaaganag gikino'amaadiiwigamigong gii-doojigaadeg iwe IRSSA.

E-gichi-inenimindwaa Gikino'amawaaganag:

- Ji-dazhinjigaadeg gaa-gii-izhi-nishiwanaaji'igooying o-gii-zanagendaanaawaa igi gaa-gii-izhisewaad gaye odinawemaaganiwaa, anokiimaaganag gaye godak IAP. Gaa-ziidoshkaagewaad gii-wiiji'iwewag giiyaabi ji-maanzhidoodaagowaad gii-dazhindamowaad gaa-gii-izhi-nishiwanaaji'indwaa gikino'amawaaganag imaa IAP gii-dagwiiwaad gaye ji-mino-ayaawaad ji-noojimowaad. Ziidoshkaagewin gii-ayaamagan bizhishig iwe apii. Gii-izhichigewag ji-ziidooshkawindwaa gikino'amawaaganag waasa giiwedinong gaa-ayaawaad gaye igi gaa-ayaasigwaa daawin, gaye igi giba'odiiwigamigong gaa-ayaawaad, dibaakoniwewininiwag gaye ji-wiiji'iwewaad.

- Gikino'amawaaganag o-gii-andawendaanaawaa ji-wiindamawindwaa niibiwa wiindamaagewin ge-nisidotamowaad, ji-anishinaabebii'igaadenig gaye. Ji-gikendamowaad gikino'amawaaganag ji-nisidotamowaad ezhisenig, niibiwa gegoon gii-gojichigaade ji-aabajichigaadeg. Mii enendamowaad gikino'amawaaganag daa-gii-onizhishin giishpin gakina igi gaa-dagwiiwaad wiindamaadiwaapan miziwe ji-gikendang gakina awiya imaa gaa-dagwiid.

- Gii-inaawag gikino'amawaaganag ji-onizhishingiban ji-anokii'aawaad dibaakoni-wewininiwan, giiyaabi dash igi gaa-gii-izhichigesigwaa o-gii-andawendaanaawaa ji-wiiji'indwaa, ji-ayaawaad ge-aabajitoowaad.

- Gii-inindwaa gikino'amawaaganag ji-odaapinaawaad dibaakoniwewininiwan ge-maa dibaakoniwewikwen gii-onizhishin gaye ge-dazhi-dibaakoniwewaad ji-inend-aagwak edibendamowaad obizindaagewiniwaa. Ini IAP bizindaagewinan miziwe gii-danakamigan, ge-izhi-minosed awe gikino'amawaagan gaa-gii-onji-izhichigeng, gaawiin aapiji waasa ji-izhaasig ji-noondawind.

- Gii-diba'igaadeni obimishkaawin awe gikino'amawaagan gaye gaa-ziidoshkaago-waad gakina ji-gashkitood ji-dagwiid gaye ji-onji-ziindendanzig gii-dazhiikang owe dibaakoniwewin.

- Gii-dagonigaadeg gaye anishinaabe izhitwaawin imaa dibaakoniwewining gii-onji-minwendamoog gikino'amawaaganag.

- Izhichigewinan daabishkoo iwe Gaa-wanised Gikino'amawaagan Izhichigewin, gaye Nawach Ji-gizhaatabiseg Bizindaagewin, amii ono gaa-minosegin ji-gashki-chigaadeg iwe dibaakoniwewin gaye ji-gashkitoowaad igi gikino'amawaaganag ji-debinamowaad endawendamowaad.

- Gii-ayaawaad imaa gikino'amawaaganag odibaakonigewininiimiwaa' gaye igi dib-aakonigewininiwag gaa-anokiitamaagewaad imaa Gaa-naagaji'iwewaad gaye NAC – gaye Dibaakoniwewin Ozhibii'igewigamig gaa-anokiiwaad – gii-onji-minose ji-gashkichigaadeg iwe IAP ji-wiiji'indwaa igi gikino'amawaaganag.

- Gii-gagwe-wiindamawaawag gikino'amawaaganag aaniin ezhised zhooniyaa ji-wiiji'igowaad ji-inwaanaawaad zhooniyaan ge-diba'amawindwaa gaye ji-onji-gimoodimigosigwaa awiyan gaawiin gaa-inwaazod zhooniyaa.[55]

[55] Nasine owe o-gii-ositaawendaanaawaa. Bezhigwayak, gaawiin gikino'amawaaganag gii-inendanziiwag ji-wiindamawind-waa aaniin ge-izhi-metinaawaad ozhooniyaamiwaan. Mii dash aye aanind dibaakoniwewininiwag gaa-izhichigewaad e-gii-wiindama-waawaad gikino'amawaagana' aaniin ge-izhi-metinaawaad zhooniyaa, ji-waaba-nda'iwewaad aaniin ge-izhi-ganawenimind zhooniyaa, ji-zhooniyaakemagak, giiyaabi zhooniyaa ji-onjised imaa gaa-gii-miinindwaa, gaawiin eta ji-michi-adaawewaad gegoon.

Bakaan ji-aabajichigaadegiban Dibaakoniwewin Ji-onji-ondizing:

- Gii-gagwedweng bizindaagewining gii-onizhishin gii-dazhiikigaadegin ini dibaakoniwewinan apiich wiin dibaakonigewigamigong gaa-izhichigeng, memindage gii-gagwejimindwaa gaa-gii-nishiwanaji'indwaa awiyag. Ini IAP bizindaagewining, nawach gii-agaasinoon nawach gii-na'endam awe gaa-dibaakoniwed gikino'amawaagan, nawach gii-manaaji'aa. Igi gaa-gii-dagwiiwaad imaa IAP gii-ikidowag e-gii-debinigaadeg debwewin nawach apiich wiin dibaakonigewigamigong danakamigangiban, ji-aazhide-ganoonind awe gikino'amawaagan.

- Giishpin aanawi e-gii-gagwejimind awe gikino'amaagan gaa-gii-izhised, giiyaabi gakina igi gaa-dagwiiwaad weweni o-gii-gagwejimaawaan ji-manaazomaawaad gaye gaawiin aapiji dibaakonigewi-ikidowinan ji-wanashkwetaagokin. Nawach daa-gii-minose aanjiike giishpin gikino'amawindwaaban ge-ayizhiiwaad gakina gaa-dagwiiwaad.

- Gii-ondinigaadegin "mazina'iganan ge-ziidoshkaagemagakin" nayaanch gii-onji-minosemagan owe dinookaan bizindaagewin. o-gii-wiiji'igonaawaa gikino'amawaaganag e-mikwendamowaad gaa-gii-izhise-waad gaa-gii-izhi-maanzhidoodawindwaa; igi godag ji-nisidotamowaad epiichi-debwemagakin gaa-ikidong; gaye dibaakoniwewininiwag ji-dibaakoniwewaad. Naasaab dash, e-gii-gashkichigaadeg ji-maamiinobii'igaadegin ini mazina'iganan gii-minose awe gaa-dibaakoniwed nawach dash e-gii-gizhaatabiseg iwe izhichi-gewin aanind goda.

- E-ayaad imaa gaa-gikendaasod gaye gii-wenjichigaade gaawiin ji-onji-wawaane-ndamimaad gaa-gagwejimaad daabishkoo dibaakonigewigamigong gaa-izhiseg ako, bebakaan gii-onji-giigidowaad e-giikaandiwaad daabishkoo. Zhaagooch dash gii-aabaji'ind awe dinookaan gaa-gikendaasod ginwesh nawach gii-izhisemagan iwe bizindaagewin apiich wiin ayaasigiban imaa.

- Iwe IAP gii-waabanda'iwemagan gii-bizindawindwaa gikino'amawaaganag aapiji niibiwa dibaakoniwewinan gii-gashkichigaadewan. Naasaab dash apii iwe IAP dinookaan izhichigewin gii-izhi-dagwiiwag igi Gaa-naagaji'iwewaad gaa-ayaawaad, gaye dibaakoniwewininiwag gaye gakina igi gaa-gii-dagwiiwaad IAP ji-dazhiikamowaad gakina gegoon.

Gichi-anishinaabe
David Budd
Wiinibiigong

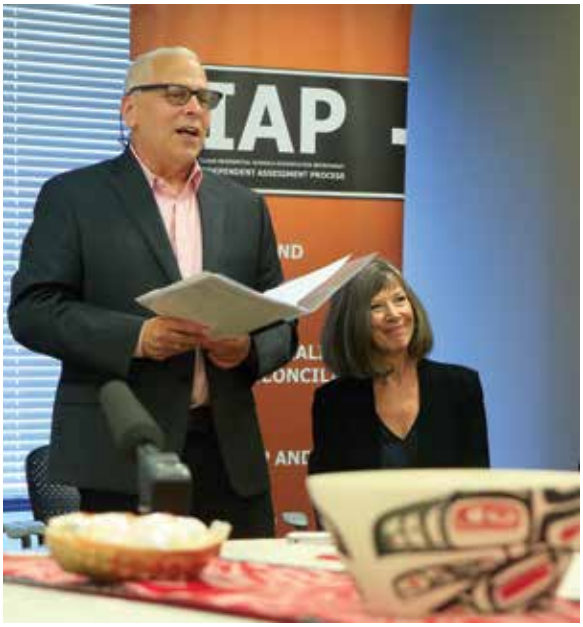
- Giishpin gii-wiinind godak gikino'amawaagan e-gii-nishiwanaaji'iwed, nawach gii-zanagan ji-dazhiikigaadeg, ji-gikenjigaadeg aaniin mayaa apii iwe gaa-gii-izhiseg gaye wegonen gaa-ozhibii'amowaad gaa-gii-anokiiwaad gekendamowaad. Bakaan izhichigewaapan ji-dazhiikamowaad ono gii-maanzhidoodaaged godak gikino'amawaagan daa-gii-minose gii-dazhiikigaadegin gakina dibaakoniwewinan gaawiin wiin memwaach aaniin apii gaa-achigaadeg gemaa gaa-noondaageng.

- Aanind dibaakoniwewinan gaa-dazhimindwaa godak gikino'amawaaganag imaa gaa-dazhiiked awe gikino'amawaagan giiyaabi izhidaawag igi godak. Gii-onji-zanagendaagwan ji-noojimowaad ji-gwayakendamowaad igi gete-giki-no'amawaaganag gii-daawaad bezhigwanong. Gii-bizindawaawag weweni ji-gikenjiganiwisigwaa igi gikino'amawaaganag gaa-gii-maanzhidoodawindwaa gaye igi gaa-gii-doodamowaad, gaye ji-minowiijiinding dazhiikewining.

- Gii-ani-gitaadiziwaad gikino'amawaaganag gaa-gii-zhaabwiiwaad, gii-naniizaa-nendaagwan ji-ishkwaa-bimaadiziwaad gemaa ji-gashkitoosigwaa ji-dagwiiwaad odibaakoniwewiniwaang. Gii-gichi-inendaagwan igi gikino'amawaaganag gaa-aakoziwaad gemaa gaa-gitaadiziwaad wewiib ji-dazhiikigaadenigin odibaakoniwewiniwaan.

- Gii-aabajichigaadewan Gaa-dakobii'igaadegin Dibaakoniwewinan (SFDs) ji-ikidong aaniin mayaa ge-ayizhiing amii dash gaa-onji-gizhaatabi-dazhiikigaadegin ini dibaakoniwewinan, gaawiin ginwesh ji-bii'owaad gikino'amawaaganag ji-diba-amawindwaa giishpin gaa-onwaadeg apii gii-bizindawindwaa.

- Gaawiin bizhishig gii-doodanziiwag iwe Dibakoniwewin Nakobii'igan (NSP) ji-gii-gizhaatabisegiban iwe dibaakoniwewin gaye nawach bangii zhooniyaa ji-gii-aabadizipan. Iwe Gaa-gizhaatabinigaadeg Bizindaagewin, SFDs gaye NSPs gii-naagwan bakaan izhichigewaapan nawachh daa-gii-gizhaatabise gaye nawach bangii zhooniyaa daa-gii-aabadizi.



Gaa-naagajichigewaad Ogimaa Mayo Moran (gichinikaaning) wiijigaabawitawaan Ogimaa-dibaakoniwe-wininiwan Dan Shapiro.

Iwe e-gii-minoseg dibaakoniwewin gii-onizhishin ji-dazhiikigaadegin ini dibaako-niwewinan weweni gaye naasaab. Gii-izhinaagwan – ji-ganawaabandamowaad enendamowaad, ge-izhichigewaad, gaye gikino'amaagewin – ji-minoseg naasaab ji-izhichigeng dago bikish ji-dana-nokiiwaad igi dibaakoniwewininiwag ji-dazhiikigaadeg endaso-dibaakoniwewin. Gaye dash iwe Gaa-naagaji'iwewaad gaye Ozhibii'igewin Gaa-wiijitoowaad gii-nagishkodaadiwag ji-dazhindamowaad gaye ji-wiindamaagewaad aaniin ge-izhi-chigemagak IAP ngoding gii-zanagendaagwak.

- Bezhig gaa-gii-zanagendaagwak gii-giizhichigaadeg IAP dibaakoniwewin mii iwe ji-gagwedweng Article 12, godak gikino'amaadiiwigamig daa-gii-dagonigaade imaa IRRSA. Amii dash aanind gikino'amawaaganag o-gii-michi-mooshkinebii'aanaawaa IAP gii-ishkwaa-maajiseg iwe izhichigewin. Gii-gichi-inendaagwak gakina gete-gikino'amawaaganag ji-gii-dagonindwaaban imaa IRRSA e-inendaagoziwaad ji-ondiziwaad imaa onji, gii-onji-bwaawisemagan ji-giizhichigaadegin dibaakoniwewinan gaye dash gii-inendaagwan aaniin gete-gikino'amawaaganag ji-noonde-aakoziwaad jibwaa-bizindawindwaa. Ji-giizhichigaadeg, gii-ikidom zagakaach ji-giizhichigaadegin ini dibaakoniwewin-an ji-minoseg.[56]

- Ji-giizhichigaadegin gakina dibaakoniwewinan gaye ishkwaawaach iwe dibaako-niwewin naasaab ji-izhi-ganawaabanjigaadeg daabishkoo iwe nitam gaa-gii-doo-jigaadeg, gii-inendaagwan ji-wiinjigaadegin gaa-zanagendaagwakin ji-giizhitoo-waad dibaakoniwewinan gaye aaniin ge-doodamowaad iwe ji-izhiseg gwayak. Gii-wiidanokiimaawag gakina gaa-dagwiiwaad gaye ogimaawinan gwayak ji-izhiseg aaniish aanind dibaakoniwewinan nitam gii-dazhiikigaadewan gemaa gii-aanjichigenaaniwan.

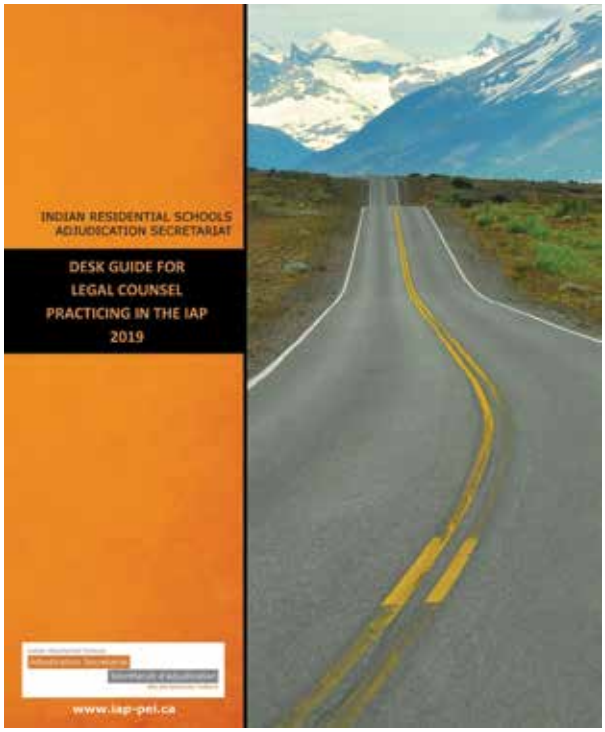
Dibenindizowin, Naagaji'iwewin gaye Bimiwijigewin:

- Gaa-naagaji'iwewaad – mii imaa gii-ayaawag gakina gaa-dagwiiwaad imaa IRRSA – ji-gwayakobinidiwaad dazhiikamowaad ini IAP dibaakoniwewinan. Ji-gashkichigaadeg iwe, gakina gaa-dagwiiwaad bebakaan gii-onji-ganootamaa-gewag, giiyaabi dash e-inwaazowaad ji-wiijitoowaad iwe IAP gaa-inaakonigeng imaa IRSSA. Gaye gii-andawendaagozi bezhig bikish Niigaaniishkang – gaawiin bezhig ogima-awiwin ji-izhi-dibendaagozid – ji-nookaadizid gaye ji-nitaa-wiidanokiimiwed.

- Megwaa igi Dibaakonigewigamigoon Gaa-naagaji'iwemagakin o-gii-dibaabandaa-naawaa iwe IRSSA giiyaabi igi Dibaakonigewigamigoon o-gii-dazhiikaanaawaan ini IAP dibaakoniwewinan apiich gaa-gii-inendaagwak ji-izhiseg. Gii-ayaasig awiya ji-dazhiikang giishpin awiya bakaan maanaabandang gegoon, ini Dibaakonigewigamigoon gii-ayaawan nitam ji-izhi-maajii-ganoonaad gikino'a-mawaagan giishpin gegoon gii-wii-dazhindang.

- Bezhigwan apii, aanind gaa-zanagendaagwakin – daabishkoo inaakonigewinan gaa-izhi-daadoseg bimiwijigewin" gaye miinawaa wii-nanaando-gikenjigaadeg godak gikino'amawaagan gaa-gii-nishiwanaaji'aad wiiji-gikino'amawaaganan – weweni dazhiikigaadegin, Gaanada ji-izhi-dazhiikang ono agwajiing IAP. Amii gaa-izhi-andawendaagwak ji-gaganoonidiwaad igi gaa-dagwiiwaad gaye ji-gagwe-dazhiikamowaad weweni gakina dibaakoniwewinan.

[56] July 27, 2015 gii-izhiseg, Hon. Madam Dibaakonige-ogimaakwe B.J. Brown imaa B. C. Gichi-dibaakonigewigamigong o-gii-gibitinaanan giiyaabi dibaakonigewinan ji-atood Article 12 imaa Nakobii'igan. Ishkwaawaach iwe gikino'amaadiiwigamig gaa-gii-dagonigaadeg imaa Article 12 iwe Kivalliq Gikino'amaadiiwigamig February 2017 gii-izhiseg. Gete-gikino'amawaaganag gaa-gii-izhaawaad imaa Kivalliq Gikino'amaadiiwigam-igong gii-miinaawag January 25, 2020 ji-mooshkinebii'amowaad IAP.



Gikino'amawaagan odibaakoniwewininiiman o-gii-aaba-jitoon wiindamaage-mazina'igan ji-gikendang aaniin ge-izhichiged IAP bizindaagewining ji-ozhiitaad.

Dago Gaa-naagaji'iwewaad gaye Dibaakonigewigamigoon Gaa-naagaji'iwe-magakin, gii-ayaawag awiyag gaa-gii-dibendamowaad iwe IAP daabishkoo NAC Dibaakonigewigamigoon gaa-ganawaabandang gaye Ogimaa-Dibaakoniwewinini. Aanind gii-inaawag ji-dazhiikamowaad gegoonan imaa IRSSA gaye JI-izhichigeng Anookiiwin gaawiin dash gii-ayaamagazinoon bezhig ji-izhichigeng ji-wiidanokii-midiwaad ogimaag gaye gaa-naagaji'iwewaad gaye Dibaakonigewigamigoon. Gii-mashkawi-dibenjigemagan iwe IAP giiyaabi dash gaawiin geget gii-ayaasin-oon ge-minoseg ji-wiidanokiimidiwaad gakina igiweniwag gaa-gii-ayaawaad imaa.

- Minosemagan ji-dibaakoniweng giishpin inenjigaadeg e-dibeninindizoomagak gaye debwe e-dibenindizoomagak dash. Imaa IAP gii-ayaawan gegoonan ge-onji-gashkichigaadeg ji-dibenindizoomagak iwe dibaakoniwewin izhichigewin. Igi dibaakoniwewininiwag gii-mikawaawag gaye gii-anokii'aawag Gaa-naagaji'iwewaad gaa-gii-doodang, gakina gaa-dagwiiwaad IRSSA onji, gaye e-gii-naagaji'igowaad Ogimaa-Dibaakoniwewininiwan.

- Gaawiin eta Gaanada gii-nagaashkaagesii dibaakoniwewining, gii-izhise gaye ji-ondinaad ini zhooniyaan ge-aabadizinid IAP ge-aabadizinid i-izhichigeng. Gaanada gii-naagajitood ji-bimiwijigaadeg iwe IRSSA bikish ayizhiim ji-izhinaag-wak gaye ji-izhichigeng gii-gichi-inendaagwan, ji-ganawenjigaadeg iwe dibenind-izowin gaa-daswewaanagakin ogimaawinan ji-gikendamowaad e-dibenindizoo-magak iwe izhichigewin.

- Igi gikino'amawaaganag odibaakoniwewininiimiwaa' minik gaa-diba'amawindwaa ngoding gaawiin gii-minwaabanjigaadesinoon. e-bagidinindwaa dibaakoniwewininiwag ji-diba'amawindwaa nawach apiich wiin Gaanada gaa-gii-miigiwed (15% minik gaye minik gaa-gii-ondizid gikino'amawaa-gan gii-izhise ngoding gikino'amawaaganag gii-odaapinamawaawag ge-gii-ondiz-iwaapan, nawach bangii e-gii-ondiziwaad. Ginwesh da-izhise ji-diba'amawindwaa dibaakoniwewininiwag gaye gikino'ama-waagan odibaakoniwewininiiman gii-inendaagwan, gii-asaawag dash dibaakoni-gewininiwag ji-dagwiiwaad giishpin gikino'amawaagan maanaabamaad odibaako- niwewininiiman giishpin giikaandiwaad gaawiin dash o-daa-ayaawaasiin dibaak-oniwewininiwan ji-ganootamaagod.

- Niibwa weweni gii-izhichigewag dibaakonigewininiwag gaa-gii-anokiitawaawaad gikino'amawaagana', aanind dash gaawiin gii-minochigesiiwag dibaakonigewini-wag IAP gaa-anokiiwaad, gii-maanzhisewag gikino'amawaaganag. Dibaakoniwewinini Izhichigewinan odaana-gii-ozhitoonaawaan ge-biminizha'amo-waad, gaawiin IAP dibaakoniwewininiwag memwaach o-gii-aabajitoosiinaawaan. Ogimaa-Dibaakoniwewinini gaye Gaa-naagaji'iwewaad o-gii-waabanda'aa-waa' dibaakoniwewininiwa' aan ge-izhi-wiiji'aawaad gikino'amawaagana' IAP.

- Gikino'amawaaganag gaawiin o-gii-gashkitoosiinaawaa aaniin ge-izhi-mimizhimaawaad odibaakoniwewininiimiwaa' giishpin maanaabamaawaad. 2014 gii-izhiseg, Dibaakonigewigamigoon o-gii-asaawaan Gaa-dibenindizod Gaa-Maamiinomiwed ji-dazhiikang gii-mamaanzhiid dibaakoniwewinini.

- Niibiwa e-ayaagin dibaakoniwewinan, IAP gii-zanagendamoog ji-dazhiikamowaad ini dibaakoniwewinan ge-bizindamowaapan dibaakoniwewininiwag gaye gakina gaa-dagwiiwaad. Giishpin bwaawisegin ini dibaakoniwewinan amii miziwe gaa-izhi-bwaawishkaagin ini dibaakoniwewinan, e-maanzhisewaad gikino'amawaaganag. September 19, 2012 gii-izhiseg gii-giishkinigaade ji-odaapinigaadegin mooshkine-bii'iganan amii dash gii-bwaawishkaamagak ozaam e-gezika-baatiinadakin.

- Gaawiin gii-gashkichigaadesinoon ji-anokaadegin ini dibaakoniwewinan giishpin gegoon gii-maanzhisemagak, zhaagooch gii-gashkichigaade ji-anokaadegin zhaa-goochi igo. Gii-gichi-anokaade e-waabanjigaadeg ge-maanzhisegiban, ji-manaa-maanzhichi-gewaad gaye ji-dazhiikamowaad gegoon maanzhisenig, gaye ji-dibaabandamo-waad ge-izhi-maanzhiseg.

- Anokiimaaganag gaye gii-ganawaabamaawag gii-ani-ishkwaaseg IAP: weweni ji-doodawindwaa, gaye deminik zhooniyaa ji-ayaad imaa ani-ishkwaakamigak ji-diba'igaadegin ini gaa-ishkosegin dibaakoniwewinan. Weweni gaganoonidiwag gaa-anokiitaagewaad gaye anokiiwin gaa-dibendaagozi-waad gaye ji-bizindawaawaad anokiiwi'iwewin gaa-nagajitoowaad. Gii-ashodamawaawag gaye ji-anokiiwaad igi IAP gaa-dazhiikamowaad ji-ayaa-waad imaa ji-giizhitoowaad odanokiiwiniwaa, ji-izhisenig ji-noondawindwaa igi gikino'amawaaganag biinish ji-diba'amawindwaa.

IRSAS anokiimaaganag gii-dagwiiwag gii-maawaji'idi-waad gikino'amawaaganag Anishinaabe Gikino'amawa- aganag Vancouver.

E-mazinichigaadeg waasechigan Gichi-Ogimaawigami-gong dibaajimoomagan gaa-gii-izhaawaad gikino'ama-waaganag gikino'amaadiiwigamigong gaye gaa-izhise-nid odinawemaaganiwaa'.

Niibiwa gii-anokaadewan ini dibaakoniwewinan IAP gaa-ayaagin, endasogiizhig dash gaa-gii-dazhiikamowaad gaa-gii-onji-gashkichigaadeg ji-doodaming. Owe gii-gischi-anokaadeg owe dinookaan anokiiwin – memindage gaa-gii-zana-gendaagwak ji-noondaming – o-gii-izhi-zanagendaanaawaa igi gaa-gii-anokaa-damowaad. Gakina anokii-izhichigewinan gaa-gii-dazhiikamowaad IAP gii-izhichigewag wego-nen igo ji-wiiji'aawaad odanokiimaaganiwaa' ji-mino-ayaanid.

- Imaa IAP gichi-anishinaabeg gii-anokii'aawag ji-wiiji'aawaad ini anokiimaagana'. Gii-dagwiiwaad igi gichi-anishinaabeg o-gii-wiiji'igonaawaa ini anokiimaaganag nawach weweni ji-wiiji'aawaad ini gikino'amawaaganag gaye ji-bizindawaawaad ini gaa-niigaaniinid anishinaabeg gekendaasowaad.

Wiiji'iwemagak Ji-Noojimong gaye JI-gwayakosijigaadeg:

- Niibiwa igi gikino'amawaaganag gii-gashkitoowaad ji-dazhindaagowaad gaa-gii-izhisewaad dibaakoniwewininiwan, ezhi-na'endamowaad, o-gii-wiiji'igonaawaa ji-noojimowaad gaye ji-gwayakendamowaad.

- Maamaw, ganawaabandamang gaa-gii-izhisewaad niibiwa gikino'amawaaganag gete-gikino'amaadiiwigamigoon gaa-gii-zhaabwiiwaad, gii-onizhishin ji-nisidawini-gaadeg aaniin gaa-izhi-maanzhichigemagakin ini gikini'amaadiiwigamigoon.

- Aanind gii-ayaawag gaa-gii-diba'amawaasiwindwaa gikino'amawaaganag, ngoding inaakonigewining onji. O-gii-zanagendaanaawaa gii-izhisewaad iwe igi gikino'amawaaganag, aanind dash gaye o-gii-minwendaanaawaa e-gii-gashkitowaad ji-dazhindamowaad gaa-gii-izhisewaad.

- Gii-gichi-inendaagwan ji-wiindamawindwaa gikino'amawaaganag e-gii-minjina-wezing gaa-gii-izhisewaad, gaawiin ji-gii-izhisesigwaa. Gaawiin daa-giii-onizhishinzinoon giishpin awiya ikidosigiban e-minjinawezing iwe gii-izhisewaad gikino'amawaaganag. Gaanada gaye Anami'ewigamig gii-ikidowag enendamowaad e-minjinaweziwaad gaa-gii-izhisewaad gikino'amawaaganag giishpin inendang gikino'amawaagan. Gii-izhichigeng owe, gii-izhi-zoongitaagwaniniwan odibaajimowiniwaan, gaye dash IAP gii-wiiji'iwemagan ji-noojimowaad gikino'amawaaganag.

- Zhaagooch dash gaawiin aapiji gii-andomaasiiwag Anami'ewigamigong gaa-izhi-dibendaagoziwaad bizindaagewining gaawiin dash o-gii-gashkitoosiinaawaa ji-ikidowaad iwe minjinaweziwin. Gaawiin gi-gii-ositaawendami'aasiiwag gikino'amawaaganag ji-biinindwaa awiyag imaa obizindaagewiniwaang gaa-maanzhiwiijiiwaawaad daabishkoo awiyag gemaa anokii-izhichigewinan. Giishpin dash weweni doojigaadeg – daabishkoo wiindamawindwaa igi anami-ewigamigong gaa-dibendaagoziwaad, wii-ikidowaad e-minjinaweziwaad gaa-gii-izhisewaad gikino'amawaaganag – amii gaa-izhi-minwendaagwak e-gii-dagwii-waad igi-anami'ewininiwag, ji-onji-noojimowaad gikino'amawaaganag.

- Amii gaa-inendamowaad gaa-gii-dagwiiwaad iwe IAP gii-ishkwaakamigak ji-izhi-chigeng gegoon ji-noojimowaad gikino'amawaaganag. Iwe gaa-gii-inwaadeg Noojimowin Izhichigewin daa-gii-onizhishin maawiin giishpin nawach ikidowaapan aaniin epiichi-gichi-inendaagwak anishinaabe- izhitwaawin ji-aabajitoowaad gikino'amawaaganag.

Gikino'amaadiiwigamigoon Dibaakoniwewigamig Ozhibii'igewigamig gii-waabanda'iwewag ezhichigewaad gii-maawaji'idiwaad igi Debwewin Gaye Gwayakosijige-win ngoji omaa akiing.

I'i IAP gii-inwaade ji-wiiji'ind awe gikino'amawaagan gaa-gii-maanzhidoodawind. Gii-izhise ji-gashkitoowaad gikino'amawaaganag ji-ondiziwaad zhooniyaan gaa-gii-maanzhidoodawindwaa gikino'amaadiiwigamigong gii-izhinizha'ondwaa. Naasaab iwe apii, iwe oko-IAP izhichigewin gii-inwaade ji-maamawinindwaa dazhiikewining gaa-ayaawaad ji-noojimowaad anishinaabewichigewining gaye odizhigiizhwewiniwaang ji-wiijiiwaawaad owiijiiwaaganiwaa' gaye odinawemaa-ganiwaa'. Iwe oko-IAP gaawiin aapiji gii-aabajichigaadesinoon, ozaamaa gaawiin aapiji gii-gikenjigaadesinoon ji-gii-doodamowaapan gikino'amwaaganag gaye gaa-bimi-wijigemagak e-gii-izhisesinog wiiba iwe IAP gii-maajitaamagak. Nawach babenak gikenjigaadegiban iwe izhichigewin gaye nawach wendagiban ji-aabadizid zhooniyaa daa-gii-onizhishin ji-oko-noojimowaad awiyag.

- O-gii-gichi-inishkaagonaawaa gaa-gii-izhaawaad gete-gikino'amaadiiwigamigong, gaawiin wiinawaa eta, oniijaanisiwaa' oozhisiwaa, oniig'igowaa gakina igo. Ami dash gaa-izhi-andawendaagwak ji-ziidooshkawindwaa ji-noojimowaad igi ge-ani-ayaawaad ani-akiiwaninig. I'i IAP gii-wiiji'iwemagan owe nake: gii-inaawag ji-giigidowaad giishpin gichi-ma-anendamowaad igi gikino'amawaaganag mikwendamowaad gaa-gii-izhisewaad gikino'amaadiiwigamigong – giishpin inendang gikino'amawaagan – ji-izhaang imaa bizindaagewining ji-ziidoshkaagowaad gichi-ayaa' gaye anokiimaaganag. Niibiwa gikino'amawaaganag gii-ikidowag gii-aabajitoowaad iwe IAP e-gii-min-wendamowaad odinawemaaganiwaa' gaye gaa-izhi-ganawaabandiwaad. Gichi-inendaagwan ji-wiindamawindwaa inawemaaganag gaa-gii-izhiseng gikino-amaadiiwigamigong, ji-ziidoshkawindwaa gikino'amawaaganag memindage ini inawemaaganag ge-bi-ayaawaad. Zhaagooch dash daa-gii-aabajichigaadewan nawach niibiwa ini IAP izhichigewin-ing daabishkoo minjinaweziwin, ge-izhi-noojimong, oko-izhichigewinan gaye ji-wiiji'iwewaad gaa-inanokiiwaad ji-wiiji'indwaa gikino'amawaaganag.

- Aanawi gii-ayaawaad imaa IRSSA gaye IAP gaye Debwewin gaye Gwayakosijige-win, gaye Gakina Gaa-gii-diba'amawindwaa, gaye Anishinaabe Noojimowin gaa-gii-bimiwijigaadegin bebikish gaye wiinawaa gaa-gii-danakamigiziwaad. Mii dash gaa-izhi-wawaanendamowaad gikino'amawaaganag wegonen ono wiiji-iwewinan gaa-inwaadegin. Nawach babenak waawiiji'idiwaapan igi gaa-wiinindwaa daa-gii-onizhishin ji-gii-wiiji'indwaa IRSSA gikino'amawaaganag ji-nisidotamowaad gaye ji-debinamow-aad iwe Nakobii'igan. Daa-gii-izhisemagan ji-nisidotamong aaniin gaa-izhi-maanzhichigemagakin ini gete-gikino'amaadiiwigamigoong gakina Gaanada awiyag ji-gikendamowaad.

- Bezhig maawach gaa-gii-zanagendaagwak imaa IRSSA gaye IAP izhichigewining ji-nisidotaming diba'amaagoowin gaye noojimowin gaye gwayakwendamowin. Niibiwa gikino'amawaaganag gii-ikidowag gaawiin e-gii-dagwiisigwaa imaa IAP ji-onji-diba'amawindwaa zhooniyaan e-wii-dibaajimowaad eta gaa-gii-izhi-maanzh-idoodaagowaad gikino'amaadiiwigamigoon. Owe dash IAP gii-inwaade ji-dibaakoniweng gaye ji-debinigaadeg gwayakwenda-mowin gaa-gii-izhi-maanzhisewaad gikino'amawaaganag. Diba'amawindwaa gaawiin gii-gibitinigaadesinoon majigegoon odaanaang.

Naasaab iwe apii, diba'amaagoowin gii-minose ji-nisidawinigaadeg iwe maanzhi-chigewin gikino'amaadiiwigamigong.[57] Ganage noojimowin gaye gwayakwendamowin daa-gii-izhise giishpin igi gaa-gii-bwaawitoowaad dibaakoniwewin wiinawaa gaa-gii-izhisewaad ji-diba'igewaad iwe maanzhichigewinan?

- Gii-bwaa'ishkaamagak gaye gii-gikendaagosinog aaniin ge-doojigaadegin ini IAP dibaajimowinan gaa-gii-maawadoonigaadegin, e-gii-ashodamawindwaa gikino'a-mawaaganag gaawiin awiya ji-waabandazig ini dibaajimowinan gii-onji-ziindend-amoog gikino'amawaaganag gaye igi IRSSA gaa-gii-dagwiiwaad. Nawach daa-gii-minose giishpin gikendamowaapan aaniin ge-doodamowaad ini gikino'amawaaganag odibaajimowiniwaan gii-maajitaawaad, igi gaa-gii-dagwii-waad – gaa-giizhaabwiiwaad gaye gikino'amawaaganag – ji-gii-gikendamowaa-pan aaniin ge-izhisenigin odibaajimowiniwaan gaye mazina'iganan.

Dibaakoniwewininiwag Gwayakosijigewin o-gii-dazhin-daanaawaa gii-maawaji'idiwaad Debwewin Gaye Gway-akosijigewin Edmonton.

Ishkwaawaach:

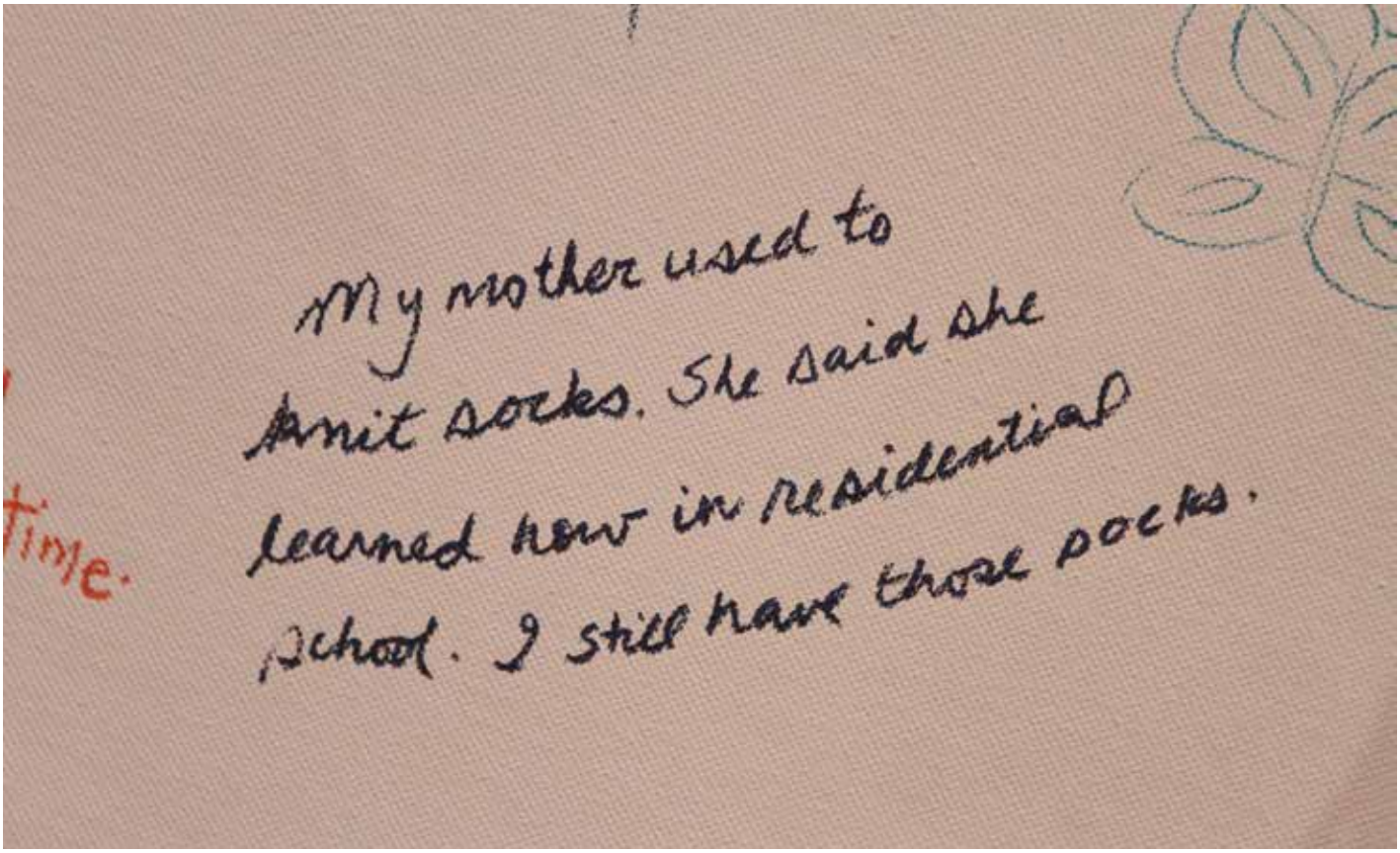
Gii-dagonigaade iwe IRSSA, iwe IAP gii-onjiimagan niibiwa daso-biboon e-gii-dazhiikamowaad gikino'amawaaganag ji-diba'amawindwaa gaa-gii-izhi-maanzhi-doodawindwaa imaa anishinaabe gikino'amaadiiwigamigong. Nawach gii-michaa iwe gaa-gii-dazhiikigaadeg ji-noojimowaad gaa-gii-izhisewaad odaanaang ji-izhaawaad ji-gwayakwendamowaad noongom gaye ji-ozhitoowaad ge-onizhishing bimaadiziwin ani-akiiwang.

Gii-bimiwijigaadeg iwe IAP niibiwa gegoon daa-naanaagadawenjigaade gaa-gii-izhseg, ji-mikwendamang. Owe gii-dasinoon mooshkinebii'iganan 38,276, gaye 25,707 bizindaagewinan gaye $3.233 biniyan daswaabik gi-diba'amawaawag gikino'amawaaganag. Gaa-gii-apiichi-michaag owe IAP izhichigewin, gii-waabanjigaade aaniin minik anishinaabeg gaa-gii-maanzhidoodaagowaad ini gikino'amaadiiwigamigoon gaye giiyaabi emaanzhichigemagakin dazhiikewining gaye Gaanada Akiing.

Niibiwa iwe gaa-gii-izhiseg – daabishkoo gii-gagwejimind gaa-dibaakoniwed, gii-gagwejimindwaa gaye gaa-gikendaasowaad, gaye gii-ondinigaadegin mazina'i-ganan ge-ziidoshkaagemagakin, gii-dazhinjigaadeg ondiziwin, izhitwaawin, ziido-shkaagewin ge-wiiji'igowaad gikino'amawaaganag – niibiwa iwe daa-aabajichi-gaade.

Zhaagooch dash gakina iwe gaa-gii-izhiseg, gaa-gii-zanagendaagwak gaye gaa-gii-gashkichigaadeg, iwe IRSSA gaye IAP amii igiwe anishinaabeg gaa-gii-gichi-inishkaagowaad maawach; abinoojiiyag gaa-gii-nishiwanaaji'indwaa miigaanind-waa, oniigi'igomaag gaa-gii-wani'aawaad oniijaanisiwaa'; gaa-gii-zhaabwiiwaad zhaagooch gaa-gii-zoongide'ewaad; gaye godak giiyaabi gaa-gagwe-dazhiikamo-waad gaa-gii-maanzhisewaad; anishinaabe ogimaag dazhiikewinining gaa-ziido-shkawaawaad gete-gikino'amawaaganag gaye igi gaa-gikendamowaad giiyaabi gaa-izhi-maanzhidoodawindwaa inawemaaganag; Anami'ewininiwag gaa-gagwe-gwayaksidoowaad gaa-izhi-debweyendamowaad gaye gaa-gii-doojigemaganinig anami'ewigamig; ogimaag gaa-gii-izhaawaad bizindaagewining, gaa-gii-inaawaad gikino'amawaagana' e-minjinaweziwaad gaa-gii-izhisenid; dibaakoniwewininiwag gaa-gii-gagwe-izhitamaagewaad ge-izhi-noojimong gaye ondinamaagewaad diba'amaagoowin; igi gaa-gii-nakwetamowaad giigidowinan endaso-giizhig, endaso-dwaate, igi gaa-giimaanendamowaad; dibaakonigewininiwag gaa-gii-izhaawaad ishkoniganing gemaa aakoziiwigamigong ji-wiiji'aawaad gikino'amawaagana'; ogimaawining gaa-anokiiwaad egaganoonaawaad gikino'amawagana'; gaye igi wiijiiwaaganag, inawemaaganag, gichi-anishinaabeg, gaa-wiidookaazo-waad, gaa-gii-ziidoshkawaawaad ini gete-gikino'amawaagana'. Iwe IAP dibaajimowin aapiji niibiwa dibaajimowinan gii-onjiiwan gaa-gii-izhisewaad anishinaabeg gaa-bi-izhisemagak.

[57] Niigaan gaagiigidowin H imaa *IRSSA* ikidoomagan: "Owe Nakobii'igan gaawiin daa-inendaagosinoon igi gikino'amawaaganag gaa-gii-wiinindwaa imaa Class Actions gemaa Cloud Class Action."



Daa-minwendaagwan omaa ji-ikidong IRSSA aazha gii-ishkwaase. Zhaagooch dash gichi-inendaagwan noongom 2020 gii-izhiseg, 3/4 Gaanada Akiing gii-bimaadiziwag giiyaabi gii-ayaagin ini gikino'amaadiiwigamigoon.[58] Anishinaabeg ogikendaanaawaa aaniin gaa-inishkaagowaad gikino'amawaaganag gii-izhaawaad gikino'amaadiiwigamigong gaye odinawemaaganiwaa'. Niibiwa gaa-anishinaabewisigwaa Gaanada gaa-ayaawaad gaawiin o-gii-gikenda-ziinaawaa e-gii-ayaagin ini anishinaabe gikino'amaadiiwigamigoon.

Ji-nisidawinigaadeg gaa-gii-izhi-maanzhichigemagakin gikino'amaadiiwigamigoon gii-gaanjise Phil Fontaine (gii-Gichi-Ogimaawid Gaa-okobiwaad Manitoba Ogima-akaanag) gii-dibaajimod gaa-gii-izhised gikino'amaadiiwigamigong; iwe IRSSA; gii-ikidod eminjinawezid Gaanada Ogimaa; gaye dash gii-anokiimagak iwe Anishinaabe Noojimowin Izhichigewin. Gii-ani-gichi-minosemagan gii-maawadoonigewaad Debwewin gaye Gwayakochi-gewin Izhichigewin e-gii-gashkitoowaad awiyag ji-dibaajimowaad gaa-gii-izhise-waad gaye e-gii-mazinaatesemagak owe dinookaan gikenjigewin. Iwe gii-onjisemagan gikendaasowin, gikendaasowining onjiimaan nisidotamowin; gaye nisidotamong onjise gwayakosijigewin noojimowin gwayakwendamowin.

Iwe IAP gaawiin naasaab gii-izhi-gikendaagosinoon daabishkoo godak ini gaa-mikoonjigaadegin. Gii-izhichigaade endaso-bezhigowaad anishinaabeg ji-dibaakoniwewaad gaye ji-ondiziwaad gaawiin awenenigo ji-gikendang enakamigiziwid, wiin eta, bizaanigo ji-dibaajimod gaa-gii-nishiwanaaji'igod gikino'amaadiiwigamigong. Naasaab dash iwe apii gii-ayaamagan imaa Nakobii'igan, e-gii-onji-gikenjigaadeg aaniin gaa-doojigemagakin ini gete-gikino'amaadiiwigamigoon omaa Gaanada Akiing.

Iwe IRSSA – gaye IAP – gaawiin o-gii-wawezhitoosiinaawaa maanzhichigewin. Gwayakosijigewin gaawiin giizhichigaadesinoon, giiyaabi bizhishig dazhiikigaade iwe gaa-gii-izhisemagak mewinzha. Noongom niibiwa dibaajimowag debaajimowaad mazinaatesewining daabishkoo e-dazhinjigaadegin ini gete-gikino'amaadiiwigamigoon, gaawiin eta mewinzha, giiyaabi sa go, gaye dash ge-ani-akiiwang. Ganabach giiyaabi niibiwa da-anokaade iwe noojimowin. Iwe dash IRSSA gaye IAP o-gii-maamawiikaanaawaa igi Anishinaabe niigaaniig, gaye Ogimaawiwin gaye Anami'ewigamigoon niigaaniig gaye igi gete-gikino'ama-waaganag gaa-gii-dibaadodamowaad gaa-gii-izhisewaad, ji-ozhichigaadeg ge-onjiimagak noojimowin gaye gwayakosijigewin. Endaso-giizhig dazhiikigaade iwe anokiiwin giiyaabi gaa-anokaadamowaad ini gaa-naanaagadawenjigaadegin.

[58] Statistics Gaanada, *Endashiwaad awiyag July 1st, endasobiboonewaad gaye inini-wiwaagwen, Adoopowin 17-10-0005-01,* April 27, 2020, https://doi.org/10.25318/1710000501-eng.

Gete-gikino'amawaagan Geronimo "Fish" Henry waab-anda'iwe aaniindi gaa-gii-izhi-ozhikodang owiinzowin imaa asiniikaaning Mohawk Institute gii-gikino'amawind imaa Brantford, ON.

Gichi-anokiiwin iwe, zanagan, da-onizhishin dash ge-onjiseg imaa.

Aapiji gichi-andawendaagwan ji-achigaadegin gaa-gii-izhisemagak mewinzha odaanaang ji-gashkitooying ji-zoongiziying ani-akiiwang… Gi-daa-gojitoomin ji-wiijiindiying ji-nisidawinamang gaye ji-manaajitooying ge-onizhishing niigaan. Debwemagan gaa-gii-izhiseying gi-ga-wiiji'igomin ji-mino-ayaaying gaye ji-gwayakosijigaadeg gegoon.

- Gete-gikino'amaadiiwigamigong Nakobii'iga, Izhisijigan "N"

Mzinaazganan nji Michael Tansey, Eric Lefebvre, Christi Belcourt minwaa *IRSAS wiindmaageyin gdo dbaajmowin* mzinaatesjige

Independent Assessment Process

FINAL REPORT

Independent Assessment Process Oversight Committee 2021

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INTRODUCTION

The Shingwauk Indian Residential School in Sault Ste. Marie operated between 1878 and 1970. The school site now has one of the largest collections of residential school history in the country.

It has taken extraordinary courage for the thousands of survivors that have come forward to speak publicly about the abuse they suffered. It is a testament to their resilience as individuals and to the strength of their cultures.[1]

On September 19, 2007, the Indian Residential Schools Settlement Agreement (IRSSA, or Settlement Agreement) was implemented. The IRSSA simultaneously signified a culmination, a continuation, and a commencement of efforts towards reparation and reconciliation for the history and ongoing impact of Canada's residential school system.[2]

In 1883, the government of Canada had formalized a policy of creating residential schools for Indigenous children with the establishment of three schools in Alberta and Saskatchewan. The residential school system – funded by the Government and administered by Christian Churches - was designed to separate children from their families in order to "civilize" them, and to "get rid of the Indian problem".[3] From then until the final federal residential school closed in 1997, more than 150,000 First Nations, Inuit, and Métis children attended these schools.

[1] The Right Honourable Stephen Harper, Prime Minister of Canada, "Statement of Apology to Former Students of Indian Residential Schools", Official Report (Hansard), Canada, Parliament, House of Commons. 39th Parl., 2nd sess., vol. 142, no. 110 (Ottawa: Parliament of Canada, 11 June 2008).

[2] The full text of the Indian Residential Schools Settlement Agreement (IRSSA) is available at: http://www.residentialschoolsettlement.ca/settlement.html

[3] Public Works Minister Hector Langevin, Hansard, 22 May 1883; Duncan Campbell Scott, Deputy Superintendent, Department of Indian Affairs, (1920), National Archives of Canada, Record Group 10, vol. 6810, file 470-2-3, vol .7, pp. 55 (L-3) and 63 (N-3), as cited in John Leslie, The Historical Development of the Indian Act, 2nd ed. (Ottawa: Department of Indian Affairs and Northern Development, Treaties and Historical Research Branch, 1978) p. 114. It should be noted that church-operated Indian Residential Schools predated confederation; the new policy was created to systematize and expand this already existing system

Spanning more than one hundred years and more than one hundred schools, the residential school experience was not the same for every child or in every location. Some former students talk about learning new subjects; about participation in sports, music, or dance; about a teacher who tried to be kind and sheltering. Some went on to higher education. But these stories are the exceptions. For most, the residential school system was profoundly negative and had a lasting impact on the children, on their families, and on their culture. Children as young as three were forcibly removed from their families and communities and taken to the schools. When they arrived, their clothes were often discarded and destroyed. They were often no longer called by their names but were given new English or French names, and numbers by which they were referred to throughout their years at the school. They were typically forbidden to use their language, follow their spiritual beliefs, or practise their cultures. Many schools prohibited parental contact, and children did not see their families for months or years at a time. At the school they could face extreme discipline and be forced to do labour. If they tried to escape, they were tracked down by the police and brought back to the schools where they were punished. Many of the students were subject to physical, psychological, and sexual abuse.

Beginning in the 1990s and continuing into the 2000s, organizations and individuals started to embark in concerted ways to acknowledge and address the legal, moral, and spiritual wrongs that the Indian Residential Schools legacy had inflicted.

An increasing number of former students began to file individual lawsuits against the Government of Canada and the Churches. Survivor groups were formed, and law firms launched class action suits on behalf of those former students.[4] When it was achieved in 2007, the Indian Residential Schools Settlement Agreement was the largest class action settlement in Canadian history and marked the culmination of many thousands of active or potential civil litigation claims.

At the same time, the IRSSA represented a step in a continuum of efforts, legal and otherwise, to come to terms with this dark chapter in the country's history. Churches had by then offered apologies for the residential schools; the Royal Commission on Aboriginal Peoples had called for a public inquiry into the schools[5]; dialogues and discussions had been undertaken and, ultimately, multi-party negotiations were launched to determine and achieve a comprehensive approach to addressing these deep and complex issues. The Indian Residential Schools Settlement Agreement was thus a continuation of a number of significant measures on a protracted and ongoing path toward recognizing and healing the past.

The IRSSA also signaled the commencement of several new initiatives. It created a Common Experience Payment, designating $1.9 billion to provide compensation for all surviving former residents of Indian Residential Schools. This marked the first time that compensation was awarded for the collective experience of all who had resided at those schools. The Settlement Agreement provided a five-year endowment for the Aboriginal Healing Foundation in the amount of $125 million, and set aside an additional $20 million for funding national and community-based commemoration projects. Furthermore, the Agreement established a Truth and Reconciliation Commission to compile the historical record and promote awareness of the Indian Residential School system, "to put the events of the past behind us so that we can work towards a stronger and healthier future… and pave the way to reconciliation."[6]

[4] In partial response to these claims, Canada commenced, in 2003, an out-of-court Dispute Resolution process to expedite the resolution of claims. This process is discussed in Chapters 3 and 4.
[5] Canada, Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples (Ottawa: Minister of Supply and Services, 1996).
[6] IRSSA, Schedule "N", p. 1.

As well, the Settlement Agreement created an Independent Assessment Process (IAP) to adjudicate claims and provide compensation for former students who had suffered abuse at residential schools. As it was part of a class action settlement, unless a class member opted out, the IAP became the only means for former students to advance claims of abuse; all class members who did not opt out of the Settlement Agreement would be bound by its terms, and unable to sue the government or the churches for issues emanating from the residential school experience.[7] Former students wishing to submit a claim under the IAP were given a five-year period in which to do so, with the deadline for applications being September 19, 2012. Ultimately, more than 38,000 Residential Schools survivors had filed claims under the IAP.[8]

More than 26,000 hearings were held in the IAP.

In the over 13 years since the signing of the IRSSA, the IAP held 26,707 claimant hearings, issued 27,846 awards, and awarded $3.233 billion in compensation.[9] It marked a unique experience in the history and legacy of Indian Residential Schools in Canada, and also – given its scale and approach - a unique undertaking in the resolution of civil litigation. It is thus vital at this juncture to capture in some measure the history, development, implementation, and impact of this core aspect of the Settlement Agreement. The Oversight Committee of the IAP hopes that its Final Report on the Independent Assessment Process will contribute to an understanding of the magnitude and complexities of this process, of the challenges in ensuring that the IAP would meet its objectives under the Settlement Agreement, and of the lessons that have been learned in shaping and delivering an undertaking of this nature and importance.

The Oversight Committee would like to acknowledge the many IAP claimants, stakeholders, and staff who have contributed to this Report. In particular, we would like to thank the tens of thousands of survivors who came forward to relate their personal histories and experiences at the residential schools.

The claims filed under the IAP have now been resolved and the work of the IAP itself is concluded.[10] However, the need to continue the healing journeys of residential school survivors, their families, communities, and Nations to work toward individual and collective reconciliation of the divisions caused and exacerbated by this important chapter of Canadian history, remains; so too does the need to address their impacts on contemporary Canadian society as a whole. This Report is dedicated to that ongoing journey.

[7] Section 4.06 (i) of the IRSSA allowed for claims to be litigated in certain specified circumstances: "…a Class Member who on or after the fifth anniversary of the Implementation Date had never commenced an action other than a class action in relation to an Indian Residential School or the operation of Indian Residential Schools, participated in a Pilot Project, applied to the DR Model, or applied to the IAP, may commence an action for any of the Continuing Claims within the jurisdiction of the court in which the action is commenced."

[8] Some of these were continuations of claims filed under the former Dispute Resolution process. Following the deadline for IAP applications, the Supervising Courts added several schools to the terms of the Settlement Agreement and provided for former students of those schools to submit IAP applications: The Courts (in Fontaine v. Canada (Attorney General), 2012 BCSC 839) also allowed a number of unsubmitted claims that had been handled by former claimant counsel David Blott to be deemed "accepted as filed" following the IAP application deadline: Chapter 4, footnote 78.

[9] In addition to this number of initial claimant hearings, the IAP also conducted separate hearings for witnesses and for alleged perpetrators, as well as claimant continuation hearings if required. The total number of awards includes those issued by adjudicators (23,425) and those resulting from the Negotiated Settlement Process (4,144). The total amount of compensation paid includes awards to claimants, disbursements and claimant counsel legal fees paid by the Government of Canada.

[10] The completion of IAP adjudication is subject to any cases that may in future be referred to the process by the Courts.

THE LEGACY OF INDIAN RESIDENTIAL SCHOOLS IN CANADA

Over the past several years, there have been numerous in-depth examinations of the history and experiences of Indian Residential Schools in Canada. Perhaps the most notable and comprehensive of these was contained in the Final Report of the Truth and Reconciliation Commission, whose mandate included the creation of "as complete an historical record as possible of the IRS system and legacy".[11] While it is not necessary to replicate these significant studies in this Report, it is important to understand the Indian Residential Schools Settlement Agreement, the IAP, and the experiences of residential school survivors, in the context of that history. The following, therefore, provides a brief description of the background and legacy of Indian Residential Schools in Canada.

History of Residential Schools in Canada

While attempts by missionaries to assimilate Indigenous peoples can be found as far back as the 17th century, the first known residential schools in Canada (then known as "Mission schools") can be traced to the 1820s.[12] These were boarding schools run by the Churches in Upper and Lower Canada, the Red River, and in British Columbia. Roman Catholic, Anglican, Presbyterian, and United Church clergy developed curricula and established and/or operated the schools to educate Indigenous children[13].

Proposals for a federally-supported residential school system began to emerge in the early 1800s, including the Bagot Report[14], seen as the foundational document for the federal residential school system.[15] Following Confederation, the Government of Canada began funding the establishment of the Indian Residential School system in Canada to meet its obligations under the Indian Act (1876), and treaty obligations to provide education. At the request of Prime Minister Alexander Mackenzie, Nicholas Flood Davin conducted a study of the boarding school concept used for "aggressive civilization" of Indians in the United States. The 1879 Davin Report promoted educating Indian children at industrial schools away from their families and cultural traditions to facilitate the destruction of Indigenous spirituality.[16] The objectives were based on the assumption that Indigenous cultures and spiritual beliefs were inferior to the European-Canadian culture. He noted:

"If anything is to be done with the Indian, we must catch him very young. The children must be kept constantly within the circle of civilized society."

Davin urged the Government to build and fund the schools to be run and operated by the Churches. To implement its policy of assimilation, in 1883 the Government of Canada funded three residential schools and relied on the Christian religious organizations to provide teachers and education. By 1900, 61 schools were in operation, in all provinces and territories except for New Brunswick and Prince Edward Island. This number grew to a total of 140.[17]

The Roman Catholic Church accounted for approximately 60% of residential school operations, the Anglican Church of Canada approximately 30%, and the United Church of Canada and Presbyterians 10%.[18]

[11] Canada and Plaintiffs and Independent Counsel and The Assembly of First Nations and Inuit Representatives and The General Synod of the Anglican Church of Canada et al, Indian Residential Schools Settlement Agreement Residential Schools Settlement Official Court Notice, (8 May 2006), Schedule N, Section 1 (e), http://www.residentialschoolsettlement.ca/IRS%20Settlement%20Agreement%20ENGLISH.pdf. See Truth and Reconciliation Commission of Canada, Honouring the Truth, Reconciling the Future. Summary of the Final Report of the Truth and Reconciliation Commission (Toronto: James Lorimer & Co., 2015). See also Aboriginal Healing Foundation, From Truth to Reconciliation: Transforming the Legacy of Residential Schools (Ottawa: Dollco Printing, 2008); Canada, Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples (Ottawa: Minister of Supply and Services, 1996); P. Fontaine, A. Croft, and the Truth and Reconciliation Commission, A Knock on the Door: The Essential History of Residential Schools (Winnipeg: University of Manitoba Press, 2015); K. Mahoney, "The Settlement Process: A Personal Reflection," University of Toronto Law Journal, 64, No.4, (2014); J. R. Miller, Shingwauk's Vision: A History of Native Residential Schools (Toronto: University of Toronto Press, 1996); J. S. Milloy, A National Crime: The Canadian Government and the Residential School System, 1879-1986 (Winnipeg, University of Manitoba Press, 1999); P. Regan, Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada (Vancouver: UBC Press, 2011).

[12] Truth and Reconciliation Commission of Canada, Honouring the Truth, Reconciling the Future.

[13] The United Church was formed in 1925 with the union of the Methodist Church, Canada, the Congregational Union of Canada, two-thirds of the Presbyterian Church of Canada, and the General Council of Union Churches.

[14] C. Bagot (The Bagot Commission), The Bagot Report: A Report on the Affairs of the Indians in Canada (Ottawa, Government of Canada, 1844).

[15] Milloy.

[16] Nicholas Flood Davin, Report on Industrial Schools for Indians and Half-Breeds, Report produced for the Minister of the Interior (Ottawa: s.n., 1879).

[17] There were 130 Indian Residential Schools included in the 2007 Indian Residential Schools Settlement Agreement. An additional eight institutions were added through Article 12 of the Agreement and two schools were added by the Courts, bringing the total number of recognized schools to 140.

[18] "Oblates in the West: The Alberta Story", Heritage Community Foundation Alberta Online Encyclopedia, University of Alberts, 2009 , http://wayback.archiveit.org/2217/20101208160339/http://www.albertasource.ca/oblatesinthewest/eng/index.html.

In the beginning, residential schools were poorly attended, as Indian agents and local clergy had a hard time convincing parents to send their children to these schools. Small schools on or near the reserves initially were more popular, but the industrial school model began to dominate: in part because of the cost effectiveness of larger facilities, but also because removing children from their families and communities drew them farther from their language and traditional practices.[19]

Attendance issues were addressed by regulations intended to allow Indian Agents and Justices of the Peace to take children from parents if it was believed that the school would provide a better environment for the child. Truant children were returned against their will or that of their parents, but even parents who voluntarily placed their children in these schools were often not given permission to visit nor to remove the students without approval from the Department of Indian Affairs. In 1920, an amendment to the Indian Act made day or residential school attendance compulsory for status Indians between the ages of seven and fifteen.

Enrolment in residential schools began to drop by the 1950s, as the Government created day schools or funneled children into provincial systems. Some schools were closed, and the remainder restructured to provide schooling for children thought to be "at risk". The Churches also began to back away in the face of active resistance to the Government of Canada's agenda of assimilation by Indigenous peoples and by their own congregations. The residential school system underwent a considerable re-organization in 1969, when Canada assumed sole operational and administrative responsibility for the schools.[20] Over the next five years, almost two dozen residential schools were closed. However, a small number of Government-run schools remained open into the 1990s. The last residential school run at least in part by the federal Government – Kivalliq Hall in Rankin Inlet, Nunavut – operated until December 31, 1997.

From 1883 to 1997, 150,000 First Nations, Métis and Inuit children were forcibly removed from their homes, families, and communities, and placed into Indian residential schools across Canada. Many generations of Indigenous children from the same families and communities attended these schools.

Residential School Experience

With the overall intent of assimilating Indian children into European-Canadian culture, the goal of residential schools was to ensure that children lost their identity, individuality and family ties. Far away from parental oversight of their intellectual, cultural and spiritual development, it was thought that Indian children would become integrated into "Canadian" society and that, over time, Indian communities would cease to exist. In this way, the Truth and Reconciliation Commission concluded that residential schools were part of a policy of cultural genocide, focused on eliminating Indian language, culture and religion within the Canadian Confederation.[21]

As cited earlier, the experiences of students who attended Indian Residential Schools are now well-documented in a number of reports. For its part, the TRC spent six years travelling across Canada listening and giving a voice to more than 6,750 Indigenous survivors who told about their experiences at residential schools at various TRC events.

For most students, when they arrived at the residential school they were separated from siblings, stripped of their belongings and given unfamiliar clothes and haircuts. Often children were given new names and a number. Living in an unfamiliar environment, they were forced to speak in a new language and to adopt a new religion. The TRC quoted one survivor:

"I wasn't aware at that time that my grandma was gonna' leave me there. I'm not even sure how she told me but they started holding me and my grandma left and I started fighting them because I didn't want my grandma to leave me, and, and I started screaming, and crying and crying…. They let me go, and they started yelling at me to shut up… they had a real mean tone of voice."

[19] In 1893, the Government of Canada implemented a system of per capita grant funding for industrial schools. This provided a financial incentive for the schools to maximize their attendance, up to the caps established by the Government: see Truth and Reconciliation Commission of Canada, Canada's Residential Schools: The History, Part 1 Origins to 1939, Final Report of the Truth and Reconciliation Commission, Vol. 1 (Montreal: McGill-Queen's University Press, 2015), p. 211, and Miller, p. 126. In 1890, Hayter Reed, then Indian Commission for the North-West Territories and Manitoba, wrote that "industrial schools should not be located close to reserves because 'the more remote from the Institution and distant from each other are the points from which the pupils are collected, the better for their success.'" Truth and Reconciliation Commission of Canada, Canada's Residential Schools, p. 208.

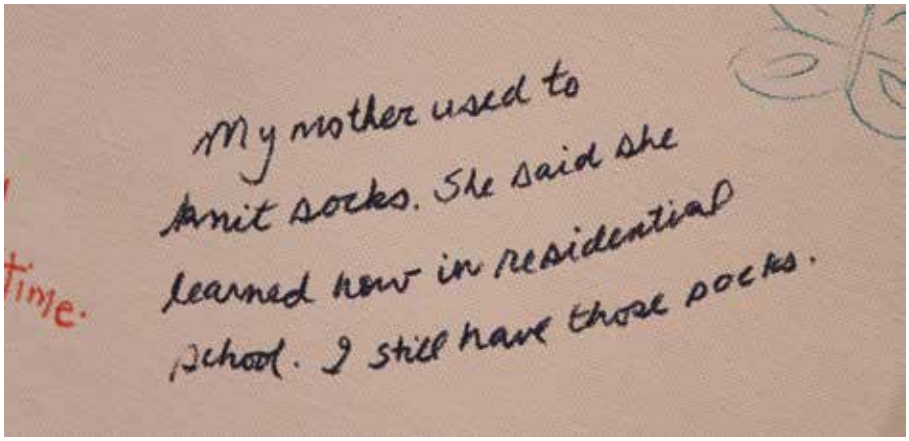
[20] This emanated at least in part following a ruling by the Ontario Labour Relations Board that residential school staff were Crown employees.

[21] Truth and Reconciliation Commission, Honouring the Truth, Reconciling the Future.

Survivors often described overcrowded classrooms, unqualified teachers, inadequate instruction and forced child labour. Students were often provided with limited academic education and taught basic trades to become self-supporting farmers or labourers. Often, in addition to learning a trade, students were required to perform chores to maintain the day-to-day operation of the schools. They grew and prepared food, repaired their clothing, raised stock, hauled water, chopped wood, and more. The TRC concluded that the residential school system was chronically underfunded, and that the federal Government did not develop a system-wide policy on teacher qualifications. As a result, teaching staff was "under-qualified, poorly paid, and overworked".

Some survivors also spoke of constant hunger. There was little consideration given to the nutritional requirements of growing children, leaving many students vulnerable to malnutrition and illness. During this time, Canadian Government scientists performed nutritional tests on some students and knowingly kept some students undernourished to serve as the control sample.[22] Living conditions in residential schools were substandard, with overcrowding, poor sanitation, inadequate heating, and lack of medical care leading to high rates of influenza and tuberculosis.[23] An examination of documents in the National Archives of Canada found that:

"As many as half of the aboriginal children who attended the early years of residential schools died of tuberculosis, despite repeated warnings to the federal Government that overcrowding, poor sanitation and a lack of medical care were creating a toxic breeding ground for the rapid spread of the disease."[24]



Corporal punishment was used on children to enforce assimilation and other school rules. Some students were struck, strapped, kicked and whipped for infractions many did not understand. They were publicly humiliated, had their heads shaved and were locked up for running away. They were severely disciplined for speaking their mother tongue. There are accounts of students being shackled to beds and even having needles inserted in their tongues for speaking their native languages.[25]

Sexual exploitation of residential school children by Church and lay staff was also common. However, complaints were ignored, improperly investigated or dismissed, and some Government and Church officials covered up the sexual abuse to protect reputations. Families were not informed that their children had been victims of sexual abuse - abusers often blamed their victims and threatened them with eternal damnation if they reported the abuse they suffered. Although not every student who attended a residential school suffered physical or sexual abuse, and not every student received a poor education, this was far overshadowed by the tens of thousands of students in the residential school system who faced neglect as well as emotional, physical and sexual abuse from teachers and administrators.[26]

The Impact of Residential Schools on Survivors and Future Generations

Based on the accounts it heard, the TRC concluded that many Indian Residential School survivors experienced a world dominated by fear, betrayal, loneliness, lack of affection, and loss. The devastating effects of the schools resulted in trauma that has been felt through succeeding generations of Indigenous people in Canada. A residential school survivor commented:

"I did attend residential school… but my mom also went through the school. So it's an experience that had an impact intergenerationally…. They experienced the abuse and the cycle continued in the communities and I was one of them that had… abuse."

[22] J.S. Mosby, "Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952", *Social History,* 46, No. 91 (2013), pp. 145-172.
[23] Milloy.
[24] B. Curry & K. Howlett, "Natives Died in Droves as Ottawa Ignored Warnings", *Globe and Mail,* 24 April 2007.
[25] According to the TRC's report, "No matter what the European standards of the day might have been, residential school discipline clearly violated the norms by which Aboriginal parents expected their children to be treated." p. 523.
[26] Miller.

The ongoing effects of Residential Schools are revealed in the low levels of educational attainment and high rates of unemployment, under-employment, poor health, poverty and suicides among children of survivors. It is shown in the disproportionate number of Indigenous children apprehended by child welfare agencies and involvement of Indigenous people in the criminal justice system. It has manifested in problems with anger, substance abuse, domestic and sexual violence, and depression.[27]

One survivor described the impact that both parents attending residential school had on her:

"My dad was an alcoholic, when my mom drank – she had a problem. My dad… was in residential school for nine years. My mom was in residential school for three years… The shame that I felt was the shame of being Aboriginal."[28]

Studies of the effects on children of single and repeated trauma are still relatively new. Some survivors of trauma experienced what has been described as a loss of spirit and hope accompanied by recurring issues with anger and fear, self-blame, sexual dysfunction, and an inability to set and maintain boundaries. A study in 2010 identified the intergenerational legacies of residential school abuse to be the loss of meaning, family, childhood, and feeling.

"These losses to the mental, emotional, physical and spiritual well-being of the children who attended residential schools have impacted our communities intergenerationally right up to the present day."[29]

Other Canadian researchers have focused on the cumulative nature of historical trauma, arguing that the more generations within a family that attended residential schools, the poorer the physical, mental and emotional well-being of the next generation.[30] They found that this occurs even if a descendant has never been told of the residential school abuse and trauma experienced by family members. For example, a person whose parent and grandparent attended residential schools may experience more stressors in their life than someone who had one family member who attended a residential school, and most likely more than a person who had no ancestors with a residential school history.

An Elder described how she raised her children in the way that she had been raised, without knowing that her mother's child-rearing practices were a legacy of her experience in a residential school:

"She held everything in there. I guess she never got the attention, the affection, the love that she wanted. So she got used to that and that's how she raised us. We didn't dare go near her, grab her all of a sudden. It was never being playful with us too, nothing…. I raised my own children that way because I thought that was the way of life. And with me not knowing that was how she went through at the school, and I never knew she went to residential school and I didn't even hear nothing about it."

The legacy of residential schools through the generations is illustrated through these words of a descendant of survivors:

"As her child, do you feel the effects passing through the generations? I think it came down to… when grandmother was taken away... she wasn't nurtured the way a mother should nurture her kids, her children. She didn't get that from her mother. So I feel like it was passed on to my mother and onto me. Expressing my true feelings like how easy it is for some people to say I love you to their children. It's hard for me."

[27] R. Corrado and I. Cohen, *Mental Health Profiles for a Sample of British Columbia's Aboriginal Survivors of the Canadian Residential School System* (Ottawa: Aboriginal Healing Foundation, 2003).
[28] Unless otherwise indicated, quotes from residential school survivors and stakeholders in the IRSSA are drawn from a series of interviews and focus groups conducted by the Indian Residential Schools Adjudication Secretariat. Details on the process and results of those interviews and focus groups are contained in Chapter 7 ("The IAP Experience – Claimants' and Stakeholders' Perspectives") of this Report.
[29] C. Partridge, "Residential Schools: The Intergenerational Impacts of Residential Schools on Aboriginal Peoples," *Native Social Work Journal,* Vol. 7 (2010), pp. 54-55.
[30] A. Bombay, K. Matheson, and H. Anisman, "The intergenerational Effects of Indian Residential Schools: The Implications for the Concept of Historical Trauma," *Transcultural Psychiatry,* 51, No. 3 (2014), pp. 320-338; and A. Bombay, K. Matheson, and H. Anisman, "Perspectives on Intergenerational Transmission of Trauma: The Case of Aboriginal Peoples in Canada", in *Social Issues in Living Colour: Challenges and Solutions from the Perspective of Ethnic Minority Psychology,* eds. Theodore Cooper et al, Vol. 3 (Santa Barbara: Praeger Press, 2017).

THE INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT


Phil Fontaine

The Quest for Redress and Healing

For many years, accounts of residential school experiences and the resulting trauma were hidden. Sometimes only the abused child knew; sometimes family and community members were aware. Because of self-blame, shame, and fear, few came forward to break their silence and accuse someone of abuse. As residential school survivors explained:

"I was still living… with a lot of shame and fear. The shame that I felt was the shame of being Aboriginal and the fear I felt that I lived with sometimes was unbearable, that I too turned to alcohol and drugs."

"Our first reaction was that we can't speak out against the system or against the school or against the Church, the Government because they were the voice of authority and it's been hammered into us all over these years that we don't do that."

That began to change significantly in 1990 when the then Grand Chief of the Assembly of Manitoba Chiefs, Phil Fontaine, publicly disclosed the sexual and physical abuse he had endured at a residential school and called for a public inquiry. He said:

"In my grade three class... if there were 20 boys, every single one of them... would have experienced what I experienced. They would have experienced some aspect of sexual abuse."[31]

Subsequently, thousands of former students came forward to speak about the abuse they had suffered.

But while Grand Chief Fontaine's public statement shone a light on the reality of the residential schools and helped pave the way for many former students to come forward and relate their own personal histories, demands for redress for abuse and mistreatment at the schools had begun several decades earlier.

Litigation:

As far back as the mid 1940s, there had been criminal prosecutions for sexual abuse that occurred at residential schools.[32] While these were important in terms of cataloguing some of the crimes that had taken place and identifying and punishing some of the perpetrators, they did not of themselves provide compensation or restitution to the victims.[33] Increasingly then, civil law suits were launched by former residential school students, seeking compensation from the Government of Canada and/or the Churches for torts committed at the schools.[34]

[31] "Phil Fontaine's shocking testimony of sexual abuse," *The Journal,* Canadian Broadcasting Corporation (30 October 1990).

[32] In the 1930s, there was a criminal investigation into sexual abuse at the Kuper Island Residential School in British Columbia. The case was closed without public disclosure. In 1995, a former Kuper Island employee pled guilty to three charges of indecent assault and gross indecency. "Kuper Island Residential Schools", National Centre for Truth and Reconciliation, University of Manitoba, https://memorial.nctr.ca/?p=1456 Prosecution for sexual assault at a residential school occurred as early as 1945, and for physical assault as early as the late-1920s.

[33] In some cases, criminal cases were followed by civil actions that did lead to individual compensation. For example, the administrator of the Gordon Residential School residence, William Starr, was imprisoned for criminal charges and was also named as a defendant on more than 400 civil claims. Similarly, Alberni School dormitory supervisor Plint (a defendant in *Blackwater v. Plint,* referenced below) was criminally convicted of sexual abuse prior to being named in the civil lawsuit. In the *Blackwater v. Plint* case, the Church and Canada admitted that "acts of sexual abuse did occur" for those plaintiffs for whom a criminal conviction against Plint had been entered. *Blackwater v. Plint,* 2001 CanLII 997 (BCSC), para. 15.

[34] A synopsis of significant aspects of residential schools litigation is contained in Mayo Moran and Kent Roach, "Introduction: The Residential School Litigation and Settlement," *University of Toronto Law Journal,* 64, No. 4 (August 2014), 479-485, and other articles in that volume.

However, many at the time felt that civil litigation was a flawed and ultimately inadequate means of obtaining redress for the abuse suffered at residential schools. In an analysis of legal actions dealing with sexual abuse at the schools, the Dean of Law of the University of Ottawa concluded that: "Canadian tort law has failed to address the unique national debt we owe to Aboriginal people arising from residential schooling."[35]

There were several factors that contributed to this failure. First, there were statutes of limitations that varied from province to province on initiating legal proceedings. If these time limitations did not preclude a civil action, plaintiffs faced significant difficulties in establishing the credibility of their claims. The inherent challenges in proving sexual assault in the Courts were exacerbated in cases related to residential schools by the length of time that had elapsed since the alleged assaults, the absence of some schools' records, the death of many alleged perpetrators, the vulnerable state of many plaintiffs who in some cases had drug and alcohol dependency problems and/or criminal records, and the cultural differences that existed between those plaintiffs and the Courts themselves. In this context, it was difficult to meet the relatively high standard of proof required by the Courts to prove the claims of abuse.[36]

Even should the abuse and mistreatment be proven, there were further challenges in assessing financial damages. In this regard, not only would actual costs – such as expenses incurred for care - need to be substantiated, but loss of past and future earnings would need to be calculated. As well, the plaintiff needed to show that the school experience actually caused the harm: other factors that may have contributed to the damages – such as sexual assaults suffered prior to or following attendance to the school – would be considered in the calculation and attribution of compensation. This could be even more difficult in the residential school context, where emotional damages were often as significant as physical ones, and where abuse occurred within a broader context of cultural loss that may also have contributed to psychological and emotional harm.

A further challenge in litigation was establishing the extent to which the operators of the schools could be held responsible for the actions of individual staff members. Although the Supreme Court of Canada found that both the Government of Canada and the Church could be vicariously liable for sexual misconduct at a residential school, it was still extremely difficult to establish that liability.[37] In addition to the legal challenges for claimants, the trial process could take an enormous psychological and spiritual toll on claimants and witnesses.

[35] Bruce Feldthusen, "Civil Liability for Sexual Assault in Aboriginal Residential Schools: The Baker Did It," *Canadian Journal of Law and Society/Revue Canadienne Droit et Société,* 22, No. 1 (2007).

[36] The IAP stipulated that: "Except as otherwise provided in this IAP, the standard of proof is the standard used by the civil courts for matters of like seriousness. . . the standard of proof remains the balance of probabilities in all matters." While the standard of proof generally remained the same, other aspects of the IAP, such as the less stringent causation test and the burden of proof shifting to the Government in relation to certain student on student claims, made it easier for the claimant to meet the requirements for compensation in the IAP in comparison with litigation.

[37] The Supreme Court ruled that employers could be vicariously liable for sexual misconduct in *Bazley v. Curry,* 2 S.C.R. 534 S.J.C. No. 35 (1999). In *Blackwater v. Plint,* [2005] 3 S.C.R. 3, SCC 58, the Supreme Court held that both the Government of Canada and the United Church of Canada were vicariously liable for sexual assaults committed by a supervisor at the Alberni Indian Residential School. While the Court ruled that residential school survivors should be compensated for sexual assault, it also ruled that such survivors were not entitled to compensation for physical and mental abuse or the loss of Aboriginal language and culture. Also, in another ruling in 2005, a majority of the Supreme Court ruled that the Church and Government of Canada could not be held liable for sexual abuse at Meares Island school as there was not a strong enough connection between the abuse and the employment: *E.B. v. Order of Oblates of Mary Immaculate in the Province of British Columbia,* [2005] 3 S.C.R. 45,2005 SCC 50.

Notwithstanding these legal hurdles, a large and increasing number of former residential school students sought redress for their experiences through the Courts. Prior to the Indian Residential Schools Settlement Agreement in 2007, there were as many as 20,000 active cases in litigation, many of which had more than one named plaintiff. There were also approximately a dozen class actions filed on behalf of former students.[38]

As well, the inability of Government and Churches to acknowledge loss of language and culture in the forum of civil litigation meant that this was an issue in hundreds of cases, complicating the litigation and impeding progress on other remediation. Little merit was accorded these claims by the Courts, which did not recognize cultural loss as a cause of action. Thus, the focus in litigation was on sexual and physical abuse, rather than on the destructive collective ramifications of the residential school system, or on other elements of redress that could aid in healing, commemoration, and reconciliation.[39]

On a pragmatic level, litigation was both costly and time-consuming. Prior to the Settlement Agreement, out of close to 20,000 claims only 2,200 cases had been settled, and only 36 trials had taken place.[40] One (albeit atypical) trial related to allegations of abuse at the Alberni Indian Residential School *(Blackwater v. Plint)* lasted almost a decade including a trial of 115 days spread out over three years. The Cloud class action lawsuit had taken five years just to reach the point of certification without addressing any issues related to the merits of the claims. The Government of Canada estimated that it would take 53 years to resolve the civil cases in traditional litigation, at a cost of $2 billion in administrative costs alone.[41] It was also calculated that, in civil litigation, it cost $3 in legal and Court fees for every dollar of compensation paid to former students. Individual residential school survivors - who provided the impetus for civil litigation - were required to retain legal counsel and bear the considerable costs of litigation. The cost of litigation was also a motivating factor for some Church entities - who were experiencing financial pressures rooted in their aging demographic - to explore alternative approaches to resolution.[42]

Increasingly, traditional civil litigation was considered as not sustainable for resolving the outstanding claims. Within the litigation framework itself, a Modified Litigation Plan was implemented in 2005 for resolving residential schools claims in British Columbia and the Yukon. Developed through extensive discussion among counsel involved in these claims, this Plan was aimed at addressing the "need to streamline litigation so that the resolution of IRS claims would be achieved in an honourable, but more expeditious manner and still meet the rigours of public scrutiny."[43] While the Modified Litigation Plan did not ultimately have the scope to rectify all concerns regarding residential schools litigation, it did incorporate such concepts as the removal of the issue of apportionment of liability as between defendants, the removal of the need for expert reports for some types of claims, a less formal process for residential school survivors to describe their personal experience, an apology, the provision of counseling and health supports, and commemoration: concepts that were eventually carried through into the Alternative Dispute Resolution Process and the Independent Assessment Process.

Eventually, attention began to focus on a comprehensive national class action settlement as the most effective way to structure a resolution to the residential school legacy. A class action, it was felt, would serve to limit liability, provide a faster and more efficient means of settling the plethora of outstanding claims, and lead to finality in the legal repercussions of the residential school experience. A pan-national class action could also provide the organizational framework for commencing discussions towards a comprehensive resolution.

[38] However, prior to the Settlement Agreement, only one class action suit had been certified by the courts: *Marlene Cloud et al v. The Attorney General of Canada et al (2004),* 73 O.R. (3rd) 401 (CA).

[39] Zoë Oxaal, "'Removing that Which Was Indian from the Plaintiff': Tort Recovery for Loss of Culture and Language in Residential Schools Litigation", *Saskatchewan Law Review,* 68, No. 367, (2005), 367-402. In most provinces physical abuse claims were barred by limitations. Ontario barred both physical and sexual abuse claims, but had no limitation on breaches of fiduciary duty, unlike other provinces, and therefore both kinds of claims could proceed there. In most of the rest of the country it was sexual abuse claims alone that proceeded.

[40] M. Moran, "The Role of Reparative Justice in Responding to the Legacy of Indian Residential Schools," *University of Toronto Law Journal,* 64, no. 4 (2014), 529-565.

[41] Canada, Indian Residential Schools Resolution Canada, *Performance Report for the period ending March 31, 2003* (Ottawa: Treasury Board of Canada Secretariat, 2003).

[42] For example, over a period of fifteen years the average age of priests at the Diocese of Antigonish, Nova Scotia, rose from 55 to 61, while the number of both priests and church attendees declined. As well, financial pressures also arose from legal obligations related to sexual abuse that occurred both outside and inside of Indian Residential Schools: that Diocese alone was required to pay $15 million to victims of sexual abuse by its priests over the past fifty years. These factors combined to force the diocese to sell properties, liquidate bank accounts, and close churches: Aaron Beswick, "Diocese starts church review," *Chronicle Herald,* 13 August 2013, p. A3.

[43] Tanya L. Jorgenson, Associate Director, Aboriginal Law, BC and Yukon Region, Department of Justice Canada, Correspondence titled "Re: Modified Litigation Plan for IRS Claims in British Columbia and the Yukon," 20 December 2004.

Dispute Resolution and the Alternative Dispute Resolution Program:

Parallel to the process unfolding in and around the Courts, many individuals and organizations had been exploring other means for addressing the legacy of residential schools. In light of the known limitations of the criminal justice system and civil litigation in dealing with the ramifications of institutional abuse, people began to look for other, more meaningful and helpful ways to provide redress for those harms.

In 1991, the federal Government established a Royal Commission on Aboriginal Peoples with a comprehensive mandate to investigate the evolution of the relationship among Aboriginal peoples, the Canadian Government, and Canadian society. The Royal Commission held 178 days of public hearings in 96 communities, and issued its report in 1996.[44] The report presented several recommendations addressing residential schools, including the establishment of a public inquiry, compensation for communities to help in the healing process, and funding for treatment of individuals and their families.

Two years later, the Government of Canada released its response to RCAP in a policy framework titled *Gathering Strength – Canada's Aboriginal Action Plan.*[45] This included a Statement of Reconciliation acknowledging historical injustices to Indigenous peoples in Canada, and the establishment of the Aboriginal Healing Foundation with a $350 million fund for "community-based healing as a first step to deal with the legacy of physical and sexual abuse at residential schools". The Government also "committed to assisting in community healing to address the profound impacts of abuse at Residential Schools", and the Minister of Indian and Northern Affairs, the Hon. Jane Stewart, made a general commitment to "negotiate rather than litigate".

During 1998-99, Government representatives, Church officials, Indigenous organizations, and former students engaged in a groundbreaking series of nine "exploratory dialogues" to develop solutions and principles for the resolution of residential school claims outside of litigation.[46] Following these dialogues, the federal Cabinet in 1999 gave its approval for the Department of Justice and Department of Indian Affairs and Northern Development Canada to launch dispute resolution pilot projects with a view towards managing litigation and resolving abuse claims. This marked a significant departure from the Government's approach up to that point, which had been to respond to claims brought in litigation, rather than to develop proactively alternative dispute resolution approaches to addressing these claims.

The pilot projects were established on a group basis, recognizing that the harms done were not just to individuals but also had collective effects on families and communities. The first of these involved former students of Grollier Hall, which had been the subject of criminal justice proceedings that had resulted in a number of convictions for assault. Grollier Hall was a Roman Catholic residential school that opened in 1959 in Inuvik. In 1962, former supervisor Martin Houston was charged, convicted, and sentenced to ten years in jail for the sexual abuse of students.[47] In 1997 and 1998, three other former supervisors of the school were charged and sentenced for sex offences. During the criminal trials, victims and witnesses were subject to cross-examination, to a judicial process that was culturally removed from their own experiences, and to a lack of emotional and psychological support at an extremely traumatic time. One consequence of the Grollier trials, however, was that many victims came together on their own to provide support to each other throughout this process. This mutual support constituted an important foundation for and dynamic in the pilot project.

In the group approach adopted in some pilot projects, while former students were required to submit individual claims and hearings were conducted and compensation determined on an individual basis, each group provided a community-based forum for mutual support. Hearings for individuals were often held in the same facility, and meals could be held collectively allowing claimants (and often their families) to share experiences and support. After individual decisions for the members of the group were issued, there could be an event such as a feast, speeches, or commemorative project, providing an opportunity for claimants and their families to share in a positive experience and a form of redress at the community level. Indeed, in a formula that commenced with Grollier and was adopted in some subsequent pilots, an amount of compensation was put into a trust for the group, to be utilized for collective community purposes in the future.[48]

[44] Canada, Royal Commission on Aboriginal Peoples.
[45] Canada, Minister of Indian Affairs and Northern Development, *Gathering Strength: Canada's Aboriginal Action Plan* (Ottawa: Minister of Public Works and Government Services Canada, 1998).
[46] K. Mahoney, "The Settlement Process: A Personal Reflection." A summary of these dialogues is published in Canada, Minister of Indian Affairs and Northern Development, *Reconciliation and Healing: Alternative Resolution Strategies for Dealing with Residential Schools Claims* (Ottawa: IAND, 2000).
[47] In 2004, Martin Houston pled guilty to three additional charges related to sexual offences at Grollier.
[48] One variant of this approach was adopted in claims related to Lower Post. There, individual claims were settled by a chosen negotiating committee. The settlements were totaled and then divided equally among the claimants. The committee did not disclose the amounts of the "individual" settlements. The "mandatory set aside" method of funding group activities was the subject of significant negative reaction from Indigenous organizations and individuals, who regarded it as a paternalistic approach to the treatment of claimants' compensation. It was not carried forward into the Dispute Resolution Model or the Independent Assessment Process.

These pilot projects were designed to test alternative approaches to dispute resolution, and adopted a number of features that distinguished them from the traditional civil litigation model.[49] Each pilot project was unique but could include the following features:

- For most projects, a process in which claimants would not be questioned by Government counsel or Church counsel
- An independent fact finder chosen by the parties whose role could include an inquisitorial approach (the "inquisitorial model")
- Less reliance on expert reports
- The availability of healing and emotional supports throughout the process
- Hearings held in informal settings, without the "trappings" of a Court
- The ability of claimants to use traditional or cultural practices – such as a cleansing or prayer – prior to the hearing

In 2001, Canada established a separate department, the Office of Indian Residential Schools Resolution Canada (IRSRC), to co-ordinate resolution of residential school abuse claims. The Department continued consultations with affected parties, which in 2003 culminated in a "National Resolution Framework".

The Framework retained the option to settle claims through litigation, but added an Alternative Dispute Resolution (ADR) program.[50]

The Framework also provided for a comprehensive Mental Health Support Program (run by Health Canada) to ensure claimants and their immediate family members had access to mental health counselling and emotional support services.

Drawing on the experiences of the pilot projects, ADR adopted the "Dispute Resolution Model for Indian Residential School Abuse Claims" as an alternative approach to traditional civil litigation.[51] This Model utilized a grid for the determination of compensation based on the abuse suffered and the harms incurred.[52] Compensation amounts were developed by the Department based on the medians established in case law. The compensation grid included recognition of consequential loss of employment, education, or training opportunity. ADR incorporated the elements of the pilot projects aimed at providing a more supportive and expeditious process than civil litigation, and provided additional funds for future care, for counselling and medical or psychiatric treatment. To some extent, ADR also addressed the contentious issue of full compensation being provided to claimants for specified proven claims, regardless of any apportionment of liability between the Government and the Churches for abuses committed by school staff.[53]

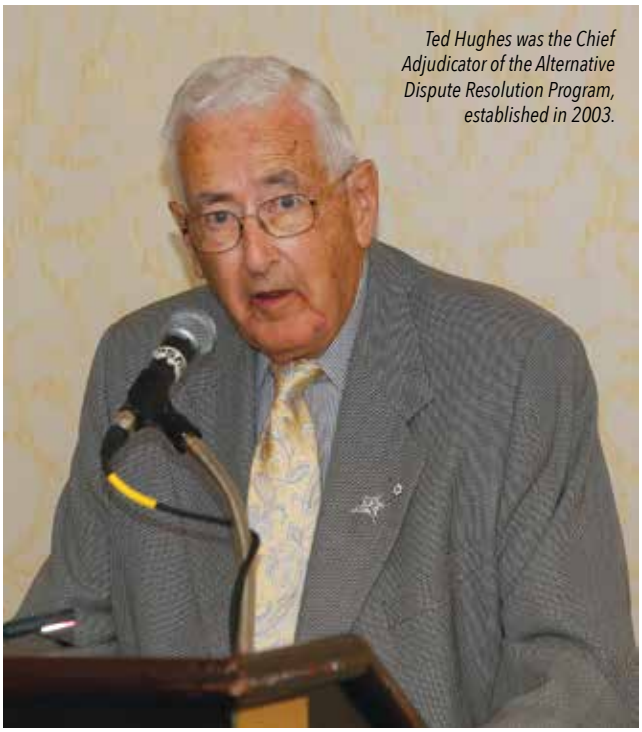
[49] As noted earlier, some of these approaches had also begun to feature in the modified litigation approach to residential school claims.

[50] The program based on the Dispute Resolution Model is variously referred to as "DR" and "ADR": cf. The Hon. Ken R. Halvorson, *Indian Residential School Abuse Claims: A Lawyer's Guide to the Adjudicative Process* (Toronto: Thomson Canada, 2005); Canada, Standing Committee on Aboriginal Affairs and Northern Development, Report on the *Effectiveness of the Government Alternative Dispute Resolution Process for the Resolution of Indian Residential School Claims* (Ottawa: House of Commons, 38th Parliament, 1st Session, 2004); and Canada, Indian Residential Schools Resolution Canada, *2004-2005 Departmental Performance Report* (Ottawa: Minister of Public Safety and Emergency Preparedness, [2005]). For sake of consistency, it is referred to herein as "ADR".

[51] A detailed description and operational analysis of the Dispute Resolution Model is presented in Halvorson.

[52] A "compensation grid" was also utilized by the Irish Redress Board established in 2002 to deal with claims related to child abuse in that country's institutional care system. However, in the Irish model, 75% of compensation was based on consequential harms - in which causation had to be proven according to strict court standards - and the remainder on the triggering act. In the ADR and IAP models, the principal compensation was more for the act than the consequential harms, but for standard track claims the proven harm needed to be only "plausibly linked" to the proven act, rather than the "causation" having to be assessed according to the stricter standards a court would apply.

[53] In 2001, the Hon. Herb Gray was appointed to lead discussions between Canada and the churches on the apportionment of liability for abuse claims. As a result, Canada agreed to provide 100% compensation for specified proven claims of abuse after April 1969, and to share compensation with the churches for specified proven abuses prior to that time. However, at the time of ADR, the Catholic Church entities had not signed contribution agreements with Canada, and only some of those entities decided to pay their 30% share on a case-by-case basis. When the IAP was implemented, in addition to the share of compensation Canada had already paid to claimants who were awarded compensation in the ADR process, Canada also provided an additional 30 % payment to ADR claimants who had not received the Church's share of the compensation.



Ted Hughes was the Chief Adjudicator of the Alternative Dispute Resolution Program, established in 2003.

At the same time, however, the parties wanted to ensure that the ADR process contained a rigorous enough validation process so as not to cast doubt on compensated claims and thereby diminish the veracity of the residential school experience and legacy. This concern over the validation of claims was strongly influenced by the 2002 report by the Hon. Fred Kaufman on the Nova Scotia Government's compensation program regarding abuse at the Shelbourne Youth Centre. In 1996, the provincial Government had implemented an alternative dispute resolution process for providing compensation to victims of abuse at the provincially operated institution. In his report, Kaufman found that the province's program "was seriously flawed. So flawed that it left in its wake true victims of abuse who are now assumed by many to have defrauded the Government, innocent employees who have been branded as abusers, and a public confused and unenlightened about the extent to which young people were or were not abused while in the care of the Province of Nova Scotia."[54]

As a result, the ADR process required that Canada screen applications for eligibility, and that claimants had the burden of proof - on the balance of probabilities - for allegations of abuse. Claimants' counsel were responsible for gathering and providing records relevant to the claims, including a list of mandatory documents required to prove certain levels of consequential harms and loss of opportunity. While individuals named in claims as perpetrators of abuse were not allowed to attend claimants' hearings, they were accorded the right to be informed of the allegations made, and the right to make representations in a separate hearing. Ultimately, the determination of the credibility of the claims and of the factors influencing the award rested with the adjudicator.

With the advent of ADR, an Indian Residential Schools Adjudication Secretariat, headed by a Chief Adjudicator, was established within IRSRC to administer the dispute resolution process.[55] Unlike in the pilot projects - where "independent fact finders" could be agreed to by the parties - ADR adjudicators were initially selected by a committee of representatives from Aboriginal organizations, Claimants' counsel, Churches and Canada, and then assigned to cases by the Chief Adjudicator, and could only be dismissed during their term on approval of the Chief Adjudicator. These moves were intended to provide for a separation between the independent adjudicators that would hear and decide ADR cases, and the representatives of the Government Department that would be acting as defendant in those cases.

While the ADR retained a group component, it was primarily focused on individual claims. Claimants could still have the option to file regular lawsuits, participate in a class action, negotiate a settlement, or apply to the ADR program. Once a claim was accepted into ADR by Canada, the Government was bound to pay compensation in accordance with the adjudicator's decision. Claimants, on the other hand, were only obliged to accept the award and sign a release with respect to civil litigation after the decision was issued.[56] When an award was issued and accepted, Canada would provide additional funds in the amount of 15% of the award to cover the legal fees of the claimant's counsel.[57] Claimants were permitted to participate in ADR without legal representation, and to that end a detailed "plain language" guide was prepared by Canada to assist them through the process.

More than 7,600 ADR claims were filed between November 2003 and March 2007.

[54] The Hon. Fred Kaufman, *Searching for Justice: An Independent Review of Nova Scotia's Response to Reports of Institutional Abuse* (Halifax: Province of Nova Scotia, 2002).
[55] The Hon. Ted Hughes was selected as the ADR's Chief Adjudicator by representatives of Canada, churches, Indigenous organizations, and lawyers representing former students. He functioned in the capacity of an independent contractor who could only be terminated by the Chief Adjudicator's Reference Group, a body composed of representatives of those organizations.
[56] The initial design of ADR was to require a claimant Release prior to a hearing, but that was changed following strong resistance from survivor groups. The Release expunged further claims against Canada and the churches, with the exception of those related to loss of language and culture (which was not covered in ADR).
[57] ADR also included a more streamlined "Process B" procedure, to be used for cases of "wrongful confinement" or in which no lasting mark or injury occurred. Process B cases had a maximum award of $3,500. In those cases, Canada's contribution to lawyers' fees was the greater of 15% of the award or $500.

Many of those who worked with ADR considered it a significant improvement over litigation. It was, clearly, designed to be a more expeditious process and supportive environment than existed in traditional litigation. Adopting some features that had been introduced in a modified approach to litigation and featured in pilot projects, it was non-adversarial and eschewed cross-examination; hearings were not held in public, and could take place in a location of the claimant's choice; health supports were available throughout the process; traditional ceremonies could be incorporated into the hearing process; claimants' travel costs to attend hearings were paid in advance by Canada; the use of a plausible link test for causation; if the acts and harms were proven in accordance with the ADR Model, compensation was paid; and awards were in line with what had been granted by the Courts. For many, especially those within Government, ADR was seen as a positive and effective alternative to litigation.

However, the ADR model was also subject to strong criticism. In 2004, the AFN held a conference at the University of Calgary Law School on the ADR process, and emanating from that conference an expert committee published its *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Resolution Schools.*[58] Both the conference and the ensuing report noted some of the positive aspects of ADR but were highly critical of the program.[59] These criticisms included:

- *Inequitable Treatment:* There were pronounced regional differences in the amounts of compensation awarded by ADR adjudicators; the Model set out a separate level of compensation that governed schools in British Columbia, the Yukon, and Ontario as distinct from the rest of the country.[60] It also contained differences based on the years in which the abuse occurred; in "Process B" of the ADR, the Model incorporated a "Standards of the Day" concept that defined the level of discipline that would be considered as exceeding acceptable standards depending on the year of occurrence.[61]

- *Differences between Churches:* Compensation depended on which Church-run school a claimant had attended. Anglican, Presbyterian, and United Churches had agreed to pay 30% of compensation to former students with the Government of Canada covering the remaining 70%. However, since Catholic Churches generally refused to pay any compensation, claimants who attended most Catholic-run schools only received 70% of their awarded compensation.[62]

- *Unspecified Harms or Ineligible Claims:* Harms specific to women such as pregnancy, forced adoption, or abortions resulting from sexual abuse were not expressly mentioned in the ADR and relied on the discretion of adjudicators to award compensation. As well, ADR did not recognize loss of language and culture as a compensable harm: an issue that had been a strong point of contention in individual litigation and class actions.

- *Student-on-Student Claims:* Claims of abuse caused by other students were not compensated unless it could be proven that staff in the residential school had actual knowledge of the abuse. Given the secrecy surrounding sexual abuse, it was difficult for survivors to prove such claims.

- *Healing/Reconciliation:* While apologies were sometimes provided by representatives of the Government of Canada and/or Church entities, the ADR program did not contain extensive provisions for healing and reconciliation.

- *Aging Claimants:* Due to the start-up time required to implement ADR and the length of the process, the ADR approach was not meeting the needs of aging claimants. The 2004 Report noted that at that point, only 93 cases had been resolved through ADR.

- *Cost:* The costs to administer the ADR program (albeit including significant start-up costs) were estimated to be four times that of the actual compensation awards.[63]

- *Lack of Finality:* The outcome of an ADR claim was non-binding, in that the claimant could accept or reject the outcome. If claimants were not satisfied with their ADR ruling, they had the option of returning to civil litigation. If the claimant did accept the outcome, the Government of Canada was bound by the decision and could not independently reject it.

- *Independence:* The Government of Canada delivered the ADR program and at the same time was a defendant in the process. Although decisions were rendered by adjudicators and not by the Government and IRSRC maintained that it was a neutral decision maker, the Government had unilateral discretion as to which claims would be admitted to the process, and accusations persisted of an unfair process lacking in transparency and cultural sensitivity. As well, although a period of consultations had preceded the implementation of the Dispute Resolution Model, it was in fact a Government policy and program. There was an inherent limitation to the extent to which there could be broad-based acceptance of a process in which only one of the parties, even well intentioned, set the rules, and in which those rules were subject to unilateral revision or alteration.

[58] Assembly of First Nations, *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools* (n.p.: Assembly of First Nations, 2004).
[59] See Mahoney, "The settlement process."
[60] The regional differences in the ADR were based on regional differences in the Court awards made in various jurisdictions.
[61] "Process B" addressed claims for physical abuse where there was no lasting injury or where wrongful confinement was alleged.
[62] Upon implementation of the IAP, this was addressed by Canada providing an additional 30% payment to ADR claimants who had not received the Church's share of compensation.
[63] Canadian Bar Association, *The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors* (n.p.: Canadian Bar Association, 2005). This ratio of administrative costs to awards was even higher for "B" claims. It should be noted, however, that this assessment was based only on the first year of ADR operations.

The AFN Report went on to set out what they considered to be the essential requirements for achieving a comprehensive and fair settlement for all former students. Based on previous consultations, the report stated that such a process should:

- Be inclusive, fair, accessible, and transparent
- Offer a holistic and comprehensive response recognizing and addressing all the harms committed in and resulting from residential schools
- Respect human dignity and equality and racial and gender equality
- Contribute towards reconciliation and healing
- Do no harm to survivors and their families

Healing and Reconciliation:

Underpinning the efforts to provide reparation for residential school abuses through litigation or alternative dispute resolution was a deeper context of attempting to understand and reconcile the broader impacts of the Indian Residential School policy. In 1986, the United Church of Canada issued an apology for its attempts to impose European culture and values on Aboriginal people. In 1991, the Catholic Missionary Oblates of Mary Immaculate issued a more specific apology for Residential Schools. This was followed by apologies for residential schools by the Anglican Church of Canada in 1993; the Presbyterian Church of Canada in 1994; the United Church of Canada in 1998; and the Royal Canadian Mounted Police in 2004. The federal Government's 1998 "Statement of Reconciliation" included a declaration that the Government was "deeply sorry" for the "tragedy of sexual and physical abuse at residential schools" and provided the initial funding for the establishment of the Aboriginal Healing Foundation to address the legacy of abuse at residential schools. Some healing events featured in the pilot projects, ADR, and even in the resolution of some litigation claims.

And, as noted earlier, the Government, Churches and Indigenous Groups met in a series of exploratory dialogues in 1998-99 that were intended to discuss not only means of addressing outstanding litigation, but of moving towards a broader resolution to the legacy of the residential schools.

As the Royal Commission on Aboriginal Peoples (RCAP) had concluded, "Redressing the wrongs associated with the residential school system will involve concerted action on a number of fronts" including a full public inquiry. In its report on the ADR plan, the AFN observed: "In order to achieve reconciliation between Canada, the Churches, and survivors and to facilitate healing among the survivors and the First Nation communities, it is a fundamental principle that the harms done be addressed in a holistic manner." The RCAP also declared: "There can be no peace and harmony unless there is justice."

Notwithstanding the dialogues that were occurring and the issuance of public apologies, it was difficult to build trust and progress towards reconciliation while survivors were required to pursue compensation through legal actions, and were subject to legal defences in which Government and Churches had attempted to limit or deny liability. Although a number of civil cases were resolved through settlement, in many important ways the implementation of a non-adversarial and supportive method of compensating the victims of residential schools for the assaults that they suffered was a necessary precondition of moving towards healing and reconciliation for Indigenous and non-Indigenous people alike.

The Indian Residential Schools Settlement Agreement

In 2005, several events occurred that had significant implications for the progress of political and legal developments regarding Indian Residential Schools. In February of that year, a number of witnesses who appeared before the House of Commons Standing Committee on Aboriginal Affairs and Northern Development were highly critical of the ADR process. The committee's report, tabled in the House of Commons in April 2005, condemned the ADR and recommended that the program be terminated.[64] A House of Commons vote subsequently adopted this call for a replacement to the ADR process, and required the Government to formulate a proposal within forty days.

Early in May, 2005, the Supreme Court of Canada dismissed the federal government's application for leave to appeal the Ontario Appeal Court's decision certifying the Cloud class action suit. This decision not only permitted the Cloud class action to proceed but also set the stage for the certification of the Baxter class action suit.

[64] For a summary of witness testimony to the standing committee, see Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (Vancouver: UBC Press, 2011), pp. 125-136.

Following these developments, in May 2005 the Government of Canada and the Assembly of First Nations signed a Political Agreement with the goal of achieving a Court-sanctioned, global resolution to all outstanding litigation. Then AFN National Chief Phil Fontaine described the Political Agreement as an accord intended to result not only in a "better, faster and more economic claims process for residential schools survivors who were abused" but also as "a commitment for the entire country to move forward through a national dialogue on healing, reconciliation, commemoration, and truth-sharing" and "a holistic way to deal with this terrible, tragic legacy of our shared past."

The Government appointed the Hon. Frank Iacobucci, a former Justice of the Supreme Court of Canada, as its representative in negotiations with representatives of the AFN and Inuit communities, residential school survivor groups, and legal counsel representing former students and Churches. According to Mr. Iacobucci, "We were trying to find ways of dealing with serious physical assault and sexual assault in ways that would be an improvement on the ADR system, which had a massive backlog. We wanted to do something to ensure that the claimants would receive fair and effective treatment and compensation if their claims were recognized. It was all about the claimants and improving the approach for them, but at the same time making it a system that had integrity and substance and, in fact, a fair process." These discussions culminated in an Agreement in Principle entered into by all parties in late November 2005.[65]

On May 10, 2006, the National Consortium[66], Merchant Law Group, Independent Counsel, AFN and Inuit representatives, the General Synod of the Anglican Church of Canada, the Presbyterian Church of Canada, the United Church of Canada, Roman Catholic entities, and the Government of Canada, signed the Indian Residential Schools Settlement Agreement.

Subsequently, a motion on consent was brought before the Ontario Superior Court of Justice and the Superior Courts of eight other provinces and territories for the certification of a class proceeding and the approval of the Settlement. The motion proposed to combine all outstanding litigation into a single class action, establishing a national class of "Survivors" to whom the Settlement would apply: all those who resided at an Indian Residential School in Canada between January 1, 1920, and December 31, 1997, and who were living as of May 30, 2005. This motion was approved by the then Ontario Regional Senior Justice Warren K. Winkler on December 15, 2006.[67] Certification hearings on the class action were held in the Supreme Courts of other jurisdictions. After the provincial and territorial Courts approved the agreement and a six-month opt-out period had passed, the Settlement Agreement – at that time the largest out-of-Court settlement in Canadian history - came into effect on September 19, 2007.

The IRSSA was meant to bring a fair and lasting resolution to the legacy of Indian Residential Schools by providing financial and non-financial benefits to the individuals affected by the Indian Residential Schools experience. Its implementation was to be overseen by nine provincial and territorial Superior Courts, and funded by the Government of Canada.

The Settlement Agreement was a broad commitment to provide redress for the harms of residential schools and move towards reconciliation. As such, it contained a number of different components: some that provided compensation for residential school survivors, and others that extended beyond direct survivors themselves and were intended to document the residential school experience and advance healing and reconciliation between Indigenous peoples and the Canadian state.

[65] Inuit representatives were not involved in the May accord reached between the federal government and the AFN to initiate settlement discussions. They joined the negotiations in September 2005, following the filing of class actions on behalf of former students in their respective jurisdictions.

[66] The National Consortium of twenty law firms representing former residential school students in individual and class actions had been formed in 2003 to pursue a national litigation plan and political action campaign. It emanated in part from the Canadian Residential School Plaintiffs' Counsel Association that had been created several years earlier and functioned as a clearinghouse for information and ideas about pursuing residential school claims.

[67] *Baxter v. Canada* (Attorney General). 2006 Can LII 41673, ON S.C.

A stained glass window in Parliament commemorates the legacy of former Indian Residential School students and their families.

The non-compensatory components of the Settlement Agreement included:

Truth and Reconciliation Commission (TRC): The TRC was allocated $60 million over five years to document the histories of survivors, families, communities and anyone affected by the residential school experience. Through events at both the national and community levels, it guided and inspired Indigenous people and Canadians in a process of reconciliation and renewed relationships based on mutual understanding and respect. The TRC released its final report in 2015.

Commemoration: The Settlement Agreement provided $20 million in funding over six years for commemorative initiatives to honour, educate, remember, memorialize, and pay tribute to former students of Indian Residential Schools, their families, and the larger Indigenous community. This included the installation of a stained-glass window in Centre Block of Parliament commemorating the legacy of former Indian Residential School students and their families. Although not formally part of the Settlement Agreement, on June 11, 2008 then Prime Minister Stephen Harper delivered a formal apology in the House of Commons on behalf of the Government of Canada to former students, their families, and communities for the Government's role in the operation of the residential schools.[68]

Healing Supports: To foster healing in Indigenous communities, a $125 million endowment was provided to the Aboriginal Healing Foundation to continue its mission. The Settlement Agreement also provided for the continuation of supports provided by Health Canada, such as a 24-hour crisis line and front-line Resolution Health Support Workers.

There were also two compensation-related components of the Settlement Agreement:

The Common Experience Payment (CEP) recognized the experience of eligible Indian Residential School students who resided at any Indian Residential School prior to December 31, 1997. Administered by Indigenous and Northern Affairs Canada (INAC), the CEP was an unprecedented recognition of the common experience of having resided at an Indian Residential School. Every former student who had resided at a recognized IRS and was alive as of May 30, 2005, was eligible to apply for and receive $10,000 for their first school year or partial school year, with an additional $3,000 in compensation for each full or partial school year of residence beyond the first school year. Under the CEP, eligible former students received an average award of $20,457. The total compensation provided through CEP was $1.6 billion.[69]

The Independent Assessment Process (IAP) was the out-of-Court process to settle claims of sexual abuse, serious physical abuse, or other wrongful acts suffered while attending a residential school. Compensation was provided up to $275,000, based on nature of the abuse and the level of harm suffered by each student.[70] Once the IRSSA received Court approval, IAP applications from survivors were accepted from September 19, 2007 to September 19, 2012.[71]

As the IAP was framed as part of a settlement of a class action, it was no longer an "opt-in" alternative to litigation. With the Settlement Agreement, the IAP was now the only way to claim compensation for abuse at a residential school, other than for those who explicitly opted out of the class action settlement within the timeframe allotted by the Courts or those who, by the application deadline, had not filed claims in Court, the ADR or the IAP.

[68] While not contained in the Settlement Agreement, the apology was part of the Political Agreement, and was recommended by Chief Justice Brenner of the Supreme Court of British Columbia in his decision approving the Settlement Agreement.

[69] "Information update on the Common Experience Payment From September 19, 2007 to March 31, 2016," *Statistics on the Implementation of the Indian Residential Schools Settlement Agreement,* Canada, Crown-Indigenous Relations and Northern Affairs Canada, 19 February 2019, https://www.rcaanc-cirnac.gc.ca/eng/1315320539682/1571590489978. The amount initially allocated to the CEP was an irrevocable grant of $1.9 billion. If that proved insufficient, it was to be augmented to the extent required. If, as turned out to be the case, it was excessive to the requirements of individual CEP compensation, the balance was designated for education benefits available to former residents and their family members.

[70] The IAP also contained the possibility for a claimant to proceed through the Courts in three circumstances: for claims related to actual income loss (AIL); where there was sufficient evidence that the claimant suffered catastrophic physical harms such that compensation available through the Courts may exceed the maximum permitted by the IAP; or in an "other wrongful act" claim, the evidence required to address the alleged harms was so complex and extensive that recourse to the Courts would be the more appropriate procedural approach. Such Court cases would not be subjected to a cap on compensation. AIL claims in excess of $250,000 could also be addressed through the Negotiated Settlement Process. More information on AIL is provided in Chapter 4.

[71] The supervising courts subsequently ordered that applications for the IAP received by September 2, 2013, for one additional school (Mistassini) were deemed to have been received on or before September 19, 2012. In 2018, the courts added Kivalliq Hall to the list of eligible residential schools and set January 25, 2020, as the application deadline for claims from that school. The supervising courts also decided that applications handled by the law firm Blott & Company (Supreme Court of Alberta, 2012) were deemed to be submitted before the deadline.

THE INDEPENDENT ASSESSMENT PROCESS

Objectives of the IAP

An agreement as complex and far-reaching as the Indian Residential Schools Settlement Agreement – unparalleled in Canadian history – had a range of objectives. These objectives emanated from the history and impact of the residential schools experience and the process that culminated in the IRSSA, as described in the previous two chapters of this report. They reflected the various interests and hopes of the parties; the broader social, political, and legal context within which it was framed; and what the IRSSA was intended to achieve for all of those affected by residential schools.

TRC Commissioner Wilton Littlechild

As a part of the Settlement Agreement, the Independent Assessment Process (IAP) also had a number of objectives. Some of these were specifically outlined in the Agreement while others were more general in nature. These objectives shaped the process for IAP claims, informed the activities of all stakeholders in the IAP, and provided the foundation and guiding principles for the Oversight Committee in carrying out its mandate in the implementation of the IAP.

Resolving Litigation:

In understanding the objectives of the IAP, it is important to start with an appreciation that the IAP was part of an agreement to settle litigation. Individual civil suits and class actions related to the residential school experience were numerous, complex, costly, and lengthy. As well, although Alternative Dispute Resolution had provided significant improvements over litigation, it still contained elements that proved less than satisfactory for many parties. Building on experiences of litigation and the ADR, the IAP was designed and intended to resolve individual claims for redress for abuse at residential schools in a manner that was more timely; that provided an opportunity for validation of claims and of the impacts of individuals' personal experiences while at the same time being less harmful to and more respectful of residential school survivors; that provided consistency in decisions and awards without differences based on geographical location or on which Church ran the school; that was an independent Court-supervised - and not a Government-run - process; and that provided finality to the litigation process.

Reconciliation:

Underpinning the efforts to provide reparation for the abuses that occurred at the schools was a deeper context of attempting to understand and reconcile the broader impacts of the Indian Residential School policy. This had been evidenced by such actions as the work of the Royal Commission on Aboriginal Peoples; the Government of Canada's Aboriginal Action Plan and the establishment of the Aboriginal Healing Foundation; the apologies offered by some Churches, the Minister of Indian Affairs and Northern Development, and the RCMP; and the extensive efforts of Aboriginal groups, Churches, and the Government to engage in dialogue on advancing reconciliation.

Notwithstanding the public apologies and the dialogues that were occurring, it was difficult to build trust and progress towards reconciliation while survivors were required to pursue compensation through legal actions and were subject to legal defences in which Government and Churches limited or denied their liability. The implementation of a less adversarial and more supportive method of compensating the victims of residential school abuse was a necessary precondition for moving towards healing and reconciliation for Aboriginals and non-Aboriginals alike. As the Royal Commission on Aboriginal Peoples stated in its 1996 report, "There can be no peace and harmony unless there is justice." Within the Settlement Agreement, the IAP was intended to provide justice for the acts and consequences of abuse.

Winnipeg Hearing Centre

Healing – A Claimant-Centred Process:

A principal foundation of the IAP was its design as a claimant-centred process. Not only was reconciliation an implicit objective of the IAP as part of the IRSSA, there were also specific aspects in the IAP process that were intended to promote healing. Ensuring that the IAP maintained a claimant-centred approach was a fundamental prism used by the Oversight Committee in its ongoing assessment of and, when required, improvements to the IAP process.

A support line and crisis line were maintained to provide immediate assistance to all those affected by the residential school experience. Claimants who chose not to have legal representation were assigned Claimant Support Officers. Claimants had access to health support workers at every phase of the process, including at the hearing. They could be accompanied at the hearing by Elders, interpreters, and/or family or community members; this not only provided support for the claimant but could aid in intergenerational healing.

Each claimant could indicate a preference in the location of her/his hearing and the gender of the adjudicator. Rather than taking place in courtrooms, hearings were held in private and informal settings, such as hearing centres, hotels, lawyers' offices, or the claimant's home. As well, hearings incorporated traditional and ceremonial elements such as smudges, songs, and/or prayers, depending on the claimant's preference.

Within the hearing, only the adjudicator could ask the claimant questions, which were inquisitorial. Claimants were not subject to cross-examination by lawyers for the Government of Canada, Churches, or alleged perpetrators.

At the end of each hearing, representatives of Canada and the Church who were in attendance would often present a personal acknowledgement or apology to the claimant for her/his experience. And the compensation award could contain, at the claimant's request and design, additional "Future Care" funds dedicated to assist them in their healing following the hearing and decision.

The hearing itself could provide transformational moments for all of those present. Claimants had the opportunity to relate their history – sometimes for the first time – and to have their experience heard and validated in a decision and an award. The hearing also exposed the others present – adjudicators, Canada's representatives, the Church's representatives – to the realities of the residential school legacy, on a first-hand and personal basis and in a confidential and non-adversarial context, where they were committed to listening, understanding, ensuring the requirements of the IAP were met, and to acknowledge the claimant's experience. This sharing of personal history would have been difficult if not impossible to achieve in a public setting or solely through the issuance of a cheque. Thus, the promotion of healing and reconciliation was not merely a potential by-product of the assessment process, but was seen as an actual objective of the IAP. In its first Annual Report, the Indian Residential Schools Adjudication Secretariat stated: "The hearing is not just a step in a compensation process: it is an opportunity for the parties to achieve, together, a degree of the healing and reconciliation intended by the authors of the Settlement Agreement."[72]

[72] Indian Residential Schools Adjudication Secretariat, *Annual Report 2008* (Ottawa: IRSAS, 2008), p. 11.

Operational and Administrative:

The adoption of the Settlement Agreement introduced with it a number of operational and administrative objectives related to the implementation of the IAP. The requirement for the IAP infrastructure to be up and running was intense in both scale and immediacy. As per Article 15.02 of the IRSSA, all existing ADR claims were either transferred to the IAP, subject to re-application under the IAP, or continued to be addressed within the ADR model but under the administrative auspices of the Chief Adjudicator.[73] The Settlement Agreement also mandated that, following a six-month start-up period, IAP claims would be processed at a minimum rate of 2,500 per year. It further stipulated that claimants who met the requirements of the IAP would be offered a hearing date within nine months of their application, "or within a reasonable period of time thereafter". Finally, the Settlement Agreement stated that, unless the claimant him or herself frustrated the scheduling process, all IAP claims would be processed within six years of the Implementation date: i.e., one year following the deadline for IAP applications.[74] As well, Schedule D specified that adjudicators provide a written decision to the claimant within 30 days of the hearing for Standard Track hearings, or 45 days for Complex Track hearings.[75]

In addition, the Court's Implementation Order provided that the fees charged by a claimant's counsel could be subject to review by the Adjudicator for "fairness and reasonableness", and that the Adjudicators' decisions on these matters could be subject to a further review by the Chief Adjudicator or his designate.[76]

From September 19, 2007, through to the end of December 2008, there were 9,295 claims received (either as new applications or transferred/continued from ADR), and 1,747 hearings held. In just over a year, the number of Adjudication Secretariat staff grew from the approximately 33 that had worked on the ADR model to more than 150 in four locations across Canada, and nearly 80 adjudicators were selected and retained by the Oversight Committee.

The Oversight Committee and those responsible for implementing the IAP were aware that the focus needed not only to be on achieving operational targets, but also on doing so in ways that were claimant-centred and that would assist in healing and reconciliation. The Adjudication Secretariat defined its strategic outcome as: "to advance reconciliation among former students of Indian Residential Schools and the Government of Canada". In furtherance of this, the Secretariat stated: "Our success will be measured not only by the number of claims resolved but by our ability to treat each claim in accordance with our core values and thus advancing reconciliation among former students of Indian Residential Schools and Canadians." It identified those core values as being "based on fairness, consistency, impartiality, claimant-centeredness and compassion".[77]

Thus, operational objectives focused not only on statistical outcomes but also on the values and approaches that were to be adopted in the achievement of those outcomes.

As the IRSSA emanated from a class action, it specifically required that efforts be undertaken to ensure that members of the class were notified of the Settlement Agreement, including their right to opt out of the Agreement. This process included a formalized "Residential Schools Class Action Litigation Settlement Notice Plan" and the implementation of a toll-free telephone information line. In addition, the Adjudication Secretariat developed its own ongoing Outreach program to raise awareness of the application deadline, and to ensure that people were aware of the mental health, emotional, and legal supports that were available. While independent legal representation for claimants was encouraged, there was no requirement to retain counsel; accordingly, the Adjudication Secretariat put in place mechanisms to ensure that claimants could fully participate in the process on a self-represented basis, if they so chose. Thus, another of the key operational objectives was to provide all those who had a potential claim under the Settlement Agreement the opportunity and support necessary to submit an IAP application prior to the deadline.

[73] Some 7,600 claims were filed in the ADR, of which 3,477 remained active at the time of implementation of the IAP. The final ADR cases were not resolved until 2013. The IAP also allowed for some claimants to re-open their ADR claims; this could only occur in specific circumstances. Relative to the ADR, there were expanded opportunities to advance claims relating to "student-on-student" abuse and to receive increased compensation for "consequential loss of opportunity".

[74] *IRSSA*, Article 6.03

[75] *IRSSA*, Schedule D, Section III (k) (ii). The Complex Track was required where the claimant sought compensation for actual income loss or for other wrongful acts, as per *IRSSA*, Schedule D, Section III (b) (ii)). Further information on the Complex Track process is provided below.

[76] *Fontaine v. Canada (Attorney General)*, Court File 00-CV-192059CP, ONSC, 8 March 2007, paras. 18 and 19.

[77] Indian Residential Schools Adjudication Secretariat, *Strategic and Operational Plan 2011-12* (Ottawa: IRSAS, 2011), p. 6 and p. 9.

IAP Hearing

Summary:

As a component of the comprehensive Settlement Agreement, the IAP was intended to achieve a range of objectives. These included:

- To provide fair and meaningful financial compensation for sexual, and serious physical abuses and other wrongful acts suffered by individual former residential school students
- To consolidate and finalize the voluminous civil legal actions arising out of the residential school experience[78]
- To provide an out-of-court, claimant-centred process for determining and awarding compensation
- To contribute to a more holistic reconciliation among residential school survivors, Indigenous communities, Canada, and the Churches
- To ensure that all former students covered by the terms of the Settlement Agreement had the opportunity to submit an IAP application prior to the deadline
- To ensure the independence of adjudicators and the adjudication process
- To ensure that all claimants had access to independent legal counsel, while accommodating claimants who chose to represent themselves
- To ensure that claims were subject to a validation process, including the right of alleged perpetrators to be informed of allegations and the right to be heard
- To provide a hearing process that did no further harm to claimants and was supportive of their healing
- To process a volume of cases and offer hearing dates to claimants in accordance with the requirements stipulated in the Settlement Agreement
- To ensure that the legal fees charged by claimants' counsel met the standard of "fairness and reasonableness" as set out in the Court's Implementation Order
- To issue decisions within the timeframes stipulated in the Settlement Agreement

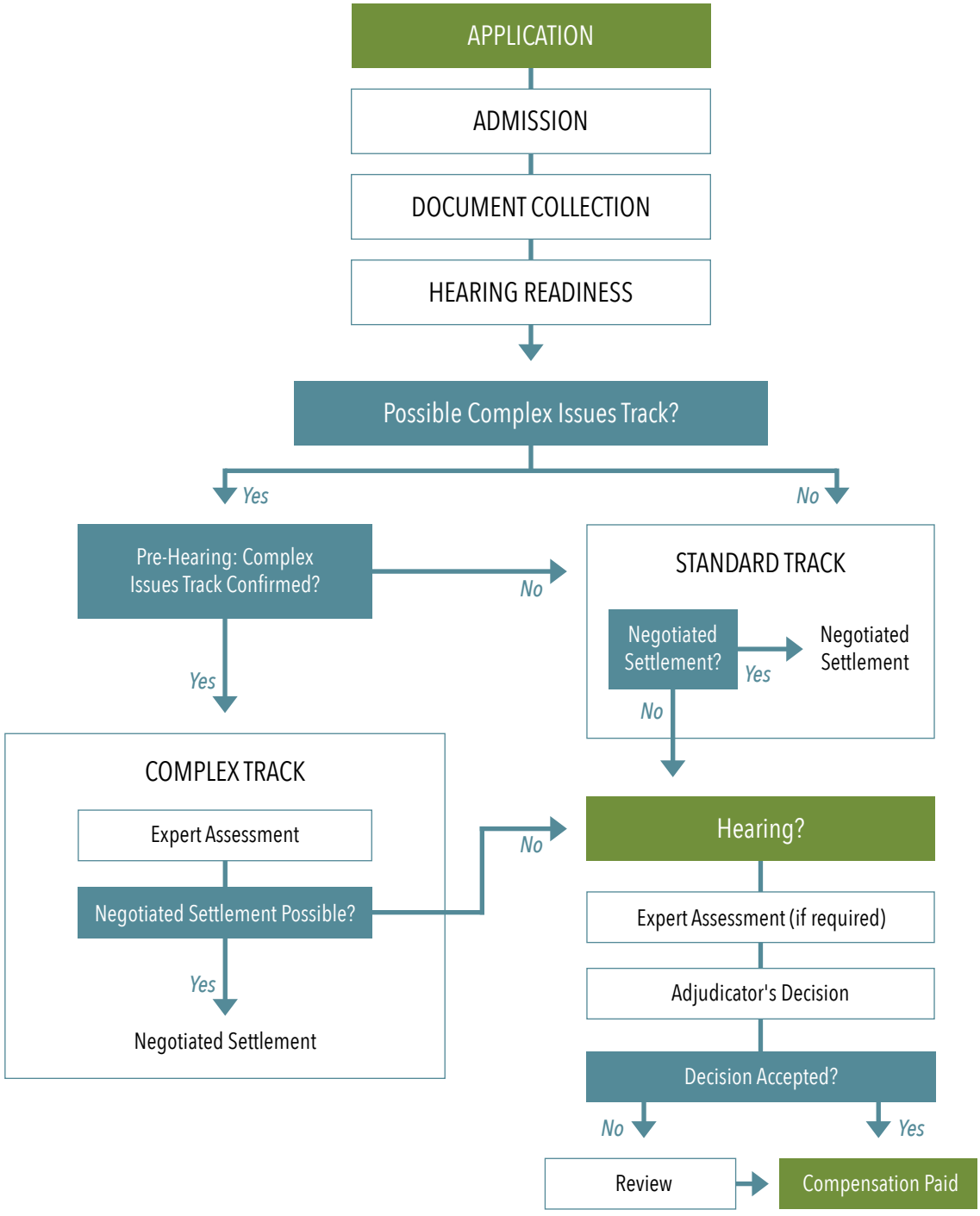
The Independent Assessment Process

To achieve these objectives, an extensive and complex process was developed for receiving, processing, and deciding IAP claims. The Settlement Agreement set out the details of the IAP process, but the obligation to interpret and apply those provisions and administer the IAP fell to the Chief Adjudicator, Adjudication Secretariat, and the Oversight Committee. As part of this process, administrative directives and guidance had to be developed and/or approved by the Oversight Committee, the Chief Adjudicator, and/or the Adjudication Secretariat to address the many challenges that arose during the course of the implementation of the IAP. (An examination of the process improvements that were implemented in order to meet the expectations of the Settlement Agreement is presented in the next chapter).

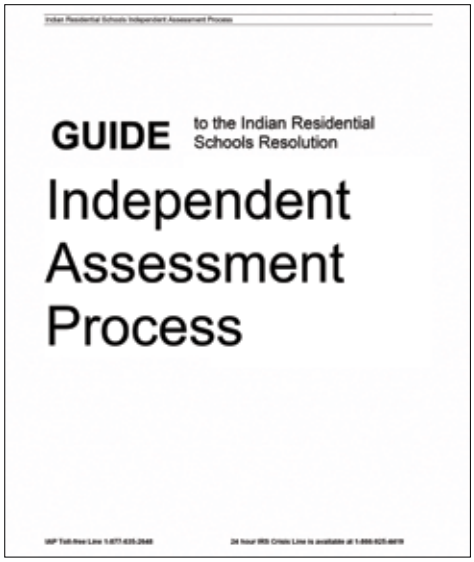
Given the variety of issues and circumstances that arose over the course of more than 38,000 unique and individual claims, it is not possible to present an exhaustive description of all possible process elements of the IAP. The simplified flow chart below illustrates the main stages in an IAP claim. A more detailed description of each of these stages follows.

[78] As noted previously, class members were allowed to opt out of the Settlement Agreement and pursue legal action

INDEPENDENT ASSESSMENT PROCESS FLOW CHART



The IAP application guide helped claimants understand if they qualified for the IAP, and provided directions on completing the IAP application form.


GUIDE to the Indian Residential Schools Resolution

Independent Assessment Process

The IAP Claim and Pre-Hearing Processes:

Applications and Admission of the Claim:

A former student of an Indian Residential School could initiate a claim for compensation under the IAP by completing a standardized application form with information on the school(s) attended, the abuse that she/he suffered at the school, and the harm that those experiences caused. It was also required that the former student, if possible, provide the names of those who perpetrated that abuse, so that efforts could be undertaken to notify the alleged perpetrators that a claim had been filed. The Settlement Agreement stipulated that the deadline for filing an IAP application would be September 19, 2012.[79]

The application form could be filled out with or without the assistance of legal counsel, but it was strongly recommended that claimants hire a lawyer as the IAP was complex and involved legal concepts. The Indian Residential Schools Adjudication Secretariat prepared a Guide to the IAP application to assist claimants and/or their representatives with the application form and process. The Guide also contained information on the support programs offered by Health Canada to former students and their families.

Applications were then reviewed by the Adjudication Secretariat which was, according to the IRSSA, "responsible for determining whether applications fall within the terms of the IAP". Specifically, the Adjudication Secretariat would admit claims if the claimant was eligible to submit a claim under the Settlement Agreement, the application was complete and signed, and the allegations – should they be proven in a hearing – would constitute a claim under the IAP.[80]

Given the volume of IAP claims, they were reviewed for admission based on priorities set out in the IRSSA. The first priority was accorded to those claimants whose health meant that they were at significant risk that they might pass away or lose the capacity to provide testimony at a hearing. Also receiving higher priority were claimants who were in failing health that could impair their ability to participate in a hearing; elderly claimants; persons who had completed an examination for discovery in a litigation process; and claimants who were applying as part of a formally recognized group. All other applications were processed in the order in which they were received.

If the Adjudication Secretariat determined that a claim was not eligible and would not be admitted, this decision could be requested by a claimant or counsel to be referred to the Chief Adjudicator for review. In these circumstances, the Chief Adjudicator would consider only the information that had already been provided in support of the application, and would only consider admission reviews on the grounds that the Adjudication Secretariat had improperly interpreted the Settlement Agreement in its decision not to admit the claim.

Once a claim was admitted, the Adjudication Secretariat would notify the claimant's counsel (or the claimant directly if she/he was not represented by a lawyer) of the "track" ("standard" or "complex") into which the claim had been admitted. Most IAP claims followed a "Standard Track". However, some specific types of claims were dealt with in a "Complex Track": this included claims of wrongful acts causing serious psychological consequences.[81] The Complex Track was also used to deal with claims for actual income losses attributable to residential school experiences. Certain Complex Track claims required more detailed proof than in the Standard Track, usually entailed expert evidence, and applied the court standards for establishing "causation" of harms versus the less stringent "plausible link" standard that applied in the Standard Track.

[79] In 2012, the Quebec Superior Court added Mistassini Hostels to the list of eligible schools under the Indian Residential Schools Settlement Agreement, and gave former students of Mistassini until September 2, 2013 to submit an IAP application. Following a 2018 decision by the Nunavut Court of Appeal that added Kivalliq Hall to the list of eligible schools, former students of that school were given until January 25, 2020, to submit an IAP application. As well, a court order in 2018 dealing with claims that had been determined by the law firm Blott and Company as "Did Not Qualify" gave until September 14, 2018, for submission of materials in support of admission of those applications: 46 such claims were subsequently admitted to the IAP. (In 2012, the supervising court had banned Blott and Company from representing residential schools survivors due to concerns about the firm's practices. Clients of Blott and Company whose applications had not been submitted and who could not be located at that time were given until October 2016 to apply to the IAP.)

[80] In practice, initial intake and review of applications was conducted on behalf of the Adjudication Secretariat by Crawford Class Action Services. Those applications that met the specified criteria were readily admitted. For applications missing information, Crawford would follow-up with claimants or their counsel and would admit those applications when such information was provided. If in those circumstances Crawford could still not make an eligibility determination, the claim would be forwarded to the Adjudication Secretariat for secondary review.

[81] The Compensation Rules that governed IAP awards are reproduced in Appendix II.

Document Collection:

IAP awards were not granted automatically; the IAP required that adjudicators assess the credibility and reliability of the claimant's evidence. Adjudicators assessed the validity of each claim in the hearing process but also through mandatory supporting documents. The Adjudication Secretariat would provide a checklist of the documents needed to support the claim, as set out in Schedule D, Appendix VII, of the IRSSA. This checklist specified the mandatory documents required for each combination of "Harm" and "Loss of Opportunity" contained in the claim, and could include records from Workers' Compensation, Income Tax, Corrections, or medical treatment. Due to the number of documents required, the scope of time that may be covered by those records, and resource limitations in the agencies that needed to supply the documents, the process of document collection could be lengthy. When the mandatory documents had been compiled, the claimant or claimant's counsel could request that a hearing be scheduled.[82]

At the same time, the Government of Canada was responsible for researching and providing records related to the claimant's attendance at the Indian Residential School, along with records related to any named alleged perpetrator(s), their role at the Indian Residential School, and any reports on record of sexual or physical abuse allegations concerning the named abuser. The Government of Canada was also responsible for preparing a report (known as the "School Narrative") on the Indian Residential School in question, including any documents mentioning abuse at that school.

Pre-Hearing Teleconferences:

In some instances, questions could arise as to whether a claim fell within the jurisdiction of the IAP. For example, there may be questions related to whether the allegations contained in a claim occurred during the "operating years" of a school. In such circumstances, the Government of Canada could request a jurisdictional review by an adjudicator, and the adjudicator could determine if a teleconference should be held to address these matters in advance of a hearing. These pre-hearing jurisdictional teleconferences provided a means of determining issues that could affect the processing of a claim as early as possible. Pre-hearing conference calls were also held for Complex Track claims and, under certain circumstances, for estate claims filed on behalf of deceased former students.

Negotiated Settlement Process:

The IRSSA allowed the option for claims to be settled without a hearing in a Negotiated Settlement Process (NSP). This process was available when both the claimant's counsel and Canada were amenable to it.[83] In such cases, once informed of the intention to pursue a negotiated settlement, the Adjudication Secretariat would share with both parties all of the evidentiary documentation that was available at that time. While a claim was active in the NSP, the parties were obliged to continue to collect any remaining mandatory documents, both for record-keeping purposes and in the event that the negotiations proved unsuccessful.[84] If a negotiated resolution of a claim was reached, it would not be subject to review by an adjudicator, but was implemented by the Government of Canada and compensation paid as the parties had agreed. If a settlement of the claim could not be reached in the NSP, the claim would then return to the normal adjudication process.

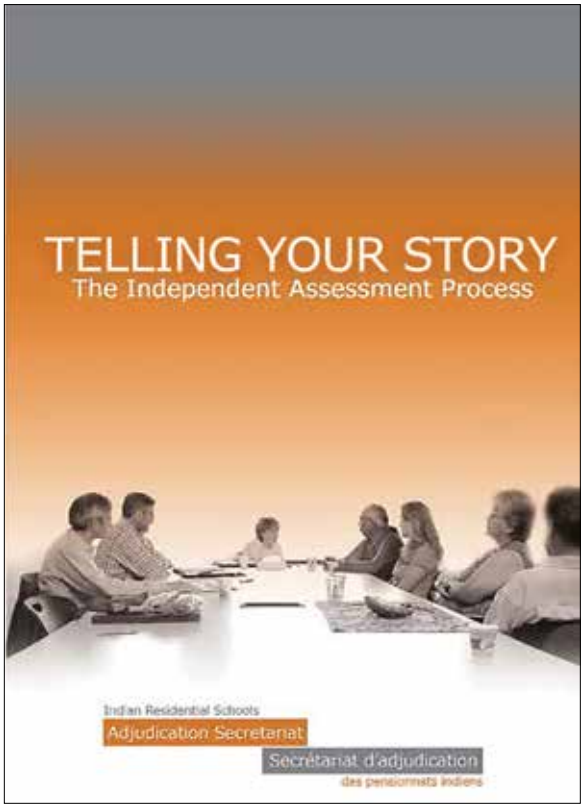
The IAP Hearing:

The scheduling of an IAP hearing was based on a number of criteria, including the claimant's stated preferences for the location of the hearing and/or the gender of the adjudicator, and the availability of all parties who would be attending the hearing. In the case of Complex Track claims, an adjudicator would conduct a pre-hearing conference call to determine if the file was ready for hearing or if additional information would be required.

Hearings were scheduled on an expedited basis for claimants where a medical doctor indicated that their health placed them at risk of passing away or of losing their capacity to provide testimony. Accelerated hearings were also offered in some circumstances where, for example, scheduling efficiencies warranted that a hearing be conducted prior to the collection of all mandatory documents. In those instances, the adjudicator would not prepare his/her decision until all documents and final submissions were completed and submitted following the hearing.

In the preferred scheduling process, hearing notices advising the parties of the date of the hearing would be issued three to five months in advance, to allow for logistical arrangements and to provide the claimant time to prepare for the hearing. Shortly after setting the hearing date, the Adjudication Secretariat would distribute to the claimant's counsel, the adjudicator, and Canada's representative, the evidentiary packages containing mandatory documents and the Government's records and research.

[82] This process was amended in 2013, when the Oversight Committee approved an "Accelerated Hearing Process" (AHP) where, even absent health issues, claims could be set down for hearing without all of the mandatory documents having been produced. The AHP is described on p. 14 below and discussed in greater detail in Chapter 5.
[83] The NSP was available only to those claimants who had legal representation. NSPs were not available in claims in which the alleged perpetrator wished to participate.
[84] However, if a hearing had been scheduled for a claim that subsequently entered the NSP, the hearing date was cancelled, and only re-scheduled if the NSP was unsuccessful.



The video, "Telling Your Story," provided claimants with information on what to expect at their IAP hearing.

Claimants could take a break from a hearing in a breakout room with an Elder and/or support people.

Prior to the hearing, claimants could view a video, on-line or on DVD, and read an accompanying booklet that provided information about the hearing. The video was not available at the outset of the IAP but was subsequently produced to help claimants prepare for their hearing and to help reduce any anxiety about the process.

The Adjudication Secretariat arranged and paid for all logistics related to the hearing itself. This included booking the hearing room, arranging for a language interpreter if required, and arranging travel for the claimant and up to two personal supporters – friends and/or family members – of the claimant's choosing, and an Elder if requested.[85] Claimants' travel could be scheduled to provide the opportunity for them to meet with their legal counsel the day before the hearing.

In Winnipeg and Vancouver, the Adjudication Secretariat had dedicated Hearing Rooms. These were intended to be safe, comfortable, welcoming and culturally appropriate spaces and provided room for the claimant to take a break from the hearing or meet with Elders or Health Support Workers. In other locations, hotel conference rooms or other appropriate facilities were utilized. All hearing facilities were intended to accommodate the needs of the claimant for private space, and the hearing room itself was arranged in an informal manner that facilitated discussion. Light refreshments were provided throughout the hearing.

The Adjudication Secretariat attempted to accommodate a claimant's preference for the hearing location, whether in his/her community or elsewhere in Canada. Where necessary, hearings were also held in correctional facilities, hospitals, outside of Canada, or other specific locations required by the claimant's circumstances.

In attendance at the hearing would be the claimant, his/her lawyer (if they were represented), a representative of the Government of Canada and the adjudicator. If the claimant chose, her/his personal supporters, a Resolution Health Support Worker, an Elder, and/or an interpreter could also attend. As a party to the process, the Churches had a right to attend the hearing. However, claimants were asked prior to the hearing if they had any objection to the Church's participation and any such requests were taken into consideration. As with all participants other than the claimant, Church representatives did not speak during the hearing; they could address the claimant at the end of the hearing in a manner to promote healing and provide pastoral care, if requested by the claimant.[86] Hearings were otherwise closed to the public, and all participants were required to sign a confidentiality form.

[85] All costs related to the implementation of the IRSSA, including those expended by the Adjudication Secretariat, were paid for by the Government of Canada.

[86] Presbyterian, Anglican, and United Churches adopted an approach that when a claimant requested that the church attend the hearing the church would participate in a supportive role, and if the claimant requested that the church not attend, the church would respect the claimant's wishes. Some Catholic entities – particularly in claims relating to Quebec schools and some schools in Ontario – regularly attended IAP hearings pursuant to their legal right under the Settlement Agreement.

Claimants could make an oath on a Bible or eagle feather at their hearing.

At the claimant's request, hearings would commence with an activity that would respect the claimant's beliefs and traditions, such as a song, ceremony, cleansing or blessing of the room, or a prayer. The claimant could make an oath on a Bible or eagle feather, or simply by affirming that she/he would speak the truth.

At the start of the hearing, the adjudicator would describe the process and explain what would take place during the hearing. The claimant would then tell their personal experience to the adjudicator. In the inquisitorial model of the IAP hearing, cross-examination was not permitted by the representatives of the Government of Canada or the Churches; only the adjudicator could ask questions of the claimant or witnesses. Nonetheless, hearings and the recounting of their experiences and the effects of their attendance at an Indian Residential School could still be traumatic, and claimants could at any time request a break and, if they wished, meet with their personal supports or Health Support Workers. As well, any party could request a caucus with the adjudicator; this could be to suggest questions for the adjudicator to ask or raise other issues. In cases involving self-represented claimants, the claimant attended the caucus sessions, which were recorded in those instances.

During the hearing, the adjudicator would make an electronic audio recording of the proceedings. In keeping with the confidentiality of the process, transcripts of those recordings were only made available to certain individuals, under specific circumstances. The adjudicator could request a copy of the transcript for his/her own reference, as could a review adjudicator or the Chief Adjudicator if the transcript was required in support of his duties as set out in the Settlement Agreement. If an expert was retained to conduct an assessment of the claimant following the hearing, he/she could receive a copy of the hearing transcript, along with the participants in the hearing. Participating parties could also request a transcript in some situations, including: if there was an adjournment longer than four months; if there was a change in legal representative; if a party sought to have a decision reviewed; if a claim was to be re-opened; or if there was an identified potential for a negotiated settlement.

Claimants could also receive a copy of the transcript of their own evidence for memorialization purposes.

At the end of the hearing, attendees could be invited to make closing comments to the claimant thanking them for their participation and/or offering an apology. The adjudicator and the parties would then discuss the evidence collected to that point and whether the claim was ready for final submissions.

Normally, Standard Track hearings would be concluded within one day, while Complex Track hearings would require two days to complete.[87]

[87] Hearings involving an Actual Income Loss claim would typically take four to five days.

Post-Hearing Processes:

Short Form Decisions:

If, at the end of the hearing, all of the evidence had been collected and parties agreed how the claim should be resolved, the adjudicator could consider issuing a Short Form Decision (SFD). Following approval by the Oversight Committee and the National Administration Committee in 2009, the SFD was implemented to reduce delays and expedite the decision-making and compensation stages of the IAP. Rather than a regular decision that would provide a detailed recounting of the testimony presented at the hearing, the SFD presented – in tabular form – a summary of the compensation categories and levels of compensation awarded by the adjudicator following the hearing. SFDs were available only in specific circumstances, in which: the claimant was represented by legal counsel; the claim was in the Standard Track; all research, document production, and testimony was complete; a future care plan (if any) and final submissions had been provided by the end of the hearing; and the claimant requested – and all parties consented – that the adjudicator render a Short Form Decision.

Even if a claim qualified on the above grounds for a Short Form Decision, a claimant could request a full narrative decision for memorialization or other reasons.

Expert and Medical Assessments:

In some cases, there were issues that remained to be decided or further evidence collected following the hearing. One such issue was the need to obtain input from psychological or medical experts. While the IAP explicitly sought - as distinct from civil litigation - to eliminate the prospect of competing reports from experts on the same issue, it did in some circumstances provide for expert witnesses when their evidence was determined to be essential. An adjudicator could order such an assessment and then only after hearing the claim, determining credibility, and deciding that the assessment was necessary to assess compensation fairly. As well, as a condition for making an award that the injury in question had resulted in serious dysfunction at harm level 4 or 5 or consequential loss of opportunity at levels 4 or 5 as described in the Settlement Agreement, the adjudicator was required to order a psychological assessment unless the Government of Canada waived that requirement.

When a psychological assessment was required, a psychiatrist or psychologist, drawn from a roster of professionals approved by the Oversight Committee, would meet with the claimant and prepare a report. At the request of any party, the Adjudicator could also subsequently schedule a conference call in which the parties could question the psychological expert. The psychological assessment process normally took several months following the conclusion of the hearing.

An adjudicator could also order that the claimant undergo a medical examination. This could occur when the claimant described a physical injury (for example, hearing loss) for which there was no evidence contained in their available medical records of the timing, cause, or impact of that injury. Medical examination or psychological assessments were also required for consequential loss of opportunity above level 3 and in the Complex Track where a claim was being advanced for actual loss of income.

In these instances, the Adjudication Secretariat would contract with a medical professional – either agreed to by the parties or selected through an external supplier – who would assess the claimant's injury and submit a report. The medical examiner could then be required to give evidence and be questioned by the adjudicator. Similarly, the medical examination process normally took several months following the conclusion of the hearing.

As mentioned earlier, some mandatory documents could be provided in the post-hearing process in claims that had been expedited due to health concerns for the claimant or were part of the accelerated hearing process.

Final Submissions:

Final submissions by the claimant or her/his lawyer and the representative of the Government of Canada could be presented to the adjudicator at the end of a hearing, but often occurred in a teleconference following the hearing at a point when the adjudicator had all of the evidence required to commence writing the decision. These submissions provided an opportunity to summarize the claimant's testimony and for the parties to give recommendations on where the claim should be placed within the categories outlined in Schedule D of the Settlement Agreement, and on funding of the claimant's Future Care Plan.

Alleged Perpetrator Hearings:

The Settlement Agreement provided those individuals named by a claimant as an alleged perpetrator the right to be informed of the allegations against them and to provide their own statement to the adjudicator. The Government of Canada, as defendant, had the responsibility of attempting to locate alleged perpetrators. Where an alleged perpetrator wished to participate in the claim, they were provided with extracts from the claimant's application related to the allegations against them, with all information related to the address of the claimant or other potential witnesses deleted. Alleged perpetrators did not have the right to attend the claimant's hearing but could request his/her own hearing - not at the same time or place as the claimant - accompanied by counsel and a support person. In practice, the alleged perpetrator's hearing occurred after the claimant's hearing. Alleged perpetrators were considered to be witnesses in a claim and not parties to the process. As such, they had the right to be informed of the results of the hearing regarding any allegations made against them, but not the amount of any compensation awarded.

Decisions and Compensation:

The Decision:

Adjudicators would prepare their decisions following the receipt of final submissions. The alleged acts cited in the claim and consequential harms and consequential loss of opportunity were proven on a "balance of probabilities" standard: the same standard used by the Courts in civil matters. In the standard track, the consequential harms and consequential loss of opportunity were then proven to be "plausibly linked" to those proven acts: the "plausible link" standard being less onerous than the court "causation" standards.

The adjudicator's decision would generally contain background information on the claimant, a summary of the allegations in the claim and the claimant's testimony, and the adjudicator's findings on the abuse acts and the harms that those acts had caused the claimant. The adjudicator would also discuss whether the claimant had suffered from a loss of opportunity due to her/his residential school experience. The decision would also discuss any Future Care Plan put forward by the claimant and the amount of funding that was awarded for that that Plan.

Based on the adjudicator's analysis of these elements, the decision would then set the points awarded for the claim and the dollar amount of compensation awarded. The IAP Model provided for compensation to be determined according to a point system defined in the Compensation Rules contained in Schedule D of the IRSSA. It directed adjudicators to award compensation based not only on the acts of abuse proven by a claimant, but also on the consequential harms, aggravating factors and, where proven, the loss of opportunity experienced by claimants as a result of the abuse. Discretion was given to adjudicators to adjust compensation within the range of points that were generated by the Model.

The IAP did away with the Alternative Dispute Resolution's two-tier regional grid, eliminated the concept of "standards of the day" in determining liability, and rectified the circumstance that claimants who had attended Catholic schools only received 70 per cent of their ADR award due to that Church's refusal to provide compensation.[88] Relative to the ADR, the IAP increased the maximum amount of compensation that could be awarded for opportunity loss; included compensation for actual loss of income; and expanded access to compensation for "other wrongful acts" that caused psychological harms and for abuses committed by other students.[89]

The decision would be sent to the claimant or the claimant's legal counsel and to Canada. Both parties would have 30 days to consider whether they would accept the decision or request a review. If the parties accepted the decision, the process to issue the compensation set out in the award would commence.

[88] As noted in the previous chapter, this was done for ADR claims by means of a top-up payment from the Government of Canada, when the IAP was implemented.

[89] Student-on-student (SOS) abuse claims were technically available but rarely awarded under ADR, due to a much more stringent test than what was provided for in the IAP. As mentioned earlier, claims related to abuses by other students and to consequential loss of opportunity that had been settled in the ADR could be re-opened in the IAP in certain circumstances. In all, there were 514 SOS re-openers resulting in $12.9 million in awards; and 562 "loss of opportunity" re-openers resulting in more than $1 million in awards.

Reviews:

The claimant or the Government of Canada could request a review of an adjudicator's decision to determine if the decision had failed to apply the IAP Model to the facts. The claimant could also request a review of an adjudicator's decision if it contained a "palpable and overriding error".[90] After the other party had responded in writing to this request, the Chief Adjudicator would assign another adjudicator to review the claim. No new evidence could be provided during the review process. Rather, the new adjudicator would review all of the documents on the file and the transcript of the hearing. The review adjudicator would then write a decision that would either uphold the original decision, change the original decision, or order a new hearing. If the review adjudicator changed the original decision, either party could request that the claim be re-reviewed. In those instances, the Chief Adjudicator would assign a Re-Review Adjudicator to the claim; the re-review would, like the first stage of review, be conducted on the basis of a review of the written material on file and would not consider new evidence. A re-review decision would constitute the final decision on an IAP claim; there was no right of appeal of an IAP decision to the Courts.

In rare and very exceptional circumstances, there could be a "limited right of judicial recourse" to the Courts from a final decision of the IAP, if that decision reflected a failure to apply the terms of the IAP and the compensation rules. In order to seek judicial recourse, claimants would also first have to exhaust all review rights within the IAP.[91]

Compensation Payment:

Once both parties accepted an adjudicator's decision, the process for implementing the award would begin. The Government of Canada was responsible for issuing the compensation amount awarded by the adjudicator to the claimant, via legal counsel. If the claimant had not been represented by a lawyer during the hearing, she/he would need to retain one at this stage – paid for by the Government of Canada - to provide independent legal advice as to the implications of accepting the award. Processing and issuing the compensation cheque would normally take four to six weeks.

When the compensation cheque was awarded, the Adjudication Secretariat would inform the Church involved. This provided the Church with the opportunity to send a letter from the Church Leader, along with the Apology of the respective Church.

Legal Fees and Fee Reviews:

In accordance with the IRSSA, Canada would pay an additional 15 per cent of the total compensation awarded as a contribution to the claimant's legal fees. These legal fees would not be deducted from the compensation award but would be paid in addition to the award itself. For example, if the adjudicator awarded $60,000 to the claimant, plus $10,000 funding for a future care plan, the claimant would receive $70,000 and the Government of Canada would pay up to an additional $10,500 for legal fees. The claimant would be responsible for paying GST/PST/HST on legal fees.[92]

The maximum amount that a lawyer could charge a claimant was 30 per cent of the compensation award. The claimant would be responsible for paying any amount in excess of the Canada's contribution towards legal fees. Lawyers were not permitted to deduct any third-party assignments, cash advances, directions to pay, disbursements, costs associated with the management of the file, or anything else, from the amount payable to the claimant.

In all cases, adjudicators reviewed legal fees to ensure that they were within the limits set out in the Court orders implementing the IRSSA. In addition, if the claimant requested, or on the adjudicator's own initiative, the adjudicator could review legal fees to determine if they were "fair and reasonable". If an adjudicator decided that the legal fees charged were not fair, he/she had the power to reduce those fees.[93] Both claimant and their counsel could appeal the legal fee ruling if they disagreed with its conclusions, in which case the legal fee ruling would be reviewed by another adjudicator who would make a final determination on the issue.

The IAP Administrative and Governance Framework

The IRSSA and the Courts' Implementation Order set out a governance structure that gave a number of bodies specific authorities to implement and oversee the IAP.

[90] In both Standard and Complex Track claims, either party could request a review if the IAP Model had not been properly applied. Only claimants could request a review of a Standard Track decision to determine if it contained a palpable and overriding error. The Defendant could request a review to determine if a decision contained a palpable and overriding error in a Complex Track claim only.

[91] The rules and parameters for seeking judicial recourse of an IAP decision were set out in several decisions including those by the Ontario Court of Appeal (Fontaine v. Duboff Edwards Haight & Schachter, 2012 ONCA 471 (CanLII), 111 O.R. (3d) 461), the Ontario Superior Court (Fontaine v. Canada (Attorney General), 2016 ONSC 4328 (CanLII), and the Supreme Court of British Columbia (Fontaine v. Canada (Attorney General), 2016 BCSC 2218), and the Supreme Court of Canada (J.W. v. Canada (Attorney General), 2019 SCC 20).

[92] Taxes were not payable if all legal work was done on reserve for a Status Indian.

[93] In rare cases – associated with substandard performance by claimant legal counsel – adjudicators reduced legal fees to less than Canada's 15% contribution.


Justice Warren K. Winkler

The Courts:

The Courts retained jurisdiction to supervise the implementation of the IRSSA, pursuant to the terms of the approval and implementation orders, legislation governing class actions, and the Courts' inherent jurisdiction. This authority was reiterated in the Baxter decision, in which then Ontario Regional Senior Justice Warren Winkler stated that: "The administration of the settlement will be under the direction of the Courts and they will be the final authority."[94] As noted above, however, ultimately the Courts would grant access to judicial recourse related to a final decision on an IAP claim only in exceptional circumstances. Throughout the course of the IAP, there were only six instances in which judicial recourse resulted in an adjudicator's decision being reversed.[95]

The Implementation Order of the Settlement Agreement appointed a Court Counsel "to assist the Courts in their supervision over the implementation and administration of the Agreement", with such specific duties as determined by the Courts.[96] The Court Counsel regularly attended meetings of the National Administration Committee and the Oversight Committee.

Court Monitor:

The Implementation Order put in place a Court Monitor (Crawford Class Action Services) to monitor the implementation of the Settlement Agreement, particularly regarding the IAP and CEP compensation programs. The Court Monitor had authority to gather information and, as directed, to report to the Courts on the administration of the IAP.

National Administration Committee:

Under the IRSSA, a National Administration Committee (NAC) was tasked with ensuring the Settlement Agreement was appropriately administered.[97] The NAC was composed of one representative from each of Canada, the Church organizations, the Assembly of First Nations, Inuit representatives, Merchant Law Group, and Independent Counsel. All NAC members were required to be legal counsel.

Although not a supervisory body, it was tasked with ensuring national consistency in the execution of the Agreement and overseeing the implementation of the Approval Orders. In addition to its primary responsibilities with respect to hearing appeals in relation to the Common Experience Payment, the NAC had the authority to apply to the Courts for orders to modify the processing rates for the IAP as set out in the Agreement or to request additional funding for the IAP from Canada, and to consider recommendations from the Oversight Committee on "changes to the IAP as are necessary to ensure its effectiveness over time".[98] Any substantive changes to the IAP had to receive the approval of the NAC before a Court order could be prepared.

The NAC remained in place throughout the life of the Settlement Agreement.

[94] *Baxter v. Canada,* para. 39. The Approval Orders established a protocol for parties requesting directions or orders from the Supervising Courts related to the implementation of the Settlement Agreement. A copy of the Court Administration Protocol can be seen at: http://www.classactionservices.ca/irs/documents/CourtAdministrationProtocol.pdf

[95] The IAP provided that persons with Actual Income Loss (AIL) claims that may exceed the $250,000.00 maximum available under IAP could apply to the Chief Adjudicator for access to the courts. As well, if there was enough evidence that the harms experienced were so complex, extensive, and catastrophic (such as a permanent significantly disabling physical injury) and that the compensation available through the courts may have been more than the maximum IAP compensation allowed, a request could be made to the Chief Adjudicator to allow a claim to be brought to the courts. In five instances, claimants sought leave from the Chief Adjudicator to access the courts to address AIL claims; three of these requests were granted. AIL claims in excess of the $250,000 maximum could also be addressed through the Negotiated Settlement Process.

[96] *Fontaine v. Canada (2007),* paras. 1, 2, 4, 12, and 13.

[97] A National Certification Committee, composed of members from each party to the Settlement Agreement, was established to work with the Courts to secure approval of the Agreement and was dissolved on the Settlement Agreement implementation date.

[98] *IRSSA,* Schedule D, Section III (r) (iii)

Oversight Committee:

Led by an independent chair, the IAP Oversight Committee was made up of eight other members, with two representatives from each of the following parties: former students (representatives for First Nations and Inuit), plaintiffs' counsel (one representing the National Consortium and the other representing Independent Counsel), Church entities (one representing the Catholic entities and one representing the Protestant Churches), and Canada (see Appendix V for a list of Oversight Committee members).[99] The IRSSA accorded the Oversight Committee several specific duties, including:

- Recruiting, appointing and, if necessary, terminating the appointment of the Chief Adjudicator
- Recruiting and appointing adjudicators, and approving training for them
- On the advice of the Chief Adjudicator, renewing or terminating the contract of an adjudicator
- Recruiting and appointing experts for psychological assessments
- Considering any proposed instructions from the Chief Adjudicator on the application of the IAP
- Providing advice to the Chief Adjudicator on any issues he/she brought forward
- Making process improvement recommendations to the NAC
- Monitoring the implementation of the IAP

Beyond the specific and exclusive authorities accorded it in Schedule D of the Settlement Agreement, the Oversight Committee acted in an advisory capacity related to the implementation of the IAP, and as a body to which the Chief Adjudicator could bring matters for advice or approval, at his discretion. Within the parameters established in Schedule D, it considered proposals from the Chief Adjudicator on the interpretation and application of the administration of the IAP Model, prepared its own instructions on such issues or forwarded proposed instructions to the NAC. The Oversight Committee also established a Technical Sub-Committee to research and discuss complex issues related to the administration of the IAP prior to consideration and decisions by the Oversight Committee, and a Bilateral Sub-Committee consisting of Canada and claimant counsel to address matters specifically related to issues between those parties. Both of these Sub-Committees reported back to the Oversight Committee.

While the IRSSA did not explicitly impose a general requirement of due diligence or a fiduciary obligation on members of the National Administration Committee or Oversight Committee, a Supervising Court noted its expectation that the Committees' decisions reflect a broader adherence to the integrity of the IAP than to the specific interests of the represented parties. The Honourable Madam Justice B.J. Brown observed that:

"The Court is aware that the committees are populated by representatives that may be perceived to have a conflict in any debate regarding new policies or guidelines. Indeed, the committees overseeing the settlement are structured in a way that superficially might lead one to conclude that those conflicts were considered acceptable. However, the better interpretation would be that there was an understanding that the ability to have differing, representative viewpoints would lead to a stronger administration, dedicated to ensuring integrity and that claimants who establish entitlement to compensation receive the entirety of that entitlement. Accordingly, the Court expects that any debate about policies or guidelines will be driven by those underlying principles and not the personal interests of the appointees to the committees."[100]

Chief Adjudicator:

Appointed by the Oversight Committee and confirmed by the supervising Courts, the Chief Adjudicator was accountable to the governing committees and the Courts for maintaining the integrity of the IAP and for setting policies and standards for the Adjudication Secretariat. As set out in the IRSSA, his specific accountabilities included:

- Assisting in the selection of adjudicators; assigning work and providing advice to adjudicators; implementing training programs and administrative measures designed to ensure consistency among adjudicator decisions; addressing performance issues, and renewing or terminating adjudicators
- Preparing instructions regarding the IAP for consideration by the Oversight Committee
- Conducting reviews of adjudicators' decisions when requested
- Setting policies and standards for the Adjudication Secretariat and directing its operations
- Hearing appeals from claimants whose claims were deemed ineligible for admission to the IAP
- Preparing reports to the Courts and the Oversight Committee

[99] Under the ADR, there had existed a "Chief Adjudicator Reference Group" (CARG) that was reconstituted as the Oversight Committee in the IAP. However, unlike CARG – which functioned within the framework of a government-run Dispute Resolution process – the Oversight Committee was a formal part of the IAP governance structure.

[100] *Fontaine v. Canada (Attorney General)*, 2012 BCSC 1671, para. 35.

Dan Shapiro (left, 2013-2021) and Dan Ish (right, 2007-2013) served as Chief Adjudicator in the IAP. Ted Hughes (middle) was the Chief Adjudicator in the ADR (2003-07).

Although not referred to in the IAP Model, Deputy Chief Adjudicators were appointed to assist the Chief Adjudicator in managing the adjudication function of the IAP.

Indian Residential Schools Adjudication Secretariat:

The Indian Residential Schools Adjudication Secretariat was responsible for the operations and administration of the IAP. With some 250 staff and 100 independent adjudicators at its peak, the Adjudication Secretariat provided information on the IAP to claimants, stakeholders, and the public; received and assessed the eligibility of claims; provided support to self-represented claimants; scheduled and made logistical arrangements for hearings; managed the Group IAP program; and measured and reported on the performance of the IAP.

The Executive Director of the Adjudication Secretariat had a dual reporting relationship: to the Chief Adjudicator on IAP operational or adjudicative matters, and to the Deputy Minister of Indigenous and Northern Affairs Canada on financial and resource management.[101]

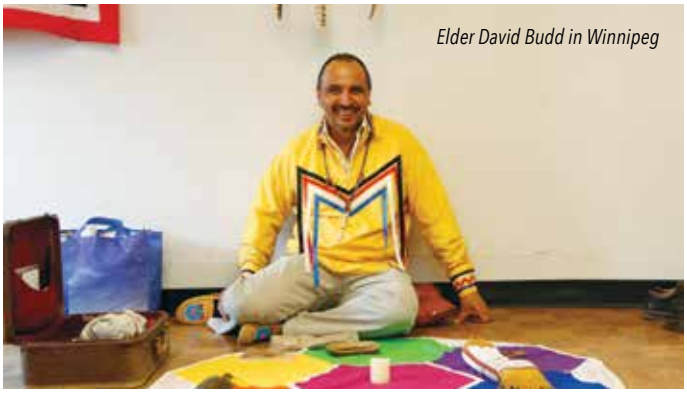
The Government of Canada:

Not only did the Government of Canada have responsibilities related to its role as defendant in IAP claims (such as document collection and attendance at hearings), it was also required by the IRSSA to provide sufficient resources to enable the IAP to achieve its operational targets. While the Adjudication Secretariat reported to the Chief Adjudicator on all operational and adjudicative matters, it was also accountable to the Government of Canada in the attainment and utilization of those resources. Adjudication Secretariat staff were employees of Canada, bound by adherence to Government policies and procedures regarding human resources, procurement, and financial management. They were similarly bound by their statutory obligations as Government employees in such areas as the exercise of financial authorities, employment equity and human rights, official languages, access to information and privacy, health and safety, and labour relations. Performance agreements between the responsible government department and senior Adjudication Secretariat management set objectives for financial and human resources management, the alignment of resources and business strategies, and development and support of a work culture that reflected Government values and ethics.

Thus, although the Government of Canada did not have a direct role in the governance of the IAP or the adjudicative process, it did have responsibility for and exercised oversight of the financial and human resource elements of the administration of the IAP.

[101] Prior to June 2008, the Indian Residential Schools Adjudication Secretariat was part of the Department of Indian Residential Schools Resolution Canada (IRSRC). At that point, with the merger of IRSRC into the Department of Indian Affairs and Northern Development (DIAND), the Adjudication Secretariat became subsumed within that latter Department. DIAND was subsequently renamed Aboriginal Affairs and Northern Development, then Indigenous and Northern Affairs Canada (INAC). In 2019, INAC was divided into two departments, with the Adjudication Secretariat becoming part of Crown-Indigenous Relations and Northern Affairs Canada.

IMPLEMENTING THE IAP: CHALLENGES, RESPONSES, AND IMPROVEMENTS



Elder David Budd in Winnipeg

As described in the previous chapter, the processes for conducting hearings and rendering decisions were detailed extensively in the Indian Residential Schools Settlement Agreement (IRSSA), and were informed by the experiences gained in litigation, in pilot projects, and in the Alternative Dispute Resolution process. However, the demands of an unprecedented number of claims, unanticipated procedural and substantive issues, and the varied circumstances of individual residential school survivors posed a number of challenges in implementing the IAP. These challenges necessitated ongoing reviews of IAP processes by the Oversight Committee, the Chief Adjudicator, and the Adjudication Secretariat. This in turn led to the development of processes designed to increase operational efficiency and effectiveness, to meet administrative demands, and to give best effect to the provisions of the IAP.

In its first year of operation, the Oversight Committee recognized the need to establish a Technical Subcommittee to address complexities that arose from the outset of the IAP. The Technical Subcommittee undertook the extensive work of analyzing issues, designing new and innovative approaches, and drafting consensus recommendations for consideration by the full Oversight Committee. Many of the improvements described in this chapter were developed through detailed research, discussions, and work by this Technical Subcommittee. In addition, a Bilateral Committee composed of claimant counsel and Government of Canada representatives met on occasion to discuss specific issues and processes.

Over the course of the IAP, 150 procedures and measures were developed to flesh out, interpret, administer, and apply the process set out in Schedule D of the IRSSA. This chapter will not describe all of these procedures; a summary list is provided in Appendix III. Rather, what follows is a description of the major challenges that arose in the implementation of the IAP and of those procedures that had the most significant impact in enabling the IAP to meet its objectives.

The Context: A Claimant-Centred Approach

The IAP was intended to be a process that positioned the claimant at its core and provided a safe, supportive, and culturally appropriate environment. Efforts to provide a claimant-centred approach ran throughout all aspects of the IAP and provided the context for analyzing and developing responses to challenges that arose in its delivery.

Once a claim was initially admitted, the claimant was given a hearing logistics form on which she/he could indicate their preferences for the hearing: its location; method of travel; whether they wanted support services, companions, Elders, a health support worker, and/or a Church representative at the hearing; cultural ceremonies at the hearing; the gender of adjudicator; and whether they needed an interpreter.

This information enabled the Adjudication Secretariat to try from the outset to ensure that, despite the overall volume of hearings held and complexities of logistical arrangements, each hearing was structured around the needs and expressed wishes of the individual claimant. For example, some claimants preferred that the hearing take place in their communities, while others preferred the anonymity of a larger centre away from where they lived. In addition, some claimants had requests for a specific location due to illness, work or family obligations, or because it held personal meaning for them.

Rather than in courtrooms, hearings were held in a variety of settings such as hearing centres, hotels, lawyers' offices, nursing homes, hospitals, correctional facilities, or the claimant's home. Hotels or other facilities were required to be accessible and allow traditional ceremonies. Correctional facilities and hospital rooms were also used when necessary. Hearings in Vancouver or Winnipeg could take place in one of the Adjudication Secretariat's dedicated Hearing Centres. These Centres were designed in conjunction with residential school survivors and legal counsel to offer a safe, culturally appropriate space for claimants.

Many claimants smudged before their hearings.

The Adjudication Secretariat developed mechanisms to arrange and pay for travel, accommodations, and meals for claimants and up to two personal support people to accompany the claimant to the hearing. The Adjudication Secretariat also covered the costs for the attendance of Elders and interpreters. This relieved the claimant of the responsibility and challenges of making arrangements and paying for travel.[102]

Health support workers – provided by Health Canada – were available throughout the hearing, if the claimant chose. Many health support workers were themselves survivors or affected by the intergenerational impacts of residential schools, often spoke the claimant's language, and were aware of cultural traditions and available health supports near claimants' home communities.

IAP hearings incorporated cultural ceremonies of the claimant's choosing, such as an opening prayer, smudge, or song. Claimants could also use an Eagle Feather when taking their oath, and could bring with them a sacred object that gave them strength, such as a stone or photograph. The ability for a claimant to have a traditional ceremony, to take an oath on the medium of her/his choosing, to be accompanied by an Elder or family or community members, and to speak in their own language allowed the claimant some control over the cultural context of the hearing.

In addition to cultural ceremonies and the presence of Elders and other support individuals, the physical set-up of the room was important in making the hearing as comfortable as possible for the claimant to share their experiences. Typically, the claimant sat to the side but facing the adjudicator to enable easier conversation. As discussed earlier, the adjudicator used an inquisitorial rather than an adversarial cross-examination approach to gathering information and assessing claims, in recognition of the emotional, physical, and spiritual toll that recounting these stories placed on the claimant.

The support services offered to claimants through Health Canada before and during the hearing remained available following the hearing as well. In addition, Canada funded a 24-hour toll-free crisis line operated by trained Indigenous crisis counselors.

Perhaps the overarching challenge of the IAP was less in making specific aspects of the IAP claimant-centred, but rather in adopting an approach that attempted to look at the entire process from the viewpoint of the claimant. This perspective was the prism through which the Oversight Committee, Chief Adjudicator, and Adjudication Secretariat assessed a range of measures that were implemented throughout the IAP, a number of which are described in greater detail below.

[102] All costs related to the implementation of the IRSSA, including those expended by the Adjudication Secretariat, were paid for by the Government of Canada.

Providing Information About the IAP

A print and electronic advertising campaign was launched when the Settlement Agreement was finalized.

The first challenge for the IAP was to ensure that Indigenous people knew about the Settlement Agreement and, in particular, that residential school survivors were aware that they could apply for compensation for the abuse suffered at the schools. It was important that claimants had a good understanding of the various stages of the IAP, such as completing an application, preparing for a hearing, the support services available to them, and what would happen during and after the hearing.

From 2006 through to 2012, there were four major court-ordered notice programs designed to ensure that those who attended residential schools were aware of the IRSSA.[103] These notice programs included:

- A "Hearing Notice" phase, launched in June, 2006, to provide notice of the Settlement Agreement to affected people residing on reserve, within other Indigenous communities or settlements, or in urban areas.
- An "Opt Out/Claims Notice" that commenced in March 2007 to ensure former students were notified prior to the deadline for individual class members to opt out of the Settlement Agreement.
- A "Common Experience Payment (CEP) Application Deadline Notice" that focused on the 2011 CEP application deadline.
- The "IAP Application Deadline Notice", started in March 2012, to ensure that former students were aware of the September 19, 2012, IAP application deadline.

All Notice Programs were conducted by Hilsoft Notifications, an experienced class action notice company, utilizing radio and television advertisements; direct mailings to Band Offices, Tribal Council Offices, and Friendship Centres; and a website and toll-free information line. Communications were produced in multiple languages appropriate to each medium, including English, French, Inuktitut, Innuinaqtun, Siglit, Oji-Cree, Déné (various dialects, such as Gwich'in and Dogrib), Ojibway, Innu, and Atikamekw. Together, the four phases of the Notice Program reached 98% of the target population an average of 14 times.[104]

In addition to the court-mandated notice programs, the Adjudication Secretariat developed its own outreach strategy, visiting communities to provide information on the IAP and to raise awareness of available support services, of the application deadline, and of the Group IAP program.

Outreach by the Adjudication Secretariat focused on communities where there was a significant gap between the number of CEP recipients and IAP applicants, indicating that there might be larger numbers of individuals who may have been eligible for the IAP but had not yet applied. Prior to their arrival in each community, outreach representatives arranged for the availability of support services, such as interpreter/translators, Elders, cultural support workers, and health support workers.

In support of its information activities, the Adjudication Secretariat developed a number of products that were approved by Oversight Committee, including a web site, pamphlets, fact sheets, a video providing information on what to expect at a hearing, and specific guides for claimants and stakeholders. The Adjudication Secretariat conducted more than 400 community information sessions: in Indigenous communities, with stakeholders, and also at in-care facilities such as federal and provincial correctional facilities, friendship centres, elder centres, and homeless shelters.

[103] Schedule K of the Settlement Agreement outlined Phases I and II of the Notice Plan.
[104] Indian Residential Schools Adjudication Secretariat, *The Indian Residential Schools Adjudication Secretariat's Independent Assessment Process (IAP) Outreach Activity Report: Raising Awareness about the IAP and the IAP Application Deadline,* (Ottawa: IRSAS, 2012), p. 4.; also Hilsoft Notifications, "Affidavit of Cameron R. Azario, Esq. on Completion of Phase IV of Notice Programme," submitted to the Ontario Superior Court of Justice (2012).

The Indian Residential Schools Adjudication Secretariat hosted information booths at National Events of the Truth and Reconciliation Commission.

The Adjudication Secretariat also maintained a presence at conferences, Truth and Reconciliation Commission national events, workshops, meetings, general assemblies, pow-wows, and educational institutions to reach out to residential school survivors and their families in as many settings as possible. Through these venues, more than 10,600 IAP information kits were distributed.

In addition to the activities undertaken by the Adjudication Secretariat, a number of stakeholder and partner organizations contributed to the distribution of information about the IAP. The Court Monitor - Crawford Class Action Services - maintained a toll-free telephone information line to respond to inquiries about the IAP. The Government of Canada also sponsored the Advocacy and Public Information Program aimed at providing information on, and raising awareness of, the Settlement Agreement. Health support workers from Health Canada provided information and support at the grassroots community level to survivors of residential schools. And many lawyers played a vital role in providing information on the IAP and assisting claimants in completing applications and in the hearing process, often travelling to remote communities to meet with residential school survivors.

Volume and Capacity

One of the initial challenges in implementing the IAP was to put in place the organization required to support the Chief Adjudicator in the administration of the process. This included creating the capacity to:

- build business processes and technological systems;
- receive, review, and admit applications;
- manage cases as they moved through the process;
- schedule, notify participants of, and arrange travel to hearings;
- arrange for the provision of health support and interpretation services, when required, at hearings;
- provide support to self-represented claimants;
- adjudicate the claims and issue decisions;
- arrange for the provision of expert assessments when required;
- conduct legal fee reviews;
- provide information on the IAP – including the application deadline – to potential claimants and the general public; and
- manage resource expenditures and maintain financial records and controls

To accomplish this required concerted and simultaneous activity on a number of fronts, including the selection and retention of adjudicators,[105] hiring staff, constructing a technological infrastructure, and securing office space to house a considerably expanded Secretariat.

The Settlement Agreement contemplated a six-month "start-up period" during which the Adjudication Secretariat and the IAP would be operational but not yet at full capacity. In addition, there was a sixteen-month gap between the date on which the parties signed the Settlement Agreement (in May 2006) and its implementation date (in September 2007), as the parties and the Courts undertook the approval process for the settlement. However, as there were delays in hiring staff, appointing a Chief Adjudicator, and allocating and expending resources, this proved to be insufficient time to build the organizational capacity necessary to adequately meet the significant operational demands.[106] The impact was that, at the outset, processes were relatively inefficient, the progress of existing ADR claims was delayed, and the Department (IRSRC) and the Adjudication Secretariat were unable to meet deadlines and service standards.

[105] As per Appendix III, Schedule D of the IRSSA, adjudicators who had been working under the ADR Model were subject to a new selection process in order to become IAP adjudicators.
[106] In this context, it should also be noted that there was a change in Government in the period between the signing of the Settlement Agreement and its implementation. In the same week that the federal Cabinet had approved the Settlement Agreement, the Liberal Government fell, requiring the Agreement and the policy framework for it to be revisited with and re-examined and approved by the new Conservative Government prior to implementation.

The IAP retained the services of 100 independent adjudicators at its peak.

Beyond the initial challenges of building the organization, capacity issues posed challenges on a number of fronts. These were exacerbated by the volume of applications and hearings in the IAP. Although disputed at the time by the AFN, Canada's initial estimates were that there would be in the region of 12,500 applications filed over the five years prior to the September 2012 deadline.[107] In fact, the 12,500-application mark was surpassed by the end of 2009, and by the application deadline more than 37,800 applications had been received.[108]

Similarly, the IRSSA contemplated that resources would be required to enable 2,500 hearings to occur each year, and to ensure that a hearing date for each claim would be within nine months of it being admitted to the IAP "or within a reasonable period of time thereafter" and that all cases would be processed by September 2013. In fact, 13,577 cases had already been resolved by 2012 (a year-and-a-half earlier than expected), and in that year the number of hearings held per year surpassed 4,100. In appreciating the magnitude of this volume, it must be remembered that all IAP hearings involved in-person gatherings of a number of individuals; this was in contrast to many other quasi-judicial settings in which adjudicators resolved cases following a review of the documentary evidence and written pleadings on a file.[109] It is also worth noting that, by comparison, targets under the ADR process were to hold 1,000 hearings per year: a level that was never achieved. While the Government of Canada paid all costs associated with the IAP, this level of performance required efforts by all parties not only to increase other resources allocated to the IAP, but also continuously to amend and enhance processes to more efficiently give effect to the provisions of the IAP.

For example, within the Adjudication Secretariat, initial staff levels of fewer than 50 were clearly inadequate to handle the increasing volume of claims. Within two years, staff levels had grown to approximately 200 and eventually to more than 270 located in four cities. However, throughout this period there were also vacancy rates at or in excess of twenty percent; occasionally, vacancy rates in key operational areas reached 50 per cent. While management attempted to mitigate this by cross-training, shifting internal resources to meet operational exigencies, utilizing agency personnel, and the retention of Crawford Class Action Services to assist in the admissions process, the chronic shortage of staff had an inexorable impact on the ability of the organization to meet stringent operational requirements.

[107] The AFN maintained in advance of the Settlement Agreement that the number of abuse victims would be at least 25,000 and that infrastructure planning for the IAP should be based on that expectation: see Mahoney, "The Settlement Process", p. 513.
[108] As described earlier, other applications were admitted pursuant to Court orders after the application deadline, bringing the total number of IAP applications to 38, 276.
[109] Approximately 90 per cent of IAP cases were resolved through hearings. The remainder were resolved through a Negotiated Settlement Process, discussed below.

Adjudicator capacity was also a recurring challenge, and was affected by the need and desirability to have female Adjudicators, francophone Adjudicators, and Indigenous Adjudicators.[110] At its peak, the IAP retained more than 100 Adjudicators, 8 Deputy Chief Adjudicators, and a Chief Adjudicator on a contractual basis. However, the initial recruitment of Adjudicators did not attract sufficient numbers of applicants, and the Oversight Committee was required to conduct four selection rounds (known as Requests for Proposals) over a four-year period.

Capacity issues posed a challenge not only for the Adjudication Secretariat, but for all other participants in the IAP. For the Government, the availability of staff to represent Canada at IAP hearings was occasionally a limiting factor in the number of hearings that could be scheduled in any given week or month. Similarly, other government Departments such as Health Canada (who provided health support workers) lacked sufficient human and/or systems resources to handle the initial demands. As a result, the Government of Canada augmented the human and financial resources dedicated to the IAP on several occasions over the following years in response to these volume and capacity challenges.[111]

While those claimants who wanted to have legal representation were generally able to retain a lawyer, those in remote communities faced greater challenges in the identification and selection of legal counsel. Some claimant counsel also faced challenges in their capacity to manage caseloads and their availability to attend hearings, resulting on occasion in senior Adjudication Secretariat staff conducting law firm visits to review and advise on business plans. Among the Churches as well, the scale of the IAP posed potential challenges to their capacity to participate fully in the process. At the outset, some Catholic Church entities did not propose to attend IAP hearings. Other Churches expressed an ongoing desire to attend hearings where claimants were amenable to their presence, and provided extensive training to those who would attend hearings on their behalf; however, their presence at hearings was limited by the right of claimants to request that Church representatives not attend.

Resolving Claims

A central objective and obligation of the IAP was to resolve all of the claims that were submitted. In order to accomplish this, a wide range of challenges needed to be addressed, and measures developed and adapted.

Mandatory Document Collection:

Schedule D of the Settlement Agreement set out requirements for documents that were necessary to allow claimants to proceed through the IAP and for a hearing to be scheduled. These "mandatory documents" included records related to medical treatment, workers' compensation, correctional services, income tax, Employment Insurance, Canada Pension Plan, and non-residential secondary and post-secondary school attendance. The number and types of mandatory documents required for each claim varied according to the levels of Harm and Loss of Opportunity claimed, as well as the complexity of the claim.

The collection of mandatory documents had a direct and significant impact on the ability of the IAP to resolve claims in accordance with the volumes and timeframes specified in the Settlement Agreement. The fact that document collection was not within the Oversight Committee's or the Adjudication Secretariat's sphere of control therefore posed particular challenges. Early experience under the IAP demonstrated that those institutions responsible for providing mandatory documents – such as local, provincial, or federal government bodies - did not have the personnel to meet those requests in a timely manner. For example, by the autumn of 2013, Correctional Service Canada had received some 9,000 requests for information, creating a two-year backlog. In the first years of the IAP, some 80 per cent of the document packages received by the Adjudication Secretariat in support of claims were incomplete and required significant and time-consuming follow-up to get the file hearing-ready.

Those responsible for administering the IAP undertook several process changes to address this issue. These included a series of tools aimed at strengthening communications with claimants' counsel to improve information about and maintain momentum in the document collection phase of the claim. In 2013 and 2014, the Adjudication Secretariat signed Memoranda of Agreements with provincial correctional facilities departments in Alberta and Saskatchewan that outlined priorities and measures to address backlogs, and held discussions with Correctional Service Canada to improve the provision of documents to counsel. The Adjudication Secretariat also worked with federal Government departments to develop an IAP-specific information request form to allow greater efficiencies in the processing of Canada Pension Plan documents. Internally, the Adjudication Secretariat established a dedicated team to work directly with self-represented claimants to obtain mandatory documents on their behalf.

[110] IAP claimants could request that a male or female adjudicator be assigned to their cases; linguistic ability also needed to be considered. To attempt to expand Indigenous Adjudicator capacity, the Oversight Committee utilized the Request for Proposals mechanism that allowed contracts to be "set-aside" for Aboriginal suppliers, and advertised Adjudicator opportunities through the Indigenous Bar Association. Notwithstanding these efforts, the number of Indigenous Adjudicators did not exceed 25% of the total.

[111] Information on the costs of the IAP is provided in the following chapter.

Inactive Claims:

In addition to delays engendered by the document collection process, another challenge in the IAP – and not uncommon in other quasi-judicial processes – was that some claims would become inactive and would not progress towards a hearing. This not only had an immediate detrimental effect on the claimants, it also raised concerns about the IAP's ultimate ability to resolve all of the claims that had been submitted.

In response, the Adjudication Secretariat introduced an "Intensive Case Management Project" to review all files that were on hold, incomplete, and older than two years; communicate with claimants' counsel to identify reasons why the claim was not progressing in the usual manner; address any outstanding issues where possible; and move the claim toward resolution or identify it for closing if the claim was withdrawn or the claimant was deceased. Intensive Case Management helped to indicate which documents were difficult to obtain, what institutions took a long time to respond to requests, what the status of the claims were with individual law firms, and what the Adjudication Secretariat could do to remove blockages. More generally, it helped to establish communications with claimants' counsel. Overall, in its first year of operation this process achieved a 90% response rate from claimants' counsel.

The information generated through Intensive Case Management in turn provided the foundation for other improvements such as the Incomplete File Resolution Process and the Lost Claimant Protocol (discussed below) to assist in the resolution and completion of IAP claims.

Incomplete Files:

Even with a case-specific and intensive approach to case management, some claims remained at a stage where they were not ready for a hearing to be scheduled. The IRSSA did not provide guidance or tools to allow a claim that had been admitted into the IAP to be closed unless it had been heard, settled, withdrawn or found to be outside of the jurisdiction of the IAP. Adjudicators did not have the authority to dismiss claims short of a hearing, even in circumstances where counsel had lost all contact with a claimant, where mandatory document collection was not possible, or where a claimant had passed away prior to providing sworn testimony. Moreover, due to the vulnerabilities of many residential school survivors – including incarceration, homelessness, and mental or physical health issues that could explain the lack of movement of claims – neither the Oversight Committee nor the Chief Adjudicator supported an approach that would see claims dismissed for "want of prosecution": the model used in the courts where a claim can be dismissed when it is inactive for a specified period of time. In an analysis of admitted claims conducted in 2011, the Adjudication Secretariat estimated that this would leave 1,000 to 1,500 claims unresolved at the completion of the IAP.

As a result, commencing in 2012 the Adjudication Secretariat, the Technical Subcommittee, the Oversight Committee, and the National Administration Committee (NAC) undertook a detailed examination and discussion of strategies, processes, and tools necessary to ensure that all IAP claims would be resolved and the IAP itself brought to completion. These new procedures were approved by the Oversight Committee and the NAC by the end of 2013, and submitted for Court approval. In June 2014, the Honourable Justice Perell of the Ontario Superior Court of Justice signed a consent order approving the Incomplete File Resolution Procedure (IFRP) as a component of the IAP "Completion Strategy Report", with the other supervising courts following suit.

The IFRP implemented a two-step approach to resolving claims that would otherwise have no prospect of proceeding. The first phase of the procedure essentially incorporated Intensive Case Management processes to a claim. If case management approaches were unsuccessful, the claim could then be referred – by the Adjudicator or by any party to the claim - to a File Management Adjudicator who could convene teleconferences with the parties, establish procedural timelines, and take other steps to progress the claim.

If that first phase of IFRP failed to move the claim forward, a "Special Resolution Adjudicator" was then appointed with the authority to receive submissions from the parties, decide about documents, set the claim for hearing with or without documents, and make a "Resolution Direction" that could, in some circumstances, involve dismissing the claim. This process included rights of review and a possibility for reconsideration by the Chief Adjudicator.

As of December 2018, of 1,233 claims referred to the IFRP, 706 - or nearly 60 per cent - were subsequently able to be returned to the normal hearing stream or other targeted approaches. Some 527 cases were the subject of a Resolution Direction. There were 26 requests to the Chief Adjudicator for reconsideration of IFRP Directions that had dismissed claims. Of these, 19 were granted, two were withdrawn, one was abandoned, and four were dismissed.

Lost Claimants:

Another key aspect of the Completion Strategy Report submitted to the Courts in 2014 was the introduction of a Lost Claimants Protocol. At that time, through information gathered in the Intensive Case Management Process, it had been determined that contact had been lost with approximately 300 claimants. This could have occurred for a number of reasons: a claimant may have passed away; may have been in a hospital or nursing home; may have become homeless or have changed address without informing their counsel or the Adjudication Secretariat. In its report to the National Administration Committee in June 2012, the Oversight Committee flagged this issue as one that needed to be addressed to ensure the ultimate completion of IAP.

Under the Lost Claimants Protocol, the Adjudication Secretariat would attempt to locate claimants with whom their counsel had lost contact using a progressively intrusive methodology, while at the same time protecting and respecting claimants' privacy. In the first instance, internet searches and a review of the information on file would be explored. Following that, if necessary, information would be sought from Aboriginal Affairs and Northern Development (e.g. Common Experience Payment, Indian Registry, Estates); Service Canada (e.g. Canada Pension Plan, Old Age Security, Guaranteed Income Supplement); Health Canada (e.g. health benefits, crisis intervention, medical transportation); Correctional Service Canada; Provincial and Territorial Motor Vehicle Registries; and Departments of Vital Statistics. Ultimately, information on a claimant's whereabouts could be sought from support persons identified in the claimant's file, Resolution Health Support Workers, police detachments, or other sources such as Veterans Affairs. To enable this, the Courts ordered that all public and private entities, institutions, and agencies operating in Canada must, if requested by the Adjudication Secretariat, provide contact information regarding the whereabouts of IAP claimants.

If a Lost Claimant was found, her/his file was returned to the regular IAP file flow. If a claimant could not be located, was non-responsive or unwilling to participate in the IAP, her/his file was moved into the Incomplete File Resolution Procedure (IFRP).

As of January 2019, the Lost Claimant Protocol had been used in 841 files, representing 771 unique claimants.[112] Of these, 546 claimants were located and their claims returned to the regular file stream or assigned to another targeted case management approach. Searches were exhausted on 225 referrals. The remaining unlocated claims were subsequently referred to the IFRP or were non-admitted.

Both the Incomplete File Resolution Process and the Lost Claimant Protocol constituted efforts unique among decision-making entities to locate and support its claimants, and provide a tangible and concrete illustration of the claimant-centred approach adopted in the implementation of the IAP.

Claims with Student-on-Student Allegations:

The IAP allowed for compensation to former students of Indian Residential Schools who had suffered abuse by fellow students. However, compensation in some of those claims required proof that staff knew of ought to have known about the abuse.[113] As this could be difficult for individual claimants to establish, Schedule D of the IRSSA stipulated that:

"With respect to student-on-student abuse allegations, the government will work with the parties to develop admissions from completed examinations for discovery, witness or alleged perpetrator interviews, or previous DR or IAP decisions relevant to the Claimant's allegations."[114]

The process for the management of claims with student-on-student allegations was the subject of discussion by the Technical Subcommittee and the Oversight Committee from the outset of the IAP. Initially, Canada did not disclose its list of all admissions for all residential schools; rather, it provided possible relevant admissions on a case-by-case basis for each claim.[115] Claimants' counsel maintained that once the onus had been met by the claimant that Canada and/or the Church knew or ought to have known about the abuse, Canada was obliged to share this information more broadly, rather than on a case-by-case basis.

In the summer of 2010, Canada proposed that it would share a Master List of all admissions with the Chief Adjudicator which would be made available to the adjudicators, but would not be shared with other parties. Canada also maintained that admissions that post-dated a claimant's attendance were not relevant to that claim. Subsequently, the Chief Adjudicator issued a Directive that gave adjudicators the authority to release potentially relevant admissions from the Master List to claimants' counsel. It also stipulated that the Chief Adjudicator had the authority to decide whether, and if so, on what terms the Master List should be made accessible to Claimant Counsel.

In June 2011, the Chief Adjudicator issued an Update in which he recommended against adjourning student-on-student hearings to await possible relevant admissions in the future.

In March 2013, the Chief Adjudicator issued another Directive that unless it was apparent at the time that a claim involving student-on-student allegations would be successful, adjudicators should in fact be receptive to requests to adjourn hearings, pending possible receipt of future admissions. The claim would be then adjourned for the sole purpose of keeping it alive until supplementary submissions arising from any new admissions were generated.

[112] In some cases, claimants were located and subsequently lost contact once again, leading to a second referral of the file to the Lost Claimant Protocol.
[113] In the IAP Model, there was no requirement to prove staff knowledge in cases of SL4/5 abuse that was predatory or exploitative.
[114] *IRSSA*, Schedule D, Appendix VIII.
[115] The Government of Canada made more than 4,500 admissions after relevant evidence or findings of adjudicators became available.

Many decisions about the IAP were made in British Columbia's Supreme Court.

In May 2013, the Chief Adjudicator released a decision that the Master List of admissions would be made available to all IAP claimant counsel. The Master List became available to counsel the following September.

However, each student-on-student claim still took into account admissions arising only from cases that had already been decided. It was recognized, though, that there might, in the future, be other claims that could generate admissions of assistance to preceding claims. This posed a challenge in that, once a decision was made on a claim, there was no avenue for a claimant to benefit from subsequent new admissions. Therefore, in December 2013, Canada proposed and the Oversight Committee approved a revised strategy and process designed to enable claims deemed likely to yield such admissions (based on information in the claim) to be heard prior to claims which might potentially benefit from them. Under this "Student-on-Student Admissions Project" strategy, Canada provided a list of almost 2,200 claims in the pre-hearing stage, of which 647 were identified as having the best potential to generate new admissions. A conference call would then be held to determine whether specific cases could be heard in advance of document completion.

The process for managing claims with allegations of student-on-student abuse was subject to further revision when, in September 2017, Canada submitted a Request for Direction (RFD) to the Courts in which it argued the Chief Adjudicator and his designates utilized "procedural fairness" as grounds for review or re-review of several of these claims that had been dismissed based on lack of proof of staff knowledge of student-on-student abuse. The Chief Adjudicator and adjudicators had decided that in some circumstances, adjudicators could consider post-decision admissions that, had they been available at the time of the initial adjudicator's decision, could have resulted in an award in favour of the claimant. Canada maintained that it was inappropriate to import the concept of procedural fairness into the IAP Model and to utilize it as grounds for the review of decisions.

The British Columbia Supreme Court agreed with Canada's position in its decision, concluding that the IAP was a "complete code" that did not contain the administrative or public law term of procedural fairness. The Court also ruled that the IAP contemplated "progressive disclosure" by requiring Canada to make admissions as the IAP unfolded; newly discovered information did not justify the re-opening of a decided IAP claim. Furthermore, only the Supervisory Courts of the Indian Residential Schools Settlement Agreement possessed the jurisdiction to re-open an IAP claim.[116]

Notwithstanding the Court's decision, on March 12, 2018, Canada announced that it would revisit student-on-student claims dismissed for lack of proof of staff knowledge, where post-decision admissions by Canada of staff knowledge might have assisted the claimant had they been available at the time of the decision. Canada stated that where it determined that cases were appropriate for settlement on this basis, such claims would be settled outside of the IAP.

Hearings

Infirm and/or Elderly Claimants:

Schedule D of the IRSSA specified that:

"In considering applications to the IAP … priority will be given, in order, to:

a) Applications from persons who submit a doctor's certificate indicating that they are in failing health such that further delay would impair their ability to participate in a hearing;

b) Applications from persons 70 years of age and over;

c) Applications from persons 60 years of age and over …"

[116] Appeals of this B.C. Supreme Court decision brought by the Assembly of First Nations and Independent Counsel were subsequently dismissed by the British Columbia Court of Appeal.

In practice, however, this posed several operational challenges. The first related to the determination of those claimants for whom a delay in a hearing could impair their ability to participate. In this regard, several issues arose, including:

- Some claimants' counsel requested expedited hearings for all of their clients, presumably in some instances as a means of getting ahead in the hearing queue. This created challenges for the Adjudication Secretariat in attempting to satisfy these requests.
- Some claimant counsel were utilizing form letters to identify medical circumstances that did not conform to the criteria as described in the Settlement Agreement.
- In remote communities, it could be difficult to obtain a doctor's certificate.
- A faster hearing did not necessarily mean faster resolution of the claims, as the collection of mandatory documents and expert/medical assessments still required the same amount of time.
- A significant proportion of all IAP claimants were over the age of 60, with some identified as being at significant risk due to diminishing capacity.

To address this problem, in 2010 the Adjudication Secretariat implemented a form to ensure that claimants who legitimately required an expedited hearing had access to one. Based on operational experience, the form was amended in 2011 and again in 2012. In its final format, the "Request for Expedited Hearing or High Priority Hearing Due to Failing Health" placed responsibility for assessing the claimant's medical needs in the hands of their attending physician, rather than their lawyer or the Adjudication Secretariat. The form removed the need for the doctor to explain the medical condition, merely to attest to it. The form also introduced a distinction between "expedited" and "high priority" hearings, with expedited indicating that a delayed hearing would result in a significant risk that the claimant may die or otherwise lose capacity to provide testimony, and "high priority" indicating that failing health could impair the claimant's ability to provide testimony.

For claimants in remote areas where doctors were not readily available, the Adjudication Secretariat could agree to proceed on an expedited basis, based on information from claimants' counsel and subject to the production of a medical certificate shortly after the hearing.

In addition, despite the priority accorded them in the IRSSA, some elderly claimants were having to wait a considerable time – up to or even in excess of two years – for a hearing to be scheduled. In large measure, this was due to the fact that although the Settlement Agreement gave elderly claimants priority for hearing dates, a claim still needed to be "hearing ready" (i.e., all required documents had to be gathered and submitted by the claimant and the Government of Canada) before it could be scheduled.[117] As a result, elderly claimants whose health was not failing and whose claims had not reached the hearing-ready stage could have their claims remain stagnant in the document collection stage.

To address this challenge, in 2012 the Oversight Committee approved an "Over-65 Pilot Project" to develop ways of processing claims more quickly for those claimants 65 years of age or older, including alternative scheduling approaches and more intensive case management by adjudicators. One key element of the Pilot Project entailed adjudicator-led pre-hearing teleconferences in which the parties could address issues regarding document collection and identify claims for which a hearing date could be scheduled, or that could be suitable for resolution through the Negotiated Settlement Process. The Pilot Project also involved block-scheduling of groups of hearings to take place over consecutive days in a single location in order to make the best use of resources. During a six-month period, more than 140 hearings were conducted through the Pilot Project. Based on those results, it was determined that the approach had merit, but that additional process improvements could help in accelerating hearings for elderly claimants.

As a result, the Oversight Committee approved an Accelerated Hearing Process (AHP) in June 2013. Based on the experience of the Pilot Project, this new process was aimed at realizing the requirement of the IRSSA to accord priority in scheduling and hearing claims of elderly claimants.

[117] The only exception to this requirement in the Settlement Agreement was where medical evidence demonstrated that the claim needed to be heard immediately due to the health of the claimant. Appendix IV, section iv of the IRSSA stated that: "No [hearing] date shall be set until the IAP Secretariat is satisfied that exchange of documents, including treatment notes and clinical records is as complete as reasonably necessary, unless a Claimant provides medical evidence that any delay in hearing their testimony involves a significant risk that they may die or lose the capacity to provide testimony. In such circumstances, the Secretariat may schedule a hearing for the limited purpose of taking such testimony, after which the hearing shall be adjourned to allow for the preparation of the case as otherwise provided for in this IAP."

IAP Hearing

Under the AHP, the Adjudication Secretariat identified files for potential inclusion in the process, giving particular priority to elderly claimants, claimants in failing health, or those with claims that had been awaiting a hearing for a longer time. Claimants' counsel (or self-represented claimants) would then consider whether to proceed with those files under the AHP. If so, an adjudicator would conduct a pre-hearing teleconference to identify issues with document production or that were otherwise delaying the process. Claimants' counsel or self-represented claimants would then be given a period of time in which to get the file hearing-ready, with the claim set down for hearing within a block schedule of hearings. AHP claims were scheduled into 5-day blocks of hearings held in the same location. In order to preserve those hearing dates, an AHP hearing could proceed as scheduled even if it was not yet hearing-ready if the parties agreed, subject to final submissions after adjournment.

In the final years of the IAP, in order to ensure the completion of the IAP, AHP became the default process for getting cases to hearing; claims were scheduled for hearing with or without the consent of the parties and whether or not the file was "hearing-ready" in terms of document collection.

Hearing Postponements, Cancellations, and Substitutions:

Based on a study in 2011, it was found that 20% of hearings did not proceed as scheduled and 40% of postponements and cancellations were avoidable. Given the volume of hearings that needed to be held and the tight timeframes for scheduling those hearings, this constituted a major obstacle to being able to realize the goals and objectives of the IAP. This challenge was exacerbated by the fact that the notice given for postponements and cancellations was often too short to allow for substitution with another claim due to the complexity of hearing logistics and diversity of geographical locations.

Following discussions by the Oversight Committee, new procedures were adopted and guidance provided to the parties aimed at reducing hearing postponements and cancellations and at ensuring that more hearings would proceed as scheduled.[118] These new processes included a requirement that all postponements requested within 10 weeks of the hearing date be approved by the presiding adjudicator. The adjudicator would work with the parties to attempt to prevent postponement, and could impose consequences if a participant failed to attend a hearing without proper cause.

In 2013, the Oversight Committee approved a policy that specifically addressed hearing cancellations related to claims that had entered the Negotiated Settlement Process (NSP) stream. Previously, hearing dates had been scheduled for claims that were in the NSP stream, and those dates were maintained until the claim actually settled. However, as is not uncommon in judicial or quasi-judicial processes, those settlements were most often reached close to the hearing. Approximately 50 per cent of NSP settlements occurred within six weeks – and 35 per cent within one month - of the hearing. Following direction of the Oversight Committee, the process for maintaining hearing dates was altered; once a claim entered the NSP stream, its hearing date was cancelled. In the rare instance that a claim did not settle in the NSP, it would be scheduled for hearing on an expedited basis. Any request for cancellation due to a claim entering into the NSP process that was made within six weeks of the hearing date would be subject to review and determination by an adjudicator.

As well, the Oversight Committee in 2013 approved changes that would facilitate the substitution of claims using previously scheduled hearing dates. In cases where an adjudicator had approved the postponement of a hearing, the same claimant counsel could propose utilizing that hearing date for another claimant whose file was hearing-ready, could be heard in the same location and who met other criteria in the policy. This approach was adopted to help preserve claimants' testimony, reduce the number of lost hearing dates, and reduce the likelihood of an adjudicator directing claimant counsel to pay costs associated with a postponement or cancellation.

Following the introduction of the hearing cancellation policy, the percentage of hearings that were cancelled or postponed declined from a peak of 20.5 per cent in 2010/11 to a rate of 16.8 per cent from 2011/12 to 2018/19.

[118] Guidance Paper "GP-7: Failure of Hearings to Proceed", issued by the Chief Adjudicator on November 22, 2011. Following continued monitoring by and discussion at the Oversight Committee, in 2015 the Chief Adjudicator enacted a number of modifications to the hearing postponement policy ("Guidance Paper 7r1: Failure of Hearings to Proceed") and new Guidance Papers to address postponements of assessments ("Guidance Paper 9: Regarding the Postponement of Assessments") and conference calls ("Guidance Paper 10: Attendance at Teleconferences").

Adjudication and Claim Resolution

Time Required to Issue Decisions:

In the IRSSA, Schedule D, Appendix XII to the IAP Model set out the format for decisions, indicating that a typical decision would be six to ten pages. Given the volume of claims anticipated in the IAP, the length of time taken on average to write a decision following a hearing, and the time required for decisions to be reviewed by the Chief Adjudicator and/or Deputy Chiefs, it soon became apparent to the Oversight Committee that a full decision in each case would take considerable time and resources, and could delay the receipt of the decision and compensation for claimants.

With this in mind, in 2009 the Technical Subcommittee (TSC) undertook to examine how, in some circumstances, the format for decisions and the length of time required to issue them might be reduced.

Based on experience with both the ADR process and the IAP, the Technical Subcommittee recognized that for some claimants, receiving a full decision that included a detailed narrative of evidence and the rationale supporting the decision was very important for memorialization and for personal healing. Other claimants, however, would appreciate receiving a decision as soon as possible following the hearing, both for marking an end to the process and for the receipt of any compensation that may be awarded. The TSC also determined that, at the conclusion of some hearings, there could be circumstances in which the adjudicator and the parties were in agreement as to how the claim should be resolved. A shorter form of decision could then be generated and signed by the parties at that time.

Given that the decision format had been prescribed by the Settlement Agreement, any change in format required consultations with the parties, discussions at the Oversight Committee and approval by the National Administration Committee. Following that, in November 2009, the Oversight Committee approved a process for Short Form Decisions, which was implemented in January 2010.

Short Form Decisions (SFDs) were available when certain requirements were met:

- the claim was in the standard track;
- all research, and mandatory document production was complete and submitted before the hearing, all testimony heard, and submissions taken place at the end of the hearing;
- the future care plan (if any) was submitted by the end of the hearing;
- the claimant requested in writing the use of an SFD; and
- the representatives of the parties attending the hearing consented in writing to the rendering of a SFD.[119]

A SFD was not available if the claimant was self-represented, an alleged perpetrator testified and disputed responsibility, or where a material issue remained with respect to credibility, liability, or compensation. All parties retained their rights to have the decision reviewed by another adjudicator.

Negotiated Settlements:

In addition to claims being decided by adjudicators at hearings, Schedule D of the Settlement Agreement provided that the Government of Canada and the claimant could resolve a claim without a hearing. This procedure – known as the Negotiated Settlement Process (NSP) - allowed the claimant's counsel and the Government of Canada to agree on an award within the compensation rules.

The circumstances in which an NSP could be used were not specifically described in the Settlement Agreement and were left to the parties to determine and agree. To this end, the Government of Canada established a Working Group in 2007 to develop the process, and settlements were reached beginning in 2008. Typically, settlement was reached based on evidence obtained through an interview conducted by a representative of Canada where:

- the claimant was represented by counsel; and
- the case was straightforward, such as in the standard track;

Negotiated settlements were a voluntary process within the purview of the parties. As such, the Chief Adjudicator and the Adjudication Secretariat were not directly involved in NSPs. However, adjudicators were required to approve legal fees in all NSPs.

[119] When a Church did not send a representative to the hearing, Canada could consent to an SFD on their behalf.

In 2011, Canada undertook a review of the Negotiated Settlement Process and implemented a number of improvements. As well, the Adjudication Secretariat began distributing evidentiary packages as new documents were received, rather than the original process where evidentiary packages were held until all documents were in place, in order to provide the parties with more time to determine if the claim could be settled. Overall, these changes resulted in more efficient and expeditious resolution of claims. The number of NSPs rose from 572 in 2011 to 742 in the following year.

Overall, negotiated settlements accounted for 4,415 file resolutions, or approximately 13 per cent of all admitted IAP claims. Careful selection by the parties of claims for this process resulted in more than 99 per cent of claims accepted into the NSP being resolved through negotiation.

Ensuring Consistency in Decisions:

While the IAP did not operate on a system of binding precedent, it was of course necessary to take measures to ensure consistency in decision-making among the more than 100 adjudicators across the country. Schedule D of the Settlement Agreement specified that: "Adjudicators … will attempt to conduct consistent sessions and produce decisions in a consistent fashion … The Chief Adjudicator shall implement training programs and administrative measures designed to ensure consistency among the decisions of adjudicators in the interpretation and application of the IAP."[120]

Accordingly, the Chief Adjudicator and his deputies conducted formal and informal training sessions and meetings of adjudicators to help them share experiences and best practices. While these meetings did not address the specifics of any individual claim, they were an essential means of promoting collegiality and consistency across the system.

As well, the IAP allowed either party to request a review if the adjudicator had not properly applied the IAP Model to the facts as found by the adjudicator. Claimants could also request a review if there had been an overriding and palpable error; this option was only available to Canada in complex track files.

In order to strengthen consistency of decision-making in the IAP, the Chief Adjudicator and his deputies also worked with the Oversight Committee and its Technical Subcommittee to develop directives and guidance papers on certain aspects of the process. These directives were made available to adjudicators and all parties through posting on the IAP web site. Over the course of the IAP, 11 Chief Adjudicator Directives provided instruction to adjudicators and parties on specific policies and procedures related to claims; 10 Guidance Papers suggested procedures to adjudicators and parties for dealing with issues regarding the administration of the IAP; and 2 Practice Directions provided guidance to practitioners on various issues including instructions to adjudicators regarding Short Form Decisions.

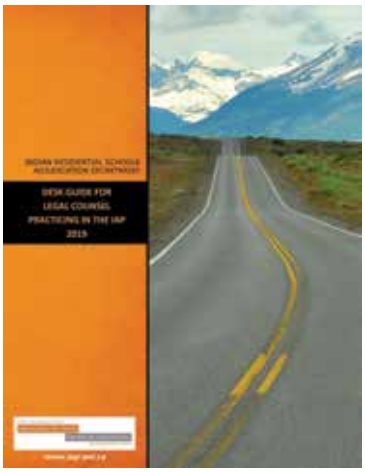
In addition, at the outset of the IAP, a database of decisions was available to adjudicators to enable them to refer to issued decisions by types of claims. Since IAP decisions did not have precedential value, the database was intended for research purposes only. However, the lack of a database that was also accessible by claimant counsel and the Government of Canada created an imbalance between the parties. Claimant counsel only had access to those decisions in which they were involved as counsel, while Canada - given that they were a party to all claims - had access within their own records to all IAP decisions. Therefore, in 2009, the Oversight Committee decided to seek to implement a secure, searchable, online database of IAP decisions for use by adjudicators, claimant counsel, Canada's representatives and Church entities to ensure equal access by all parties.

In 2010, the Supervising Court issued an order directing that the Adjudication Secretariat, with the assistance of Crawford Class Action Services, develop a database of important IAP decisions. As per the approval of the database by Oversight Committee, one key aspect was that extensive redaction of the included decision was required in order to protect the privacy of claimants, alleged perpetrators (living and deceased,) and other witnesses. This included redaction of:

- All proper names of individuals (other than adjudicators, party representatives, and names of schools)
- Any reference to a family relationship that would make any individual identifiable
- All staff positions
- Date of birth of the claimant or any individual
- The location of the residence or origins of the claimant
- The education of the claimant or any individual
- Any reference describing the employment of the claimant or any individual

Lists of important decisions were posted to the IAP Decisions Database at regular intervals. Decisions themselves were posted in the language in which they were written, but were translated on request by any of the parties subject to approval by the Chief Adjudicator.

[120] *IRSSA,* Schedule D, sec. III m (i) and (ii)



Claimants' legal counsel could consult a guide with detailed information on procedures and practices in the IAP.

Administrative and Process Management

Sharing Documents:

Due to the volume of anticipated claims and of the number of documents associated with each claim, it was of paramount importance to develop an electronic means for sharing and transferring those documents among all parties, adjudicators, and the Adjudication Secretariat. At the same time, while an electronic system would eliminate the risk associated with the physical transfer of documents, it was crucial that the system be secure so as to protect the privacy and confidentiality of IAP records. This was particularly important in that any such system would of necessity be managed by an independent body outside of the Adjudication Secretariat and would be accessible to a range of users.

Following Oversight Committee approval, a Court Order to establish an Electronic Document Interchange was issued in 2010. Crawford Class Action Services – the Court Monitor for the IAP – was tasked with providing a secure file transfer protocol that would enable the parties to electronically transfer protected documents housed on a secure website with secure links between all users. Crawford also was to provide training and technical support, measure and ensure quality control, and regularly destroy documents posted on the website according to timelines provided by the Chief Adjudicator.

The EDI system was rolled out in stages commencing in September 2010. Although some law firms with smaller IAP caseloads did not utilize EDI, the system was widely adopted and within three years the number of document packages transferred via EDI had exceeded 250,000. This represented not only considerable reductions in time but also in resources, with the savings of hundreds of thousands of dollars in courier costs. However, two gaps in its utility remained: EDI could not be used by claimants' counsel for submitting mandatory documents to the Adjudication Secretariat, and it was not available to self-represented claimants. In both of these circumstances, the Adjudication Secretariat determined that the submission process already in place was adequate.

File Management:

As noted earlier, one of the most significant ongoing operational challenges in the IAP was the slow rate of mandatory document production. Most claimants needed to submit medical, education, and income records to prove higher levels of harm and opportunity loss in the IAP, and could not have a hearing scheduled until those documents were produced. Many claimants' counsel experienced difficulty obtaining these documents or lacked appropriate information systems to track document production across a large number of claims.

In order to address both concerns, in 2011 a Court Order was issued for the implementation of an Interactive File Management System (IFMS). This secure web-based tool allowed authorized claimants' counsel and their office staff to view the status of their clients' claims in real time, and provided updated information directly into the system. This eliminated time-consuming rounds of correspondence and gave the Adjudication Secretariat valuable information on causes of delay that in turn could lead to targeted attempts to remove blockages.

In 2013, IFMS was expanded to provide additional tools that enabled users to view files in the scheduling stage; access an interactive calendar of hearings; electronically submit logistical requirements; view the status of post-hearing files; and obtain information on the progress of decisions, fee rulings, and reviews.

Ultimately, while a large number of law firms did utilize IFMS, those that already had a file tracking system in place did not embrace its use. Claimant counsel that adopted IFMS did indicate that the system greatly facilitated their understanding of the status of their files. As well, adjudicators and the Adjudication Secretariat found that it provided an efficient and effective file management tool.

Providing Information on IAP Processes to Claimants' Legal Counsel:

In 2011, the Adjudication Secretariat published a comprehensive "Desk Guide for Legal Counsel Practising in the IAP", providing specific and detailed information on all aspects of the IAP. The Desk Guide was in excess of 50 pages and intended as a tool to assist claimants' legal counsel by providing information on IAP procedures and processes, common issues, best practices, key resources, and technical assistance with claims at each stage of the IAP.

The Desk Guide was published on the IAP website in both HTML and PDF format, and modified as policies and procedures changed or new issues arose. Over the course of the IAP, the document was updated seven times.

While the Guide was developed primarily to benefit lawyers who were new to the process, it was also meant to provide a useful reference for any lawyer requiring information on matters of process. There are, however, no data that tracked the usage of the Guide by claimant counsel or others.

Misconduct of Some Claimants' Legal Counsel

Over the course of the IAP, there were numerous lawyers that served as legal counsel on behalf of claimants. Many of these had extensive previous engagement in Indigenous issues; some were themselves residential school survivors; and most were diligent, engaged, and ethical in their practice. However, the issue of lawyer misconduct by a minority of legal counsel was a significant challenge with far-reaching consequences that resulted in the ongoing attention and involvement of the Oversight Committee, the Chief Adjudicator, Bar Associations, Law Societies, and the Courts.

From the outset, it was recognized that IAP claimants would be best served by having legal representation. Although the Settlement Agreement explicitly provided for self-represented claimants,[121] IAP applicants were encouraged to hire a lawyer.[122] In information provided to former students, the Adjudication Secretariat noted that while the decision to hire a lawyer rested with each claimant, "every party who signed the Settlement Agreement encourages you to hire a lawyer to help with your IAP claim". The Adjudication Secretariat went on to advise: "If you do hire a lawyer, find someone you can trust."[123]

That in itself posed a considerable challenge, particularly for former students living in remote communities and for those who did not have experience in engaging legal counsel to represent them in civil actions. The Settlement Agreement stipulated that the National Administration Committee would compile a list of those lawyers who, at the time, had active claims related to Indian Residential Schools, and who agreed to be bound by the terms of the Settlement Agreement.[124] Inclusion on that list did not, however, require lawyers to adhere to a particular code of conduct relative to the specific nature of the claims or the claimants, nor did it advise former students as to what they should reasonably expect from their legal counsel.

In 2000, in recognition of the fact that "survivors of Aboriginal residential schools are often vulnerable and in need of healing as well as legal assistance", the Canadian Bar Association adopted a resolution pertaining to lawyers acting for survivors of residential schools.[125] The resolution urged Law Societies to adopt guidelines for the conduct of such lawyers stipulating that:

(a) Lawyers should not initiate communications with individual survivors of Aboriginal residential schools to solicit them as clients or inquire as to whether they were sexually assaulted;

(b) Lawyers should not accept retainers until they have met in person with the client, whenever reasonably possible;

(c) Lawyers should recognize that survivors had control taken from their lives when they were children and therefore, as clients, should be given as much control as possible over the direction of their case;

(d) Lawyers should recognize that survivors may be seriously damaged from their experience, which may be aggravated by having to relive their childhood abuse, and that healing may be a necessary component of any real settlement for these survivors. Lawyers should therefore be aware of available counselling resources for these clients to ensure that they have opportunities for healing prior to testifying;

(e) Lawyers should recognize that damage to the survivors of Aboriginal residential schools may well include cultural damages from being cut off from their own society, and should endeavor to understand their clients' cultural roots;

(f) Lawyers should recognize that survivors are often at risk of suicide or violence towards others and should ensure appropriate instruction and training for their own employees, including available referrals in time of crisis

Over the next few years, Law Societies in Ontario, Manitoba, the Northwest Territories, and the Yukon adopted guidelines that generally incorporated or built upon these concepts.

[121] *IRSSA,* Section 4.08 (4) and Schedule D, Section III (p)
[122] The Application Form was 21 pages long. To assist claimants in completing their IAP application, the Adjudication Secretariat developed a "Guide to the Application". However, at 44 pages, it was itself a lengthy and complex document.
[123] Indian Residential Schools Adjudication Secretariat, "Do I need a lawyer for my IAP claim?"
[124] *IRSSA,* Sections 4.08 (2) and 4.11 (12) (n)
[125] Canadian Bar Association, Resolution 00-04-A, August 19-20, 2000. In October 2000, the Oversight Committee adopted the CBA Guidelines in respect of a direction that counsel who committed to those principles would be invited to participate in the Adjudication Secretariat's outreach program. (The issue of the lack of formal engagement of legal counsel in that outreach program is discussed in Chapter 8).

The British Columbia Supreme Court removed lawyer David Blott and his law firm from representing claimants in the IAP following a hearing in 2012.

Manitoba Court of Queen's Bench in Winnipeg

In this context, the most public and significant example of the challenges created by lawyer misconduct was evidenced by the circumstances involving David Blott and his Calgary-based firm Blott & Company.[126] Blott & Company represented more than 5,600 claimants, by far the largest caseload of any law firm involved in the IAP. Most of these clients had been referred to Blott & Company by Honour Walk, an organization associated with Mr. Blott that recruited claimants and assisted them in filling out their application forms.[127] In 2009, Mr. Blott was the subject of a complaint to the Law Society of Alberta regarding the way in which he solicited clients and his relationship with Honour Walk. The Law Society's review of the complaint concluded that Mr. Blott had "taken appropriate steps to deal with these matters", and it did not proceed further with the complaint. In 2010, another Law Society complaint was filed by a client. IAP adjudicators also went on record with observations about the inaccuracy of some Blott & Company IAP application forms and discrepancies between the information contained on those forms and that provided by the claimants during their hearings. In 2010, the Chief Adjudicator initiated an internal investigation into Mr. Blott's practices. This investigation was still in progress when, in 2011, the Court Monitor raised its concerns over Blott & Company with the Supervising Courts, and was ordered by the Court to commence its own investigation. Based on the allegations contained in an interim report by the Court Monitor, the Law Society launched yet another investigation of Mr. Blott. Ultimately, the Supreme Court of British Columbia convened a hearing in June 2012 on the final report and recommendations made by the Court Monitor. Following that hearing, the Court ordered the removal of Mr. Blott and Blott & Company from the representation of claimants in the IAP or any other aspect of the Settlement Agreement.[128]

While the case of Blott & Company constituted the largest example – in terms of scale and impact on IAP claimants – of misconduct by lawyers or their agents, it was not an isolated instance. On several other occasions, the Chief Adjudicator reported concerns about claimant counsel to their respective Law Societies. Two of those complaints led to the disbarment of the lawyers concerned, including one who was alleged to have misappropriated nearly $1 million in fees from IAP clients.[129] Another Saskatchewan lawyer was convicted of professional misconduct and fined by the Law Society for his refusal to provide an adjudicator with a copy of the contingency fee agreement as required by Court orders. In February 2013, following a Request for Direction filed by the Court Monitor related to allegations of possible extortion of funds from IAP claimants and the falsification of applications, the Supreme Court of British Columbia ordered that an individual be removed from all participation in the IAP. The Court also ordered the Court Monitor to conduct a review of the law firm alleged to be involved.

The Chief Adjudicator also raised with the Courts concerns related to the practices of some firms that were assisting claimants with completing IAP applications and the allegedly improper fees levied by them on IAP claimants. In 2014, the Manitoba Court of Queen's Bench ruled that any service contracts requiring claimants to pay contingency fees to form fillers were null and void, as were contracts requiring claimants to pay non-lawyers for legal services.[130]

When the Court ordered the removal of Blott & Company from all IAP matters, it appointed a retired judge of the Supreme Court of British Columbia to oversee the transition of clients from that firm to other legal counsel. In order to ensure that these claimants would receive an appropriate level of representation from their new lawyers, this transition co-ordinator required that any lawyer accepting a case in this transition process first undertake to adhere to expectations set out by the Chief Adjudicator.

[126] Information on Blott & Company's operations is taken from the Supreme Court of British Columbia's Reasons for Judgment in *Fontaine v. Canada (Attorney General),* 2012 BCSC 839.
[127] Claimants signed a retainer with Honour Walk stating that if they did not hire Blott & Company, they would ultimately be responsible for the payment of Honour Walk's fees of $4,000. The retainer with Blott & Company further stipulated that if the client changed lawyers for any reason, he/she would be required to pay Blott & Company $8,000 plus disbursements.
[128] Supreme Court of British Columbia. *Fontaine v. Canada (Attorney General),* 2012 BCSC 839.
[129] Following the Chief Adjudicator's complaint, the Law Society reported that all the money owed had been repaid to the IAP claimants.
[130] *Fontaine v. Canada (Attorney General),* 2014 MBQB 113.

Accordingly, in August 2012, the Chief Adjudicator published a document entitled *Expectations of Legal Practice in the IAP,* that was posted on the IAP web site, provided to all legal counsel representing claimants in the IAP, and provided to current and potential claimants at outreach sessions. The document addressed such issues as contacting and working with claimants, preparing them for hearings, not participating in loan arrangements or assigning claimants' compensation, and respecting their client's right to change counsel. It stipulated that: "Lawyers must restrict their IAP practice to the number of cases they can competently and responsibly take on at any one time". In 2013, these "Expectations" were amended and strengthened with the introduction of "Special Direction" clauses in legal fee rulings that made it explicit that no deductions could be made from awards except as approved by adjudicators, and requiring successor counsel to protect claimants from fee claims by predecessor counsel.

Another element of the Court's intervention in the Blott & Company matter was the Court's explicit confirmation of the Chief Adjudicator's authority to implement policies and guidelines for the IAP and provide specific penalties or disciplinary measures where these were not complied with. The court also found that it was appropriate for adjudicators to ask claimants about the broad parameters of their relationship with their lawyer, such as the frequency of meetings and scope of services provided, where circumstances warranted. In tandem, these measures provided a new level of guidance and oversight for the quality of legal representation in the IAP and the conduct of counsel.

In addition, following discussions including the Chief Adjudicator, the Court Monitor, and Court Counsel, the Oversight Committee developed an "IAP Integrity Protocol" to serve as a model and mechanism through which complaints against legal counsel, or others purporting to act on behalf of claimants in the IAP, could be investigated and potentially resolved. In 2014, following unanimous consent of the National Administration Committee, the British Columbia Supreme Court granted an Order approving the Integrity Protocol and appointed an Independent Special Advisor to the Court Monitor. Over the remainder of the IAP, the Independent Special Advisor reviewed complaints on such issues as usurious loan arrangements and improper legal fees.

Disposition of IAP Records and Documents

Claim Records:

Schedule D of the IRSSA emphasized the confidential nature of IAP claim records and processes. It specified that:

"Hearings are closed to the public. Parties, an alleged perpetrator and other witnesses are required to sign agreements to keep information disclosed at a hearing confidential, except their own evidence, or as required within this process or otherwise by law."[131]

Schedule D also contained provisions regarding the confidential treatment of the IAP application form, required that applicants sign a declaration that committed the applicant to the private nature of the hearing, and stipulated that "all copies [of the application] other than those held by the Government will be destroyed on the conclusion of the matter, unless the Claimant asks that others retain a copy, or unless counsel for a party is required to retain such copy to comply with his or her professional obligations."[132]

At the same time, the Settlement Agreement provided that claimants would receive a copy of the decision in their case, redacted to remove identifying information about any alleged perpetrators. Claimants could also request a copy of their own evidence at the hearing, and had "the option of having the transcript deposited in an archive developed for the purpose."[133]

As well, Schedule N of the Settlement Agreement – that set out the mandate for the Truth and Reconciliation Commission (TRC) – accorded the TRC responsibility for establishing a research centre within five years and ensuring the preservation of its archives.

Over the course of several years, the Adjudication Secretariat, Oversight Committee, and the TRC discussed how best to ensure that IAP claimants could be provided information to enable them to grant informed consent about providing their IAP evidence to a centre for archival purposes. This proved particularly challenging as the terms of reference for such a centre had not yet been framed, making "informed consent" difficult to be articulated. In addition, as time passed, many thousands of hearings had already occurred in which participants had been accorded promises of confidentiality and in which permission for archiving testimony had not been sought or obtained.

In 2012, the TRC concluded that it would seek that all IAP documents should be deposited in the archive with or without claimants' consent, pursuant to Section 11 of Schedule N, which stated that "…Canada and the churches will provide all relevant documents in their possession or control for the use of the Truth and Reconciliation Commission…".

[131] *IRSSA,* Schedule D, sec. III 0 (i).
[132] *IRSSA, Schedule D, Appendix II (iv)*
[133] *IRSSA, Schedule D, sec. III o (ii)*

Supreme Court of Canada

As a result, the TRC and the Chief Adjudicator each brought Requests for Direction to the Supervising Court, seeking to clarify how IAP records should be treated at the conclusion of the IAP, and whether IAP documents and personal information could be shared and/or archived without the consent of the claimant. In its 2014 decision, the Ontario Superior Court of Justice ruled that specific categories of IAP claim records (identified as "IAP Retained Documents", and described below) were to be held by the Chief Adjudicator for a 15-year retention period during which individual IAP claimants could elect to have the records in their own file preserved. Following the retention period, IAP Retained Documents held by the Chief Adjudicator would be destroyed; all other documents were to be destroyed upon completion of the IAP claim.[134] This decision was substantially upheld by the Ontario Court of Appeal[135], but was then appealed to the Supreme Court of Canada by the Attorney General of Canada.

In 2017, the Supreme Court of Canada dismissed that appeal, and upheld the previous ruling of the Ontario Court.[136] The Supreme Court recognized the tension between commemoration and memorialization, on the one hand, and on the other hand the privacy that IAP claimants had been promised; or, as the Court described it, charting "an appropriate course between the Scylla of potentially unwanted destruction and the Charybdis of potentially injurious preservation". In the end, the Court upheld the supervising judge's finding that "the negotiators of the IRSSA intended the IAP to be a confidential and private process, that claimants and alleged perpetrators relied on the confidentiality assurances and that, without such assurances, the IAP could not have functioned." The Supreme Court went on to observe that:

The MyRecordsMyChoice.ca website was set up to provide information to IAP and ADR claimants on the choices they had regarding the disposition of their claims records.

"The high premium placed on confidentiality by the participants in the IAP becomes readily apparent when one considers the nature of the information disclosed during this process. As was made plain by the submissions of the Inuit Representatives before this Court, that information is – to put it mildly – of the most sensitive and private nature."

The Supreme Court ruled that residential school survivors were and should be "in control of their own stories", and that: "The position taken by the TRC, and later by the NCTR [National Centre for Truth and Reconciliation],[137] that these documents should be transferred to the National Archives and eventually shared with the NCTR, would defeat the principle of voluntariness underlying the IAP." To that end, the Court confirmed that all ADR and IAP documents held by the Adjudication Secretariat would be destroyed with the exception of:

- application forms
- printed transcripts of claimants' testimony
- voice recordings of claimants' testimony, and
- decisions on IAP claims

These "IAP Retained Documents" would be held for 15 years (specifically to September 19, 2027), during which time a claimant could voluntarily request a copy of her/his documents to preserve or share as they wished, and/or request that their documents be preserved for history, public education, and research at the NCTR.[138] Following that retention period, if a claimant did not request a copy of their documents or that they be transferred to the NCTR, those documents would then be destroyed.

[134] *Fontaine v. Canada (Attorney General)*, 2014 ONSC 4585 (CanLII).
[135] *Fontaine v. Canada (Attorney General)*, 2016 ONCA 241 (CanLII).
[136] *Canada (Attorney General) v. Fontaine*, 2017 SCC 47 (CanLII), [2017] 2 SCR 205.
[137] The NCTR was created as the permanent home for the records of the Truth and Reconciliation Commission, and has the responsibility to foster truth, reconciliation and healing. It is hosted at the University of Manitoba.
[138] Claimants who chose to preserve their records at the NCTR could choose between restricted access or open access. Under restricted access, the NCTR could use and share records with others for purposes such as public education, but only if the NCTR removed personal information. Personal information would be made available to the NCTR and researchers, but only under strict confidentiality conditions. Open access meant that the NCTR could use records and personal information (except addresses, phone numbers, band or disc numbers) in the way it deemed appropriate including by sharing with others.

The Indian Residential Schools Adjudication Secretariat sent out thousands of information packages to inform Indigenous communities, stakeholders and IAP claimants about the choices they had regarding their IAP or ADR records.

The Courts also directed that the Chief Adjudicator administer a notice program to inform IAP claimants of their right to choose what would happen with their IAP Retained Documents. Following a series of discussions at the Oversight Committee and consultations with representatives of the Assembly of First Nations, Inuit, the Government of Canada, lawyers representing former students, and the National Centre for Truth and Reconciliation, this notice program was developed by the Chief Adjudicator and Oversight Committee and its terms set out in a 2018 decision and Order by the Ontario Superior Court of Justice.[139] It comprised a multi-media information campaign of public service announcements on radio and television; print publication and online notices; videos, mail-outs of information packages; and engagement with community radio stations, local newsletters, and websites. The Court also ordered that Canada fund the participation of the Assembly of First Nations, Inuit Representatives, the NCTR, and Indigenous Services Canada Resolution Health Support Program Services in the implementation of the Notice Program. Crawford & Company (Canada) was appointed by the Court as Records Agent to assume responsibility for the safe care of IAP Retained Documents following the wind-up of the Adjudication Secretariat to the end of the Retention Period.

Non-claim Records:

Following the Supreme Court of Canada decision dealing with IAP claims records and "Retained Documents", questions remained as to how, at the conclusion of the IAP, to dispose of those records not related to specific IAP claims. In 2019, the Chief Adjudicator submitted a Request for Direction (RFD) to the Supervising Courts outlining a proposal for handling documents related to the establishment, governance, and operations of the IAP. These documents included Chief Adjudicator Reports to the Courts, Oversight Committee records, statistical reports, records of complaints, adjudicator personal records, information related to solicitor-client or litigation privilege, and the Adjudication Secretariat's administrative records dealing with financial and human resource management, communications, technology, and procurement processes.

In a decision issued in January 2020, the Ontario Superior Court of Justice ruled that the disposition of all IAP records – whether claim or non-claim in nature – was a matter of administering the Indian Residential Schools Settlement Agreement, but dismissed the proposal contained in the Chief Adjudicator's RFD. Rather, the Court directed Canada to develop a proposal for the Court's consideration for the archiving of copies of non-claim records at the National Centre for Truth and Reconciliation (NCTR). The Court further directed that Canada's proposal be based on the following principles regarding inclusion or exclusion of certain documents in the NCTR's Non-Claim Records Collection:

- Existing statistical reports on the IAP (those that were already in the public domain) should be included, but so-called "Static Reports" (i.e. final outcome statistical reports drawn from IAP documents) were not to be included in the Non-Claim Records Collection nor contained in the IAP Final Report
- Copies of publicly-published Oversight Committee minutes should be included but other Oversight Committee documents such as unpublished minutes of in camera meetings, agendas, document packages, emails and correspondence among members, and travel expense vouchers were to be excluded
- Redacted copies of Reports to the Courts were to be included
- Information and documents subject to solicitor-client or litigation privilege were to be excluded
- Complaints records; adjudicator personal, personnel, and performance records; IAP Personal Information; draft or duplicative records were to be excluded
- Claim records would continue to be dealt with in accordance with the previous Court "Claim Records" decisions[140]

The Court also ruled that, once the prerogatives of the Settlement Agreement were addressed according to the above principles and with the exception of Chief Adjudicator records subject to solicitor-client privilege, the retention and destruction of documents would be governed by the Library and Archives Canada Act and Canada's document retention policies.

At time of the writing of this IAP Final Report, Canada's proposal to the Courts was still pending, and the NCTR had appealed the decision.

[139] *Fontaine v. Canada (Attorney General)*, 2018 ONSC 4179.
[140] *Fontaine v Canada (Attorney General)* [Claims Records], 2014 ONSC 4585, aff'd 2016 ONCA 241, aff'd 2017 SCC 47.

THE INDEPENDENT ASSESSMENT PROCESS – STATISTICAL DATA

I: Applications Received and Resolved by Calendar Year[141]

From implementation through to October 1, 2020, a total of 38,276 IAP applications were submitted, of which 33,861 were admitted. Nearly one-quarter of all applications were received in the six-month period prior to the application deadline of September 19, 2012. The number of applications was fairly evenly split between men (50.9%) and women (48.9%). As of October 1, 2020, all applications had been resolved.

Calendar Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Applications Received	3,849	5,418	4,750	5,148	5,494	12,787	372	132	48	98	2	159	7	12	**38,276**
Applications Resolved	404	1,502	2,897	4,348	4,426	5,345	6,251	5,092	3,642	2,439	1,070	706	127	27	**38,276**
Adjudicator Decisions	322	1,081	2,086	3,210	3,377	3,935	3,938	3,739	2,646	1,494	534	284	112	16	**26,774**
Dismissals[142]	0	0	0	1	12	20	53	75	54	329	392	243	4	0	**1,183**
Negotiated Settlements	0	39	280	625	572	742	727	622	510	196	48	47	6	1	**4,415**
Ineligible/ Withdrawn	82	382	531	512	465	648	1,533	656	432	420	96	132	5	10	**5,904**

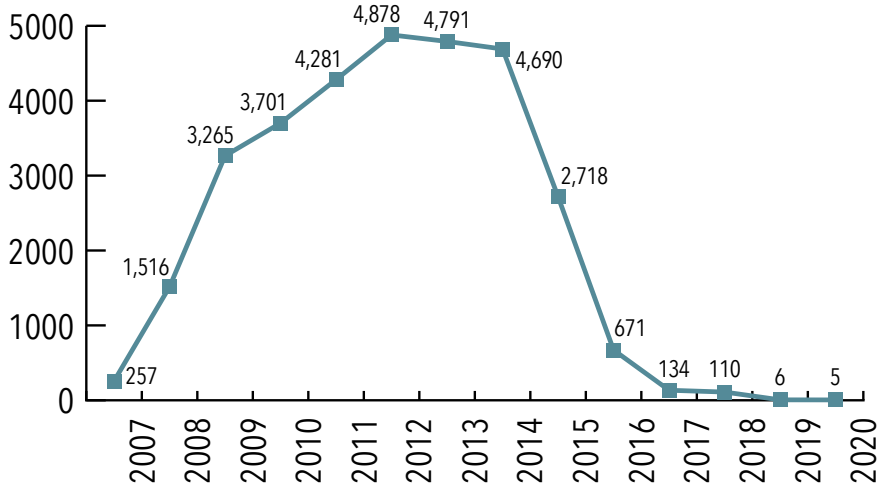
[141] Indian Residential Schools Adjudication Secretariat, *2019 Annual Report of the Chief Adjudicator to the Independent Assessment Process Oversight Committee (Ottawa: IRSAS, 2020),* Table 1, p. 14.
[142] This includes various types of dismissals including those proceeding from Jurisdictional Decisions, Failure to Appear, Estate Decisions, and Resolution Directions provided under the Incomplete File Resolution process.

II: Applications Received by Region[143]

Region	Applications Received
British Columbia	6,640
Alberta	8,376
Saskatchewan	8,897
Manitoba	5,492
Ontario	3,368
Quebec	2,200
Yukon Territory	556
Northwest Territories	1,545
Nunavut	529
Atlantic	305
Outside of Canada	368
Total	**38,276**

III: Applications Processed Per Calendar Year[144]

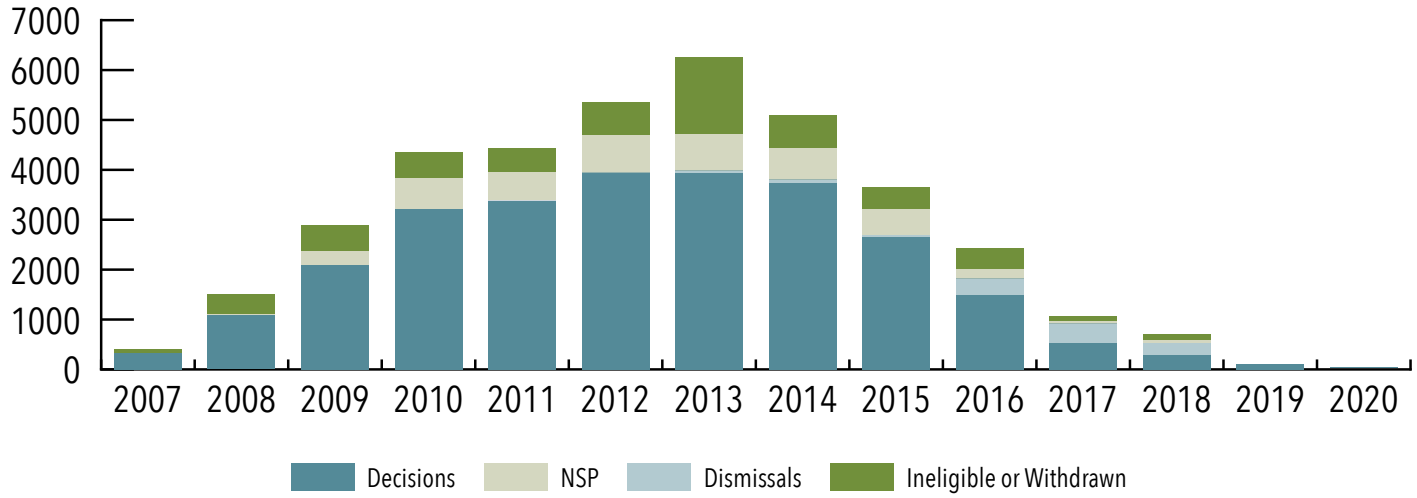
As of October 1, 2020, a total of 31,023 IAP applications had been processed. A claim was considered processed if a hearing or paper review was held or the parties entered into a Negotiated Settlement. The definition of "processed" did not include claims withdrawn, ineligible, or dismissed without a hearing.



[143] "Independent Assessment Process (IAP) Statistics from September 19, 2007, to September 30, 2020", Indian Residential Schools Adjudication Secretariat, September 30, 2020, http://www.iap-pei.ca/stats-eng.php
[144] Indian Residential Schools Adjudication Secretariat, *2019 Annual Report of the Chief Adjudicator,* Figure 2, p. 15.

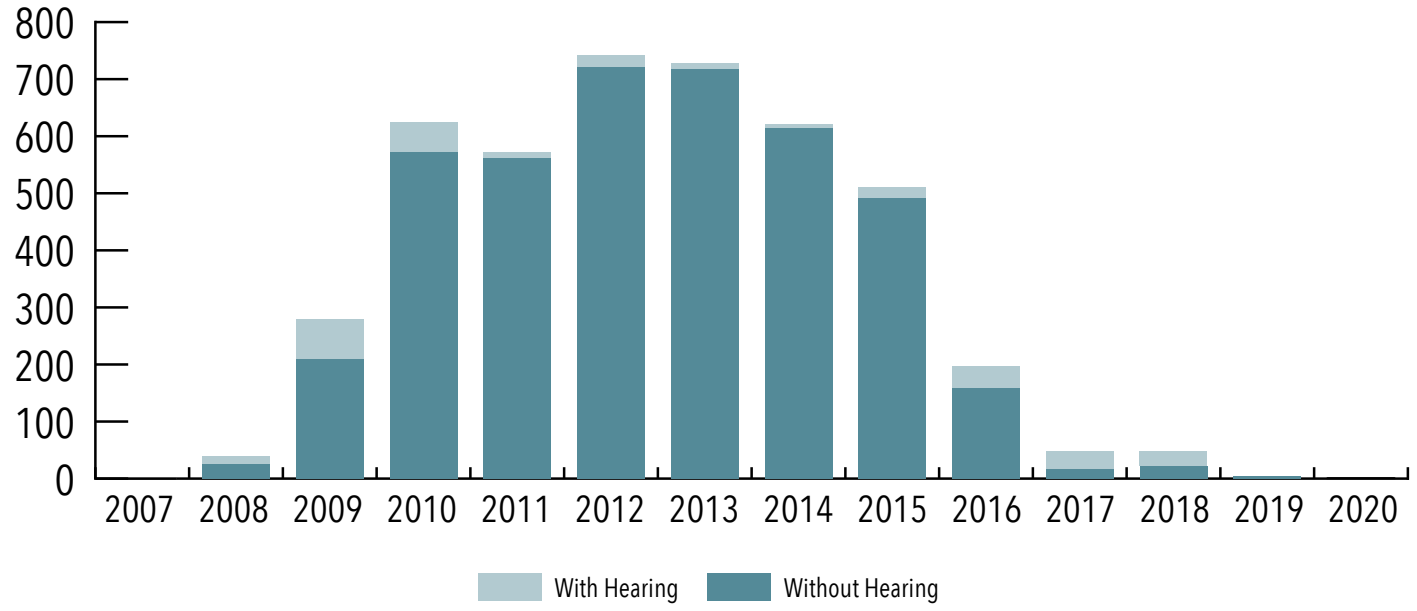
IV: Claim Resolutions by Calendar Year[145]

Nearly 90% of all claimants whose claims went to a hearing before an IAP adjudicator or into the Negotiated Settlement Process received compensation, with an average amount of $91,472.82.



V: Negotiated Settlements by Calendar Year[146]

Negotiated Settlements accounted for approximately 12% of all IAP file resolutions.



[145] Indian Residential Schools Adjudication Secretariat, *2019 Annual Report of the Chief Adjudicator,* Figure 1, p. 15.
[146] Indian Residential Schools Adjudication Secretariat, 2019 Annual Report of the Chief Adjudicator, Figure 3 p. 16. "Without Hearing" and "With Hearing" refers to those claims that were referred to the NSP process before or after an IAP hearing had taken place, respectively.

VI: Independent Assessment Process Costs[147]

Over its lifetime, costs of the Independent Assessment Process totaled approximately $4 billion.[148] Costs of the Indian Residential Schools Adjudication Secretariat amounted to $411 million, or approximately 10 per cent of the total IAP expenditures by Indian Northern Affairs Canada and its successor departments. About three-quarters of Adjudication Secretariat costs were spent directly on IAP hearings, with an additional 5 per cent spent on other support for claimants.

Government of Canada - CIRNAC (in millions of dollars)

	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20
IAP Compensation	$36.0	$75.3	$25.2	$288.7	$400.0	$446.1	$465.2	$452.3	$377.3	$221.6	$114.4	$40.9	$22.2	$13.0
ADR Compensation	$36.1	$111.2	$93.5	$32.6	$11.7	$1.6	$0.18	$	$	$	$	$	$	$
DoJ Legal Services	$16.8	$15.8	$12.9	$13.9	$14.7	$16.4	$19.8	$19.3	$17.7	$13.0	$7.0	$5.9	$3.2	$2.6
Other Legal	$2.9	$3.6	$3.6	$1.6	$2.2	$2.8	$2.4	$1.7	$1.9	$1.4	$1.4	$1.5	$1.8	$.61
Delivery Costs	$34.9	$23.8	$22.2	$26.5	$27.2	$33.0	$34.1	$40.3	$32.0	$25.1	$20.8	$16.7	$10.6	$10.0
Total (MM)	**$126.7**	**$229.7**	**$157.4**	**$363.3**	**$455.8**	**$499.9**	**$521.7**	**$513.6**	**$428.9**	**$261.1**	**$143.6**	**$65.0**	**$37.8**	**$26.2**

IRSAS (in millions of dollars)

	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20
IAP Compensation	$	$0.008	$0.55	$3.7	$6.2	$6.6	$7.1	$8.9	$8.4	$6.7	$2.7	$0.88	$0.48	$0.2
ADR Compensation	$	$	$	$	$	$	$	$	$	$	$	$	$	$
DoJ Legal Services	$	$	$	$	$	$	$	$	$	$	$	$	$	$
Other Legal	$	$	$	$0.14	$0.22	$0.22	$0.53	$0.66	$1.0	$0.41	$0.38	$0.36	$0.52	$0.18
Delivery Costs	$13.0	$19.8	$27.6	$36.4	$39.4	$44.9	$51.5	$50.9	$49.3	$38.4	$23.3	$17.2	$13.1	$8.7
Total (MM)	**$13.0**	**$19.8**	**$28.2**	**$40.2**	**$45.8**	**$51.8**	**$59.1**	**$60.5**	**$58.7**	**$45.5**	**$26.4**	**$18.4**	**$14.1**	**$9.1**
Grand Total (MM)	**$139.7**	**$249.4**	**$186.5**	**$403.5**	**$501.6**	**$551.7**	**$580.8**	**$574.1**	**$487.6**	**$306.6**	**$170.0**	**$83.4**	**$51.9**	**$35.3**

Notes

IAP Compensation – Canada
- Reported amounts include all payments made out of the Settlement Allotment funds
- Payments include, but are not limited to, amounts paid to claimants as compensation, legal fees and disbursements paid to counsel representing claimants

IAP Compensation – IRSAS
- Direct IAP hearing costs. Excludes costs for continuing ADR claims that the Adjudication Secretariat managed until the claims were resolved

DoJ Legal Fees
- Reported amounts are transfers to the Department of Justice to represent Canada at hearings to provide legal advice

Other Legal Fees - Canada
- Payments include, but are not limited to, departmental litigation management and legal services for alleged perpetrators

Other Legal Fees – IRSAS
- Payments include, but are not limited to, independent legal services

Delivery costs
- Amount includes overall costs for delivery of the IRSSA. Information is not available to separate these costs out

General comments
- Reported delivery costs do not include expenditures by Health Canada to provide health support services related to Indian Residential Schools nor do they include expenditures incurred by any other Government department
- All amounts shown above have been used in the preparation of the Public Accounts of Canada
- Excluded from this report: CEP payments, Internal Services costs, Employee Benefit Plan costs

[147] Canada, Standing Committee on Public Accounts. *Public Accounts of Canada 2017: Report of the Standing Committee on Public Accounts,* (Ottawa: House of Commons, 2017).
[148] This amount does not include expenditures by Health Canada to provide health support services related to Indian Residential Schools.

THE IAP EXPERIENCE – PERSPECTIVES OF CLAIMANTS, STAKEHOLDERS & PARTICIPANTS

Former Executive Director Shelley Trevethan conducts the first interview for the IAP Final Report with claimant Zepheria Joseph in Vancouver.

At the core of the IAP are the views of the IAP claimants themselves, and of individuals who were directly involved in the development and delivery of this element of the Settlement Agreement. This Report does not endeavour comprehensively to capture and reflect the perspectives of residential school survivors or even all IAP claimants; such an undertaking is beyond the scope of this Report and would arguably best be led by those who have been explicitly mandated to represent residential school survivors. Nonetheless, the perspectives of IAP claimants, stakeholders, adjudicators, and other participants in the IAP are important in understanding the IAP experience and the lessons to be drawn from it.

In order to reach out to and hear directly from people involved in the IAP, the Adjudication Secretariat conducted a two-phase process spanning several years and covering all regions of Canada. In the first phase, in late 2013 and early 2014 the Adjudication Secretariat conducted 23 focus groups with more than 125 participants nationwide. These consultations were aimed at determining their views on what, in retrospect, were the key objectives of the IAP and how to measure the success with which those objectives were met. The results of these discussions provided the framework for an extended second phase of meetings, interviews, and questionnaires.

In that second phase, a total of 37 focus groups were held with claimants, Indigenous organizations, community service providers (including health support workers, cultural support workers, and interpreters), Church representatives, Government of Canada representatives, adjudicators, and Adjudication Secretariat staff. Personal interviews were also conducted with 254 survivors, and with 72 individuals drawn from stakeholder groups and those responsible for implementing the IAP. As well, the Adjudication Secretariat sent out questionnaires to those claimant counsel who had each represented at least 100 IAP claimants; a total of 24 claimant counsel completed the questionnaires. (Appendix IV provides a list of many of the respondents who participated in focus groups, interviews, or questionnaires.)

The interview and focus group sessions were organized by the Adjudication Secretariat working with Indigenous community organizations, primarily those who provided health support services to survivors. Most participants were able to provide information in any way they felt comfortable: an in-person interview, telephone interview, participation in a focus group, or by providing written input. Those who participated in the interviews were given as much time as they wanted to answer questions; on average, each lasted about 1½ hours.[149] Claimants and stakeholders were asked to share their views on the challenges and successes of the IAP in:

- raising awareness and providing information about the IAP
- providing an efficient and effective approach to settling litigation
- offering a claimant-centred approach
- providing acknowledgement and validation for harms done to former residential school students
- contributing to healing and reconciliation

[149] Canada's representatives were generally invited to an in-person or telephone interview, which was often shorter in duration.

An IRSAS staff member interviews Resolution Health Support Workers in London, ON.

The data contained in this chapter are drawn exclusively from those interviews and questionnaires. As participation in interviews, focus groups and questionnaires was voluntary, it is important to remember that the results reported in this chapter reflect the views of those who chose to take part in this process. They may not be representative of all survivors and stakeholders. Nonetheless, they provided an opportunity for interested claimants, stakeholders, and other participants, in their own voices, to reflect and comment on the IAP experience.

Unless otherwise indicated, quotes included in this chapter are taken from these interviews, focus groups, or questionnaires.

Obtaining Information about the IAP

As described earlier, there were a number of initiatives aimed at ensuring that all potential IAP claimants were aware of the IAP and of how to apply for it. These included four court-ordered Notice Programs, the Adjudication Secretariat's National Outreach Strategy, a toll-free telephone information line and web site, distribution of information products, and the efforts of claimant counsel, Health Canada support workers, Band Councils, the Assembly of First Nations, and Inuit organizations. In total, the Notice Programs alone were estimated to have reached more than 98% of residential school survivors, an average of 14 times.[150]

Of those claimants who were interviewed by the Adjudication Secretariat, almost one-half (45%) indicated that they first heard about the IAP through some of the notification efforts. Others became aware through more informal routes, such as family members (34%), friends (26%) or Indigenous organizations/band offices (26%). A further 11% said they heard about the IAP from a lawyer.[151]

Among those who attended information sessions offered by the Adjudication Secretariat as part of its National Outreach Strategy, about three-quarters said that they were satisfied with the sessions: that they were thorough, useful, easy to understand, and culturally-sensitive. Similarly, 81% of those who received information on the IAP said it helped them move forward with their claim. Specifically, the Adjudication Secretariat's video "Telling Your Story" was appreciated for providing good information and increasing their comfort about what to expect at a hearing.

However, many stakeholders believed that there needed to be greater outreach in the North. As one Government of Canada representative noted:

"[In the North] there were not a lot of outreach programs… [and] not a lot of counsel getting into these communities."

As well, some 80% of claimants interviewed said that they knew someone who was aware of the IAP and met the criteria but chose not to submit a claim. It is difficult to determine why people did not participate in the IAP: a choice that could be affected by a wide range of personal reasons. But some claimants felt that the application deadline of five years was one limiting factor. As one community leader noted:

"There shouldn't have been a timeline, after seven generations of residential schools, some people - it takes them a while before they feel safe enough, secure enough, to talk about this. I know from talking with a few of the elderly people from the North, they say they still had a fear of talking about it. They felt they'd be punished. So the timeline shouldn't have been that short."

In more general terms, stakeholders agreed that there remained confusion about the Settlement Agreement overall, contributed to in part by the many different sources of information. One claimant counsel observed:

"There was some confusion among claimants about who exactly all the parties were. I don't know how coordinated the efforts were amongst the different groups tasked by the Federal Government with communicating about the Settlement Agreement."

[150] Hilsoft Notifications, "Affidavit of Cameron R. Azario, Esq. on Completion of Phase IV of Notice Programme," submitted to the Ontario Superior Court of Justice (2012).
[151] Multiple responses could be provided to this question; hence, totals add to more than 100%.

Claimant Laurel Curley, from the Six Nations of the Grand River FN, participated in an interview for the Final Report in Brantford, ON.

IAP Adjudicator Kathleen Keating

Applying for the IAP

Almost all claimants (94%) said they thought it was important to have help completing the forms because they were complicated and raised difficult memories.

"Everything was hard, hard to understand; [the] forms [were] not plain English; [I had] flashbacks, sensitive memories. [It was] hard to talk about it."

"[I] did my own [claim] but [it] would have been good to have had help. I didn't want to share information [because as I was filling it out, I] burst out crying; it was hard to write down. [I] needed someone [like a] counsellor. [I] was lucky that my husband helped me feel at ease."

Three-quarters (74%) of claimants reported that they had help completing their application form, mostly from legal counsel. Claimants who were not represented by a lawyer were positive about the information they received from the Adjudication Secretariat's Claimant Support Officers (CSOs); all of those interviewed expressed that they were satisfied with the service. Respondents said that Claimant Support Officers provided good communication, explained the process well, and were supportive. As noted by one claimant:

"[My] CSO made sure all relevant information was collected and included. He talked to me; he would always let me know things were confidential. [He] touched base and always asked how I was."

Some claimant counsel raised the concern that Claimant Support Officers sometimes went further than their role required, potentially providing advice to claimants rather than solely helping them to progress their claim to a hearing.

The IAP Hearing

As described earlier, one of the key aspects of the IAP was to provide a more positive hearing experience for claimants than would be the case in litigation. To help ensure that the process did not further traumatize claimants, the IAP gave them control over the location of their hearing; the ability to indicate a preference in the gender of the adjudicator; the use of cultural traditions; the availability of support services; and a less-adversarial and less-formal hearing.

Hearing Location:

In general, most claimants (78%) said they were satisfied with the physical location of their hearing. Of those who were not, the main issues were that the physical space should have been more positive or brighter. As one person noted, "The worst hearings were the ones that were done in the basement of a hotel." Support workers and stakeholders also expressed concerns about some hearing locations. Given that many claimants were elderly, it was problematic when it was difficult to get to the hearing room or back and forth to breakout rooms. Stakeholders mentioned that some rooms did not have enough privacy due to a lack of soundproofing.

The Adjudicator:

Claimants were given the option to indicate a preference for a female or male adjudicator, and the Adjudication Secretariat endeavoured to accommodate these requests. However, many claimants stated that they were not aware that they had this option, and eighty-one percent of those interviewed said they did not make such a request. Of those who did, close to 90% indicated that having this option helped them to feel more comfortable with the hearing process.

Elder Evelyn Finlayson in Kenora, ON

Aside from the issue of gender preference, large percentages of claimants expressed satisfaction with the adjudicator:

- 86% said the adjudicator was prepared and the hearing was well organized
- 76% said the adjudicator ensured that they understood their rights
- 75% said the questions the adjudicator asked were fair, reasonable and asked in a respectful manner
- 71% said they were satisfied with the role of the adjudicator at the hearing

Cultural Traditions:

More than three-quarters (78%) of claimants said that they were satisfied with the cultural aspects of the hearing. As one claimant expressed:

"The ceremonies and cultures helped a lot. I didn't know anything; I was surprised there's so much in our culture. I was surprised I was missing so much."

In general, stakeholders tended to agree that the IAP incorporated important cultural aspects into the hearing. However, some stakeholders, including cultural support workers and Elders, maintained that there should have been mandatory cultural awareness training for all participants in the hearings. As one suggested:

"All hearing participants need to be educated on IRS and Aboriginal communities."

Support Services:

Elders and Personal Supporters:

For many claimants, the hearing was not just a place to make a claim; it was an opportunity to share their personal histories, often for the first time. Claimants had the option of bringing support individuals, such as family members, friends, or Elders to their hearing. About one-third (30%) of the claimants interviewed had an Elder attend their hearing, and almost all of those (90%) said they were satisfied with the role the Elder played.

Slightly more than half of the claimants interviewed said they brought personal supporters with them. Among those that did not, some indicated that they felt more comfortable going through the hearing alone or did not want family members to have to hear about the abuse. As a claimant said, *"sometimes you don't want other people to know what you went through".*

Almost all claimants who did bring support people said that this made them feel more comfortable; 93% were very satisfied with their personal supporters. One claimant noted, *"I did things on my own with ADR, [it was a] big difference having someone with me, I didn't feel alone. [I] had my own people with me."* Another spoke of the positives and downsides of bringing support people, saying *"[I] felt supported [but it] was a mistake to bring her. She had to hear the abuse I suffered."* One claimant counsel observed:

"People appreciated the idea that they could bring support people with them. I certainly know some of my clients would not have come to a hearing had they not been able to do that. So that was a very important element. The health workers… were helpful…. Just being able to bring a support person and/or an Elder with them… that was really helpful."

Resolution Health Support Worker Ray Thunderchild of the Indian Residential Schools Survivors Society in British Columbia drums during meetings held in Vancouver.

Resolution Health Support Worker Debbie Cielen supported hundreds of claimants at IAP hearings.

Health Support Workers:

In addition to personal supporters selected by the claimant, Resolution Health Support Workers (RHSWs) – provided by Health Canada – could also be available throughout the hearing, if the claimant chose. Many health support workers were themselves survivors or affected by the intergenerational impacts of residential schools.

The vast majority of claimants (more than 90%) said they were satisfied with the services they received, as the health supporters helped them understand the process and cope with mental health issues. Further, more than three-quarters (77%) of claimants said that the services of support workers had an impact on their healing because they were helpful, supportive, and available to talk to.

"[The health support worker] was excellent. He helped me through the whole process. The fact that he was a survivor helped, he understood what I was saying. It made it easier. I believed in the confidentiality with him."

Stakeholders as well as claimants emphasized the importance of mental health support services in the healing process, and agreed that access to these services helped claimants prepare for, and benefit from emotional support and reassurance during and after the hearing. A Government of Canada representative commented:

"I can't speak highly enough of the resolution support workers… their ability to bring the claimants to a state of calmness, to reassurance, to feel that they always had someone in the room that was completely in support of them, and just professionally they were very good at what they did."

However, stakeholders had more mixed reviews of the role of health support workers. Some claimant counsel maintained that a claimant's first point of contact should be a health support worker or a Claimant Support Officer, while others felt that *"untrained RHSWs [were] giving legal advice"* and called for more training and higher qualifications for health support workers.

As well, some of those interviewed commented on inconsistency in their experiences with support services. One adjudicator observed:

"[I had a] wide range of experiences [with RHSWs]. It is an important role but some counsel tried to keep them out, some areas of the country they came late and didn't participate or support the claimant, some had familial relationships with the claimant that weren't known beforehand (confidentiality breach). [I] also had the opposite experience. Many were great and very thoughtful about making it an important day, offering prayers, support etc. It made a very big difference in how the claimant got through their day."

Health support workers themselves commented that they sometimes could have benefited from more time with the claimant to establish a relationship based on trust and support. For example, one health support worker said, *"The more we as health supports were able to embrace a connection and make a connection with the former students, a good three to four months at least, really showed an outcome of stability, security, and also furthering their healing process."*

Interpreters:

Another form of support that was available in IAP hearings were interpreters. While fewer than 10% of claimants said they requested the services of an interpreter at their hearing, 80% of those indicated they were satisfied with their interpreter and 88% felt that having the interpreter present helped them to feel more comfortable with the process.

Some participants in the IAP reported that occasionally there were incidents where interpreters did not speak the correct dialect, had difficulty interpreting the complex language of the IAP, knew the claimant, or went beyond the role of an interpreter. An adjudicator noted:

"…we have had issues with interpreters where the interpreter actually wasn't interpreting what the claimant was actually conveying, but was basically saying what she thought would help the claimant in her claim."

In 2013, extensive work was undertaken by the Adjudication Secretariat to improve the interpretation services. An approved list of experienced interpreters was developed, training on the IAP was provided to interpreters, an interpreter liaison position was created who conducted a dialect check prior to the hearing, and an interpreter handbook was developed. As a result of these changes, claimants were less likely to have the relating of their residential school experience interpreted by someone they knew, and hearing participants had greater confidence in the quality and authenticity of the translations provided.

The Inquisitorial Process:

Most respondents agreed that the inquisitorial model – where adjudicators asked questions and claimants were not subject to adversarial cross-examination by defendants - was important in providing a claimant-centred approach. To achieve this, adjudicators needed to balance support and kindness with fairness and impartiality. As one adjudicator explained:

"[You needed] to demonstrate ability to be understanding and supportive and kind while at the same time upholding the model and maintaining impartiality and being effective decision makers…. It was a tough balance to maintain."

Among claimants interviewed, 75% said that the questions the adjudicator asked were fair, reasonable and asked in a respectful manner, and 76% said that the adjudicator explained their rights to them. Almost three-quarters (71%) said that they were satisfied with how the adjudicators fulfilled their role during the hearings, made them feel comfortable, and listened. One claimant commented:

"The adjudicator was quite respectful in asking questions to me as a survivor of residential school. I had no problems with the way the questions were being asked. I answered them all, directly and concise, precise."

Stakeholders tended to agree with claimants, noting that in general adjudicators were impartial. However, many claimants and other stakeholders also said they found the process to be too legalistic and litigious, and that the language could be complex:

"Every bit of the language is all legal terminology - a hearing, an adjudicator, lawyer for Canada, lawyer for the claimant, cross-examination, appeal systems - and you've got people who might have anywhere from three days to 18 years in residential school who still don't understand those words. So definitely [use] plain language please."

Generally, the majority of claimants (60%) said they were satisfied with the Government of Canada's representative at the hearing.

Costs, Compensation and Awards

In addition to paying for costs associated with the hearing – such as the hearing location, interpreters, health support workers, Elders, and cultural ceremonies - the IAP covered the costs of travel, accommodation, and meals for claimants and for up to two personal support people to accompany each claimant. Almost one-half of claimants interviewed stated that they had to travel to their hearing. Of these, two-thirds said the Adjudication Secretariat paid for their expenses in advance. More than three-quarters (78%) of those who received payment for travel were satisfied with the expense payment process. Those who were dissatisfied said that the payment was slow or inadequate.

Regarding the results of the hearing itself, 90% of all claims that went to a hearing or a Negotiated Settlement Process interview resulted in some level of compensation. As a Government of Canada representative noted:

"The vast majority of claims have been found to be compensable and the payment has been made. There is no possible way that in the span of this last decade we would have accomplished that in litigation."

The IAP's method for assessing the compensation for harms experienced by claimants was based on a grid set out in the Settlement Agreement. The grid was developed in part to ensure consistency in awards. According to a claimant counsel who was involved in structuring the Agreement:

"The grid was put together with care. It was put together to recognize the factors that actually influenced real outcomes in real cases subject to court standards, so that the monetary outcome would be predictable and in line with what people could expect if they went through a gruesome litigation process with a higher causation standard."

However, some claimants and stakeholders criticized the grid method as being too restrictive. As one claimant said:

"It wasn't fair to put points to abuse. It should have never been a point system. What about the broken families now? What about mental abuse? It took survivors away from their families, broke families apart. My family is not whole."

It was also argued that "Other Wrongful Acts", income loss, and opportunity loss, were difficult to prove and not well-compensated. As noted by one claimant counsel:

"The other wrongful acts category could have been more effective…. There were people who came out of those schools never having been sexually assaulted or physically assaulted to the point of needing medical treatment, but who came out with huge psychological damage…. And that really was never compensated for. And you get a lot of people who just really were shattered by the experience, but had no compensable injuries."

Another criticism about the scope of the IAP – as set out in the Settlement Agreement - was that some schools were not included and that could mean that claimants who had suffered abuse were not compensated due to these exclusions. Abuse between students of the school that occurred off-premises was not compensable. As one claimant said:

"Even though it happened out of the school [the abuse] should have been accepted. It wasn't fair. No compensation because it happened away from school. It does not matter where it happened it happened to me and I am suffering today."

There was a difference of opinion among those interviewed as to whether the average award of just under $92,000 was comparable to what would have been received in court. For example, Frank Iacobucci, the Government of Canada's Chief Negotiator of the Settlement Agreement and a former Supreme Court of Canada Justice observed:

"Monetary awards were very genuinely, and it seems to me, seriously arrived at because if you look at the average award, it's not a puny award… I had heard of very serious sexual assaults, and the impression I got was these awards that were made were comparable to what one would get in a court outcome."

Others argued that the compensation received was less for some types of claims than would have been awarded by a court. One claimant asserted:

"We see many cases where abuse suffered were awarded more going through court system. The point-system impacted total awards and was unfair. The Courts would take longer but would have been awarded more."

At the same time, another claimant counsel noted that although the compensation was less than might have been awarded by a court, the IAP provided claimants with a speedier process and improved experience:

"[They] capped the compensation at a level that was less than would have been available in a court. The trade-off for that was that it provided a process which was less rigorous for claimants to experience, more attuned to their circumstances, and quicker than the outcome than they would have faced if they had to get into a queue of 36,000 people in the courts across the country."

For their part, about 60% of claimants interviewed indicated that they were satisfied with the decision and the compensation provided in their claim. A similar percentage of claimants said that the adjudicator's reasons for the decision were clear to them. About half of claimants (53%) said that their review rights were explained to them.

Overall, about one-half (52%) of claimants said that they were satisfied with the timeliness of the IAP. The same percentage said they were satisfied with the amount of time it took to get to a hearing. More than two-thirds (69%) were satisfied with the amount of time it took to receive compensation: about four months following the decision.

Following the hearing, adjudicators had the authority to review the fees charged by legal counsel for their services to IAP claimants. Generally, the issues of legal fees and legal fee reviews were contentious among those claimants and stakeholders interviewed.

Many said that they believed the legal fees should have been no higher than 15 per cent, so that it would be covered entirely by the Government of Canada. As noted by one claimant counsel, *"I would have to say from my experience that the case in the IAP does not exist where 15% is not a fair fee."*

Some claimant counsel disagreed, instead arguing that 15% was not reasonable because it did not cover the large number of non-compensable claims that claimant counsel dealt with.

"Maybe there are some lawyers who made a lot of money. It certainly wasn't me. But you have to appreciate that no matter what you do, probably three out of seven cases we advanced didn't go anyplace. I went to a hearing yesterday… it was 12 hours I will never see again. And we did that time after time, and place after place. So quite frankly, the 15%, which is basically the rate that most of the adjudicators were giving at the end of the day, was absolutely insulting."

Some also argued that the fee structure and fee review was a disincentive for lawyers to spend time with clients, and led to lawyers trying to maximize the number of cases that they handled. One claimant counsel noted that *"with the review of all the fees and lawyers not getting what had been agreed to in the retainers, there was a real disincentive for some people to spend any more time than they felt they really had to with their clients."*

Others felt that the legal fee review process went beyond what was intended in the Settlement Agreement. Some claimant counsel said that, rather than conducting legal fee reviews on most claims, as was the practice, adjudicators should have exercised discretion about doing fee reviews only when they appeared warranted.

"Instead of the fee review, the Chief Adjudicator could have set up criteria for the adjudicators… If you have a claimant who is clearly illiterate, if the person does not appear to have had any discussion with the lawyer, you should do a legal fee review."

Others suggested that legal fees should have been set at a specific rate and paid by the Government of Canada, so that claimants would not have to incur any legal costs out of their compensation and adjudicators would not need to do fee reviews that put lawyers in conflict with their clients. One stakeholder said:

"I like very much the structure that saw the 15% preliminary compensation come out of a pot, separate and apart from the award to the claimant.... The exception that allows counsel… feeling that they have been undercompensated… to then make the claim from the pool of award that the client has received puts the claimant… at odds in interest with their legal counsel. I would like to see that structure not repeated in a similar type of initiative."

While there was a wide variance of views among stakeholders as to the effectiveness of the legal fee review process, the majority of claimants (74%) expressed satisfaction with it.

Focus Group with Resolution Health Support Workers in Kenora, ON

Healing and Reconciliation

The IAP hearing presented important opportunities for healing and reconciliation: it provided claimants the opportunity to talk about their experiences; provided defendants and other participants the opportunity to hear and acknowledge those personal histories; and provided claimants an opportunity to have an impartial adjudicator validate those experiences through a written decision and compensation. As one claimant commented, *"Many survivors said 'all I needed to hear was that I was believed'."*

As noted earlier, almost 90% of claimants who attended a hearing or a Negotiated Settlement Process interview received some compensation. Most said, though, that the most important aspect of going through the IAP was not about the compensation, but was being able to talk about their experiences and be believed. As one claimant said:

"My priority was to tell a story about the loss of culture, loss of language, loss of Inuit shamanism, loss of parenting skills, and about the time that I was sexually abused by a Grey Nun. So that was the story I wanted to get out. So not for the money."

Similarly, a Support Worker observed:

"Compensation was really secondary in the minds of most people... for most, their well-being, the need to be heard, far outweighed the money. To be free of those chains, those memories, was compensation in itself…. For most, it was the first time they spoke about these things. It was really a grand unveiling, a grand statement about their truths. To witness this – that these people are no longer a victim – it gave me courage, it was very inspiring."

Almost three-quarters (73%) of all claimants interviewed said that those involved in the hearing listened respectfully and that the claimant's voice was heard. For some, the hearing was the first time someone showed that they cared about their experiences.

"I think the hearing process was really essential. It was probably the most important part of the IAP, it was the chance for people to… sit and tell their stories and have them validated…. That I think was worth more than the money that was paid out."

"I think a lot of people benefited from the hearings in a way that I didn't anticipate. There were any number of hearings I was at where, at the end of the hearing, the person would hug the adjudicator, they would hug the representative for the government, they would hug everyone, it was just sort of like somebody was completing a marathon and wanting to hug everybody there. There was a sense of achievement, there was a sense of vindication that you wouldn't have gotten from a system where there was no hearing."

Many stakeholders described how the hearing could enable claimants to realize that they had the strength to talk to others about what happened to them in residential schools.

"I think one of the things that comes out as being the most important is just having the opportunity to tell somebody other than people in your community. That's where a lot of it was hidden away. It's like nobody in the community wants to say anything because you're related to so-and-so or your friends with so-and-so, and what you say is going to get out."

William Herney, of the Eskasoni First Nation participated in claimant interviews in Nova Scotia.

According to a Government of Canada representative:

> *"It's a very important step in the hearing process… to have someone who is there on behalf of the government to tell them, 'I believe you're credible. I believe these things happened to you.' Just those words, you could hear and see the emotion on their face. For many years they didn't feel that [anyone] would believe them… you could tell they were very appreciative and it was almost like a relief that someone believed them and it was important for that to be said in the hearing."*

Adjudicators agreed that the opportunity for claimants to talk about harms such as loss of family and love was important, even if some of those harms were not covered by or compensated in the IAP. As one adjudicator said, "[the hearing is] a day to tell their story to somebody, a person of authority but in a setting where they are truly listened to. I think that is enormous." The adjudicator's decision was a key element of validation for claimants. However, some stakeholders noted that the positive effect of this dissipated if the claimant had to wait for many months for the decision to be received. The short-form decision, which was received at the hearing, was the most effective in this regard. As one claimant commented, "It would have been nice to know right away. It creates more trauma waiting for decision; I was in limbo."

Almost two-thirds (63%) of claimants said that they were offered acknowledgement of the harm and impact of residential schools.

One claimant said:

> *"I felt that the Canada person listened to what I was saying, they were respectful – they offered an apology for my experiences and abuse suffered."*

Almost all respondents indicated that apologies from the Churches and the Government of Canada were important, especially when it was in person. As a Government of Canada representative noted *"someone representing the Crown and/or the Church sitting across from you and apologizing may in fact be more powerful than any kind of money."*

Government of Canada representatives attended all hearings, and almost half of the claimants (45%) said that they received an apology from that representative. Only 12% of claimants surveyed said that a Church representative attended their hearing. One claimant counsel observed that *"I had very few hearings in which there was a Church representative present, [but] it was always positive."*

In addition to an apology at the hearing, claimants could also receive letters of apology from the Government of Canada and the Church. When they received a written apology, many said that it was important to them. However, as with written decisions, the timing of the written apology was also important; the sooner it was received, the more meaning it held.[152]

[152] In this regard, it should be noted that there was often a considerable delay in the Church being notified of the culmination of a hearing, resulting in a concomitant delay in the Church's provision of a written apology.

LESSONS LEARNED

Drawing from the experiences of the Independent Assessment Process described throughout this Report, this chapter aims to identify those lessons that can be learned from the efforts to fulfill the objectives of that component of the Settlement Agreement. Those objectives included providing residential school survivors compensation for any sexual and/or serious physical abuse that they suffered at the schools; offering an alternative means of resolving claims to traditional civil litigation; and providing IAP claimants with an experience that could aid in individual healing and broader reconciliation.

This chapter is not intended to be a comprehensive list of lessons to be learned from the residential school experience itself. These have been eloquently articulated by residential school survivors in a number of public first-hand accounts and in reports from the Truth and Reconciliation Commission, Aboriginal Healing Foundation, historians, and others. Rather, the following observations are specific to the IAP and are drawn from the experience of the Oversight Committee; from others responsible for the implementation and delivery of the IAP; and from IAP claimants themselves.

Offering a Claimant-Centred Process

Perhaps the overarching challenge in the IAP was adopting an approach that attempted to look at the entire process from the viewpoint of the claimant, while balancing it with the needs of the other parties and stakeholders. This perspective recognized that implementing a claimant-centred process was not the responsibility of one individual or organization but required the participation and input of health support workers, Indigenous organizations, Elders, legal counsel, adjudicators, Government and Church representatives, Adjudication Secretariat staff and, most importantly, claimants. This led to the implementation of a range of measures that, while they did not meet all of the challenges, strove to make the experience focused on the needs of the claimant.

Support for Claimants:

- Confronting past abuse can be traumatic for survivors, their families, former staff, or anyone who engages in a process such as the IAP. A positive aspect of the IAP was the support that it offered, both emotional and technical. Support workers helped to minimize the risk of re-traumatization of residential school survivors, enabled them to participate in the IAP, and helped to protect the survivors' health and well-being.

- Support workers drawn from the claimant's community could be familiar with appropriate cultural and traditional practices and with local support services. However, having a local support worker could pose issues of privacy and confidentiality. This was compounded as health support workers did not know the identity of the claimant – and vice versa – prior to the hearing.

- Support needed to be provided in a variety of forms: from trained health-care professionals, crisis call-lines, Elders, family members, interpreters, and in some instances the adjudicators themselves.

- Support needed to be available at all steps of the process: before, throughout, and after the hearing itself. Many claimants required assistance in completing application forms, preparing for and participating in hearings, receiving and understanding the adjudicator's decision and future care plan, or in continuing their healing process. It was important – but not universally the case – that Claimants were aware of their right to request support.

- At the hearing in particular, an important aspect of helping the claimant through a challenging process was having not only interpreters and professional health support workers but also personal supporters – such as family members – and Elders, available at no cost to the claimant.

- Specific and targeted efforts could have been further improved to ensure that supports – including trained legal counsel - were available early on in the process to those living in more remote locations, to those who were homeless, and to those who were in institutional settings.

- In the IAP, no-cost assistance was available for completing application forms: either through legal counsel or through the Adjudication Secretariat for those who were not represented by a lawyer. Nonetheless, a number of private-sector enterprises charged claimants for filling out their applications. While this practice violated the terms of the Settlement Agreement, the fact that some claimants used these services meant that there was at least a perceived need for them, indicating that more information and support specifically related to the application process could have been helpful.

Claimants could get help filling out their IAP Application form.

Raising Awareness and Providing information About the IAP:

A strategic and extensive approach to outreach and information sharing was a vital element in such a large-scale program as the IAP. Claimants needed to receive as much information as possible in a manner that was clear and understandable. The IAP utilized a variety of methods over a number of years to ensure that all potential IAP claimants were aware of the Settlement Agreement, the IAP, and the application process. These efforts were largely, although not universally, successful. Given the complexity of the process, even more information could have been provided to ensure survivors understood their rights and choices, the application process, and what to expect at and after a hearing.

- The video presentation of a simulated hearing ("Telling Your Story") helped claimants see and understand what to expect at a hearing and helped them feel more comfortable with the process.

- Ensuring that all residential school survivors and potential IAP applicants were aware of the application process and deadlines required a range of efforts, using a variety of media and outreach mechanisms (such as radio, television, print media, pamphlets and posters, videos, and community sessions). Information material needed to be available in Indigenous languages and written in plain language.

- To be effective and successful, outreach activities depended on first engaging and building relationships with community leaders.

- Specific and targeted efforts were required to ensure that information was available to those living in more remote locations, to those who were homeless, and to those who were in institutional settings.

- From the standpoint of potential claimants, information activities could have been more effective if they had been more coordinated. While the involvement of a number of parties and stakeholders was helpful in raising awareness about the IAP, a lack of co-ordination and consistency may have contributed to incomplete information or, at worst, to misinformation, leaving potential claimants unclear as to how the process worked and what to expect from the IAP experience.

- Efforts could have been made to make it easier for potential claimants in remote communities to obtain legal advice and the assistance of counsel: for example, by more actively encouraging and facilitating the participation of legal counsel in Adjudication Secretariat outreach activities. There were occasions, in complicated cases, where adjudicators adjourned hearings and assisted a claimant in finding counsel.

Support for Self-Represented Claimants:

- While all stakeholders recommended that claimants retain legal counsel, the Settlement Agreement did not require this, and included specific provisions for self-represented claimants. Nonetheless, given the complexity of the process and the requirement for mandatory documents, many self-represented claimants required assistance in preparing their claims for a hearing. The Adjudication Secretariat provided dedicated resources to assist claimants in this process, while not providing them with legal advice or representation at hearings. It was an important aspect of a claimant-centred process to recognize that self-represented claimants would still require support and assistance, and to have the necessary resources in place to provide this.[153]

[153] In 2013, Oversight Committee also initiated a project whereby they maintained a list of approved counsel willing to accept a referral from a self-represented claimant; this list was utilized by the Adjudication Secretariat in assisting self-represented claimants who wished to contact a lawyer.

Vancouver Hearing Room

Selection of Hearing Location and Gender of the Adjudicator:

Providing claimants the opportunity to choose the location of the hearing provided them with an important element of control and power, and the ability to select a place that was safe and appropriate to their individual circumstances. Accordingly, this was included in the IAP application form. However, it was not universally the case that the claimant selected the hearing location, as some legal counsel located hearings for their own convenience.

- Similarly, providing claimants the right to indicate their preference of the gender of the adjudicator in their hearing also provided them with an element of control in the process and respect for what would make the claimant most comfortable in sharing their history. This option was also included on the IAP application form signed by each claimant. It was also important to try to ensure that there was a sufficient roster of Anglophone and Francophone male and female adjudicators to accommodate claimants' preferences.

- The IAP had two designated Hearing Centres in Winnipeg and Vancouver, intended to provide a safe private location designed for the specific purpose of conducting an IAP, and an improvement on public courtrooms or meeting rooms in hotels, However, the location of the Vancouver facility, co-located with Government of Canada offices, distant from the lodging and meal sources for the claimant, and difficult to access by public transit, limited its value to claimants.

Claimant-Centred Case Management:

- Case management needed not only to address the efficiency and timeliness of the process, but also to maintain the focus on the claimant. As described above, such initiatives as the Lost Claimant Protocol and Expedited Hearings were examples of case management approaches that met the objectives of the process while at the same time addressing specific needs of the most vulnerable individual claimants.

Claimant Feedback Throughout the Process:

- The high volume of cases posed significant challenges not only to operational procedures, but also to the capacity of the process to offer claimant-focused attention to each claim. This required continual oversight by those responsible for administering the IAP, and benefitted from feedback from those directly involved in claims and hearings. In this regard, the presence and input of claimant representatives and counsel on such bodies as the Oversight Committee and the National Administration Committee – along with the ongoing outreach and community dialogue efforts by the Adjudication Secretariat – provided essential information and perspectives required to maintain and give best effect to the claimant-centred approach of the IAP.

Information About Compensation Awards:

- The IAP, combined with the Common Experience Payment, awarded large sums of money to claimants but did not provide information about or access to financial management services. This was a contentious issue for many. On the one hand, it was important for claimants not to feel as though they were being told in any way what to do with their money. On the other hand, while some legal counsel took on this role, it could also have been useful to assist claimants in a more consistent manner– perhaps through Aboriginal financial institutions - in being aware of the options and resources available to them for managing this money according to their own wishes. Measures to provide claimants with information that could help their own financial literacy may have been beneficial in protecting them from financial abuse and in ensuring that their compensation awards were used as they intended.[154]

[154] On approval of the Settlement Agreement, but before its implementation, the Indian Residential Schools Survivors' Society in British Columbia organized a series of public workshops involving health support workers, financial advisors, legal counsel, RCMP, and others to prepare individuals and communities to deal with the expected influx of funds. In addition, information circulars were included with CEP payments to caution against abusive behavior and to urge that complaints be lodged with the RCMP or police in abusive situations.

Incorporating Traditional Elements and Cultural Practices:

The incorporation of traditional elements and cultural practices was seen by many claimants as a key aspect of the IAP and one that helped them meet the challenges of the hearing and of sharing their histories.[155] One of the important lessons of the IAP was the extent to which judicial and quasi-judicial processes should be aware of and sensitive to the use of traditional practices to make the process more relevant, familiar, and helpful. This also illustrated the need for even more frequent consultation and engagement with claimants, residential school survivors, and their community representatives.

Providing an Alternative Approach to Adjudicating Compensation Claims

Inquisitorial Approach:

- The inquisitorial approach to hearings provided an effective and more sensitive means for adjudicating claims than would otherwise be handled through traditional civil litigation, particularly when dealing with victimized and injured persons. IAP hearings were completely private and offered a less formal, safer, and more respectful experience than the traditional adversarial approach.
- Parties to the IAP generally agreed that the process demonstrated that the truth could usually be ascertained by means other than cross-examination, competing evidence, and arguments. Overall, an inquisitorial hearing allowed adjudicators to test the credibility of a claim while minimizing the traumatization of the claimant that is inherent in any credibility-testing process.[156]
- Even in an inquisitorial model, claimants' needs could be overtaken by legal processes, attitudes, and requirements: particularly in a process such as the IAP which was based on modified litigation. Maintaining a non-adversarial approach required the engagement and commitment of all parties to the process and to ensuring that hearings were conducted with civility, respect, and a minimum of legal technicalities. This could have been further aided by including specific training for all hearing participants.
- Decision-makers are key to the success of any adjudicative process and of an inquisitorial approach in particular. The IAP vested considerable authority in the hands of individual adjudicators. As well, the parties to the Settlement Agreement were accorded the mandate of choosing the adjudicators who would work in the IAP, by unanimous vote. It was therefore essential that the selection criteria for adjudicators be extensive; in dealing with the particular sensitivities of abuse, human qualities were as important to find and nurture in decision-makers as were technical skills and expertise. As well, it required support and training. In this regard, ongoing training for adjudicators in conducting an inquisitorial hearing and in questioning skills could have been beneficial in ensuring greater consistency in the application of this approach across all hearings.

Validating Claims:

- Ensuring that decisions and the outcomes of each claim were valid and appropriate was essential to the integrity of the adjudicative process and was in the interest of all parties. Absent the ability to subpoena documents and witnesses, there needed to be other means of assessing the validity of claims. In the inquisitorial model, testing the credibility of claims required balancing documentary and assessment requirements with the objectives of claimant-centredness and timeliness. As discussed below, processes that supported this aspect of the IAP might have been more streamlined, while still maintaining the robustness of its credibility-testing.

Document Collection/Mandatory documents:

- Providing "mandatory documents" in advance of a hearing assisted all parties in an inquisitorial hearing. It helped claimants, in some instances, in recalling the incidents and extent of harms that they suffered; defendants in understanding the validity of claims; and adjudicators in decision-making.
- At the same time, not all pre-determined mandatory documents may have been required for all claims. The ability to tailor further the requirement for mandatory documents to meet the circumstances of a claim may have streamlined and expedited the adjudicative process.
- The volume of demand for document production overwhelmed the organizations and individuals – ranging from single medical practitioners to large correctional institutions and government departments– thus considerably slowing down the adjudicative process. As described in Chapter 5, the Adjudication Secretariat adopted several initiatives to address this; however, it would have been helpful to have had strategies and resources available to these document-providing bodies from the outset, to ensure that document production did not create a significant bottleneck and backlog.

[155] This also featured in the ADR process.
[156] For a broader discussion on inquisitorial processes, see Laverne Jacobs and Sacha Bagley, eds., *The Nature of Inquisitorial Processes in Administrative Regimes: Global Perspectives,* (London: Routledge, 2016).

Medical and Psychological Assessments:

Having a single expert assessor was substantially more streamlined, less adversarial, and an easier experience for the claimant than the standard litigation model of having the claimant and defendant present opposing medical or psychological opinions.

- Nonetheless, claims that required an expert assessment could still take considerably longer in the adjudicative process than those that did not. (A claimant or counsel may have decided that it was preferable to receive an earlier albeit reduced award than to wait several more months for an expert assessment and potentially receive more compensation.)

- While Oversight Committee maintained a pre-approved list of psychological assessors from the outset, a process to streamline the selection of medical examiners was not developed until 2014. It could have been helpful in reducing delays to have implemented such a list (including experts' availability) from the outset.

Hearing Location and Setting:

- As distinct from the Courts and most quasi-judicial processes, IAP hearings were held in many locations selected by claimants, including remote First Nations and Inuit communities, personal homes, hospitals, and prisons. Some were held outside of Canada. This demonstrated that, despite the obvious logistical challenges and given the necessary resources, the adjudicative process could be conducted in remote settings - in locations that were convenient to the claimant rather than the Adjudication Secretariat - within a reasonable timeframe.

- Providing travel costs for claimants and their personal supporters helped ensure equal access to the process, ensured that the choice of hearing location was not determined solely on a cost basis, and removed a potential source of stress for hearing participants. This also contributed to a more effective hearing and a healing experience.

The IAP Model:

- In the IAP, the Indian Residential Schools Settlement Agreement established an elaborate post-settlement adjudicative process. Despite a very large caseload, the IAP Model of a hearing-based, adjudicative approach to the settlement of abuse claims was able to resolve tens of thousands of cases as well as provide reviews and re-reviews of decisions as required. However, elements of the Model as set out in the Settlement Agreement also contributed to challenges in processing many claims expeditiously and in meeting time commitments.

- As the Settlement Agreement emanated at least in part from class action lawsuits, it was modeled on a civil litigation base. The IAP Model was very detailed and particularized, with a detailed framework of categories for wrongs and harms and the calculation of levels of compensation. As a result, the Model was complex and complicated to apply and interpret, and generated considerable demand for experts to guide the process and advance claims. The complexity of the Model also required regular engagement by the Oversight Committee, adjudicators, and all participants in the IAP to make the process work in as effective a manner as possible.

Addressing Challenges Raised by Certain Types of Claims

Claims Alleging Abuse by Other Students:

Claims alleging abuse by other students raised distinct challenges and difficulties. In the IAP Model, compensation in many of these claims required evidence that staff at the school in question had knowledge or should have had knowledge of that type of abuse at the time that it occurred. This requirement for evidence of knowledge could be satisfied by an admission of that knowledge. The Government of Canada made admissions of such knowledge after relevant evidence or findings of adjudicators became available.[157] In these circumstances, alternative mechanisms for addressing abuse by other students may have provided for a more equal process for all such claims, regardless of when the claim had been filed or heard.

- In that context, special consideration needed to be given and procedures applied to these types of claims. As described in Chapter 5, the Oversight Committee's "Student on Student Admissions Project" and resulting instructions from the Chief Adjudicator were successful in prioritizing claims with the greatest likelihood of producing decisions resulting in admissions of staff knowledge, that in turn could benefit those claimants whose claims had not been decided. However, this was not implemented until 2013 and did not address potential concerns arising from such cases resolved before that date. Ultimately, temporal fairness concerns arising in those earlier cases were addressed by the Government of Canada, outside of the IAP.

- Some claims alleging abuse by other students involved people known to each other and living in the same communities. This created particular challenges for healing and reconciliation between individuals or within communities. This was exacerbated by the requirement to notify alleged perpetrators of any claims implicating them, which could create a risk to communities even given the IAP's promises of confidentiality. Special attention needed to be paid to protect the identity of claimants and alleged perpetrators, and to provide support to residential school survivors while at the same time minimizing potential trauma at inter-personal or community levels.

Estate claims:

- With an ageing population of residential school survivors, the danger of claimants passing away or becoming too incapacitated to participate in a hearing meant that some would be unable to relate their personal histories of the abuse that they suffered at the schools. It was thus vital – through such mechanisms as the Over-65 Pilot Project and Accelerated Hearing Process described in Chapter 5 - to ensure that claims of the infirm or elderly were expedited to ensure that the claimant's testimony could be obtained as quickly as possible.

- Even with an expedited hearing process in place, some IAP claimants passed away before their hearing took place. There were occasions in which the Government of Canada, in addition to being the defendant, was also required to be the administrator of the estate and the claim, creating delays until it was able to appoint an independent administrator.

Efficiency and Effectiveness: Ensuring Fair and Timely Progress of Claims to Hearings and Resolution

- The IAP demonstrated that establishing a targeted adjudicative process, as an alternative to the courts, to address particular types of claims could provide for timelier resolution of claims than the standard civil litigation model. In addition to being more efficient, such a process was more effective than traditional civil litigation in providing an opportunity to address not only the specific tort, but also healing. It encouraged and permitted the development of processes that were more holistic and reflected the needs of its participants.

- Consistency in the treatment of claimants and in decisions was an essential goal and required specific focus and strategies. The effectiveness of the adjudicative process required not only that it provided resolutions to claims, but also that it process and resolve those claims in a fair and consistent manner. This was a particular challenge in a process that handled a large volume of cases over several years.

- Specific strategies, checks, and balances were needed to provide consistency while at the same time maintaining the independence of adjudicators and ensuring that each case was resolved on its own merits. In the case of the IAP, this was achieved in part by mechanisms in the Settlement Agreement to allow the parties to request reviews of decisions. It was further provided through the Chief Adjudicator's issuance of a number of Practice Directions and Guidance Papers on various topics to ensure that all adjudicators, claimant counsel, and Government of Canada representatives were operating with the same knowledge and understanding. In addition, the Oversight Committee and its Technical Subcommittee met on a regular basis to address and provide direction consistent with the IAP on several more complex procedural and interpretive issues as they arose. It was also important that ongoing opportunities were provided for adjudicators to receive training throughout the process, and to be able to discuss among themselves broad matters of policy and interpretation. Actions on all of these fronts and levels were required to support consistency and fairness throughout the process.[158]

[157] More than 4,500 admissions were made by Canada over the course of the IAP.
[158] Schedule D of the IRSSA specifically addressed measures to provide consistency in hearings and decisions in Section III (m), p. 14.

One item that was included in the Settlement Agreement's recital was that the Agreement would provide finality to all claims other than for those individuals that specifically opted out of it. This element of finality was essential not only to the timely resolution of claims but also to enabling the parties to move beyond litigation to other aspects of healing and reconciliation.[159]

- One element of the Settlement Agreement that created a challenge to finality – not of individual claims but of the process as a whole – was the ability to request, under Article 12, that an additional school be added to the Settlement Agreement. The IAP contemplated that further research would be conducted and provided a mechanism to consider the addition of schools. Although Article 12 included criteria for adding a school, it did not provide specific deadlines for making such a request or for when the Courts would need to render a decision. As a result, some residential school survivors were only able to file an IAP claim many years into the process. While it was important that all former students who should have been included in the Settlement Agreement were accorded the right to benefit from it, this not only delayed the ultimate finality of the resolution of all claims but also increased the likelihood that some survivors may have become too infirm to apply or attend a hearing. To ensure finality, specified timelines for actions that extended the process could have been helpful.[160]

- It is unlikely if not impossible that any model or procedural code would have anticipated all issues related to the effective and efficient processing of all claims. In the case of the IAP Model, governance bodies responsible for interpreting and implementing the model had powers and perspectives to enable them to adapt case management and other processes to meet unanticipated challenges.

Case Management:

- Case management was, not unexpectedly, labour-intensive. Determining the best ways to facilitate the progression of a file required hands-on, in-depth analysis of the case and strong communication with representatives of all parties. The timely completion of a process of the scale and complexity of the IAP could only be achieved with a significant focus on case management and with dedicated human and financial resources.

- Over the course of the IAP, literally dozens of new procedures and approaches to case management were implemented to respond to unforeseen challenges, to changing circumstances, or to address concerns that emerged. In order to ensure that a large volume of claims could be addressed in a fair and timely manner, a skilled and adaptive approach to case management was required. Mechanisms were put in place to promote continuous review and improvements in operational processes, and allowed the administrators to adjust quickly and creatively.

Expedited & Accelerated Hearings:

- The IAP adopted a process of expediting hearings for claimants with health issues that threatened their ability to attend a hearing. During the course of the IAP, the Adjudication Secretariat extended the expedited hearing process to those over the age of 65 to minimize the potential that claimants' testimonies might be lost due to ill health or death. Subsequently, as described in Chapter 5, the Oversight Committee developed an Accelerated Hearing Process giving particular priority to elderly claimants in failing health or with claims that had been awaiting a hearing for a longer time. This again demonstrated the need and effectiveness of claim-by-claim case management to ensure that these most vulnerable claimants could proceed as quickly as possible to a hearing.

"Lost" Claimants:

- The Lost Claimant Protocol was a unique initiative aimed at ensuring that every IAP claimant was provided the opportunity to have their claim resolved. The number of claimants that were located and whose claims were allowed to progress as a result of this initiative again demonstrated the importance of particularized and innovative case management, and for maintaining a focus on claimants and their individual needs.

Short-Form Decisions:

- Similarly, in a process that spanned several years and addressed a large volume of cases, there needed to be continuous exploration of methods to ensure that the decision-making process was as timely and fair as possible. The implementation of short-form decisions in cases where the parties agreed on how the claim should be resolved significantly reduced the amount of time claimants had to wait for their compensation and provided a measure of closure for claimants on the day of the hearing.

[159] However, as a court-supervised process, judicial recourse was available in the event of a failure to apply the terms of the Settlement Agreement.
[160] On July 27, 2015, the Hon. Madame Justice B.J. Brown of the B.C. Supreme Court barred any further proceedings to add an institution under Article 12 of the Settlement Agreement. The final school to be included pursuant to an Article 12 application was Kivalliq Hall in February 2017. Former students of Kivalliq Hall were given until January 25, 2020, to file an IAP application.

Elder Gertie Pierre worked with the Indian Residential Schools Survivors Society to help IAP claimants.

Negotiated Settlements:

The Negotiated Settlement Process (NSP) provided an alternative means of resolving claims in those cases where the claimant and the defendant agreed to enter into that process. While not applicable to all instances, and while it did not provide the parties with an adjudicator's decision, it often resulted in a more rapid resolution to appropriate claims and reduced administrative costs. Short Form Decisions and NSPs demonstrated that in certain circumstances alternative approaches to dispute resolution saved time and money.

Ensuring that All Claims were Resolved:

- It was to be expected that in the processing and resolution of a large volume of claims, there would be those claims that – due to their complexity; to legal or technical issues; to their inter-relationship with other claims; or to other process issues such as the availability of a claimant, of an expert, of an estate administrator, or of documentation – would not be addressed within the normal timelines and would remain unresolved approaching the end of the process.

- In order to ensure that all claims were ultimately resolved, and that the last claim would receive the same attention and sensitivity as the first, it was necessary to develop a targeted strategy identifying specific challenges to the completion of all claims and methods for addressing those challenges. As this involved prioritizing certain claims or revising operational procedures, this strategy had to be transparent and developed in conjunction with all parties and governance bodies.

Governance and Oversight

Oversight Committee

- The Oversight Committee – composed of representatives of the parties to the Settlement Agreement – was a governance body that was neither a board of governors nor board of directors, but rather more akin to a board of stakeholders. Given its representative nature, it could provide checks and balances in implementing the IAP. To be successful in that role, it required its members to bring disparate perspectives to bear while ultimately coming together as a collective protector of the IAP as codified in the Settlement Agreement.

- While many different constituencies were represented on the Oversight Committee – and their representatives changed over time - the consensus model of decision-making worked well in most cases. That Oversight Committee debates and discussion did not descend into factionalism was a testament to the commitment of those representatives to the overarching objectives of the IAP and to supporting and guiding its resolution. It also required an Independent Chair – not representative of any particular party – with strong skills, sensitivity, and a facility in consensus building.

- Given the large number of claims and the complexity of the IAP Model, it was incumbent upon those responsible for the governance of the IAP – notably the Oversight Committee and Chief Adjudicator – to address a number of challenging situations as they occurred. To a large extent, this was accomplished successfully through such means as Directives and Guidance papers from the Chief Adjudicator and decisions by the Oversight Committee that permitted the adoption of dozens of new procedures and process improvements.

The Courts

- As noted earlier, it was highly unlikely that any Agreement would have been able to anticipate and address all issues that may have arisen in its implementation. Given the complexity of the IAP, it was essential, that governance bodies retained authorities to respond to matters as they arose. In the IAP, some authorities in this regard were accorded to the Oversight Committee, while the Supervising Courts retained residual authority over the Agreement. In practice, the residual authority of the Courts was called upon - and the Courts were actively involved in the interpretation and administration of the IAP - more than had originally been anticipated, as evidenced by the large and increasing number of Requests for Direction that were put before the Courts. These Requests for Direction were required to help clarify the structure and authorities of the IAP.

At the same time, it should also be noted that some challenges - such as "Administrative Splits" and the re-examination of some "student-on-student" abuse allegations - were resolved, at least in part, by the Government of Canada creating a process to revisit these claims outside of the formal IAP process and without recourse to the courts. This demonstrated the need for continued, creative dialogue among the parties, and a shared commitment to the fair resolution of all claims.

- In the absence of an Ombudsperson or designated individual with the authority to receive and address internal complaints, the Courts effectively remained the first point of access for claimants to pursue certain issues.

Roles and Relationships of Various Governance Bodies

- In addition to the Oversight Committee and the Supervising Courts, there were a number of other bodies that played an important role in the governance of the IAP, including the National Administration Committee, Court Monitor, and Chief Adjudicator. While some of these had specific authorities set out in the Settlement Agreement and Implementation Order, there was no specific mechanism for providing co-ordination of governance and oversight other than the Supervising Courts themselves, who retained final authority in the administration of the Settlement Agreement. While there remained strong and neutral governance of the IAP, some advantages of potential synergies between these various bodies were perhaps missed. In addition, while the National Administration Committee was intended to have a superordinate governance role, it was also tasked with the responsibility of addressing some 4,600 Common Experience Payments; this activity, of necessity, consumed much of the NAC's focus and attention. As a result, the Courts were called upon with increasing frequency to resolve a number of governance issues, such as how IAP records would be handled at the close of the process.

- The large volume of post-Settlement matters that were raised before the Supervising Courts created an extensive commitment of judicial resources. In this context, the creation of the role of Court Counsel assisted in the co-ordination of these legal actions and in some instances provided an opportunity for the mediated resolution of issues either without or in conjunction with Court hearings. Having Court Counsel as part of the governance structure to assist the parties and the Courts helped to address these matters in a more timely and coordinated manner.

Actual and Perceived Independence

- Actual and perceived independence are crucial to the integrity of a neutral adjudicative process. In the context of the IAP, there were a number of safeguards in place to protect the independence of the adjudicative process. Adjudicators were recruited and appointed by an Oversight Committee composed of the parties to the Settlement Agreement and their performance was monitored by a Chief Adjudicator who had the exclusive authority to renew or recommend the termination of adjudicators' contracts and who was himself appointed by the Oversight Committee.

- The Government of Canada was not only a defendant in the process but also had administrative responsibility for the Adjudication Secretariat and for providing financial and human resources in support of the IAP. At the start of the IAP, it was difficult to envisage a body other than the Government of Canada that had the scope, infrastructure, and resources to undertake this responsibility. However, this led not only to some operational challenges where the needs of the IAP did not fit squarely within the administrative procedures of the Government, but also to the possibility of perceptions that the IAP did not enjoy independence from the Government of Canada.

- Given the Government of Canada's role in administering aspects of the Settlement Agreement the maintenance of actual and perceived independence required continued attention and vigilance, and an appreciation at all levels of Government of the importance of this independence.

Claimant Counsel Oversight

Claimant Counsel Legal Fees and Legal Fee Reviews:

- In the IAP, the legal fee structure for compensating claimant counsel was largely shaped by the civil litigation/class action model. Rather than charging a specific fee per case or an hourly rate, lawyers received fees that were calculated as a percentage of a successful claimant's award. An additional legal fee review process allowed adjudicators to review and, if they so decided, reduce the fees claimed by claimant counsel.[161] This model offered several advantages. It was rooted in existing practice in the legal profession; the percentage of an award that would be paid in legal fees was capped and was lower than some class action norms; it provided for a review process; and it made the Government of Canada – as defendant – responsible for paying some or all of the legal fees for each compensated claim.

[161] The legal fee review process was not contained in the Settlement Agreement reached by the parties but was introduced by the Courts in their approval of the Agreement.

However, the IAP's legal fee structure and fee review process were criticized on a number of levels. The fees themselves were considered by some to be, on average, overly generous given the lower level of financial risk and effort required to represent an IAP claim in an inquisitorial process compared to standard civil litigation. As such, potential legal fees were seen to have attracted some lawyers into the IAP process who did not have experience in or commitment to Indigenous issues in general or residential school litigation in particular.

- Allowing lawyers to charge more than the Government of Canada's contribution to fees (15% on top of the amount of the award) meant that for some claimants a portion of the legal fees was deducted from their award, leaving them with less than the amount actually awarded in the adjudicator's decision. In addition, claimants were required to pay taxes on legal fees.

- The legal fee review process was seen to be time consuming both for adjudicators and claimant counsel, and delayed finality in a claim's resolution. It also placed neutral adjudicators in a position of ruling on a conflict between the claimant and his or her lawyer, and put the claimant in a position of being in conflict with her/his lawyer without the benefit or support of legal counsel.

- Overall, the structure of legal fees in the IAP raised several questions. First, would it have been better for the process and fairer for claimants if fees were more in line with the actual risk and uncertainty about compensation faced by legal counsel in a process such as the IAP, which was governed by a specific model and award matrix (in other words, should fees have been capped at less than 30%)? Second, should legal fees have been limited to the amount that the defendant was obliged to pay (15% on top of the amount of the award) so that they did not in effect reduce the award that the claimant received?

Lawyer Conduct:

- While the vast majority of the more than 600 law firms involved in the IAP provided skilled, supportive, and sensitive service, the ethical conduct of some claimants' legal counsel created serious unanticipated challenges for the IAP and for claimants. This caused considerable hardship for some claimants, and time-consuming work for the Courts, Oversight Committee, and the Chief Adjudicator in addressing and rectifying claimant lawyer misconduct.

- Selection and retention of a legal representative often posed the first challenge for a claimant. For those unfamiliar with the legal process – and particularly for those in remote locations where the pool of lawyers was small - it could be difficult to identify a lawyer with the ability, experience, cultural awareness, and commitment to represent a claimant on matters of such sensitivity and importance. Partway through the IAP process, the Oversight Committee developed an approved list of lawyers and guidelines for claimants in selecting a lawyer, but this was not available from the very beginning. As well, approved counsel were not included in the Adjudication Secretariat's community-based outreach and information-providing activities.

- At various stages, several provincial Law Societies developed codes of conduct or guidelines for lawyers working on residential school issues, or offered professional development programs on such topics as cultural competency training. However, these were not mandatory for lawyers to be able to work in the IAP. As a result, not all legal counsel were required to commit to a specific code of conduct and practice guidelines, and to have an appropriate level of experience, professional development and/or training. Arguably, Chief Adjudicator and/or Oversight Committee-approved training for legal counsel could have been made a condition of representing claimants in the IAP. As the Truth and Reconciliation Commission observed: "The lack of sensitivity that lawyers often demonstrated in dealing with residential school Survivors resulted, in some cases, in the Survivors not receiving appropriate legal service. These experiences prove the need for lawyers to develop a greater understanding of Aboriginal history and culture as well as the multi-faceted legacy of residential schools."

- Alternatively, other methods of providing legal representation may have made it easier for claimants to identify and retain counsel that were trained in and committed to appropriate approaches to working with residential school survivors. These may have included having an approved group of lawyers - trained in the Settlement Agreement, the hearing process, cultural traditions, and the compensation model - retained on contract by the Administrator of the process and made available to claimants. Alternatively, a system of staff lawyers, with the appropriate knowledge and experience, could have provided free legal services for claimants. Another option might have been to provide the necessary resources to maintain a roster of trained and experienced "duty counsel" – either through Legal Aid Clinics or otherwise – to represent claimants. However, such methods of providing legal representation might have been perceived as depriving claimants of their freedom to choose in a process that attempted to be claimant-centred and respectful of claimants' choices, where possible.

- In the IAP, residential school survivors were able to submit a claim and attend a hearing without a lawyer; in those cases, the Adjudication Secretariat provided dedicated staff to assist them in submitting and supporting their claim. These staff, however, did not attend hearings and were not able to provide legal advice. Nonetheless, this was an important option for those who, for whatever reason, did not want or were not able to have legal representation.

There were more than 20 Indigenous Adjudicators and 3 Indigenous DCAs in the IAP

Finally, the IAP experience highlighted the need for more available and effective oversight of legal counsel to address instances of misconduct. For their part, claimants did not have an accessible place or process to raise concerns. It did not prove reasonable to expect individual claimants, largely unfamiliar with the legal process, to be able to approach a relevant Law Society with a complaint. As a result, the Chief Adjudicator became directly involved in issues related to the conduct of legal counsel: an engagement that he considered necessary in the circumstances but not ideal in terms of maintaining adjudicative neutrality. When made aware of problems, some Law Societies did initiate investigations but these did not prove sufficient to address issues of misconduct. In 2014, the Courts appointed an Independent Special Advisor to address lawyer misconduct, but this was several years into the process and followed instances of egregious behaviour on the part of some lawyers.

Administration

Building Operational Capacity:

- The IAP experienced many challenges related to capacity: challenges that were heightened by the large volume of claims. Initially, there was very little "ramp-up" time during which the Adjudication Secretariat needed to become operational, implementation processes and procedures developed, and adjudicators selected. This situation was exacerbated by the existing capacity with the Government of Canada to be able to build the organization at the pace that was required. Human Resources professionals could not meet the demands of a rapid-growth organization that was seeking to staff positions in locations across the country. These capacity challenges were further compounded by the Government of Canada's administrative procedures and rules that did not provide the flexibility and response times required.

- Capacity issues not only affected the Secretariat, but all other participants in the process. Some claimant counsel with very large numbers of clients lacked the capacity to process claims in a timely manner, or to provide each residential school survivor the attention they required as individuals who had suffered traumatic personal experiences. As the IAP deadline approached, many claimant counsel of necessity turned their attention to ensuring that potential claimants had the opportunity to submit applications, which reduced those firms' capacity to attend hearings on behalf of other claimants. The Government of Canada had challenges in retaining and making Canada's representatives available to attend IAP hearings in a timely manner. Other government departments such as Health Canada (who provided health support workers) lacked sufficient human and/or system resources to handle initial demands. And, over the course of the IAP, it took several different selection processes to retain sufficient numbers of adjudicators to meet the demand. As well, despite focused efforts to expand Indigenous Adjudicator capacity, the number of Indigenous Adjudicators working in the IAP remained relatively low.

Taken together, these capacity challenges affected the timeliness with which IAP claims could be processed, heard, and decided. Although at its peak, the IAP was conducting more than 4,000 hearings per year, capacity shortages anywhere in the system created bottlenecks that affected the entire process and could have had a negative effect on claimants awaiting resolution of their IAP claims. This was further exacerbated when thousands of claims were submitted just prior to the September 19, 2012, IAP application deadline.

- An undertaking as complex and sensitive as the IAP was only made possible on a daily basis by the dedication of the people who worked in support of it. This level of engagement – combined with the particular nature of its subject matter and its historical significance – in turn exacted a toll on those who dedicated their time and commitment to this issue. In particular, all those engaged in the delivery of the program were potentially subject to vicarious trauma. Thus, support of staff was as vital as support by staff. All organizations involved in the IAP needed to devote effort and resources to provide training, opportunities for staff input, and support for emotional and physical wellness.

- In the IAP, Elders provided considerable assistance in protecting the wellness of staff. Drawing on the skills and experience of Elders not only helped staff maintain a claimant-centred perspective but also allowed them to benefit personally from the wisdom and sensitivity of Indigenous community leaders.

Establishing Processes and Adjusting to Meet Unanticipated Challenges:

- Given the complexities of the IAP Model as set out in the Settlement Agreement, a primary challenge for the Chief Adjudicator and Adjudication Secretariat staff was to interpret the Model and develop the processes necessary to make it operational. This required drawing not only on the past experiences of modified litigation and Alternative Dispute Resolution, but also of creating new approaches, operational procedures, and administrative structures.

- As with any process as large-scale, long-term, and complex as the IAP - however well-intentioned and designed - unanticipated circumstances and unintended consequences did arise. As it was not possible to plan for all contingencies and eventualities, it was crucial to build organizational, managerial, and staff capacity to manage change and respond to realities as they evolved. As described earlier, the IAP needed to implement literally dozens of administrative process improvements to meet unanticipated challenges in order to achieve its objectives.

- An important element of this capacity to adapt was a robust framework for the identification, mitigation, and management of risk, including the determination of the levels of risk that were acceptable. Risk assessment and mitigation proved to be a more flexible and efficient management approach in these circumstances than attempting to control risk through rigid pre-approval and reporting requirements.

The Effects of Administrative Rules on Organizational Effectiveness:

- In addition to the issue of perceived independence discussed earlier, the role of the Government of Canada as administrator of the IAP posed operational and administrative challenges. Building and operating a high-volume, operationally-focused, time-sensitive enterprise such as the Indian Residential Schools Adjudication Secretariat required organizational nimbleness and flexibility. Having to operate with rigid adherence to a plethora of administrative procedures with lengthy approval processes was inimical to efficient and effective operations. Despite good will and hard work, the rules and regulations designed for administering large-scale, long-term Government programs were not conducive to managing an organization that needed to become operational quickly and respond rapidly to changing circumstances.

Wind-down:

- Despite the pressures of building and adapting a process to resolve tens of thousands of claims, attention also needed to be paid from an early stage as to how the process would be brought to completion. Due to their complexity or the time when some applications were filed, it was inevitable that some claims took longer to resolve and remained active right up to the end of the process. To address this, a comprehensive Completion Strategy was developed by the Chief Adjudicator, in consultation with the Oversight Committee and the National Administration Committee, years before the expected end of the IAP. This Strategy included human resources and financial projections and logistical planning, but most importantly case management approaches on the part of both the Adjudication Secretariat and the Government of Canada to ensure that all claims would be resolved. As with any planning strategy, this needed to be reviewed and revised regularly to monitor its progress, address new issues and challenges, and incorporate changing circumstances.

- Staff considerations within the Adjudication Secretariat and the Government of Canada were central in the wind-down phase: both the need to treat staff fairly and transparently, and also to ensure that sufficient resources remained at the end of the process to resolve all remaining claims. Striking this balance was difficult, as on the one hand staff needed to seek alternative employment as the IAP neared completion and, on the other hand, experienced staff were required right up to the end to address the final claims. As with any human resources issue, this element of the completion strategy required strong and clear communications, engagement of staff and staff unions, and the advice of human resources professionals. In the IAP, a commitment of continued employment was also extended to staff occupying a small number of key positions to aid in their retention, in order to fulfill the IAP's commitment to claimants and operational objectives.

Indian residential school survivor Geronimo "Fish" Henry shows the spot where he carved his name into the brick at the Mohawk Institute while he was a student at the school in Brantford, ON.

Contributing to Healing and Reconciliation

Providing an Opportunity for Residential School Survivors to Tell their History

For many residential school survivors, the ability to talk about their personal experiences to an adjudicator in a safe, fair, impartial, supportive, and culturally appropriate and respectful hearing was a healing opportunity and a step towards reconciliation. For many claimants, this was the first time they had spoken about these things, and it was the beginning of a new journey. This important step would not have been available if the process had been designed only to provide financial compensation through a paper-based claim process.

Validation of the Survivor's Personal Experience

- Each compensated IAP claim not only resulted in a monetary award, it also represented the validation of the claimant's personal history by an independent and neutral third party. For residential school survivors, being able to relate their experiences and have their histories and the harms that they suffered acknowledged, accepted, and validated was an essential step in their personal healing.

- Conversely, as in any individual-based compensation process, there were some claimants whose claims were not compensated, sometimes for jurisdictional or technical reasons. In those instances, some claimants found this difficult to accept, while others found some benefit in the opportunity to talk about their experiences to a person in authority who truly listened.

- Collectively, the acknowledgement of the experiences of tens of thousands of residential school survivors was an essential step in a broader awareness of the history of residential schools in Canada, and toward national-level reconciliation.

Apologies

- The power of apology in the healing and reconciliation process cannot be overstated. It may well be argued that there could not have been restorative justice or reconciliation without expressions of remorse and regret.

- Then-Prime Minister Stephen Harper's apology to former students of Indian Residential Schools – recognizing the Government's responsibility for and the consequences of the residential school system - was seen by many as an opportunity to begin the act of healing. IAP hearings provided an opportunity for Government and Church representatives to apologize directly and personally to each claimant. The Government of Canada and the relevant Church also delivered personalized statements of apology to individual claimants in the form of a letter if desired by the claimant. This reinforced the validation of their histories, and was an important element of the IAP's contribution to individual healing.

However, the potential positive impact of the apology was reduced by the fact that Church representatives rarely were invited to or attended hearings and thus were not able to extend this expression of remorse and responsibility. On the one hand, it was important not to traumatize survivors by having individuals or organizations represented at their hearing with whom the claimant was not comfortable. On the other hand, if handled sensitively and transparently, improved processes - such as ensuring that the relevant Church was notified that a hearing had occurred to enable it to provide a written apology to the claimant in a timelier manner - could have facilitated the positive engagement of the Church. This could not only have contributed to individual healing but could have sent, in a stronger and more consistent way, the message that those entities too were part of the process and wanted to play a constructive role in reconciliation efforts.

Future Care Plans

- Most stakeholders felt that the provision of treatment following the IAP hearing, through the Future Care Plan, was important for claimants' continued healing. While the pursuit of Future Care was the choice of each individual claimant, it was important to provide and fund an identified post-hearing treatment plan for those who wished it. This recognized that the hearing and award were not the culmination, but just one aspect, of the road to recovery.

- In practice, though, there were several areas in which this aspect of the IAP could have been improved. At the outset, claimants and/or their counsel were expected to prepare future care plans without expertise in what treatment was required and how to access it. Some community-based programs became more difficult to find once funding for the Aboriginal Healing Foundation ended. Also, it was sometimes difficult to obtain adjudicator approval for future care plans that focused on traditional healing and could not be shown to be "equivalent" to a western-style treatment.

- Also, having a single cap for future care plans for all claimants did not take into account that people living in the North or in remote communities would have to spend considerably more to access some treatments than those in southern, urban areas.

- Overall, the importance of the future care dimension of a hearing and compensation program warranted more planning and preparation of these healing plans. It could also have benefited from a more explicit recognition of the value and validity of traditional healing practices by not requiring such care to be the equivalent of a recognized "western" treatment, and by allowance for the differential costs of obtaining treatment depending on the claimant's location.

Individual vs. Collective Healing

- The IAP was, by intent and design, focused primarily on the individual. It enabled individual residential school survivors to recount their experiences and receive compensation for the harms that were specifically done to them. Other elements of the Settlement Agreement acknowledged that everyone who resided at a residential school was wronged, and that the residential school system itself – and not only those instances in which individual students were abused - was the problem that needed to be acknowledged and rectified. Accordingly, the Common Experience Payment (CEP) - providing compensation to all former residential students in recognition of the common experience and impacts of having resided at a residential school, irrespective of whether they also suffered harms from sexual, physical, or emotional abuse - and the Truth and Reconciliation Commission - which organized community-based gatherings and documented the full collective history of residential schools - were focused more on the community and the collective of residential school survivors. In terms of individual and collective healing, the IAP must be considered in the context of being only one aspect of the broader Settlement Agreement.

- At the same time, some aspects of the IAP did contribute to collective healing. Notably, the Group IAP program was explicitly intended to bring together community members and to experience healing activities in their language, in ceremonies reflective of their culture, with friends and family members.

- However, Group IAP was relatively under-utilized, in part due to limited awareness of it among claimants, and in part due to administrative burdens in accessing it, particularly in the early years of the IAP. Better information about this program, especially at the community level, and more streamlined administrative rules, could have contributed to more collective healing opportunities.

- It is also worth noting that the Alternative Dispute Resolution program specifically set aside money for group activities and community-based commemoration. This group engagement provided for shared support and healing, and a lasting legacy. Where they occurred, commemorative community-based activities had a strong resonance and provided opportunities for healing and reconciliation that were not available solely through individual hearings and redress.

Adjudicators made a Statement of Reconciliation at a National Event of the Truth and Reconciliation commission in Edmonton.

Intergenerational Healing

The powerful effect of Indian Residential Schools is well known to have affected not only those who attended the schools but their family members, children, and grand-children. Therefore, support and healing efforts needed to extend to intergenerational survivors. Some elements of the IAP offered this: the telephone crisis line was available to all who were affected by residential schools, and family members could – if the claimant wanted – attend a hearing where they would have the support of Resolution Health Support Workers and/or Elders.

- Many claimants expressed that going through the IAP had a positive impact on their families and family relationships, allowing them, often for the first time, to talk with their families about their residential school experiences. This in turn also helped family members understand the impact of the schools on the survivors, and on themselves. Thus, the opportunity to share one's experiences with family members in a supportive and validating environment could be an important step in intergenerational healing as well.
- Other elements of the Settlement Agreement, such as the work of the Truth and Reconciliation Commission (TRC) and the Aboriginal Healing Foundation (AHF), focused efforts directly at intergenerational healing. However, there may have been scope to extend more explicitly aspects of the IAP process – such as the post-hearing apology, future care plans, group programs, and health care support – to family members of survivors to aid in their own healing.

Public Information and Education

- Although they were all parts of the Settlement Agreement, the IAP, TRC, CEP, and AHF operated for the most part as separate entities and programs, and conducted their own outreach and information activities. As a result, there remained some confusion among residential school survivors as to what all these elements were, and what they were intended to offer. Better co-ordination in the provision of information about the Settlement Agreement and all of its components could have assisted residential school survivors in better understanding the Settlement Agreement as a whole, and in taking full advantage of all of its elements.

In addition, it was important that information about the legacy of residential schools and the Settlement Agreement extended not only to former students and Indigenous communities, but also to the entire general public. Healing and reconciliation required the awareness, acknowledgment, and understanding of all Canadians. In the Settlement Agreement, the Truth and Reconciliation Commission undertook considerable effort in addressing this need for public information and education. Much of this public information and education work of the TRC was transferred to and remains with the National Centre for Truth and Reconciliation. Outreach by the IAP, as a confidential and individual-based process, was focused more on ensuring that residential school survivors were aware of their entitlement to file compensation claims. At the same time, better awareness of the IAP could have assisted the general public in understanding the role of compensation in healing and reconciliation, and the importance of providing survivors the chance to have their histories heard and validated. Unified direction of the Settlement Agreement as a whole and co-ordination in the provision of information about it might have contributed to a fuller understanding of the legacy of residential schools by all Canadians.

The Role of Compensation in Healing and Reconciliation

- One of the most complex issues emanating from the Settlement Agreement and the IAP was understanding the role of financial compensation in healing and reconciliation. Many claimants noted that they did not choose to participate in the IAP for the prospect of a financial award, but rather that they needed to share their personal experiences and the impact of Indian Residential Schools. Personal and community healing could only have occurred when the past was acknowledged in a supportive environment. National reconciliation required not only this acknowledgement but also an understanding of the responsibility for and the impacts of the residential school system.

- At the same time, it is vital to remember that the Settlement Agreement was reached at least in part as a method for resolving a number of class action lawsuits on behalf of residential school survivors. While the Settlement Agreement explicitly stated that it was not to be construed as an admission of liability, it was a resolution of civil litigation and as such would normally include a compensation component.[162]

- Moreover, given that those class actions and individual lawsuits existed, would it have been reasonable to expect that the Settlement Agreement would not have included a means of resolving them? Could healing and reconciliation have progressed had the "wrongdoers" apologized and established some form of public inquiry or truth and reconciliation process, while at the same time continuing to deny in litigation their legal and financial liability for those wrongs?

- Compensation was a concrete way of demonstrating the validation of and the responsibility for the residential school experience. It was a judicially-styled and recognized measure, and had a significant impact on individual survivors and claimants.

- At the same time, though, while the IAP was designed to resolve civil litigation, it should also be seen as an essential component of a broader reconciliation process. Receiving compensation of itself could not eliminate past harms.

- This underlines the importance of those involved in the process – adjudicators, claimant counsel, and defendants' representatives – who had experience and training not solely in law, litigation, and contract interpretation but also in Indigenous issues. Their engagement enabled a more purposive perspective to be brought to bear on the process and on the legal, technical, and administrative issues that arose.

[162] Preamble H of the IRSSA stated that: "This Agreement is not to be construed as an admission of liability by any of the defendants named in the Class Actions or the Cloud Class Action."

In a similar vein, it is important to recognize that the purposes of the Indian Residential Schools Settlement Agreement were varied and complex. These ranged from addressing sweeping historical issues, to achieving social justice, to assisting in individual and collective healing, to providing individual redress, and to resolving litigation claims and quantifying liabilities. Among and within the parties to the Settlement Agreement, there were those who had broad political or social perspectives and goals, and others whose goal was to ensure that the Agreement was technically sound and protected their legal interests. Thus, even after the agreement was achieved, there remained the ongoing challenge of harmonizing those voices and perspectives – both across and within organizations – in order that the overarching objectives of the Settlement Agreement were realized to their fullest. It was important that the more partisan adversarial mindset that preceded the Settlement Agreement needed to be tempered after the settlement was reached to ensure that goodwill was maintained, that the consensus among the parties was protected, that there were a minimum of ongoing legal or technical distractions, and that the objectives of the Agreement were met.

Preserving the Historical Record

- The Settlement Agreement was based in no small measure on the importance of acknowledging and attempting to redress the impacts of the residential school history and experience. On a societal level, it has been widely acknowledged that without understanding and addressing this collective past, it would not be possible either to understand our current realities or move towards a more positive future. Similarly, on an individual basis, many former students have stated that only through sharing their personal residential school experiences – with family members, elders, support workers, the Truth and Reconciliation Commission, or in an IAP hearing – have they been able to confront and begin to move beyond the impact of those experiences on their lives and the lives of their children.

- In the Indian Residential Schools Settlement Agreement, the mandate for creating and preserving that historical record was given to the Truth and Reconciliation Commission. The TRC not only compiled millions of documents, but also gathered thousands of first-hand accounts from residential school survivors of their experiences at the schools and the effects of the residential schools on their lives and the lives of their families. Much of this historical record of the TRC was transferred to and remains with the National Centre for Truth and Reconciliation.

- The primary focus of the IAP was to determine compensation for those students that suffered abuse at the schools. Claimants were required to share their histories with an adjudicator, and were promised confidentiality in that process. Many claimants in the IAP agreed to tell of their personal experiences only after they were promised that their privacy would be protected. Privacy also was promised to others who were identified in claims, including adults and students who were accused of abuse, witnesses who volunteered to testify, and family and community members whose personal histories may have been discussed. Anyone who was accused of abuse was notified, if they could be identified and found. But many had passed away or were too old or frail, or had their own reasons for not testifying. Many of these people never knew they were mentioned in an IAP claim.

- The question remained, however, as to what would be done with the records generated in the IAP and which if any would form part of the historical record. This question was only answered in October 2017 - years after the vast majority of IAP hearings were held – when the Supreme Court of Canada confirmed that most IAP documents (medical records, and so on) must be destroyed. It also confirmed that four types of records - the IAP application, audio recordings and transcripts of testimony, and the adjudicator's decision - must be kept for 15 years. In that time, claimants could decide if they want their records to be preserved.

- The delay and uncertainty in knowing what would ultimately be done with IAP records and the effect of that on promises of confidentiality as well as on the historical record was an ongoing source of concern for claimants and those involved in the Settlement Agreement. This demonstrated that it would have been preferable to have had a clear approach to the disposition of records in place at the outset of the process, so that all those involved – most notably survivors and claimants – had a clear understanding of what would happen to their personal documents, records, and histories.

CONCLUSION

A public policy and legal initiative as large and historic as the Independent Assessment Process can be analyzed from a myriad of viewpoints and measured against a range of objectives. This report has endeavored to set out the context for and origins of the IAP; to describe its processes, challenges, innovations, and results; to share some perspectives of those responsible for the oversight of the IAP, stakeholders, and claimants; and to draw out lessons that can be learned from this experience.

As part of the ground-breaking Indian Residential Schools Settlement Agreement, the IAP was the culmination of years of struggle by residential school survivors and their representatives and advocates to obtain compensation for the wrongs that the residential school system had inflicted. As such, it was also an essential part of a larger continuum of efforts to heal the wounds of the past, move towards a broader reconciliation of its legacy, and build a more positive future.

The experience of implementing and delivering the IAP generated many notable aspects that bear reflection and consideration. There are, of course, the numbers: 38,276 claims filed, 25,707 hearings held, $3.232 billion in compensation awarded. The scale of the IAP indicated not only the magnitude of the residential school experience and the abuse suffered in those schools, but also the ongoing impact on contemporary Indigenous communities and on Canada as a whole. The management of that large volume of claims presented challenges to all those involved in the process, and required continuous oversight, review, and adjustment. It demonstrated the need for flexibility, and the vital importance of maintaining a shared commitment to resolving claims while keeping a firm focus on the circumstances and experiences of each individual claimant.

There were also many aspects of that process itself – such as the inquisitorial approach, the approach to expert testimony and document production, approaches to negotiated settlements, cultural sensitivity, and the availability of support for claimants - that bear further contemplation. The IAP provided a significant alternative to traditional civil litigation: one that attempted to provide a path to justice that was sympathetic to the claimant's circumstances while respecting defendants' rights. In that way, it demonstrated approaches and lessons that may have broader implications for the civil justice system.[163]

However, beyond the numbers, beyond the administrative challenges and achievements, and beyond the procedural innovations in giving effect to the provisions of the IAP Model, what the Indian Residential Schools Settlement Agreement and the Independent Assessment Process was truly about was people: children who were assaulted; parents who lost their families; survivors who somehow found a core of strength; others who were still trying to come to terms with their past and overcome the harms that were inflicted; leaders of Indigenous communities who provided support to residential school survivors and, on a daily basis, who address its intergenerational impacts; Church leaders who were attempting to reconcile their belief and their ministry with the legacy that they bear; Government officials who attended hearings, listened, and apologized to former students; adjudicators who provided a space for healing while also trying to link that with financial compensation; those who answered telephone calls twenty-four hours a day, seven days a week, from people in crisis over the residential school experience or its memories; lawyers who traveled to remote communities or hospitals to provide counsel and help get justice; public servants who spent their work days talking with survivors about the most intimate and troublesome aspects of their lives and helped them navigate their way through the system; and countless friends, family members, Elders, and spiritual leaders, who stood with and supported residential school survivors. The story of the IAP was above all an amalgam of literally tens of thousands of personal stories, experiences, and journeys.

[163] The Hon. Rosalie Silberman Abella recently observed: "In a speech to the American Bar Association called The Causes of Popular Dissatisfaction with the Administration of Justice, Roscoe Pound criticized the civil justice system's trials for being overly fixated on procedure, overly adversarial, too expensive, too long and too out of date. The year was 1906." Rosie Silberman Abella, "Our civil justice system needs to be brought into the 21st Century", *The Globe and Mail*, 24 April 2020.

It might be tempting at this stage, after the conclusion of the IAP along with the Common Experience Payment and the Truth and Reconciliation Commission, to consider that the Settlement Agreement and all that it contained is now a thing of the past. However, it is important to remember that even in 2020, nearly three-quarters of Canadians were living while an Indian residential school remained in operation.[164] To Indigenous peoples, the effects of those schools on former students, their families, and their communities remain well-known and acutely felt. Many non-Indigenous Canadians, however, were not even aware of the history and legacy of Indian Residential Schools.

Recognition of the existence and impacts of the residential school system took a significant step forward when the then Grand Chief of the Assembly of Manitoba Chiefs, Phil Fontaine, spoke on national television about his personal experience in residential school. It progressed even more when the Settlement Agreement was announced, and when the then Prime Minister apologized on behalf of the Government of Canada in the House of Commons. It grew with the development by the Aboriginal Healing Foundation of curricula on Indian Residential Schools for use in our public schools. It was greatly encouraged when the Truth and Reconciliation Commission held events, provided a forum for people to share their histories, and garnered media attention that helped commemorate the residential schools experience. That commemoration brought knowledge; knowledge breeds understanding; and understanding can provide a basis for justice, healing, and reconciliation.

The IAP did not share the same level of publicity as some of these other landmark events. It was designed as an individual compensation system and, indeed, one of its main strengths is that it did not subject claimants to the public exposure that they would face in a civil litigation process. It was intended to be private, supportive, and to offer a protected space in which people could talk about intimate and damaging experiences in their lives. But, at the same time, it was an integral part of the Settlement Agreement, which in its entirety undoubtedly changed the conversation in Canada about Indian Residential Schools.

The Settlement Agreement – and the IAP – have not "fixed" the legacy of the residential schools. Reconciliation is not a fait accompli, nor is it a linear process; there is progress and there are setbacks. There have, over the past few years, been literally thousands of media reports related to Indian Residential Schools, not only about the wounds of the past but also about present frustrations and as-yet-unfulfilled hopes for the future. Perhaps most of the work towards reconciliation still lies ahead. But the Settlement Agreement and the IAP did represent a concerted effort by Indigenous leaders, by Government and Church representatives, and by residential school survivors who shared their histories and shared of themselves, to build the foundation on which healing and reconciliation can grow. And that effort is replicated on a daily basis in the motivation and commitment of those who continue to work on these issues.

The task is historic, the challenges significant, and the rewards immeasurable.

There is an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future … This is a profound commitment to establishing new relationships embedded in mutual recognition and respect that will forge a brighter future. The truth of our common experiences will help set our spirits free and pave the way to reconciliation.

- Indian Residential Schools Settlement Agreement, Schedule "N"

[164] Statistics Canada, *Population estimates on July 1st, by age and sex, Table 17-10-0005-01,* April 27 2020, https://doi.org/10.25318/1710000501-eng.

LIST OF INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT SCHOOLS[165]

St. Paul's Indian Residential School, in Cardston, AB

The site of the Shubenacadie Indian Residential School in Nova Scotia, which closed in 1967, was designated as a National Historic Site in 2020.

Alberta

- Assumption (Hay Lakes): Assumption
- Blue Quills (Saddle Lake, Sacred Heart, formerly Lac la Biche): St. Paul
- Crowfoot (St. Joseph's, Ste. Trinité): Cluny
- Desmarais (St. Martin's, Wabasca Roman Catholic): Desmarais-Wabasca
- Edmonton (formerly Red Deer Industrial): St. Albert
- Ermineskin: Hobbema
- Fort Vermilion (St. Henry's): Fort Vermilion
- Grouard (St. Bernard's, Lesser Slave Lake Roman Catholic): Grouard
- Holy Angels (Fort Chipewyan, École des Saints-Anges): Fort Chipewyan
- Joussard (St. Bruno's): Joussard
- Lac la Biche (Notre Dame des Victoire, predecessor to Blue Quills) (1893 to 1898): Lac la Biche
- Lesser Slave Lake (St. Peter's): Lesser Slave Lake
- Morley (Stony): Morley
- Old Sun: Gleichen
- Sacred Heart: Brocket
- St. Albert (Youville): Youville
- St. Augustine (Smoky River) (1900 to 1907): Smoky River
- St. Cyprian's (Queen Victoria's Jubilee Home): Brocket, Peigan Reserve
- St. John's (Wabasca Anglican/Church of England): Wabasca
- St. Joseph's (Dunbow): High River
- St. Mary's (Blood, Immaculate Conception): Cardston
- St. Paul's (Blood, Anglican/Church of England): Cardston
- Sarcee (St. Barnabas): T'suu Tina
- Sturgeon Lake (St. Francis Xavier): Calais
- Whitefish Lake (St. Andrew's): Whitefish Lake

British Columbia

- Ahousaht: Ahousaht
- Alberni: Port Alberni
- Anahim Lake Dormitory (September 1968 to June 1977): Anahim Lake
- Cariboo (St. Joseph's, Williams Lake): Williams Lake
- Christie (Clayoquot, Kakawis),:Tofino
- Coqualeetza (1924 to 1940): Chilliwack / Sardis
- Cranbrook (St. Eugene's, Kootenay): Cranbrook
- Kamloops: Kamloops
- Kitimaat: Kitimaat
- Kuper Island: Kuper Island
- Lejac (Fraser Lake): Fraser Lake
- Lower Post: Lower Post
- Port Simpson (Crosby Home for Girls): Port Simpson
- St. George's (Lytton): Lytton
- St. Mary's (Mission): Mission
- St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home): Alert Bay
- St. Paul's (Squamish, North Vancouver): North Vancouver
- Sechelt: Sechelt

Manitoba

- Assiniboia (Winnipeg): Winnipeg
- Birtle: Birtle
- Brandon: Brandon
- Churchill Vocational Centre: Churchill
- Cross Lake (St. Joseph's, Jack River Annex - predecessor to Notre Dame Hostel): Cross Lake
- Dauphin (McKay): The Pas / Dauphin
- Elkhorn (Washakada): Elkhorn
- Fort Alexander (Pine Falls): Fort Alexander

[165] Includes schools listed in Schedules E and F of the Indian Residential Schools Settlement Agreement, schools added to the IRSSA through Article 12, and schools added to the IRSSA by the Courts. Source: "List of Indian Residential Schools", *List of Schools,* Indian Residential Schools Adjudication Secretariat, n.d. http://www.iap-pei.ca/schools-eng.php {Listing format: School Name (alternative schools name/s) (dates *if applicable*): Location}

- Guy Hill (Clearwater): The Pas, formerly Sturgeon Landing
- Norway House United Church: Norway House
- Notre Dame Hostel (Norway House Roman Catholic, Jack River Hostel, replaced Jack River Annex at Cross Lake): Norway House
- Pine Creek (Camperville): Camperville
- Portage la Prairie: Portage la Prairie
- Sandy Bay: Marius

Northwest Territories

- Akaitcho Hall (Yellowknife): Yellowknife
- All Saints (Aklavik Anglican): Aklavik
- Bompas Hall (Fort Simpson Anglican): Fort Simpson
- Breynat Hall (Fort Smith): Fort Smith
- Federal Hostel at Fort Franklin: Déline
- Fleming Hall (Fort McPherson): Fort McPherson
- Grandin College: Fort Smith
- Grollier Hall (Inuvik Roman Catholic): Inuvik
- Hay River (St. Peter's): Hay River
- Immaculate Conception (Aklavik Roman Catholic): Aklavik
- Lapointe Hall (Fort Simpson Roman Catholic): Fort Simpson
- Sacred Heart (Fort Providence): Fort Providence
- St. Joseph's (Fort Resolution): Fort Resolution
- Stringer Hall (Inuvik Anglican Hostel): Inuvik

Nova Scotia

- Shubenacadie: Shubenacadie

Nunavut

- Chesterfield Inlet (Turquetil Hall): Chesterfield Inlet
- Federal Hostel at Baker Lake, Qamani'tuaq: Qamanittuaq
- Federal Hostel at Belcher Islands: Sanikiluaq
- Federal Hostel at Broughton Island: Qikiqtarjuaq
- Federal Hostel at Cambridge Bay: Cambridge Bay
- Federal Hostel at Cape Dorset: Kinngait
- Federal Hostel at Eskimo Point: Arviat
- Federal Hostel at Frobisher Bay (Ukkivik): Iqaluit
- Federal Hostel at Igloolik: Igloolik/Iglulik
- Federal Hostel at Lake Harbour: Kimmirut
- Federal Hostel at Pangnirtung (Pangnirtang): Pangnirtung / Panniqtuuq
- Federal Hostel at Pond Inlet: Mittimatalik
- Federal Tent Hostel at Coppermine: Coppermine
- Kivalliq Hall: Rankin Inlet

Ontario

- Bishop Horden Hall (Moose Fort, Moose Factory): Moose Island
- Cecilia Jeffrey (Kenora, Shoal Lake): Kenora
- Chapleau (St. John's): Chapleau
- Cristal Lake High School (September 1, 1976 to June 30, 1986): Cristal Lake
- Fort Frances (St. Margaret's): Fort Frances
- Fort William (St. Joseph's): Fort William
- McIntosh: McIntosh
- Mohawk Institute: Brantford
- Mount Elgin (Muncey, St. Thomas): Munceytown
- Pelican Lake (Pelican Falls): Sioux Lookout
- Poplar Hill: Poplar Hill
- St. Anne's (Fort Albany): Fort Albany
- St. Mary's (Kenora, St. Anthony's): Kenora
- Shingwauk (Wawanosh Home): Sault Ste. Marie
- Spanish Boys School (Charles Garnier, St. Joseph's, formerly Wikwemikong Industrial): Spanish
- Spanish Girls School (St. Joseph's, St. Peter's, St. Anne's formerly Wikwemikong Industrial): Spanish
- Stirland Lake High School/Wahbon Bay Academy (September 1, 1971 to June 30, 1991): Stirland Lake
- Wawanosh Home (January 1, 1879 to August 5, 1892): Sault Ste. Marie

Québec

- Amos (Saint-Marc-de-Figuery): Amos
- Federal Hostel at George River: Kangirsualujjuaq
- Federal Hostel at Great Whale River (Poste-de-la-Baleine): Kuujjuaraapik / Whapmagoostui
- Federal Hostel at Payne Bay (Bellin): Kangirsuk
- Federal Hostel at Port Harrison (Inoucdjouac, Innoucdouac): Inukjuak
- Fort George (St. Philip's): Fort George
- Fort George (St. Joseph's Mission, Résidence Couture, Sainte-Thérèse-de-l'Enfant-Jésus): Fort George
- Fort George Hostels (September 1, 1975 to June 30, 1978): Fort George
- La Tuque: La Tuque
- Mistassini Hostels (September 1, 1971 to June 30, 1978): Mistassini
- Pointe Bleue: Pointe Bleue
- Sept-Îles (Notre-Dame, Maliotenam): Sept-Îles

Saskatchewan

- Battleford Industrial School (December 1883 to May 1914): Battleford
- Beauval (Lac la Plonge): Beauval
- Cote Improved Federal Day School (September 1928 to June 1940): Kamsack
- Crowstand: Kamsack
- File Hills: Balcarres
- Fort Pelly: Fort Pelly
- Gordon's, Gordon's Reserve: Punnichy
- Lebret (Qu'Appelle, Whitecalf, St. Paul's High School): Lebret
- Marieval (Cowesess, Crooked Lake): Grayson
- Muscowequan (Lestock, Touchwood): Lestock
- Prince Albert (Onion Lake Church of England, St. Alban's, All Saints, St. Barnabas, Lac La Ronge): Prince Albert
- Regina: Regina
- Round Lake: Stockholm
- St. Anthony's (Onion Lake Roman Catholic): Onion Lake
- St. Michael's (Duck Lake): Duck Lake
- St. Philip's: Kamsack
- Sturgeon Landing (Predecessor to Guy Hill, MB): Sturgeon Landing
- Thunderchild (Delmas, St. Henri): Delmas

Yukon

- Coudert Hall (Whitehorse Hostel/Student Residence - Predecessor to Yukon Hall): Whitehorse
- St. Paul's Hostel (September 1920 to June 1943): Dawson City
- Shingle Point (Predecessor to All Saints, Aklavik): Shingle Point
- Whitehorse Baptist: Whitehorse
- Yukon Hall (Whitehorse/Protestant Hostel): Whitehorse

IAP COMPENSATION RULES

	ACTS PROVEN	COMPENSATION POINTS
SL5	• Repeated, persistent incidents of anal or vaginal intercourse. • Repeated, persistent incidents of anal/vaginal penetration with an object.	45-60
SL4	• One or more incidents of anal or vaginal intercourse. • Repeated, persistent incidents of oral intercourse. • One or more incidents of anal/vaginal penetration with an object.	36-44
SL3	• One or more incidents of oral intercourse. • One or more incidents of digital anal/vaginal penetration. • One or more incidents of attempted anal/vaginal penetration (excluding attempted digital penetration). • Repeated, persistent incidents of masturbation.	26-35
PL	• One or more physical assaults causing a physical injury that led to or should have led to hospitalization or serious medical treatment by a physician; permanent or demonstrated long-term physical injury, impairment or disfigurement; loss of consciousness; broken bones; or a serious but temporary incapacitation such that bed rest or infirmary care of several days duration was required. Examples include severe beating, whipping and second-degree burning.	11-25
SL2	• One or more incidents of simulated intercourse. • One or more incidents of masturbation. • Repeated, persistent fondling under clothing.	11-25
SL1	• One or more incidents of fondling or kissing. • Nude photographs taken of the Claimant. • The act of an adult employee or other adult lawfully on the premises exposing themselves. • Any touching of a student, including touching with an object, by an adult employee or other adult lawfully on the premises which exceeds recognized parental contact and violates the sexual integrity of the student.	5-10
OWA	• Being singled out for physical abuse by an adult employee or other adult lawfully on the premises which was grossly excessive in duration and frequency and which caused psychological consequential harms at the H3 level or higher. • Any other wrongful act committed by an adult employee or other adult lawfully on the premises which is proven to have caused psychological consequential harms at the H4 or H5 level.	5-25

LEVEL OF HARM	CONSEQUENTIAL HARM	COMPENSATION POINTS
H5	**Continued harm resulting in serious dysfunction.** *Evidenced by:* psychotic disorganization, loss of ego boundaries, personality disorders, pregnancy resulting from a defined sexual assault or the forced termination of such pregnancy or being required to place for adoption a child resulting therefrom, self- injury, suicidal tendencies, inability to form or maintain personal relationships, chronic post-traumatic state, sexual dysfunction, or eating disorders.	20-25
H4	**Harm resulting in some dysfunction.** *Evidenced by:* frequent difficulties with interpersonal relationships, development of obsessive-compulsive and panic states, severe anxiety, occasional suicidal tendencies, permanent significantly disabling physical injury, overwhelming guilt, self-blame, lack of trust in others, severe post-traumatic stress disorder, some sexual dysfunction, or eating disorders.	16-19
H3	**Continued detrimental impact.** *Evidenced by:* difficulties with interpersonal relationships, occasional obsessive-compulsive and panic states, some post- traumatic stress disorder, occasional sexual dysfunction, addiction to drugs, alcohol or substances, a long term significantly disabling physical injury resulting from a defined sexual assault, or lasting and significant anxiety, guilt, self-blame, lack of trust in others, nightmares, bed-wetting, aggression, hyper-vigilance, anger, retaliatory rage and possibly self-inflicted injury.	11-15
H2	**Some detrimental impact.** *Evidenced by:* occasional difficulty with personal relationships, some mild post-traumatic stress disorder, self-blame, lack of trust in others, and low self-esteem; and/or several occasions and several symptoms of: anxiety, guilt, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.	6-10
H1	**Modest Detrimental Impact.** *Evidenced by:* Occasional short-term, one of: anxiety, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.	1-5

AGGRAVATING FACTORS - ADD 5-15% OF POINTS FOR ACT AND HARM COMBINED *(ROUNDED UP TO THE NEAREST WHOLE NUMBER)*
Verbal abuse
Racist acts
Threats
Intimidation/inability to complain; oppression
Humiliation; degradation
Sexual abuse accompanied by violence
Age of the victim or abuse of a particularly vulnerable child
Failure to provide care or emotional support following abuse requiring such care
Witnessing another student being subjected to an act set out on page 3
Use of religious doctrine, paraphernalia or authority during, or in order to facilitate, the abuse
Being abused by an adult who had built a particular relationship of trust and caring with the victim (betrayal)

FUTURE CARE	ADDITIONAL COMPENSATION ($)
General – medical treatment, counselling	Up to $10,000
If psychiatric treatment required, cumulative total	Up to $15,000

	CONSEQUENTIAL LOSS OF OPPORTUNITY	ADDITIONAL COMPENSATION (POINTS)
OL5	Chronic inability to obtain employment	21-25
OL4	Chronic inability to retain employment	16-20
OL3	Periodic inability to obtain or retain employment	11-15
OL2	Inability to undertake/complete education or training resulting in underemployment, and/or unemplyment	6-10
OL1	Diminished work capacity – physical strength, attention span	1-5

COMPENSATION POINTS	COMPENSATION ($)
1-10	$5,000 - $10,000
11-20	$11,000 - $20,000
21-30	$21,000 - $35,000
31-40	$36,000 - $50,000
41-50	$51,000 - $65,000
51-60	$66,000 - $85,000
61-70	$86,000 - $105,000
71-80	$106,000 - $125,000
81-90	$126,000 - $150,000
91-100	$151,000 - $180,000
101-110	$181,000 - $210,000
111-120	$211,000 - $245,000
121 or more	Up to $275,000

Proven Actual Income Loss

Where actual income losses are proven pursuant to the standards set within the complex issues track of this IAP, an adjudicator may make an award for the amount of such proven loss up to a maximum of $250,000 in addition to the amount determined pursuant to the above grid, provided that compensation within the grid is established without the allocation of points for consequential loss of opportunity. The amount awarded for actual income loss shall be determined using the legal analyses and amounts awarded in court decisions for like matters.

Source: Indian Residential Schools Settlement Agreement, Schedule D, 3-6.

IMPLEMENTATION OF IMPROVEMENTS BY CATEGORY

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Alternative Dispute Resolution (ADR)	2007-2008	Issuance of Guidance Paper (GP)-3 regarding re-opening a hearing to adjust a DR award for loss of opportunity
	2009-2010	Development and implementation of procedures for transferring claims from ADR to IAP
Case Management	2009-2010	Implementation of new procedures for admitting claims to the complex track
	2009-2010	Processes for early track assessment of complex track claims
	2009-2010	"Performance Framework" initiatives to improve tracking of claims, services standards, quality controls and reporting mechanisms
	2009-2010	Case management strategies for files "on hold" without mandatory documents over 145 days
	2009-2010	Procedures to provide for a secondary review of applications within 30 days
	2010-2011	Preliminary deployment of secure web-based system for Electronic Document Interchange (EDI) to enable users electronically to transfer protected documents
	2010-2011	Full implementation of EDI with access expanded to all adjudicators, 34 claimants' counsel representing large caseloads, and representatives of defendant Churches and Canada
	2011-2013	Design, pilot project, and implementation of on-line Interactive File Management System (IFMS) to provide real-time communication between claimants' counsel and the Adjudication Secretariat on the status of individual claims
	2012-2013	Development of special IFMS module for use by Transition Coordinator in assignment of Blott & Company cases
	2012-2013	Development of special intensive case management procedures to assist in getting claims ready for hearing
	2013-2014	Expansion of IFMS functionality to include scheduling, post-hearing, intensive case management, and incomplete file resolution processes
	2014-2015	Oversight Committee approval of "Completion Action Plan"; Requests for Directions submitted to and approved by Court for an Incomplete File Resolution Process (IFRP) and Lost Claimant Protocol (LCP) to address claims that had been unable to reach resolution
	2014-2015	EDI made mandatory for electronic document submission
	2014-2015	Further enhancement of IFMS functionality and processes.
	2015-2016	Oversight Committee and Court approval of second phase of IFRP allowing a "Special Resolution Adjudicator" to receive submissions from the parties and make a "Resolution Direction"

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Communications and Outreach	2008-2009	Design, development of communications procedures, and launch of IAP website and Adjudication Secretariat intranet
	2009-2010	Development of Outreach Strategy to provide information on the IAP focusing on regions where the number of IAP applications was low relative to the number of Common Experience Payment applications
	2009-2010	Development of improved processes for responding to claimants' telephone inquiries
	2011-2012	Enhancements to IAP Info-Line processes
	2011-2012	Development and implementation of notice program re. IAP Application Deadline
	2013-2014	Development and implementation of revised Outreach Strategy
	2013-2014	Development and implementation of revised Strategic Communications Plan focusing on IAP information products for claimants, claimant counsel, stakeholders and Canadians; re-launch of the internal staff newsletter
	2014-2015	Launch of social media presence and development of social media processes
	2014-2015	Development and implementation of notice program re. Lost Claimants Protocol
	2015-2016	Development and implementation of Strategic Partnership Engagement Plan in disseminating information about the IAP and in searching for lost claimants as provided in the LCP
	2015-2016	Partnership with Health Canada to provide claimants' counsel with information on services offered by Health Support Services Program
	2015-2016	Development and implementation of Post-Secondary Engagement Project to offer specially designed information materials about the IAP to colleges and universities to contribute to indigenous studies courses
	2016-2018	Development and implementation of notice program re. Records Disposition
Decisions	2007-2008	Clarification of policy and procedures re. redaction of decisions
	2007-2008	Oversight Committee approval of Chief Adjudicator Direction (CAD)-2 re. processes for adjudicators in dealing with consequential loss of opportunity compensation top-ups from ADR to IAP
	2008-2009	Oversight Committee approval of CAD-3r2 revising, consolidating, and clarifying policies regarding the redaction of names in decisions
	2008-2009	Issuance of GP-5 setting policy for internal reviews of adjudicators' decisions by the Chief Adjudicator
	2008-2009	Process changes to expedite distribution of unredacted decisions to Canada and Churches
	2008-2009	Development and implementation of database to improve content and access to existing Adjudicators' Web-site of Decisions
	2009-2010	Oversight Committee and National Administration Committee approval of PD-2 establishing the process and procedures for issuing Short Form Decisions, followed by pilot project and full implementation
	2014-2015	Expansion of Decisions Database to include the most up-to-date school history narratives, and making these accessible to all registered legal counsel and adjudicators

APPENDIX III

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Estate Claims	2009-2011	Establishment of procedures and implementation of pilot projects for admitting claims of deceased claimants
	2015-2016	Full Implementation of estate claims procedures
	2016-2017	Formation of Estate Claims Working Group to review and revise processes
Finance and Administration	2008-2009	Restructuring of financial systems to improve administrative efficiency
	2008-2009	Process-Flow Mapping for Chief Adjudicator's office
	2009-2010	Procedures to improve security effectiveness of monitoring process for transcripts and audio cards
	2009-2010	Hearings Management process review to address invoice backlog
	2009-2010	Development of protocols to improve management of claims
	2009-2010	Quality Assurance Assessment of application intake by Crawford
	2010-2011	Implementation of quality control mechanisms for hearing logistics
	2010-2012	Audits and development of action plans of core management practices of governance, risk management, stewardship, and accountability
	2013-2014	Development and implementation of procedures to enhance data protection and security measures; development of adjudicator security manual
	2013-2014	Initiative to enhance the quality and effectiveness of operational plan preparation procedures
	2014-2015	Transfer of contracts to PWGSC to obtain higher funding authorities and ensure service continuity
	2014-2015	Implementation of procedures identified in external consultant's Security Audit
	2014-2016	Review and revision of processes to monitor contracts to strengthen fiscal accountability; revision of adjudicator billing guidelines
	2015-2016	Development with PSPC of limited tendering process for legal firms to support the Chief Adjudicator, Executive Director, and Chair of the Oversight Committee
	2015-2016	Development and implementation of Comprehensive Integrated Document Management System (CDIMS) to store emails and documents
Group IAP	2007-2008	Established processes for the program
	2013-2014	Update of Group IAP terms and conditions and redesign of Group IAP application process
	2014-2015	Launch of online toolkit to assist Group Coordinators in forming groups, financial reporting, final reporting, planning, implementing, and evaluating funded activities
Hearings and Hearing Scheduling	2007-2008	Oversight Committee approval of CAD-1 setting procedures for adjudicators to flag potential movement of a claim from ADR to IAP in certain circumstances
	2007-2008	Oversight Committee approval of CAD-4r1 setting policy regarding responses to statements from alleged perpetrators

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Hearings and Hearing Scheduling	2008-2009	Clarification of policy and process for selecting hearing location and implementation of new claimant's preference form
	2008-2009	Oversight Committee approval of CAD-7 to clarify policy and procedures re. hearing transcripts
	2008-2009	Series of process changes to increase efficiencies in arranging hearings
	2008-2009	Development of processes to align resources through "block hearings" based on analysis of distribution of claims by locations and law firms
	2008-2009	Oversight Committee approval of CAD-6 and CAD-6r1 setting policy and procedures for scheduling hearings for alleged perpetrators
	2008-2009	Establishment of hearing targets & scheduling horizon to maximize adjudication capacity and increase effectiveness/efficiency for scheduling hearings
	2009-2010	Establishment of Winnipeg Hearing Centre to offer claimants a safe and culturally-appropriate hearing location
	2009-2010	Oversight Committee approval of GP-6 regarding preparation of Other Wrongful Acts claims
	2009-2010	Implementation of new scheduling process for alleged perpetrator hearings
	2009-2010	Travel policy and process changes to improve effectiveness of approval of hearing travel arrangements
	2009-2010	Scheduling strategy and processes to accommodate travel and logistical challenges posed by the Vancouver Olympics
	2010-2011	Establishment of Vancouver Hearing Centre
	2010-2011	Revision and clarification of policy and process for request and approval of expedited hearings, including new "Expedited Hearing Request Form"
	2011-2012	Following directions from Oversight Committee and the Courts, issuance of GP-7 setting new procedures for hearing postponements
	2011-2012	"Over 65" Pilot Project and associated processes (pre-hearing teleconferences, adjudicator-led teleconferences)
	2013-2014	"5-Day Block" Pilot Project to increase volume of hearings for claimants of same age and health status
	2013-2014	Oversight Committee approval of initiative to minimize the impact of hearing postponements by coordinating hearing substitutions among represented claims
	2013-2014	Oversight Committee approval and implementation of the Accelerated Hearings Process (AHP)
	2013-2014	New procedures re. hearings in correctional facilities to address security requirements
	2013-2014	Extension of Hearing Postponement Policy to Negotiated Settlements
	2014-2015	Oversight Committee approval of initiative to minimize impact of hearing postponements by coordinating hearing substitutions among represented claims
	2014-2015	Implementation of strategy to engage qualified, objective, and sensitive interpreters for hearings

APPENDIX III

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Hearings and Hearing Scheduling	2014-2015	Oversight Committee approval and implementation of "Over 80" initiative implemented permitting claimants over 80 years of age to proceed to hearing in advance of mandatory document completion
	2014-2015	Integration of AHP into other targeted initiatives to increase number of hearing-ready files
	2014-2015	Expansion of the AHP to Include Self-Represented Claimants
	2015-2016	Oversight Committee approval of mandatory scheduling of hearings using AHP when required
	2015-2016	Improvements in complex track hearing scheduling processes
	2015-2016	Issuance of GP-7r1 providing modifications to and additional details re. hearing postponement policy
Human Resources	2007-2019	Commencing with vicarious trauma training for staff and adjudicators from the outset of the Adjudication Secretariat, the development and implementation of a range of processes and activities aimed at protecting and enhancing the well-being of staff and a healthy work environment; further formalized in 2011-12 with the development of an evergreen Wellness Strategy and implementation of action plans
	2013-2014	Agreement between Adjudication Secretariat and AANDC on new staffing processes to enable more rapid filling of vacant positions
	2015-2016	Development and implementation of strategies and procedures for wind-down of Adjudication Secretariat including workforce adjustment sessions, developmental training, and skills enhancement initiatives
	2016-2017	Development and implementation of Knowledge Retention Strategy to identify areas at greatest risk, strategies to protect information and knowledge, and to retain key staff required for completion of IAP
Legal Representation	2009-2010	Establishment of processes for legal fee reviews and appeals of decisions
	2010-2011	Issuance of GP-1r2 providing information to claimants about legal fees and requests for legal fee reviews or challenges
	2011-2012	Publication of comprehensive Desk Guide for Legal Counsel providing information on all aspects of the IAP
	2012-2013	Contingency plan to Address the removal of Blott & Co. from the IAP
	2012-2013	Development of processes to encourage high quality legal representation for claimants, including publication of information for claimants on what they have a right to expect from and how to work effectively with their lawyer, and centralization of handling of complaints
	2012-2013	Oversight Committee approval of CAD-10 re. procedures for withdrawal of legal counsel from a claim
	2013-2014	Issuance of GP-1r3 revising guidance to adjudicators on factors to consider in legal fee reviews
	2014-2015	Implementation of IAP Integrity Protocol as approved by the Court, appointing Independent Special Advisor and establishing processes for lodging, investigating, and resolving complaints against lawyers
	2015-2016	Update of Desk Guide for Legal Counsel to include various procedural and legal matters and information on Health Support services

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Negotiated Settlements Process	2008-2009	Clarification of policy and rules regarding the selection of claims and procedures for the conduct of Negotiated Settlement Processes (NSPs)
	2011-2012	Changes in processes to allow earlier distribution of evidentiary packages
	2013-2014	Oversight Committee approval of new processes for NSP-related hearing cancellations
Post-Hearing Processes	2008-2009	Revisions of processes to increase effectiveness/efficiencies in acquiring services of medical experts
	2009-2010	Process changes to increase post-hearing efficiency (assessments, transcript requests, scheduling of hearings for witnesses or alleged perpetrators)
	2010-2011	Revision of contracting model for psychological experts and Request for Proposals to manage medical assessment contracts
	2010-2011	Implementation of procedures and reports to enhance effectiveness of tracking decision status, post-hearing submissions, and legal fee reviews
	2011-2012	At the request of the Court, revision of procedures and supplemental reports to track hearing process
	2015-2016	Revision of processes to improve scheduling of final submission teleconferences
	2015-2016	Implementation of strategies to address post-hearing claim delays
	2015-2016	Issuance of GP-9 establishing procedures regarding the postponement of assessments
Pre-Hearing Processes	2007-2008	Oversight Committee and National Administration Committee approval of Practice Directive (PD)-1 setting policies and procedures for preliminary case assessments of complex track claims
	2008-2009	New processes to streamline mandatory document production
	2008-2009	Oversight Committee and National Administration Committee approval of GP-2 providing guidance and procedures regarding Actual Income Loss claims
	2008-2009	Oversight Committee approval of CAD-5 to increase efficiencies in dealing with complex track cases through pre-hearing teleconferences
	2009-2010	Process improvements related to jurisdictional pre-hearing teleconferences
	2009-2010	Memoranda of Understanding and/or development of IAP-specific processes with Alberta Corrections, Saskatchewan Corrections, Corrections Canada, and Service Canada to improve provision of mandatory documents
	2010-2011	Development and implementation of procedures for progressing files on-hold at scheduling phase
	2010-2011	Introduction of processes to work with claimant counsel to address missing mandatory documents
	2011-2012	Oversight Committee approval of CAD-9 to codify procedures for resolving jurisdictional issues
	2012-2013	Oversight Committee approval of GP-8 setting procedures for the withdrawal of IAP claims

APPENDIX III

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Pre-Hearing Processes	2013-2014	Revision to Schedule P processes allowing represented claims requiring Schedule P to proceed through document collection to a hearing
	2015-2016	Revisions of pre-hearing logistics procedures to improve efficiencies
	2015-2016	Issuance of GP-10 establishing procedures to permit adjudicators to proceed with a case despite lack of participation by claimants in teleconferences
	2016-2017	Oversight Committee approval of CAD-11 establishing deadline to appeal decisions denying admission of claims into the IAP, and notification of non-admit decisions for lost or deceased claimants with no estate identified
	2016-2017	Oversight Committee approval of GP-8r1 revising procedures for the withdrawal of IAP claims
Self-Represented Claimants	2008-2009	Procedures & services standards for providers of support to self-represented claimants
	2009-2010	Project to ensure effective structure and processes in place to assist with document collection for self-represented claimants
	2010-2011	Pilot Project to improve document collection for self-represented claimants in the North
	2010-2011	Introduction of early track assessment teleconferences for self-represented claimants
	2011-2012	Contracts with the AFN and NTI to help self-represented claimants in the Arctic complete IAP applications
	2013-2014	Pilot Project to assist self-represented claimants in finding counsel
	2014-2015	Analysis of and procedures to address outstanding pre-hearing self-represented claims
	2014-2015	Pilot project designed to educate self-represented claimants on the role and potential benefits of legal counsel
	2014-2015	Oversight Committee approval of list of lawyers accepting referrals of self-represented claimants
	2015-2016	Combination of Early Track Assessment and Pre-hearing conference calls for self-represented claims in the complex track
	2015-2016	Project to identify barriers and assist in moving claims forward for claimants with capacity or mental health issues
	2015-2016	Project to develop adjudicator expertise in dealing with the volume of documents for self-represented claimants produced as a consequence of the Court Direction re. St. Anne's school
	2015-2016	Processes to assign specially-trained adjudicators where involuntarily unrepresented claimants had been unable to retain counsel
Student-on-Student (SOS) Claims	2007-2008	Issuance of GP-4 to establish processes and mechanisms to identify and address re-openers of ADR SOS claims
	2008-2009	Oversight Committee approval of CAD-8 to clarify policy, process and options for sharing of information re. admission of staff knowledge in SOS claims
	2013-2014	Oversight Committee approval of strategy to enable SOS claims deemed likely to yield admissions of staff knowledge (based on information available in the application) to be heard prior to claims which might potentially benefit from them

FOCUS GROUP, INTERVIEW, AND QUESTIONNAIRE PARTICIPANTS

CLAIMANTS

Hundreds of claimants and family members participated in individual one-on-one interviews or focus groups with the research team. The interviews were conducted confidentially; therefore, names of these participants will not be identified in this report except in cases where they gave explicit permission to provide an attributed quote. The following are the locations of interviews and focus groups:

- Eskasoni First Nation, Nova Scotia
- Montreal, Quebec
- Kenora, Ontario
- London, Ontario
- Sault Ste. Marie, Ontario
- Six Nations (Brantford), Ontario
- Thunder Bay, Ontario
- Stony Mountain Institution, Manitoba
- Winnipeg, Manitoba
- Saskatoon, Saskatchewan
- Cardston (Blood Tribe), Alberta
- Buffalo Sage Treatment Centre, Alberta
- Edmonton, Alberta
- Kainai Treatment Centre, Blood Reserve, Alberta
- Port Alberni, British Columbia
- Vancouver, British Columbia
- Behchokǫ̀, Northwest Territories
- Inuvik, Northwest Territories
- Yellowknife, Northwest Territories

PARTNERS/STAKEHOLDERS/STAFF – FOCUS GROUPS/QUESTIONNAIRES

The following partner, stakeholder, and staff groups provided information for this report through focus groups or questionnaires:

Health Support Workers:

- Eskasoni First Nation, Nova Scotia
- Montreal Friendship Centre, Quebec
- Atlosha Healing Family Services, London, Ontario
- Indian Residential Schools Support Services of Ontario
- Aboriginal Health and Wellness Centre of Winnipeg, Manitoba
- Saskatoon Tribal Council, Saskatchewan
- Edmonton Institution For Women
- Native Counselling Services of Alberta
- SAPAATSIMA-PII Health Centre, Alberta
- Indian Residential Schools Survivors Society of BC
- Quu'asa, Port Alberni, British Columbia
- Vision of Hope, Yellowknife

Cultural Support Workers/Elders/Interpreters:

- Eskasoni First Nation, Nova Scotia
- Montreal Friendship Centre, Quebec
- Atlosha Healing Family Services, London, Ontario
- Indian Residential Schools Support Services of Ontario
- Aboriginal Health and Wellness Centre of Winnipeg, Manitoba
- Saskatoon Tribal Council, Saskatchewan
- Edmonton Institution for Women, Alberta
- Native Counselling Services of Alberta
- SAPAATSIMA-PII Health Centre, Alberta
- Indian Residential Schools Survivors Society of BC
- Quu'asa, Port Alberni, British Columbia
- Vision of Hope, Yellowknife

APPENDIX IV

IRSAS staff participated in an honour ceremony held by the Indian Residential Schools Survivors Society in Vancouver.

Community Leaders:

- Eskasoni First Nation, Nova Scotia
- Six Nations, Ontario
- Winnipeg, Manitoba
- Saskatoon, Saskatchewan
- Saskatoon Tribal Council, Saskatchewan
- Cardston (Blood Reserve) Elders, Alberta
- Indian Residential Schools Survivors Society of British Columbia – Board of Directors
- NCTR Survivor Circle

Adjudication Secretariat:

- Adjudicators (4 focus groups)
- IRSAS staff (3 focus groups)

Government of Canada:

- Health Canada RHSW Coordinators
- Health Canada National Representatives
- Resolution Managers/Department of Justice Representatives (2 focus groups)

Church:

- United Church Representatives

Claimant Counsel:

- McKiggan Hebert Lawyers, Nova Scotia
- Éric Lépine Avocat Inc, Quebec
- Carol Robitaille et Pierre Garon, Quebec
- Carroll Law Office, Manitoba
- Duboff Edwards Haight & Schachter Law Corporation, Manitoba
- Troniak Law Office, Manitoba
- Aboriginal Law Group, Saskatchewan
- Cabott & Cabott, British Columbia
- Stevens & Company, British Columbia Field Law, NWT
- Daniel S. Shier Law Office, Yukon

Other:

- Crawford (now called Epiq) Class Action Services

INDIVIDUAL INTERVIEWS[166]

The following are a list of individuals who were interviewed individually for the report:

Claimants – with consent to use their name:

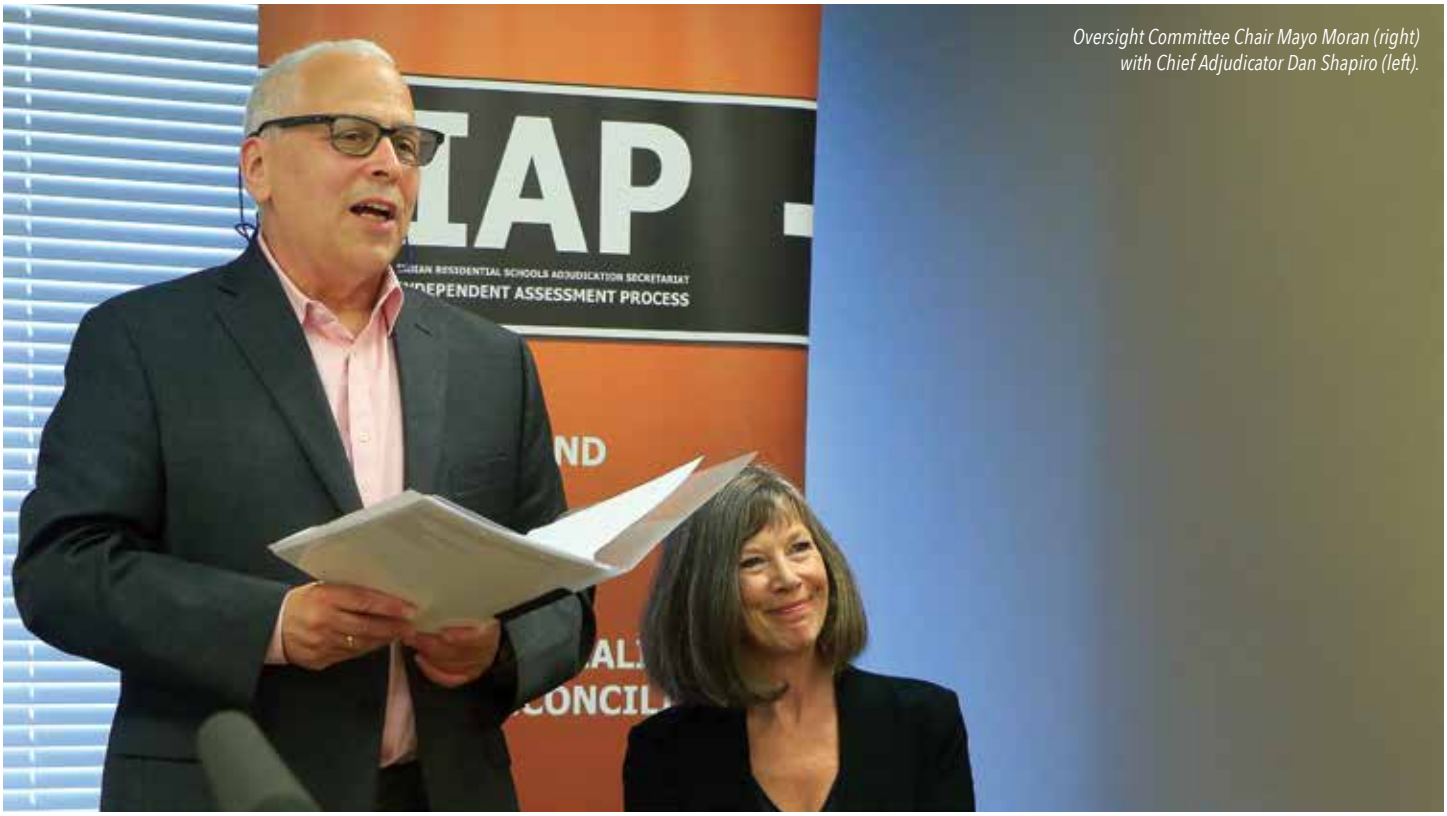
- Laurel Curley
- Johnny Heavyshields
- Rex Lumberjack
- Andrew Reuben
- Grace Smallboy

Indigenous Organizations/Representatives:

- Jarred Baker, Director of Programs Aboriginal Wellness Centre of Winnipeg, Manitoba
- Mike Cachagee, OIRSSS, Ontario
- Claudette Chevrier, OIRSSS, Ontario
- Debbie Cielen, Aboriginal Wellness Centre of Winnipeg, Manitoba
- Michael R. Denny, RHSW, Eskasoni, Nova Scotia
- Carolyn Doxtator, Intergenerational, Ontario
- Inuit Tapiriit Kanatami (ITK)
- Kelly Eagle Tail Feather, Blood Tribe of Alberta
- Jill Green, Intergenerational, Ontario
- Marlene Green, Elder/Intergenerational, Ontario
- Nunavut Tunngavik Inc
- Joanne Hansenn, Sapaatsima-PII Health Centre, Alberta
- Duane Hill, Intergenerational, Ontario
- Piita Irniq, NCTR Survivor Circle
- Janice Knighton, Coordinator IRSSS of BC
- Rex Lumberjack, Saskatoon Tribal Council, Saskatchewan
- Diane Maluorno, Coordinator, Vision of Hope, NWT
- Ida Martin, OIRSSS, Ontario
- Ry Moran, NCTR, Manitoba
- Tony Rebesca, Addictions Counsel, Behchokǫ̀, NWT
- Peter Sakaney, OIRSSS, Ontario
- Melba Thomas, OIRSSS, Ontario
- Ray Thunderchild, Elder, IRSSS of BC
- Barney Williams, NCTR Survivor Circle
- Beverly Wise, IRS Coordinator, Saskatoon Tribal Council

[166] Note: some respondents are noted twice because they represent different groups.

APPENDIX IV



Oversight Committee Chair Mayo Moran (right) with Chief Adjudicator Dan Shapiro (left).

Oversight Committee:

- Les Carpenter, Inuit Organizations
- Karen Cuddy, Government of Canada
- Paul Favel, AFN
- Mitch Holash, Catholic Church
- David Iverson, United Church
- Len Marchand, former Claimant Counsel
- Mayo Moran, Independent Chair
- David Paterson, Claimant Counsel
- Tara Shannon, Government of Canada
- Diane Soroka, Claimant Counsel

National Administration Committee:

- Catherine Coughlan, Government of Canada
- P. Jonathan Faulds, Independent Counsel
- Peter Grant, Chair
- Kathleen Mahoney, AFN
- Jane Ann Summers, Independent Counsel

Court:

- Brian Gover, Court Counsel
- Michael Mooney, Court Monitor
- Perry Schulman, Retired Justice of the Court of Queens Bench
- Warren Winkler, Retired Ontario Chief Justice

Independent Assessment Process:

- Irene Fraser, former Manager
- Ted Hughes, former Chief Adjudicator (ADR)
- Jeffrey Hutchinson, former Executive Director
- Dan Ish, former Chief Adjudicator
- Catherine Knox, former DCA
- Michel Landry, DCA
- Rodger Linka, DCA
- Peggy Martin-McGuire, former Manager
- Wes Marsden, DCA
- Delia Opekokew, DCA
- Harold Robinson, Adjudicator
- Susan Ross, DCA
- Michael Simpson, former Manager
- Akivah Starkman, former Executive Director
- John Trueman, former Senior Advisor
- Lisa Weber, DCA

Truth and Reconciliation Commission:

- Kim Murray, Executive Director
- Murray Sinclair, Commissioner
- Marie Wilson, Commissioner

Church:

- Cecile Fausak, United Church
- Mitch Holash, Catholic Church
- David Iverson, United Church
- Sister Margaret Hayward, Anglican Church
- Stephen Kendall, Presbyterian Church
- Rev. Bill Gillis – Winnipeg
- Rev. Pat Wotton – Winnipeg
- Rev. John Badertscher – Manitoba
- Rev. Jim Manly – Nanaimo, BC
- Ms. Eva Manly – Nanaimo, BC

Claimant Counsel:

- Dale Cunningham, Field Law
- John Dooks, Alberta Law Society
- P. Jonathan Faulds, Field Law
- Leah Kosokowsky, Law Society of Manitoba
- David Paterson, Claimant Counsel
- Diane Soroka, Claimant Counsel
- Jane Ann Summers, Claimant Counsel

Government of Canada:

- Karen Cuddy, OC Rep
- Mario Dion, former DM, IRSRC
- Doug Ewart, former Advisor, IRSRC
- Brad Favel, DOJ Counsel and NSP Coordinator
- Frank Iacobucci, Government of Canada's Negotiator for Indian Residential Schools Settlement Agreement
- Helene Laurendeau, INAC Deputy Minister
- Tara Shannon, OC Rep
- Colleen Swords, former INAC Deputy Minister
- Michael Wernick, former INAC Deputy Minister

INDEPENDENT ASSESSMENT PROCESS: OVERSIGHT COMMITTEE, ADJUDICATORS, AND ADMINISTRATION

Oversight Committee Members:

- Mayo Moran, Independent Chair
- David Paterson, Claimant Counsel Representative
- Diane Soroka, Claimant Counsel Representative
- Len Marchand, past Claimant Counsel Rep
- Kerry O'Shea, past Claimant Counsel Rep
- David Iverson, Church Representative (Protestant Churches)
- Mitch Holash, Church Representative (Catholic Entities)
- James Ehmann, past Church Representative
- Julie McGregor, AFN Representative
- Paul Favel, past AFN Representative
- Bobby Joseph, past AFN Representative
- William Wuttunee, past AFN Representative
- Carol Brzezicki, past Indigenous Representative
- Lucy Kuptana, Inuit Representative
- Les Carpenter, past Inuit Representative
- Rosemarie Kuptana, past Inuit Representative
- Juliet Donnici, Canada Representative
- Karen Turcotte, Canada Representative
- Tara Shannon, past Canada Representative
- Karen Cuddy, past Canada Representative
- Luc Dumont, past Canada Representative
- Alison Molloy, past Canada Representative
- Line Pare, past Canada Representative
- James Ward, past Canada Representative

Chief Adjudicators:

- Daniel Ish
- Daniel Shapiro

Deputy Chief Adjudicators:

- Kay Dunlop
- Catherine Knox
- Michel Landry
- Rodger Linka
- Wes Marsden
- Delia Opekokew
- Susan Ross
- Lisa Weber

Adjudicators:

- André Bachand
- Kevin E. Ball
- Susan Barber
- Evelyn J. Baxter
- Michael Bay
- Jean-Pierre Beauchesne
- Normand G (Rusty) Beauchesne
- Vivienne G. Beisel
- Ronald Gordon Bell
- Leslie Belloc-Pinder
- David Bennet
- Peggy Blair
- M. Anne Bolton
- Hugh Braker
- Joan Bubbs
- Peter Burns
- Dennis Callihoo
- Ruth Campbell
- William J. Campbell
- Jack M. Chapman
- Lawrie Cherniack
- Terrance Chinn
- N. Paul Cloutier
- Jean Charles Coutu
- Paulah Dauns
- Wilfred DeGraves
- Sheila Denysiuk
- Max Dokuchie
- Arlene Doll
- Firoz R. Dossa
- Jean L. Dutil
- Paul Fraser
- Carolyn J. Frost
- Lyall Gardiner
- Matthew Garfield
- Michelle Gelfand
- Caron George
- Larry Gilbert
- Scott P. Gray
- Richard W. Grounds
- Ken Halvorson
- Silas Halyk
- Carol Ann Hart
- William Hartzog
- J. Richard Hatchette
- Maria G. Henheffer
- John C. Hill
- John (Jack) D. Hillson
- Richard Hornung
- Thomas A. B. Jolliffe
- Bertha L. Joseph
- Cynthia Joseph
- Roy M. Kahle
- Kathleen Keating
- Robert Kominar
- Pamela Large-Moran
- David Garth Leitch
- J. Paul Lordon
- Paul Love
- Cheryl Macdonald
- Kelly A. MacDonald
- Dawn Marie McBride
- Hugh McCall
- Myrna McCallum
- Anne McGarry
- Jill H. McIntyre
- Kathleen McIsaac
- Elizabeth M. B. Mckall
- Kathleen Mell
- Joan Mercredi
- Lore Marie Mirwaldt
- John M. Moreau
- Gloria Morgan
- Jane Morley
- Teri Mosher
- Donald Murray
- Cheryl Mustard Berry
- Theodore Nemetz
- Rober Neron
- Kurt Neuenfeldt
- Patricia O'Connor
- John M. Orr
- Phillipe Patry
- Bonnie Pelletier-Maracle
- Robert Pelton
- Lawrence Richard Plenert
- James R. Posynick
- Christopher Poudrier
- Karen Prisciak
- Joe Quarton
- Douglas Racine
- Merrilee Rasmussen
- Kabir P. Ravindra
- Pamela M. Reilly
- Yvon Roberge
- Carol Roberts
- Harold Robinson
- John P. Sanderson
- Rita Scott
- Helen G. Semaganis
- Kelly Serbu
- Dirk Silversides
- Karen L. Snowshoe
- Roxane Stanners
- Huguette St-Louis
- Troy Sweet
- Ian Szlazak
- M. Gwendolynne Taylor
- Roxane Vachon
- Shirley R. Wales
- Anne Wallace
- Theresa M. Walsh
- Gavin Wood
- Milton (Mickey) Woodard
- Adrian C. Wright
- Barbara J. Yates
- Leanne Young
- Lennard Young
- Angela Zborosky
- Catherine Zuck

Adjudication Secretariat

Executive Directors:

- Jeffrey Hutchinson
- Akivah Starkman
- Shelley Trevethan
- Roger Tetreault

Hundreds of staff worked at the Adjudication Secretariat over the years. We would like to express our gratitude to all of the staff who put in long hours and tireless work to ensure that claimants were provided with excellent service during a very difficult time for them.

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Photos by Michael Tansey, Eric Lefebvre, Christi Belcourt and *IRSAS Telling Your Story* video

Independent Assessment Process

FINAL REPORT

Independent Assessment Process Oversight Committee 2021

IF YOU ARE FEELING PAIN OR DISTRESS BECAUSE OF YOUR RESIDENTIAL SCHOOL EXPERIENCES
YOU CAN CONTACT A 24-HOUR CRISIS LINE AT 1-866-925-4419

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INTRODUCTION

The Shingwauk Indian Residential School in Sault Ste. Marie operated between 1878 and 1970. The school site now has one of the largest collections of residential school history in the country.

It has taken extraordinary courage for the thousands of survivors that have come forward to speak publicly about the abuse they suffered. It is a testament to their resilience as individuals and to the strength of their cultures.[1]

On September 19, 2007, the Indian Residential Schools Settlement Agreement (IRSSA, or Settlement Agreement) was implemented. The IRSSA simultaneously signified a culmination, a continuation, and a commencement of efforts towards reparation and reconciliation for the history and ongoing impact of Canada's residential school system.[2]

In 1883, the government of Canada had formalized a policy of creating residential schools for Indigenous children with the establishment of three schools in Alberta and Saskatchewan. The residential school system – funded by the Government and administered by Christian Churches - was designed to separate children from their families in order to "civilize" them, and to "get rid of the Indian problem".[3] From then until the final federal residential school closed in 1997, more than 150,000 First Nations, Inuit, and Métis children attended these schools.

[1] The Right Honourable Stephen Harper, Prime Minister of Canada, "Statement of Apology to Former Students of Indian Residential Schools", Official Report (Hansard), Canada, Parliament, House of Commons. 39th Parl., 2nd sess., vol. 142, no. 110 (Ottawa: Parliament of Canada, 11 June 2008).

[2] The full text of the Indian Residential Schools Settlement Agreement (IRSSA) is available at: http://www.residentialschoolsettlement.ca/settlement.html

[3] Public Works Minister Hector Langevin, Hansard, 22 May 1883; Duncan Campbell Scott, Deputy Superintendent, Department of Indian Affairs, (1920), National Archives of Canada, Record Group 10, vol. 6810, file 470-2-3, vol .7, pp. 55 (L-3) and 63 (N-3), as cited in John Leslie, The Historical Development of the Indian Act, 2nd ed. (Ottawa: Department of Indian Affairs and Northern Development, Treaties and Historical Research Branch, 1978) p. 114. It should be noted that church-operated Indian Residential Schools predated confederation; the new policy was created to systematize and expand this already existing system

Spanning more than one hundred years and more than one hundred schools, the residential school experience was not the same for every child or in every location. Some former students talk about learning new subjects; about participation in sports, music, or dance; about a teacher who tried to be kind and sheltering. Some went on to higher education. But these stories are the exceptions. For most, the residential school system was profoundly negative and had a lasting impact on the children, on their families, and on their culture. Children as young as three were forcibly removed from their families and communities and taken to the schools. When they arrived, their clothes were often discarded and destroyed. They were often no longer called by their names but were given new English or French names, and numbers by which they were referred to throughout their years at the school. They were typically forbidden to use their language, follow their spiritual beliefs, or practise their cultures. Many schools prohibited parental contact, and children did not see their families for months or years at a time. At the school they could face extreme discipline and be forced to do labour. If they tried to escape, they were tracked down by the police and brought back to the schools where they were punished. Many of the students were subject to physical, psychological, and sexual abuse.

Beginning in the 1990s and continuing into the 2000s, organizations and individuals started to embark in concerted ways to acknowledge and address the legal, moral, and spiritual wrongs that the Indian Residential Schools legacy had inflicted.

An increasing number of former students began to file individual lawsuits against the Government of Canada and the Churches. Survivor groups were formed, and law firms launched class action suits on behalf of those former students.[4] When it was achieved in 2007, the Indian Residential Schools Settlement Agreement was the largest class action settlement in Canadian history and marked the culmination of many thousands of active or potential civil litigation claims.

At the same time, the IRSSA represented a step in a continuum of efforts, legal and otherwise, to come to terms with this dark chapter in the country's history. Churches had by then offered apologies for the residential schools; the Royal Commission on Aboriginal Peoples had called for a public inquiry into the schools[5]; dialogues and discussions had been undertaken and, ultimately, multi-party negotiations were launched to determine and achieve a comprehensive approach to addressing these deep and complex issues. The Indian Residential Schools Settlement Agreement was thus a continuation of a number of significant measures on a protracted and ongoing path toward recognizing and healing the past.

The IRSSA also signaled the commencement of several new initiatives. It created a Common Experience Payment, designating $1.9 billion to provide compensation for all surviving former residents of Indian Residential Schools. This marked the first time that compensation was awarded for the collective experience of all who had resided at those schools. The Settlement Agreement provided a five-year endowment for the Aboriginal Healing Foundation in the amount of $125 million, and set aside an additional $20 million for funding national and community-based commemoration projects. Furthermore, the Agreement established a Truth and Reconciliation Commission to compile the historical record and promote awareness of the Indian Residential School system, "to put the events of the past behind us so that we can work towards a stronger and healthier future… and pave the way to reconciliation."[6]

[4] In partial response to these claims, Canada commenced, in 2003, an out-of-court Dispute Resolution process to expedite the resolution of claims. This process is discussed in Chapters 3 and 4.
[5] Canada, Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples (Ottawa: Minister of Supply and Services, 1996).
[6] IRSSA, Schedule "N", p. 1.

As well, the Settlement Agreement created an Independent Assessment Process (IAP) to adjudicate claims and provide compensation for former students who had suffered abuse at residential schools. As it was part of a class action settlement, unless a class member opted out, the IAP became the only means for former students to advance claims of abuse; all class members who did not opt out of the Settlement Agreement would be bound by its terms, and unable to sue the government or the churches for issues emanating from the residential school experience.[7] Former students wishing to submit a claim under the IAP were given a five-year period in which to do so, with the deadline for applications being September 19, 2012. Ultimately, more than 38,000 Residential Schools survivors had filed claims under the IAP.[8]

More than 26,000 hearings were held in the IAP.

In the over 13 years since the signing of the IRSSA, the IAP held 26,707 claimant hearings, issued 27,846 awards, and awarded $3.233 billion in compensation.[9] It marked a unique experience in the history and legacy of Indian Residential Schools in Canada, and also – given its scale and approach - a unique undertaking in the resolution of civil litigation. It is thus vital at this juncture to capture in some measure the history, development, implementation, and impact of this core aspect of the Settlement Agreement. The Oversight Committee of the IAP hopes that its Final Report on the Independent Assessment Process will contribute to an understanding of the magnitude and complexities of this process, of the challenges in ensuring that the IAP would meet its objectives under the Settlement Agreement, and of the lessons that have been learned in shaping and delivering an undertaking of this nature and importance.

The Oversight Committee would like to acknowledge the many IAP claimants, stakeholders, and staff who have contributed to this Report. In particular, we would like to thank the tens of thousands of survivors who came forward to relate their personal histories and experiences at the residential schools.

The claims filed under the IAP have now been resolved and the work of the IAP itself is concluded.[10] However, the need to continue the healing journeys of residential school survivors, their families, communities, and Nations to work toward individual and collective reconciliation of the divisions caused and exacerbated by this important chapter of Canadian history, remains; so too does the need to address their impacts on contemporary Canadian society as a whole. This Report is dedicated to that ongoing journey.

[7] Section 4.06 (i) of the IRSSA allowed for claims to be litigated in certain specified circumstances: "…a Class Member who on or after the fifth anniversary of the Implementation Date had never commenced an action other than a class action in relation to an Indian Residential School or the operation of Indian Residential Schools, participated in a Pilot Project, applied to the DR Model, or applied to the IAP, may commence an action for any of the Continuing Claims within the jurisdiction of the court in which the action is commenced."

[8] Some of these were continuations of claims filed under the former Dispute Resolution process. Following the deadline for IAP applications, the Supervising Courts added several schools to the terms of the Settlement Agreement and provided for former students of those schools to submit IAP applications: The Courts (in Fontaine v. Canada (Attorney General), 2012 BCSC 839) also allowed a number of unsubmitted claims that had been handled by former claimant counsel David Blott to be deemed "accepted as filed" following the IAP application deadline: Chapter 4, footnote 78.

[9] In addition to this number of initial claimant hearings, the IAP also conducted separate hearings for witnesses and for alleged perpetrators, as well as claimant continuation hearings if required. The total number of awards includes those issued by adjudicators (23,425) and those resulting from the Negotiated Settlement Process (4,144). The total amount of compensation paid includes awards to claimants, disbursements and claimant counsel legal fees paid by the Government of Canada.

[10] The completion of IAP adjudication is subject to any cases that may in future be referred to the process by the Courts.

THE LEGACY OF INDIAN RESIDENTIAL SCHOOLS IN CANADA

Over the past several years, there have been numerous in-depth examinations of the history and experiences of Indian Residential Schools in Canada. Perhaps the most notable and comprehensive of these was contained in the Final Report of the Truth and Reconciliation Commission, whose mandate included the creation of "as complete an historical record as possible of the IRS system and legacy".[11] While it is not necessary to replicate these significant studies in this Report, it is important to understand the Indian Residential Schools Settlement Agreement, the IAP, and the experiences of residential school survivors, in the context of that history. The following, therefore, provides a brief description of the background and legacy of Indian Residential Schools in Canada.

History of Residential Schools in Canada

While attempts by missionaries to assimilate Indigenous peoples can be found as far back as the 17th century, the first known residential schools in Canada (then known as "Mission schools") can be traced to the 1820s.[12] These were boarding schools run by the Churches in Upper and Lower Canada, the Red River, and in British Columbia. Roman Catholic, Anglican, Presbyterian, and United Church clergy developed curricula and established and/or operated the schools to educate Indigenous children[13].

Proposals for a federally-supported residential school system began to emerge in the early 1800s, including the Bagot Report[14], seen as the foundational document for the federal residential school system.[15] Following Confederation, the Government of Canada began funding the establishment of the Indian Residential School system in Canada to meet its obligations under the Indian Act (1876), and treaty obligations to provide education. At the request of Prime Minister Alexander Mackenzie, Nicholas Flood Davin conducted a study of the boarding school concept used for "aggressive civilization" of Indians in the United States. The 1879 Davin Report promoted educating Indian children at industrial schools away from their families and cultural traditions to facilitate the destruction of Indigenous spirituality.[16] The objectives were based on the assumption that Indigenous cultures and spiritual beliefs were inferior to the European-Canadian culture. He noted:

"If anything is to be done with the Indian, we must catch him very young. The children must be kept constantly within the circle of civilized society."

Davin urged the Government to build and fund the schools to be run and operated by the Churches. To implement its policy of assimilation, in 1883 the Government of Canada funded three residential schools and relied on the Christian religious organizations to provide teachers and education. By 1900, 61 schools were in operation, in all provinces and territories except for New Brunswick and Prince Edward Island. This number grew to a total of 140.[17]

The Roman Catholic Church accounted for approximately 60% of residential school operations, the Anglican Church of Canada approximately 30%, and the United Church of Canada and Presbyterians 10%.[18]

[11] Canada and Plaintiffs and Independent Counsel and The Assembly of First Nations and Inuit Representatives and The General Synod of the Anglican Church of Canada et al, Indian Residential Schools Settlement Agreement Residential Schools Settlement Official Court Notice, (8 May 2006), Schedule N, Section 1 (e), http://www.residentialschoolsettlement.ca/IRS%20Settlement%20Agreement%20ENGLISH.pdf. See Truth and Reconciliation Commission of Canada, Honouring the Truth, Reconciling the Future. Summary of the Final Report of the Truth and Reconciliation Commission (Toronto: James Lorimer & Co., 2015). See also Aboriginal Healing Foundation, From Truth to Reconciliation: Transforming the Legacy of Residential Schools (Ottawa: Dollco Printing, 2008); Canada, Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples (Ottawa: Minister of Supply and Services, 1996); P. Fontaine, A. Croft, and the Truth and Reconciliation Commission, A Knock on the Door: The Essential History of Residential Schools (Winnipeg: University of Manitoba Press, 2015); K. Mahoney, "The Settlement Process: A Personal Reflection," University of Toronto Law Journal, 64, No.4, (2014); J. R. Miller, Shingwauk's Vision: A History of Native Residential Schools (Toronto: University of Toronto Press, 1996); J. S. Milloy, A National Crime: The Canadian Government and the Residential School System, 1879-1986 (Winnipeg, University of Manitoba Press, 1999); P. Regan, Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada (Vancouver: UBC Press, 2011).

[12] Truth and Reconciliation Commission of Canada, Honouring the Truth, Reconciling the Future.

[13] The United Church was formed in 1925 with the union of the Methodist Church, Canada, the Congregational Union of Canada, two-thirds of the Presbyterian Church of Canada, and the General Council of Union Churches.

[14] C. Bagot (The Bagot Commission), The Bagot Report: A Report on the Affairs of the Indians in Canada (Ottawa, Government of Canada, 1844).

[15] Milloy.

[16] Nicholas Flood Davin, Report on Industrial Schools for Indians and Half-Breeds, Report produced for the Minister of the Interior (Ottawa: s.n., 1879).

[17] There were 130 Indian Residential Schools included in the 2007 Indian Residential Schools Settlement Agreement. An additional eight institutions were added through Article 12 of the Agreement and two schools were added by the Courts, bringing the total number of recognized schools to 140.

[18] "Oblates in the West: The Alberta Story", Heritage Community Foundation Alberta Online Encyclopedia, University of Alberts, 2009 , http://wayback.archiveit.org/2217/20101208160339/http://www.albertasource.ca/oblatesinthewest/eng/index.html.

In the beginning, residential schools were poorly attended, as Indian agents and local clergy had a hard time convincing parents to send their children to these schools. Small schools on or near the reserves initially were more popular, but the industrial school model began to dominate: in part because of the cost effectiveness of larger facilities, but also because removing children from their families and communities drew them farther from their language and traditional practices.[19]

Attendance issues were addressed by regulations intended to allow Indian Agents and Justices of the Peace to take children from parents if it was believed that the school would provide a better environment for the child. Truant children were returned against their will or that of their parents, but even parents who voluntarily placed their children in these schools were often not given permission to visit nor to remove the students without approval from the Department of Indian Affairs. In 1920, an amendment to the Indian Act made day or residential school attendance compulsory for status Indians between the ages of seven and fifteen.

Enrolment in residential schools began to drop by the 1950s, as the Government created day schools or funneled children into provincial systems. Some schools were closed, and the remainder restructured to provide schooling for children thought to be "at risk". The Churches also began to back away in the face of active resistance to the Government of Canada's agenda of assimilation by Indigenous peoples and by their own congregations. The residential school system underwent a considerable re-organization in 1969, when Canada assumed sole operational and administrative responsibility for the schools.[20] Over the next five years, almost two dozen residential schools were closed. However, a small number of Government-run schools remained open into the 1990s. The last residential school run at least in part by the federal Government – Kivalliq Hall in Rankin Inlet, Nunavut – operated until December 31, 1997.

From 1883 to 1997, 150,000 First Nations, Métis and Inuit children were forcibly removed from their homes, families, and communities, and placed into Indian residential schools across Canada. Many generations of Indigenous children from the same families and communities attended these schools.

Residential School Experience

With the overall intent of assimilating Indian children into European-Canadian culture, the goal of residential schools was to ensure that children lost their identity, individuality and family ties. Far away from parental oversight of their intellectual, cultural and spiritual development, it was thought that Indian children would become integrated into "Canadian" society and that, over time, Indian communities would cease to exist. In this way, the Truth and Reconciliation Commission concluded that residential schools were part of a policy of cultural genocide, focused on eliminating Indian language, culture and religion within the Canadian Confederation.[21]

As cited earlier, the experiences of students who attended Indian Residential Schools are now well-documented in a number of reports. For its part, the TRC spent six years travelling across Canada listening and giving a voice to more than 6,750 Indigenous survivors who told about their experiences at residential schools at various TRC events.

For most students, when they arrived at the residential school they were separated from siblings, stripped of their belongings and given unfamiliar clothes and haircuts. Often children were given new names and a number. Living in an unfamiliar environment, they were forced to speak in a new language and to adopt a new religion. The TRC quoted one survivor:

"I wasn't aware at that time that my grandma was gonna' leave me there. I'm not even sure how she told me but they started holding me and my grandma left and I started fighting them because I didn't want my grandma to leave me, and, and I started screaming, and crying and crying…. They let me go, and they started yelling at me to shut up… they had a real mean tone of voice."

[19] In 1893, the Government of Canada implemented a system of per capita grant funding for industrial schools. This provided a financial incentive for the schools to maximize their attendance, up to the caps established by the Government: see Truth and Reconciliation Commission of Canada, Canada's Residential Schools: The History, Part 1 Origins to 1939, Final Report of the Truth and Reconciliation Commission, Vol. 1 (Montreal: McGill-Queen's University Press, 2015), p. 211, and Miller, p. 126. In 1890, Hayter Reed, then Indian Commission for the North-West Territories and Manitoba, wrote that "industrial schools should not be located close to reserves because 'the more remote from the Institution and distant from each other are the points from which the pupils are collected, the better for their success.'" Truth and Reconciliation Commission of Canada, Canada's Residential Schools, p. 208.

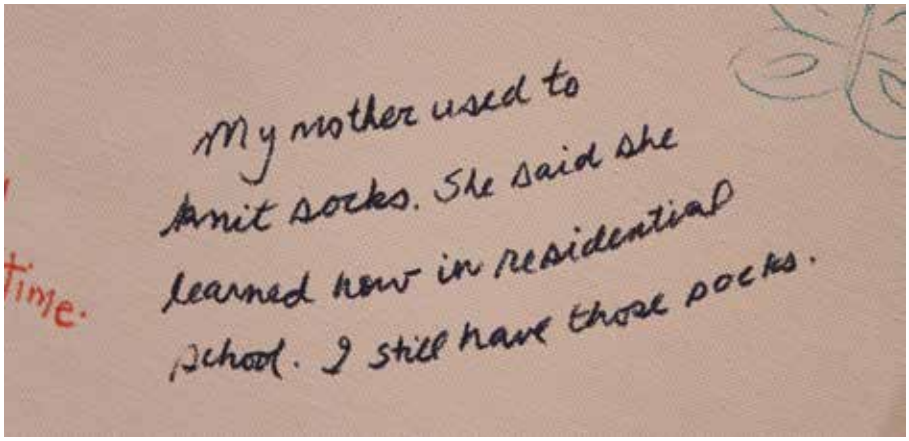
[20] This emanated at least in part following a ruling by the Ontario Labour Relations Board that residential school staff were Crown employees.

[21] Truth and Reconciliation Commission, Honouring the Truth, Reconciling the Future.

Survivors often described overcrowded classrooms, unqualified teachers, inadequate instruction and forced child labour. Students were often provided with limited academic education and taught basic trades to become self-supporting farmers or labourers. Often, in addition to learning a trade, students were required to perform chores to maintain the day-to-day operation of the schools. They grew and prepared food, repaired their clothing, raised stock, hauled water, chopped wood, and more. The TRC concluded that the residential school system was chronically underfunded, and that the federal Government did not develop a system-wide policy on teacher qualifications. As a result, teaching staff was "under-qualified, poorly paid, and overworked".

Some survivors also spoke of constant hunger. There was little consideration given to the nutritional requirements of growing children, leaving many students vulnerable to malnutrition and illness. During this time, Canadian Government scientists performed nutritional tests on some students and knowingly kept some students undernourished to serve as the control sample.[22] Living conditions in residential schools were substandard, with overcrowding, poor sanitation, inadequate heating, and lack of medical care leading to high rates of influenza and tuberculosis.[23] An examination of documents in the National Archives of Canada found that:

"As many as half of the aboriginal children who attended the early years of residential schools died of tuberculosis, despite repeated warnings to the federal Government that overcrowding, poor sanitation and a lack of medical care were creating a toxic breeding ground for the rapid spread of the disease."[24]



Corporal punishment was used on children to enforce assimilation and other school rules. Some students were struck, strapped, kicked and whipped for infractions many did not understand. They were publicly humiliated, had their heads shaved and were locked up for running away. They were severely disciplined for speaking their mother tongue. There are accounts of students being shackled to beds and even having needles inserted in their tongues for speaking their native languages.[25]

Sexual exploitation of residential school children by Church and lay staff was also common. However, complaints were ignored, improperly investigated or dismissed, and some Government and Church officials covered up the sexual abuse to protect reputations. Families were not informed that their children had been victims of sexual abuse - abusers often blamed their victims and threatened them with eternal damnation if they reported the abuse they suffered. Although not every student who attended a residential school suffered physical or sexual abuse, and not every student received a poor education, this was far overshadowed by the tens of thousands of students in the residential school system who faced neglect as well as emotional, physical and sexual abuse from teachers and administrators.[26]

The Impact of Residential Schools on Survivors and Future Generations

Based on the accounts it heard, the TRC concluded that many Indian Residential School survivors experienced a world dominated by fear, betrayal, loneliness, lack of affection, and loss. The devastating effects of the schools resulted in trauma that has been felt through succeeding generations of Indigenous people in Canada. A residential school survivor commented:

"I did attend residential school… but my mom also went through the school. So it's an experience that had an impact intergenerationally…. They experienced the abuse and the cycle continued in the communities and I was one of them that had… abuse."

[22] J.S. Mosby, "Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952", *Social History,* 46, No. 91 (2013), pp. 145-172.
[23] Milloy.
[24] B. Curry & K. Howlett, "Natives Died in Droves as Ottawa Ignored Warnings", *Globe and Mail,* 24 April 2007.
[25] According to the TRC's report, "No matter what the European standards of the day might have been, residential school discipline clearly violated the norms by which Aboriginal parents expected their children to be treated." p. 523.
[26] Miller.

The ongoing effects of Residential Schools are revealed in the low levels of educational attainment and high rates of unemployment, under-employment, poor health, poverty and suicides among children of survivors. It is shown in the disproportionate number of Indigenous children apprehended by child welfare agencies and involvement of Indigenous people in the criminal justice system. It has manifested in problems with anger, substance abuse, domestic and sexual violence, and depression.[27]

One survivor described the impact that both parents attending residential school had on her:

"My dad was an alcoholic, when my mom drank – she had a problem. My dad… was in residential school for nine years. My mom was in residential school for three years… The shame that I felt was the shame of being Aboriginal."[28]

Studies of the effects on children of single and repeated trauma are still relatively new. Some survivors of trauma experienced what has been described as a loss of spirit and hope accompanied by recurring issues with anger and fear, self-blame, sexual dysfunction, and an inability to set and maintain boundaries. A study in 2010 identified the intergenerational legacies of residential school abuse to be the loss of meaning, family, childhood, and feeling.

"These losses to the mental, emotional, physical and spiritual well-being of the children who attended residential schools have impacted our communities intergenerationally right up to the present day."[29]

Other Canadian researchers have focused on the cumulative nature of historical trauma, arguing that the more generations within a family that attended residential schools, the poorer the physical, mental and emotional well-being of the next generation.[30] They found that this occurs even if a descendant has never been told of the residential school abuse and trauma experienced by family members. For example, a person whose parent and grandparent attended residential schools may experience more stressors in their life than someone who had one family member who attended a residential school, and most likely more than a person who had no ancestors with a residential school history.

An Elder described how she raised her children in the way that she had been raised, without knowing that her mother's child-rearing practices were a legacy of her experience in a residential school:

"She held everything in there. I guess she never got the attention, the affection, the love that she wanted. So she got used to that and that's how she raised us. We didn't dare go near her, grab her all of a sudden. It was never being playful with us too, nothing…. I raised my own children that way because I thought that was the way of life. And with me not knowing that was how she went through at the school, and I never knew she went to residential school and I didn't even hear nothing about it."

The legacy of residential schools through the generations is illustrated through these words of a descendant of survivors:

"As her child, do you feel the effects passing through the generations? I think it came down to… when grandmother was taken away... she wasn't nurtured the way a mother should nurture her kids, her children. She didn't get that from her mother. So I feel like it was passed on to my mother and onto me. Expressing my true feelings like how easy it is for some people to say I love you to their children. It's hard for me."

[27] R. Corrado and I. Cohen, *Mental Health Profiles for a Sample of British Columbia's Aboriginal Survivors of the Canadian Residential School System* (Ottawa: Aboriginal Healing Foundation, 2003).
[28] Unless otherwise indicated, quotes from residential school survivors and stakeholders in the IRSSA are drawn from a series of interviews and focus groups conducted by the Indian Residential Schools Adjudication Secretariat. Details on the process and results of those interviews and focus groups are contained in Chapter 7 ("The IAP Experience – Claimants' and Stakeholders' Perspectives") of this Report.
[29] C. Partridge, "Residential Schools: The Intergenerational Impacts of Residential Schools on Aboriginal Peoples," *Native Social Work Journal,* Vol. 7 (2010), pp. 54-55.
[30] A. Bombay, K. Matheson, and H. Anisman, "The intergenerational Effects of Indian Residential Schools: The Implications for the Concept of Historical Trauma," *Transcultural Psychiatry,* 51, No. 3 (2014), pp. 320-338; and A. Bombay, K. Matheson, and H. Anisman, "Perspectives on Intergenerational Transmission of Trauma: The Case of Aboriginal Peoples in Canada", in *Social Issues in Living Colour: Challenges and Solutions from the Perspective of Ethnic Minority Psychology,* eds. Theodore Cooper et al, Vol. 3 (Santa Barbara: Praeger Press, 2017).

THE INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT


Phil Fontaine

The Quest for Redress and Healing

For many years, accounts of residential school experiences and the resulting trauma were hidden. Sometimes only the abused child knew; sometimes family and community members were aware. Because of self-blame, shame, and fear, few came forward to break their silence and accuse someone of abuse. As residential school survivors explained:

"I was still living… with a lot of shame and fear. The shame that I felt was the shame of being Aboriginal and the fear I felt that I lived with sometimes was unbearable, that I too turned to alcohol and drugs."

"Our first reaction was that we can't speak out against the system or against the school or against the Church, the Government because they were the voice of authority and it's been hammered into us all over these years that we don't do that."

That began to change significantly in 1990 when the then Grand Chief of the Assembly of Manitoba Chiefs, Phil Fontaine, publicly disclosed the sexual and physical abuse he had endured at a residential school and called for a public inquiry. He said:

"In my grade three class... if there were 20 boys, every single one of them... would have experienced what I experienced. They would have experienced some aspect of sexual abuse."[31]

Subsequently, thousands of former students came forward to speak about the abuse they had suffered.

But while Grand Chief Fontaine's public statement shone a light on the reality of the residential schools and helped pave the way for many former students to come forward and relate their own personal histories, demands for redress for abuse and mistreatment at the schools had begun several decades earlier.

Litigation:

As far back as the mid 1940s, there had been criminal prosecutions for sexual abuse that occurred at residential schools.[32] While these were important in terms of cataloguing some of the crimes that had taken place and identifying and punishing some of the perpetrators, they did not of themselves provide compensation or restitution to the victims.[33] Increasingly then, civil law suits were launched by former residential school students, seeking compensation from the Government of Canada and/or the Churches for torts committed at the schools.[34]

[31] "Phil Fontaine's shocking testimony of sexual abuse," *The Journal,* Canadian Broadcasting Corporation (30 October 1990).

[32] In the 1930s, there was a criminal investigation into sexual abuse at the Kuper Island Residential School in British Columbia. The case was closed without public disclosure. In 1995, a former Kuper Island employee pled guilty to three charges of indecent assault and gross indecency. "Kuper Island Residential Schools", National Centre for Truth and Reconciliation, University of Manitoba, https://memorial.nctr.ca/?p=1456 Prosecution for sexual assault at a residential school occurred as early as 1945, and for physical assault as early as the late-1920s.

[33] In some cases, criminal cases were followed by civil actions that did lead to individual compensation. For example, the administrator of the Gordon Residential School residence, William Starr, was imprisoned for criminal charges and was also named as a defendant on more than 400 civil claims. Similarly, Alberni School dormitory supervisor Plint (a defendant in *Blackwater v. Plint,* referenced below) was criminally convicted of sexual abuse prior to being named in the civil lawsuit. In the *Blackwater v. Plint* case, the Church and Canada admitted that "acts of sexual abuse did occur" for those plaintiffs for whom a criminal conviction against Plint had been entered. *Blackwater v. Plint,* 2001 CanLII 997 (BCSC), para. 15.

[34] A synopsis of significant aspects of residential schools litigation is contained in Mayo Moran and Kent Roach, "Introduction: The Residential School Litigation and Settlement," *University of Toronto Law Journal,* 64, No. 4 (August 2014), 479-485, and other articles in that volume.

However, many at the time felt that civil litigation was a flawed and ultimately inadequate means of obtaining redress for the abuse suffered at residential schools. In an analysis of legal actions dealing with sexual abuse at the schools, the Dean of Law of the University of Ottawa concluded that: "Canadian tort law has failed to address the unique national debt we owe to Aboriginal people arising from residential schooling."[35]

There were several factors that contributed to this failure. First, there were statutes of limitations that varied from province to province on initiating legal proceedings. If these time limitations did not preclude a civil action, plaintiffs faced significant difficulties in establishing the credibility of their claims. The inherent challenges in proving sexual assault in the Courts were exacerbated in cases related to residential schools by the length of time that had elapsed since the alleged assaults, the absence of some schools' records, the death of many alleged perpetrators, the vulnerable state of many plaintiffs who in some cases had drug and alcohol dependency problems and/or criminal records, and the cultural differences that existed between those plaintiffs and the Courts themselves. In this context, it was difficult to meet the relatively high standard of proof required by the Courts to prove the claims of abuse.[36]

Even should the abuse and mistreatment be proven, there were further challenges in assessing financial damages. In this regard, not only would actual costs – such as expenses incurred for care - need to be substantiated, but loss of past and future earnings would need to be calculated. As well, the plaintiff needed to show that the school experience actually caused the harm: other factors that may have contributed to the damages – such as sexual assaults suffered prior to or following attendance to the school – would be considered in the calculation and attribution of compensation. This could be even more difficult in the residential school context, where emotional damages were often as significant as physical ones, and where abuse occurred within a broader context of cultural loss that may also have contributed to psychological and emotional harm.

A further challenge in litigation was establishing the extent to which the operators of the schools could be held responsible for the actions of individual staff members. Although the Supreme Court of Canada found that both the Government of Canada and the Church could be vicariously liable for sexual misconduct at a residential school, it was still extremely difficult to establish that liability.[37] In addition to the legal challenges for claimants, the trial process could take an enormous psychological and spiritual toll on claimants and witnesses.

[35] Bruce Feldthusen, "Civil Liability for Sexual Assault in Aboriginal Residential Schools: The Baker Did It," *Canadian Journal of Law and Society/Revue Canadienne Droit et Société,* 22, No. 1 (2007).

[36] The IAP stipulated that: "Except as otherwise provided in this IAP, the standard of proof is the standard used by the civil courts for matters of like seriousness. . . the standard of proof remains the balance of probabilities in all matters." While the standard of proof generally remained the same, other aspects of the IAP, such as the less stringent causation test and the burden of proof shifting to the Government in relation to certain student on student claims, made it easier for the claimant to meet the requirements for compensation in the IAP in comparison with litigation.

[37] The Supreme Court ruled that employers could be vicariously liable for sexual misconduct in *Bazley v. Curry,* 2 S.C.R. 534 S.J.C. No. 35 (1999). In *Blackwater v. Plint,* [2005] 3 S.C.R. 3, SCC 58, the Supreme Court held that both the Government of Canada and the United Church of Canada were vicariously liable for sexual assaults committed by a supervisor at the Alberni Indian Residential School. While the Court ruled that residential school survivors should be compensated for sexual assault, it also ruled that such survivors were not entitled to compensation for physical and mental abuse or the loss of Aboriginal language and culture. Also, in another ruling in 2005, a majority of the Supreme Court ruled that the Church and Government of Canada could not be held liable for sexual abuse at Meares Island school as there was not a strong enough connection between the abuse and the employment: *E.B. v. Order of Oblates of Mary Immaculate in the Province of British Columbia,* [2005] 3 S.C.R. 45,2005 SCC 50.

Notwithstanding these legal hurdles, a large and increasing number of former residential school students sought redress for their experiences through the Courts. Prior to the Indian Residential Schools Settlement Agreement in 2007, there were as many as 20,000 active cases in litigation, many of which had more than one named plaintiff. There were also approximately a dozen class actions filed on behalf of former students.[38]

As well, the inability of Government and Churches to acknowledge loss of language and culture in the forum of civil litigation meant that this was an issue in hundreds of cases, complicating the litigation and impeding progress on other remediation. Little merit was accorded these claims by the Courts, which did not recognize cultural loss as a cause of action. Thus, the focus in litigation was on sexual and physical abuse, rather than on the destructive collective ramifications of the residential school system, or on other elements of redress that could aid in healing, commemoration, and reconciliation.[39]

On a pragmatic level, litigation was both costly and time-consuming. Prior to the Settlement Agreement, out of close to 20,000 claims only 2,200 cases had been settled, and only 36 trials had taken place.[40] One (albeit atypical) trial related to allegations of abuse at the Alberni Indian Residential School *(Blackwater v. Plint)* lasted almost a decade including a trial of 115 days spread out over three years. The Cloud class action lawsuit had taken five years just to reach the point of certification without addressing any issues related to the merits of the claims. The Government of Canada estimated that it would take 53 years to resolve the civil cases in traditional litigation, at a cost of $2 billion in administrative costs alone.[41] It was also calculated that, in civil litigation, it cost $3 in legal and Court fees for every dollar of compensation paid to former students. Individual residential school survivors - who provided the impetus for civil litigation - were required to retain legal counsel and bear the considerable costs of litigation. The cost of litigation was also a motivating factor for some Church entities - who were experiencing financial pressures rooted in their aging demographic - to explore alternative approaches to resolution.[42]

Increasingly, traditional civil litigation was considered as not sustainable for resolving the outstanding claims. Within the litigation framework itself, a Modified Litigation Plan was implemented in 2005 for resolving residential schools claims in British Columbia and the Yukon. Developed through extensive discussion among counsel involved in these claims, this Plan was aimed at addressing the "need to streamline litigation so that the resolution of IRS claims would be achieved in an honourable, but more expeditious manner and still meet the rigours of public scrutiny."[43] While the Modified Litigation Plan did not ultimately have the scope to rectify all concerns regarding residential schools litigation, it did incorporate such concepts as the removal of the issue of apportionment of liability as between defendants, the removal of the need for expert reports for some types of claims, a less formal process for residential school survivors to describe their personal experience, an apology, the provision of counseling and health supports, and commemoration: concepts that were eventually carried through into the Alternative Dispute Resolution Process and the Independent Assessment Process.

Eventually, attention began to focus on a comprehensive national class action settlement as the most effective way to structure a resolution to the residential school legacy. A class action, it was felt, would serve to limit liability, provide a faster and more efficient means of settling the plethora of outstanding claims, and lead to finality in the legal repercussions of the residential school experience. A pan-national class action could also provide the organizational framework for commencing discussions towards a comprehensive resolution.

[38] However, prior to the Settlement Agreement, only one class action suit had been certified by the courts: *Marlene Cloud et al v. The Attorney General of Canada et al (2004),* 73 O.R. (3rd) 401 (CA).

[39] Zoë Oxaal, "'Removing that Which Was Indian from the Plaintiff': Tort Recovery for Loss of Culture and Language in Residential Schools Litigation", *Saskatchewan Law Review,* 68, No. 367, (2005), 367-402. In most provinces physical abuse claims were barred by limitations. Ontario barred both physical and sexual abuse claims, but had no limitation on breaches of fiduciary duty, unlike other provinces, and therefore both kinds of claims could proceed there. In most of the rest of the country it was sexual abuse claims alone that proceeded.

[40] M. Moran, "The Role of Reparative Justice in Responding to the Legacy of Indian Residential Schools," *University of Toronto Law Journal,* 64, no. 4 (2014), 529-565.

[41] Canada, Indian Residential Schools Resolution Canada, *Performance Report for the period ending March 31, 2003* (Ottawa: Treasury Board of Canada Secretariat, 2003).

[42] For example, over a period of fifteen years the average age of priests at the Diocese of Antigonish, Nova Scotia, rose from 55 to 61, while the number of both priests and church attendees declined. As well, financial pressures also arose from legal obligations related to sexual abuse that occurred both outside and inside of Indian Residential Schools: that Diocese alone was required to pay $15 million to victims of sexual abuse by its priests over the past fifty years. These factors combined to force the diocese to sell properties, liquidate bank accounts, and close churches: Aaron Beswick, "Diocese starts church review," *Chronicle Herald,* 13 August 2013, p. A3.

[43] Tanya L. Jorgenson, Associate Director, Aboriginal Law, BC and Yukon Region, Department of Justice Canada, Correspondence titled "Re: Modified Litigation Plan for IRS Claims in British Columbia and the Yukon," 20 December 2004.

Dispute Resolution and the Alternative Dispute Resolution Program:

Parallel to the process unfolding in and around the Courts, many individuals and organizations had been exploring other means for addressing the legacy of residential schools. In light of the known limitations of the criminal justice system and civil litigation in dealing with the ramifications of institutional abuse, people began to look for other, more meaningful and helpful ways to provide redress for those harms.

In 1991, the federal Government established a Royal Commission on Aboriginal Peoples with a comprehensive mandate to investigate the evolution of the relationship among Aboriginal peoples, the Canadian Government, and Canadian society. The Royal Commission held 178 days of public hearings in 96 communities, and issued its report in 1996.[44] The report presented several recommendations addressing residential schools, including the establishment of a public inquiry, compensation for communities to help in the healing process, and funding for treatment of individuals and their families.

Two years later, the Government of Canada released its response to RCAP in a policy framework titled *Gathering Strength – Canada's Aboriginal Action Plan.*[45] This included a Statement of Reconciliation acknowledging historical injustices to Indigenous peoples in Canada, and the establishment of the Aboriginal Healing Foundation with a $350 million fund for "community-based healing as a first step to deal with the legacy of physical and sexual abuse at residential schools". The Government also "committed to assisting in community healing to address the profound impacts of abuse at Residential Schools", and the Minister of Indian and Northern Affairs, the Hon. Jane Stewart, made a general commitment to "negotiate rather than litigate".

During 1998-99, Government representatives, Church officials, Indigenous organizations, and former students engaged in a groundbreaking series of nine "exploratory dialogues" to develop solutions and principles for the resolution of residential school claims outside of litigation.[46] Following these dialogues, the federal Cabinet in 1999 gave its approval for the Department of Justice and Department of Indian Affairs and Northern Development Canada to launch dispute resolution pilot projects with a view towards managing litigation and resolving abuse claims. This marked a significant departure from the Government's approach up to that point, which had been to respond to claims brought in litigation, rather than to develop proactively alternative dispute resolution approaches to addressing these claims.

The pilot projects were established on a group basis, recognizing that the harms done were not just to individuals but also had collective effects on families and communities. The first of these involved former students of Grollier Hall, which had been the subject of criminal justice proceedings that had resulted in a number of convictions for assault. Grollier Hall was a Roman Catholic residential school that opened in 1959 in Inuvik. In 1962, former supervisor Martin Houston was charged, convicted, and sentenced to ten years in jail for the sexual abuse of students.[47] In 1997 and 1998, three other former supervisors of the school were charged and sentenced for sex offences. During the criminal trials, victims and witnesses were subject to cross-examination, to a judicial process that was culturally removed from their own experiences, and to a lack of emotional and psychological support at an extremely traumatic time. One consequence of the Grollier trials, however, was that many victims came together on their own to provide support to each other throughout this process. This mutual support constituted an important foundation for and dynamic in the pilot project.

In the group approach adopted in some pilot projects, while former students were required to submit individual claims and hearings were conducted and compensation determined on an individual basis, each group provided a community-based forum for mutual support. Hearings for individuals were often held in the same facility, and meals could be held collectively allowing claimants (and often their families) to share experiences and support. After individual decisions for the members of the group were issued, there could be an event such as a feast, speeches, or commemorative project, providing an opportunity for claimants and their families to share in a positive experience and a form of redress at the community level. Indeed, in a formula that commenced with Grollier and was adopted in some subsequent pilots, an amount of compensation was put into a trust for the group, to be utilized for collective community purposes in the future.[48]

[44] Canada, Royal Commission on Aboriginal Peoples.
[45] Canada, Minister of Indian Affairs and Northern Development, *Gathering Strength: Canada's Aboriginal Action Plan* (Ottawa: Minister of Public Works and Government Services Canada, 1998).
[46] K. Mahoney, "The Settlement Process: A Personal Reflection." A summary of these dialogues is published in Canada, Minister of Indian Affairs and Northern Development, *Reconciliation and Healing: Alternative Resolution Strategies for Dealing with Residential Schools Claims* (Ottawa: IAND, 2000).
[47] In 2004, Martin Houston pled guilty to three additional charges related to sexual offences at Grollier.
[48] One variant of this approach was adopted in claims related to Lower Post. There, individual claims were settled by a chosen negotiating committee. The settlements were totaled and then divided equally among the claimants. The committee did not disclose the amounts of the "individual" settlements. The "mandatory set aside" method of funding group activities was the subject of significant negative reaction from Indigenous organizations and individuals, who regarded it as a paternalistic approach to the treatment of claimants' compensation. It was not carried forward into the Dispute Resolution Model or the Independent Assessment Process.

These pilot projects were designed to test alternative approaches to dispute resolution, and adopted a number of features that distinguished them from the traditional civil litigation model.[49] Each pilot project was unique but could include the following features:

- For most projects, a process in which claimants would not be questioned by Government counsel or Church counsel
- An independent fact finder chosen by the parties whose role could include an inquisitorial approach (the "inquisitorial model")
- Less reliance on expert reports
- The availability of healing and emotional supports throughout the process
- Hearings held in informal settings, without the "trappings" of a Court
- The ability of claimants to use traditional or cultural practices – such as a cleansing or prayer – prior to the hearing

In 2001, Canada established a separate department, the Office of Indian Residential Schools Resolution Canada (IRSRC), to co-ordinate resolution of residential school abuse claims. The Department continued consultations with affected parties, which in 2003 culminated in a "National Resolution Framework".

The Framework retained the option to settle claims through litigation, but added an Alternative Dispute Resolution (ADR) program.[50]

The Framework also provided for a comprehensive Mental Health Support Program (run by Health Canada) to ensure claimants and their immediate family members had access to mental health counselling and emotional support services.

Drawing on the experiences of the pilot projects, ADR adopted the "Dispute Resolution Model for Indian Residential School Abuse Claims" as an alternative approach to traditional civil litigation.[51] This Model utilized a grid for the determination of compensation based on the abuse suffered and the harms incurred.[52] Compensation amounts were developed by the Department based on the medians established in case law. The compensation grid included recognition of consequential loss of employment, education, or training opportunity. ADR incorporated the elements of the pilot projects aimed at providing a more supportive and expeditious process than civil litigation, and provided additional funds for future care, for counselling and medical or psychiatric treatment. To some extent, ADR also addressed the contentious issue of full compensation being provided to claimants for specified proven claims, regardless of any apportionment of liability between the Government and the Churches for abuses committed by school staff.[53]

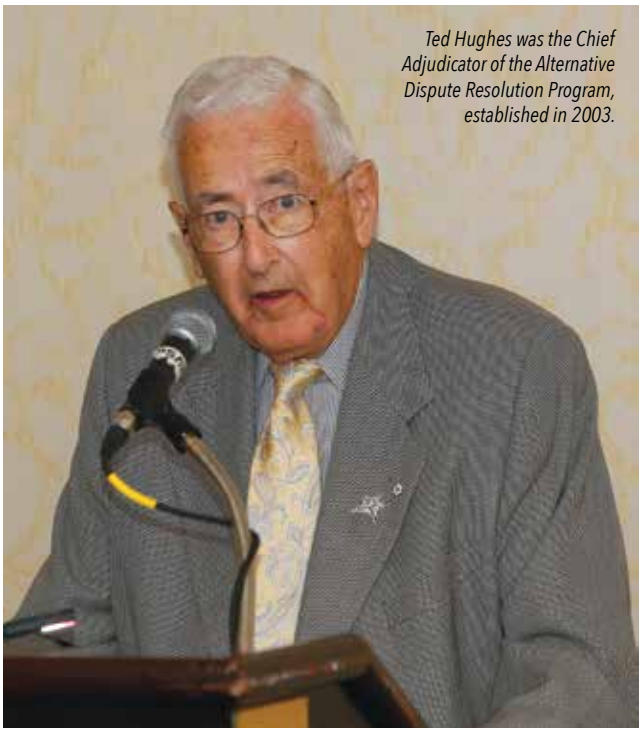
[49] As noted earlier, some of these approaches had also begun to feature in the modified litigation approach to residential school claims.

[50] The program based on the Dispute Resolution Model is variously referred to as "DR" and "ADR": cf. The Hon. Ken R. Halvorson, *Indian Residential School Abuse Claims: A Lawyer's Guide to the Adjudicative Process* (Toronto: Thomson Canada, 2005); Canada, Standing Committee on Aboriginal Affairs and Northern Development, Report on the *Effectiveness of the Government Alternative Dispute Resolution Process for the Resolution of Indian Residential School Claims* (Ottawa: House of Commons, 38th Parliament, 1st Session, 2004); and Canada, Indian Residential Schools Resolution Canada, *2004-2005 Departmental Performance Report* (Ottawa: Minister of Public Safety and Emergency Preparedness, [2005]). For sake of consistency, it is referred to herein as "ADR".

[51] A detailed description and operational analysis of the Dispute Resolution Model is presented in Halvorson.

[52] A "compensation grid" was also utilized by the Irish Redress Board established in 2002 to deal with claims related to child abuse in that country's institutional care system. However, in the Irish model, 75% of compensation was based on consequential harms - in which causation had to be proven according to strict court standards - and the remainder on the triggering act. In the ADR and IAP models, the principal compensation was more for the act than the consequential harms, but for standard track claims the proven harm needed to be only "plausibly linked" to the proven act, rather than the "causation" having to be assessed according to the stricter standards a court would apply.

[53] In 2001, the Hon. Herb Gray was appointed to lead discussions between Canada and the churches on the apportionment of liability for abuse claims. As a result, Canada agreed to provide 100% compensation for specified proven claims of abuse after April 1969, and to share compensation with the churches for specified proven abuses prior to that time. However, at the time of ADR, the Catholic Church entities had not signed contribution agreements with Canada, and only some of those entities decided to pay their 30% share on a case-by-case basis. When the IAP was implemented, in addition to the share of compensation Canada had already paid to claimants who were awarded compensation in the ADR process, Canada also provided an additional 30 % payment to ADR claimants who had not received the Church's share of the compensation.



Ted Hughes was the Chief Adjudicator of the Alternative Dispute Resolution Program, established in 2003.

At the same time, however, the parties wanted to ensure that the ADR process contained a rigorous enough validation process so as not to cast doubt on compensated claims and thereby diminish the veracity of the residential school experience and legacy. This concern over the validation of claims was strongly influenced by the 2002 report by the Hon. Fred Kaufman on the Nova Scotia Government's compensation program regarding abuse at the Shelbourne Youth Centre. In 1996, the provincial Government had implemented an alternative dispute resolution process for providing compensation to victims of abuse at the provincially operated institution. In his report, Kaufman found that the province's program "was seriously flawed. So flawed that it left in its wake true victims of abuse who are now assumed by many to have defrauded the Government, innocent employees who have been branded as abusers, and a public confused and unenlightened about the extent to which young people were or were not abused while in the care of the Province of Nova Scotia."[54]

As a result, the ADR process required that Canada screen applications for eligibility, and that claimants had the burden of proof - on the balance of probabilities - for allegations of abuse. Claimants' counsel were responsible for gathering and providing records relevant to the claims, including a list of mandatory documents required to prove certain levels of consequential harms and loss of opportunity. While individuals named in claims as perpetrators of abuse were not allowed to attend claimants' hearings, they were accorded the right to be informed of the allegations made, and the right to make representations in a separate hearing. Ultimately, the determination of the credibility of the claims and of the factors influencing the award rested with the adjudicator.

With the advent of ADR, an Indian Residential Schools Adjudication Secretariat, headed by a Chief Adjudicator, was established within IRSRC to administer the dispute resolution process.[55] Unlike in the pilot projects - where "independent fact finders" could be agreed to by the parties - ADR adjudicators were initially selected by a committee of representatives from Aboriginal organizations, Claimants' counsel, Churches and Canada, and then assigned to cases by the Chief Adjudicator, and could only be dismissed during their term on approval of the Chief Adjudicator. These moves were intended to provide for a separation between the independent adjudicators that would hear and decide ADR cases, and the representatives of the Government Department that would be acting as defendant in those cases.

While the ADR retained a group component, it was primarily focused on individual claims. Claimants could still have the option to file regular lawsuits, participate in a class action, negotiate a settlement, or apply to the ADR program. Once a claim was accepted into ADR by Canada, the Government was bound to pay compensation in accordance with the adjudicator's decision. Claimants, on the other hand, were only obliged to accept the award and sign a release with respect to civil litigation after the decision was issued.[56] When an award was issued and accepted, Canada would provide additional funds in the amount of 15% of the award to cover the legal fees of the claimant's counsel.[57] Claimants were permitted to participate in ADR without legal representation, and to that end a detailed "plain language" guide was prepared by Canada to assist them through the process.

More than 7,600 ADR claims were filed between November 2003 and March 2007.

[54] The Hon. Fred Kaufman, *Searching for Justice: An Independent Review of Nova Scotia's Response to Reports of Institutional Abuse* (Halifax: Province of Nova Scotia, 2002).
[55] The Hon. Ted Hughes was selected as the ADR's Chief Adjudicator by representatives of Canada, churches, Indigenous organizations, and lawyers representing former students. He functioned in the capacity of an independent contractor who could only be terminated by the Chief Adjudicator's Reference Group, a body composed of representatives of those organizations.
[56] The initial design of ADR was to require a claimant Release prior to a hearing, but that was changed following strong resistance from survivor groups. The Release expunged further claims against Canada and the churches, with the exception of those related to loss of language and culture (which was not covered in ADR).
[57] ADR also included a more streamlined "Process B" procedure, to be used for cases of "wrongful confinement" or in which no lasting mark or injury occurred. Process B cases had a maximum award of $3,500. In those cases, Canada's contribution to lawyers' fees was the greater of 15% of the award or $500.

Many of those who worked with ADR considered it a significant improvement over litigation. It was, clearly, designed to be a more expeditious process and supportive environment than existed in traditional litigation. Adopting some features that had been introduced in a modified approach to litigation and featured in pilot projects, it was non-adversarial and eschewed cross-examination; hearings were not held in public, and could take place in a location of the claimant's choice; health supports were available throughout the process; traditional ceremonies could be incorporated into the hearing process; claimants' travel costs to attend hearings were paid in advance by Canada; the use of a plausible link test for causation; if the acts and harms were proven in accordance with the ADR Model, compensation was paid; and awards were in line with what had been granted by the Courts. For many, especially those within Government, ADR was seen as a positive and effective alternative to litigation.

However, the ADR model was also subject to strong criticism. In 2004, the AFN held a conference at the University of Calgary Law School on the ADR process, and emanating from that conference an expert committee published its *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Resolution Schools.*[58] Both the conference and the ensuing report noted some of the positive aspects of ADR but were highly critical of the program.[59] These criticisms included:

- *Inequitable Treatment:* There were pronounced regional differences in the amounts of compensation awarded by ADR adjudicators; the Model set out a separate level of compensation that governed schools in British Columbia, the Yukon, and Ontario as distinct from the rest of the country.[60] It also contained differences based on the years in which the abuse occurred; in "Process B" of the ADR, the Model incorporated a "Standards of the Day" concept that defined the level of discipline that would be considered as exceeding acceptable standards depending on the year of occurrence.[61]

- *Differences between Churches:* Compensation depended on which Church-run school a claimant had attended. Anglican, Presbyterian, and United Churches had agreed to pay 30% of compensation to former students with the Government of Canada covering the remaining 70%. However, since Catholic Churches generally refused to pay any compensation, claimants who attended most Catholic-run schools only received 70% of their awarded compensation.[62]

- *Unspecified Harms or Ineligible Claims:* Harms specific to women such as pregnancy, forced adoption, or abortions resulting from sexual abuse were not expressly mentioned in the ADR and relied on the discretion of adjudicators to award compensation. As well, ADR did not recognize loss of language and culture as a compensable harm: an issue that had been a strong point of contention in individual litigation and class actions.

- *Student-on-Student Claims:* Claims of abuse caused by other students were not compensated unless it could be proven that staff in the residential school had actual knowledge of the abuse. Given the secrecy surrounding sexual abuse, it was difficult for survivors to prove such claims.

- *Healing/Reconciliation:* While apologies were sometimes provided by representatives of the Government of Canada and/or Church entities, the ADR program did not contain extensive provisions for healing and reconciliation.

- *Aging Claimants:* Due to the start-up time required to implement ADR and the length of the process, the ADR approach was not meeting the needs of aging claimants. The 2004 Report noted that at that point, only 93 cases had been resolved through ADR.

- *Cost:* The costs to administer the ADR program (albeit including significant start-up costs) were estimated to be four times that of the actual compensation awards.[63]

- *Lack of Finality:* The outcome of an ADR claim was non-binding, in that the claimant could accept or reject the outcome. If claimants were not satisfied with their ADR ruling, they had the option of returning to civil litigation. If the claimant did accept the outcome, the Government of Canada was bound by the decision and could not independently reject it.

- *Independence:* The Government of Canada delivered the ADR program and at the same time was a defendant in the process. Although decisions were rendered by adjudicators and not by the Government and IRSRC maintained that it was a neutral decision maker, the Government had unilateral discretion as to which claims would be admitted to the process, and accusations persisted of an unfair process lacking in transparency and cultural sensitivity. As well, although a period of consultations had preceded the implementation of the Dispute Resolution Model, it was in fact a Government policy and program. There was an inherent limitation to the extent to which there could be broad-based acceptance of a process in which only one of the parties, even well intentioned, set the rules, and in which those rules were subject to unilateral revision or alteration.

[58] Assembly of First Nations, *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools* (n.p.: Assembly of First Nations, 2004).
[59] See Mahoney, "The settlement process."
[60] The regional differences in the ADR were based on regional differences in the Court awards made in various jurisdictions.
[61] "Process B" addressed claims for physical abuse where there was no lasting injury or where wrongful confinement was alleged.
[62] Upon implementation of the IAP, this was addressed by Canada providing an additional 30% payment to ADR claimants who had not received the Church's share of compensation.
[63] Canadian Bar Association, *The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors* (n.p.: Canadian Bar Association, 2005). This ratio of administrative costs to awards was even higher for "B" claims. It should be noted, however, that this assessment was based only on the first year of ADR operations.

The AFN Report went on to set out what they considered to be the essential requirements for achieving a comprehensive and fair settlement for all former students. Based on previous consultations, the report stated that such a process should:

- Be inclusive, fair, accessible, and transparent
- Offer a holistic and comprehensive response recognizing and addressing all the harms committed in and resulting from residential schools
- Respect human dignity and equality and racial and gender equality
- Contribute towards reconciliation and healing
- Do no harm to survivors and their families

Healing and Reconciliation:

Underpinning the efforts to provide reparation for residential school abuses through litigation or alternative dispute resolution was a deeper context of attempting to understand and reconcile the broader impacts of the Indian Residential School policy. In 1986, the United Church of Canada issued an apology for its attempts to impose European culture and values on Aboriginal people. In 1991, the Catholic Missionary Oblates of Mary Immaculate issued a more specific apology for Residential Schools. This was followed by apologies for residential schools by the Anglican Church of Canada in 1993; the Presbyterian Church of Canada in 1994; the United Church of Canada in 1998; and the Royal Canadian Mounted Police in 2004. The federal Government's 1998 "Statement of Reconciliation" included a declaration that the Government was "deeply sorry" for the "tragedy of sexual and physical abuse at residential schools" and provided the initial funding for the establishment of the Aboriginal Healing Foundation to address the legacy of abuse at residential schools. Some healing events featured in the pilot projects, ADR, and even in the resolution of some litigation claims.

And, as noted earlier, the Government, Churches and Indigenous Groups met in a series of exploratory dialogues in 1998-99 that were intended to discuss not only means of addressing outstanding litigation, but of moving towards a broader resolution to the legacy of the residential schools.

As the Royal Commission on Aboriginal Peoples (RCAP) had concluded, "Redressing the wrongs associated with the residential school system will involve concerted action on a number of fronts" including a full public inquiry. In its report on the ADR plan, the AFN observed: "In order to achieve reconciliation between Canada, the Churches, and survivors and to facilitate healing among the survivors and the First Nation communities, it is a fundamental principle that the harms done be addressed in a holistic manner." The RCAP also declared: "There can be no peace and harmony unless there is justice."

Notwithstanding the dialogues that were occurring and the issuance of public apologies, it was difficult to build trust and progress towards reconciliation while survivors were required to pursue compensation through legal actions, and were subject to legal defences in which Government and Churches had attempted to limit or deny liability. Although a number of civil cases were resolved through settlement, in many important ways the implementation of a non-adversarial and supportive method of compensating the victims of residential schools for the assaults that they suffered was a necessary precondition of moving towards healing and reconciliation for Indigenous and non-Indigenous people alike.

The Indian Residential Schools Settlement Agreement

In 2005, several events occurred that had significant implications for the progress of political and legal developments regarding Indian Residential Schools. In February of that year, a number of witnesses who appeared before the House of Commons Standing Committee on Aboriginal Affairs and Northern Development were highly critical of the ADR process. The committee's report, tabled in the House of Commons in April 2005, condemned the ADR and recommended that the program be terminated.[64] A House of Commons vote subsequently adopted this call for a replacement to the ADR process, and required the Government to formulate a proposal within forty days.

Early in May, 2005, the Supreme Court of Canada dismissed the federal government's application for leave to appeal the Ontario Appeal Court's decision certifying the Cloud class action suit. This decision not only permitted the Cloud class action to proceed but also set the stage for the certification of the Baxter class action suit.

[64] For a summary of witness testimony to the standing committee, see Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (Vancouver: UBC Press, 2011), pp. 125-136.

Following these developments, in May 2005 the Government of Canada and the Assembly of First Nations signed a Political Agreement with the goal of achieving a Court-sanctioned, global resolution to all outstanding litigation. Then AFN National Chief Phil Fontaine described the Political Agreement as an accord intended to result not only in a "better, faster and more economic claims process for residential schools survivors who were abused" but also as "a commitment for the entire country to move forward through a national dialogue on healing, reconciliation, commemoration, and truth-sharing" and "a holistic way to deal with this terrible, tragic legacy of our shared past."

The Government appointed the Hon. Frank Iacobucci, a former Justice of the Supreme Court of Canada, as its representative in negotiations with representatives of the AFN and Inuit communities, residential school survivor groups, and legal counsel representing former students and Churches. According to Mr. Iacobucci, "We were trying to find ways of dealing with serious physical assault and sexual assault in ways that would be an improvement on the ADR system, which had a massive backlog. We wanted to do something to ensure that the claimants would receive fair and effective treatment and compensation if their claims were recognized. It was all about the claimants and improving the approach for them, but at the same time making it a system that had integrity and substance and, in fact, a fair process." These discussions culminated in an Agreement in Principle entered into by all parties in late November 2005.[65]

On May 10, 2006, the National Consortium[66], Merchant Law Group, Independent Counsel, AFN and Inuit representatives, the General Synod of the Anglican Church of Canada, the Presbyterian Church of Canada, the United Church of Canada, Roman Catholic entities, and the Government of Canada, signed the Indian Residential Schools Settlement Agreement.

Subsequently, a motion on consent was brought before the Ontario Superior Court of Justice and the Superior Courts of eight other provinces and territories for the certification of a class proceeding and the approval of the Settlement. The motion proposed to combine all outstanding litigation into a single class action, establishing a national class of "Survivors" to whom the Settlement would apply: all those who resided at an Indian Residential School in Canada between January 1, 1920, and December 31, 1997, and who were living as of May 30, 2005. This motion was approved by the then Ontario Regional Senior Justice Warren K. Winkler on December 15, 2006.[67] Certification hearings on the class action were held in the Supreme Courts of other jurisdictions. After the provincial and territorial Courts approved the agreement and a six-month opt-out period had passed, the Settlement Agreement – at that time the largest out-of-Court settlement in Canadian history - came into effect on September 19, 2007.

The IRSSA was meant to bring a fair and lasting resolution to the legacy of Indian Residential Schools by providing financial and non-financial benefits to the individuals affected by the Indian Residential Schools experience. Its implementation was to be overseen by nine provincial and territorial Superior Courts, and funded by the Government of Canada.

The Settlement Agreement was a broad commitment to provide redress for the harms of residential schools and move towards reconciliation. As such, it contained a number of different components: some that provided compensation for residential school survivors, and others that extended beyond direct survivors themselves and were intended to document the residential school experience and advance healing and reconciliation between Indigenous peoples and the Canadian state.

[65] Inuit representatives were not involved in the May accord reached between the federal government and the AFN to initiate settlement discussions. They joined the negotiations in September 2005, following the filing of class actions on behalf of former students in their respective jurisdictions.

[66] The National Consortium of twenty law firms representing former residential school students in individual and class actions had been formed in 2003 to pursue a national litigation plan and political action campaign. It emanated in part from the Canadian Residential School Plaintiffs' Counsel Association that had been created several years earlier and functioned as a clearinghouse for information and ideas about pursuing residential school claims.

[67] *Baxter v. Canada* (Attorney General). 2006 Can LII 41673, ON S.C.

A stained glass window in Parliament commemorates the legacy of former Indian Residential School students and their families.

The non-compensatory components of the Settlement Agreement included:

Truth and Reconciliation Commission (TRC): The TRC was allocated $60 million over five years to document the histories of survivors, families, communities and anyone affected by the residential school experience. Through events at both the national and community levels, it guided and inspired Indigenous people and Canadians in a process of reconciliation and renewed relationships based on mutual understanding and respect. The TRC released its final report in 2015.

Commemoration: The Settlement Agreement provided $20 million in funding over six years for commemorative initiatives to honour, educate, remember, memorialize, and pay tribute to former students of Indian Residential Schools, their families, and the larger Indigenous community. This included the installation of a stained-glass window in Centre Block of Parliament commemorating the legacy of former Indian Residential School students and their families. Although not formally part of the Settlement Agreement, on June 11, 2008 then Prime Minister Stephen Harper delivered a formal apology in the House of Commons on behalf of the Government of Canada to former students, their families, and communities for the Government's role in the operation of the residential schools.[68]

Healing Supports: To foster healing in Indigenous communities, a $125 million endowment was provided to the Aboriginal Healing Foundation to continue its mission. The Settlement Agreement also provided for the continuation of supports provided by Health Canada, such as a 24-hour crisis line and front-line Resolution Health Support Workers.

There were also two compensation-related components of the Settlement Agreement:

The Common Experience Payment (CEP) recognized the experience of eligible Indian Residential School students who resided at any Indian Residential School prior to December 31, 1997. Administered by Indigenous and Northern Affairs Canada (INAC), the CEP was an unprecedented recognition of the common experience of having resided at an Indian Residential School. Every former student who had resided at a recognized IRS and was alive as of May 30, 2005, was eligible to apply for and receive $10,000 for their first school year or partial school year, with an additional $3,000 in compensation for each full or partial school year of residence beyond the first school year. Under the CEP, eligible former students received an average award of $20,457. The total compensation provided through CEP was $1.6 billion.[69]

The Independent Assessment Process (IAP) was the out-of-Court process to settle claims of sexual abuse, serious physical abuse, or other wrongful acts suffered while attending a residential school. Compensation was provided up to $275,000, based on nature of the abuse and the level of harm suffered by each student.[70] Once the IRSSA received Court approval, IAP applications from survivors were accepted from September 19, 2007 to September 19, 2012.[71]

As the IAP was framed as part of a settlement of a class action, it was no longer an "opt-in" alternative to litigation. With the Settlement Agreement, the IAP was now the only way to claim compensation for abuse at a residential school, other than for those who explicitly opted out of the class action settlement within the timeframe allotted by the Courts or those who, by the application deadline, had not filed claims in Court, the ADR or the IAP.

[68] While not contained in the Settlement Agreement, the apology was part of the Political Agreement, and was recommended by Chief Justice Brenner of the Supreme Court of British Columbia in his decision approving the Settlement Agreement.

[69] "Information update on the Common Experience Payment From September 19, 2007 to March 31, 2016," *Statistics on the Implementation of the Indian Residential Schools Settlement Agreement,* Canada, Crown-Indigenous Relations and Northern Affairs Canada, 19 February 2019, https://www.rcaanc-cirnac.gc.ca/eng/1315320539682/1571590489978. The amount initially allocated to the CEP was an irrevocable grant of $1.9 billion. If that proved insufficient, it was to be augmented to the extent required. If, as turned out to be the case, it was excessive to the requirements of individual CEP compensation, the balance was designated for education benefits available to former residents and their family members.

[70] The IAP also contained the possibility for a claimant to proceed through the Courts in three circumstances: for claims related to actual income loss (AIL); where there was sufficient evidence that the claimant suffered catastrophic physical harms such that compensation available through the Courts may exceed the maximum permitted by the IAP; or in an "other wrongful act" claim, the evidence required to address the alleged harms was so complex and extensive that recourse to the Courts would be the more appropriate procedural approach. Such Court cases would not be subjected to a cap on compensation. AIL claims in excess of $250,000 could also be addressed through the Negotiated Settlement Process. More information on AIL is provided in Chapter 4.

[71] The supervising courts subsequently ordered that applications for the IAP received by September 2, 2013, for one additional school (Mistassini) were deemed to have been received on or before September 19, 2012. In 2018, the courts added Kivalliq Hall to the list of eligible residential schools and set January 25, 2020, as the application deadline for claims from that school. The supervising courts also decided that applications handled by the law firm Blott & Company (Supreme Court of Alberta, 2012) were deemed to be submitted before the deadline.

THE INDEPENDENT ASSESSMENT PROCESS

Objectives of the IAP

An agreement as complex and far-reaching as the Indian Residential Schools Settlement Agreement – unparalleled in Canadian history – had a range of objectives. These objectives emanated from the history and impact of the residential schools experience and the process that culminated in the IRSSA, as described in the previous two chapters of this report. They reflected the various interests and hopes of the parties; the broader social, political, and legal context within which it was framed; and what the IRSSA was intended to achieve for all of those affected by residential schools.

TRC Commissioner Wilton Littlechild

As a part of the Settlement Agreement, the Independent Assessment Process (IAP) also had a number of objectives. Some of these were specifically outlined in the Agreement while others were more general in nature. These objectives shaped the process for IAP claims, informed the activities of all stakeholders in the IAP, and provided the foundation and guiding principles for the Oversight Committee in carrying out its mandate in the implementation of the IAP.

Resolving Litigation:

In understanding the objectives of the IAP, it is important to start with an appreciation that the IAP was part of an agreement to settle litigation. Individual civil suits and class actions related to the residential school experience were numerous, complex, costly, and lengthy. As well, although Alternative Dispute Resolution had provided significant improvements over litigation, it still contained elements that proved less than satisfactory for many parties. Building on experiences of litigation and the ADR, the IAP was designed and intended to resolve individual claims for redress for abuse at residential schools in a manner that was more timely; that provided an opportunity for validation of claims and of the impacts of individuals' personal experiences while at the same time being less harmful to and more respectful of residential school survivors; that provided consistency in decisions and awards without differences based on geographical location or on which Church ran the school; that was an independent Court-supervised - and not a Government-run - process; and that provided finality to the litigation process.

Reconciliation:

Underpinning the efforts to provide reparation for the abuses that occurred at the schools was a deeper context of attempting to understand and reconcile the broader impacts of the Indian Residential School policy. This had been evidenced by such actions as the work of the Royal Commission on Aboriginal Peoples; the Government of Canada's Aboriginal Action Plan and the establishment of the Aboriginal Healing Foundation; the apologies offered by some Churches, the Minister of Indian Affairs and Northern Development, and the RCMP; and the extensive efforts of Aboriginal groups, Churches, and the Government to engage in dialogue on advancing reconciliation.

Notwithstanding the public apologies and the dialogues that were occurring, it was difficult to build trust and progress towards reconciliation while survivors were required to pursue compensation through legal actions and were subject to legal defences in which Government and Churches limited or denied their liability. The implementation of a less adversarial and more supportive method of compensating the victims of residential school abuse was a necessary precondition for moving towards healing and reconciliation for Aboriginals and non-Aboriginals alike. As the Royal Commission on Aboriginal Peoples stated in its 1996 report, "There can be no peace and harmony unless there is justice." Within the Settlement Agreement, the IAP was intended to provide justice for the acts and consequences of abuse.

Winnipeg Hearing Centre

Healing – A Claimant-Centred Process:

A principal foundation of the IAP was its design as a claimant-centred process. Not only was reconciliation an implicit objective of the IAP as part of the IRSSA, there were also specific aspects in the IAP process that were intended to promote healing. Ensuring that the IAP maintained a claimant-centred approach was a fundamental prism used by the Oversight Committee in its ongoing assessment of and, when required, improvements to the IAP process.

A support line and crisis line were maintained to provide immediate assistance to all those affected by the residential school experience. Claimants who chose not to have legal representation were assigned Claimant Support Officers. Claimants had access to health support workers at every phase of the process, including at the hearing. They could be accompanied at the hearing by Elders, interpreters, and/or family or community members; this not only provided support for the claimant but could aid in intergenerational healing.

Each claimant could indicate a preference in the location of her/his hearing and the gender of the adjudicator. Rather than taking place in courtrooms, hearings were held in private and informal settings, such as hearing centres, hotels, lawyers' offices, or the claimant's home. As well, hearings incorporated traditional and ceremonial elements such as smudges, songs, and/or prayers, depending on the claimant's preference.

Within the hearing, only the adjudicator could ask the claimant questions, which were inquisitorial. Claimants were not subject to cross-examination by lawyers for the Government of Canada, Churches, or alleged perpetrators.

At the end of each hearing, representatives of Canada and the Church who were in attendance would often present a personal acknowledgement or apology to the claimant for her/his experience. And the compensation award could contain, at the claimant's request and design, additional "Future Care" funds dedicated to assist them in their healing following the hearing and decision.

The hearing itself could provide transformational moments for all of those present. Claimants had the opportunity to relate their history – sometimes for the first time – and to have their experience heard and validated in a decision and an award. The hearing also exposed the others present – adjudicators, Canada's representatives, the Church's representatives – to the realities of the residential school legacy, on a first-hand and personal basis and in a confidential and non-adversarial context, where they were committed to listening, understanding, ensuring the requirements of the IAP were met, and to acknowledge the claimant's experience. This sharing of personal history would have been difficult if not impossible to achieve in a public setting or solely through the issuance of a cheque. Thus, the promotion of healing and reconciliation was not merely a potential by-product of the assessment process, but was seen as an actual objective of the IAP. In its first Annual Report, the Indian Residential Schools Adjudication Secretariat stated: "The hearing is not just a step in a compensation process: it is an opportunity for the parties to achieve, together, a degree of the healing and reconciliation intended by the authors of the Settlement Agreement."[72]

[72] Indian Residential Schools Adjudication Secretariat, *Annual Report 2008* (Ottawa: IRSAS, 2008), p. 11.

Operational and Administrative:

The adoption of the Settlement Agreement introduced with it a number of operational and administrative objectives related to the implementation of the IAP. The requirement for the IAP infrastructure to be up and running was intense in both scale and immediacy. As per Article 15.02 of the IRSSA, all existing ADR claims were either transferred to the IAP, subject to re-application under the IAP, or continued to be addressed within the ADR model but under the administrative auspices of the Chief Adjudicator.[73] The Settlement Agreement also mandated that, following a six-month start-up period, IAP claims would be processed at a minimum rate of 2,500 per year. It further stipulated that claimants who met the requirements of the IAP would be offered a hearing date within nine months of their application, "or within a reasonable period of time thereafter". Finally, the Settlement Agreement stated that, unless the claimant him or herself frustrated the scheduling process, all IAP claims would be processed within six years of the Implementation date: i.e., one year following the deadline for IAP applications.[74] As well, Schedule D specified that adjudicators provide a written decision to the claimant within 30 days of the hearing for Standard Track hearings, or 45 days for Complex Track hearings.[75]

In addition, the Court's Implementation Order provided that the fees charged by a claimant's counsel could be subject to review by the Adjudicator for "fairness and reasonableness", and that the Adjudicators' decisions on these matters could be subject to a further review by the Chief Adjudicator or his designate.[76]

From September 19, 2007, through to the end of December 2008, there were 9,295 claims received (either as new applications or transferred/continued from ADR), and 1,747 hearings held. In just over a year, the number of Adjudication Secretariat staff grew from the approximately 33 that had worked on the ADR model to more than 150 in four locations across Canada, and nearly 80 adjudicators were selected and retained by the Oversight Committee.

The Oversight Committee and those responsible for implementing the IAP were aware that the focus needed not only to be on achieving operational targets, but also on doing so in ways that were claimant-centred and that would assist in healing and reconciliation. The Adjudication Secretariat defined its strategic outcome as: "to advance reconciliation among former students of Indian Residential Schools and the Government of Canada". In furtherance of this, the Secretariat stated: "Our success will be measured not only by the number of claims resolved but by our ability to treat each claim in accordance with our core values and thus advancing reconciliation among former students of Indian Residential Schools and Canadians." It identified those core values as being "based on fairness, consistency, impartiality, claimant-centeredness and compassion".[77]

Thus, operational objectives focused not only on statistical outcomes but also on the values and approaches that were to be adopted in the achievement of those outcomes.

As the IRSSA emanated from a class action, it specifically required that efforts be undertaken to ensure that members of the class were notified of the Settlement Agreement, including their right to opt out of the Agreement. This process included a formalized "Residential Schools Class Action Litigation Settlement Notice Plan" and the implementation of a toll-free telephone information line. In addition, the Adjudication Secretariat developed its own ongoing Outreach program to raise awareness of the application deadline, and to ensure that people were aware of the mental health, emotional, and legal supports that were available. While independent legal representation for claimants was encouraged, there was no requirement to retain counsel; accordingly, the Adjudication Secretariat put in place mechanisms to ensure that claimants could fully participate in the process on a self-represented basis, if they so chose. Thus, another of the key operational objectives was to provide all those who had a potential claim under the Settlement Agreement the opportunity and support necessary to submit an IAP application prior to the deadline.

[73] Some 7,600 claims were filed in the ADR, of which 3,477 remained active at the time of implementation of the IAP. The final ADR cases were not resolved until 2013. The IAP also allowed for some claimants to re-open their ADR claims; this could only occur in specific circumstances. Relative to the ADR, there were expanded opportunities to advance claims relating to "student-on-student" abuse and to receive increased compensation for "consequential loss of opportunity".

[74] *IRSSA*, Article 6.03

[75] *IRSSA*, Schedule D, Section III (k) (ii). The Complex Track was required where the claimant sought compensation for actual income loss or for other wrongful acts, as per *IRSSA*, Schedule D, Section III (b) (ii)). Further information on the Complex Track process is provided below.

[76] *Fontaine v. Canada (Attorney General)*, Court File 00-CV-192059CP, ONSC, 8 March 2007, paras. 18 and 19.

[77] Indian Residential Schools Adjudication Secretariat, *Strategic and Operational Plan 2011-12* (Ottawa: IRSAS, 2011), p. 6 and p. 9.

IAP Hearing

Summary:

As a component of the comprehensive Settlement Agreement, the IAP was intended to achieve a range of objectives. These included:

- To provide fair and meaningful financial compensation for sexual, and serious physical abuses and other wrongful acts suffered by individual former residential school students
- To consolidate and finalize the voluminous civil legal actions arising out of the residential school experience[78]
- To provide an out-of-court, claimant-centred process for determining and awarding compensation
- To contribute to a more holistic reconciliation among residential school survivors, Indigenous communities, Canada, and the Churches
- To ensure that all former students covered by the terms of the Settlement Agreement had the opportunity to submit an IAP application prior to the deadline
- To ensure the independence of adjudicators and the adjudication process
- To ensure that all claimants had access to independent legal counsel, while accommodating claimants who chose to represent themselves
- To ensure that claims were subject to a validation process, including the right of alleged perpetrators to be informed of allegations and the right to be heard
- To provide a hearing process that did no further harm to claimants and was supportive of their healing
- To process a volume of cases and offer hearing dates to claimants in accordance with the requirements stipulated in the Settlement Agreement
- To ensure that the legal fees charged by claimants' counsel met the standard of "fairness and reasonableness" as set out in the Court's Implementation Order
- To issue decisions within the timeframes stipulated in the Settlement Agreement

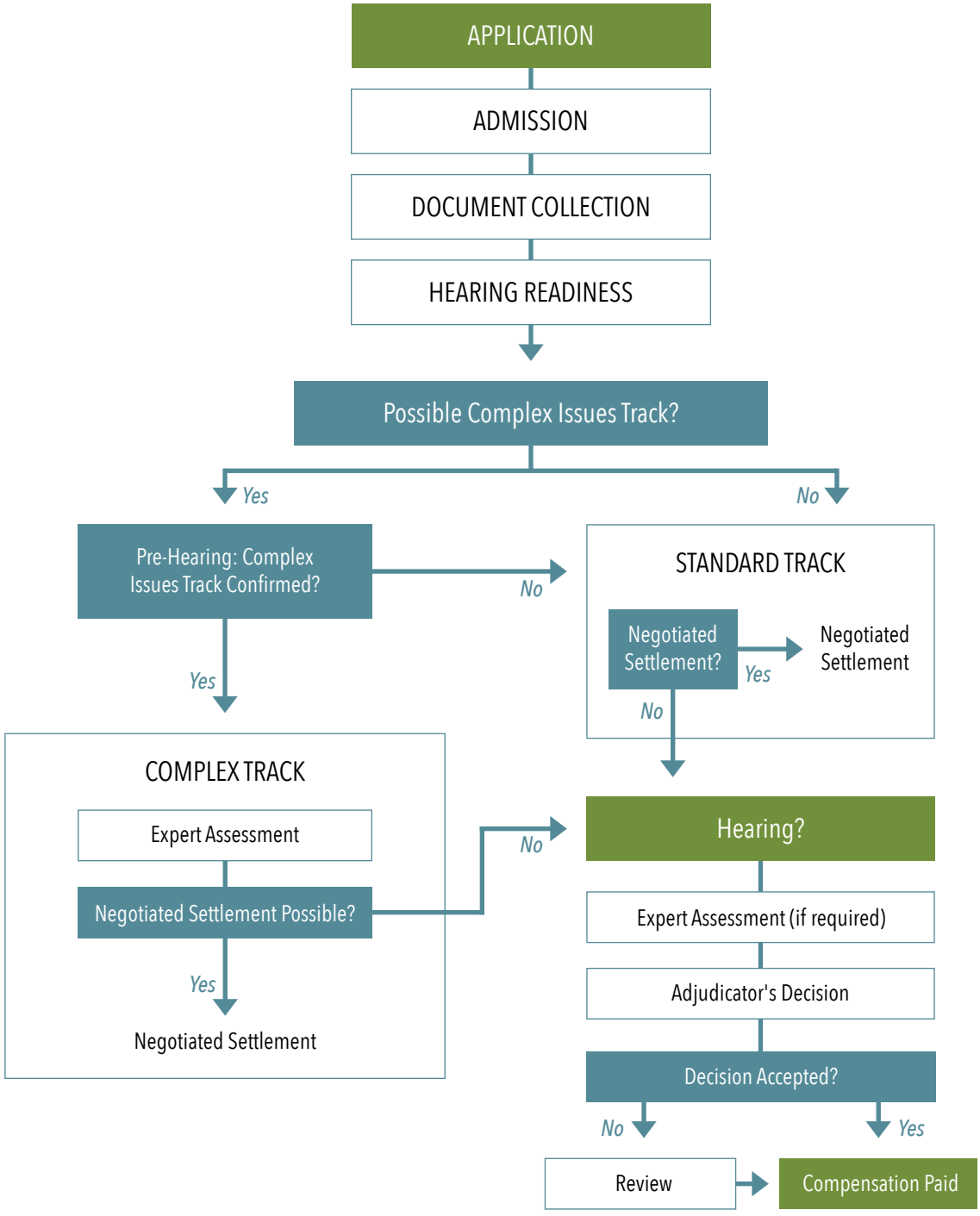
The Independent Assessment Process

To achieve these objectives, an extensive and complex process was developed for receiving, processing, and deciding IAP claims. The Settlement Agreement set out the details of the IAP process, but the obligation to interpret and apply those provisions and administer the IAP fell to the Chief Adjudicator, Adjudication Secretariat, and the Oversight Committee. As part of this process, administrative directives and guidance had to be developed and/or approved by the Oversight Committee, the Chief Adjudicator, and/or the Adjudication Secretariat to address the many challenges that arose during the course of the implementation of the IAP. (An examination of the process improvements that were implemented in order to meet the expectations of the Settlement Agreement is presented in the next chapter).

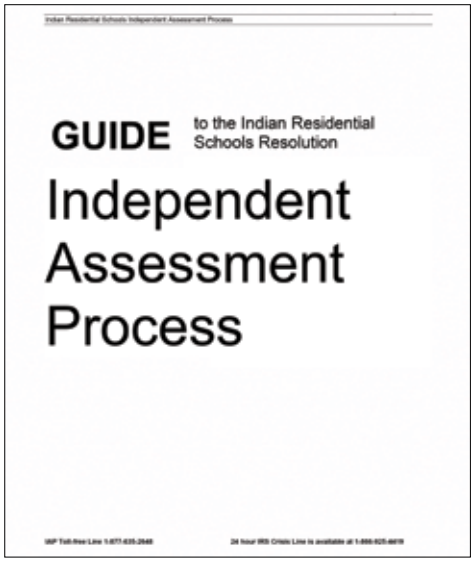
Given the variety of issues and circumstances that arose over the course of more than 38,000 unique and individual claims, it is not possible to present an exhaustive description of all possible process elements of the IAP. The simplified flow chart below illustrates the main stages in an IAP claim. A more detailed description of each of these stages follows.

[78] As noted previously, class members were allowed to opt out of the Settlement Agreement and pursue legal action

INDEPENDENT ASSESSMENT PROCESS FLOW CHART



The IAP application guide helped claimants understand if they qualified for the IAP, and provided directions on completing the IAP application form.


GUIDE to the Indian Residential Schools Resolution

Independent Assessment Process

The IAP Claim and Pre-Hearing Processes:

Applications and Admission of the Claim:

A former student of an Indian Residential School could initiate a claim for compensation under the IAP by completing a standardized application form with information on the school(s) attended, the abuse that she/he suffered at the school, and the harm that those experiences caused. It was also required that the former student, if possible, provide the names of those who perpetrated that abuse, so that efforts could be undertaken to notify the alleged perpetrators that a claim had been filed. The Settlement Agreement stipulated that the deadline for filing an IAP application would be September 19, 2012.[79]

The application form could be filled out with or without the assistance of legal counsel, but it was strongly recommended that claimants hire a lawyer as the IAP was complex and involved legal concepts. The Indian Residential Schools Adjudication Secretariat prepared a Guide to the IAP application to assist claimants and/or their representatives with the application form and process. The Guide also contained information on the support programs offered by Health Canada to former students and their families.

Applications were then reviewed by the Adjudication Secretariat which was, according to the IRSSA, "responsible for determining whether applications fall within the terms of the IAP". Specifically, the Adjudication Secretariat would admit claims if the claimant was eligible to submit a claim under the Settlement Agreement, the application was complete and signed, and the allegations – should they be proven in a hearing – would constitute a claim under the IAP.[80]

Given the volume of IAP claims, they were reviewed for admission based on priorities set out in the IRSSA. The first priority was accorded to those claimants whose health meant that they were at significant risk that they might pass away or lose the capacity to provide testimony at a hearing. Also receiving higher priority were claimants who were in failing health that could impair their ability to participate in a hearing; elderly claimants; persons who had completed an examination for discovery in a litigation process; and claimants who were applying as part of a formally recognized group. All other applications were processed in the order in which they were received.

If the Adjudication Secretariat determined that a claim was not eligible and would not be admitted, this decision could be requested by a claimant or counsel to be referred to the Chief Adjudicator for review. In these circumstances, the Chief Adjudicator would consider only the information that had already been provided in support of the application, and would only consider admission reviews on the grounds that the Adjudication Secretariat had improperly interpreted the Settlement Agreement in its decision not to admit the claim.

Once a claim was admitted, the Adjudication Secretariat would notify the claimant's counsel (or the claimant directly if she/he was not represented by a lawyer) of the "track" ("standard" or "complex") into which the claim had been admitted. Most IAP claims followed a "Standard Track". However, some specific types of claims were dealt with in a "Complex Track": this included claims of wrongful acts causing serious psychological consequences.[81] The Complex Track was also used to deal with claims for actual income losses attributable to residential school experiences. Certain Complex Track claims required more detailed proof than in the Standard Track, usually entailed expert evidence, and applied the court standards for establishing "causation" of harms versus the less stringent "plausible link" standard that applied in the Standard Track.

[79] In 2012, the Quebec Superior Court added Mistassini Hostels to the list of eligible schools under the Indian Residential Schools Settlement Agreement, and gave former students of Mistassini until September 2, 2013 to submit an IAP application. Following a 2018 decision by the Nunavut Court of Appeal that added Kivalliq Hall to the list of eligible schools, former students of that school were given until January 25, 2020, to submit an IAP application. As well, a court order in 2018 dealing with claims that had been determined by the law firm Blott and Company as "Did Not Qualify" gave until September 14, 2018, for submission of materials in support of admission of those applications: 46 such claims were subsequently admitted to the IAP. (In 2012, the supervising court had banned Blott and Company from representing residential schools survivors due to concerns about the firm's practices. Clients of Blott and Company whose applications had not been submitted and who could not be located at that time were given until October 2016 to apply to the IAP.)

[80] In practice, initial intake and review of applications was conducted on behalf of the Adjudication Secretariat by Crawford Class Action Services. Those applications that met the specified criteria were readily admitted. For applications missing information, Crawford would follow-up with claimants or their counsel and would admit those applications when such information was provided. If in those circumstances Crawford could still not make an eligibility determination, the claim would be forwarded to the Adjudication Secretariat for secondary review.

[81] The Compensation Rules that governed IAP awards are reproduced in Appendix II.

Document Collection:

IAP awards were not granted automatically; the IAP required that adjudicators assess the credibility and reliability of the claimant's evidence. Adjudicators assessed the validity of each claim in the hearing process but also through mandatory supporting documents. The Adjudication Secretariat would provide a checklist of the documents needed to support the claim, as set out in Schedule D, Appendix VII, of the IRSSA. This checklist specified the mandatory documents required for each combination of "Harm" and "Loss of Opportunity" contained in the claim, and could include records from Workers' Compensation, Income Tax, Corrections, or medical treatment. Due to the number of documents required, the scope of time that may be covered by those records, and resource limitations in the agencies that needed to supply the documents, the process of document collection could be lengthy. When the mandatory documents had been compiled, the claimant or claimant's counsel could request that a hearing be scheduled.[82]

At the same time, the Government of Canada was responsible for researching and providing records related to the claimant's attendance at the Indian Residential School, along with records related to any named alleged perpetrator(s), their role at the Indian Residential School, and any reports on record of sexual or physical abuse allegations concerning the named abuser. The Government of Canada was also responsible for preparing a report (known as the "School Narrative") on the Indian Residential School in question, including any documents mentioning abuse at that school.

Pre-Hearing Teleconferences:

In some instances, questions could arise as to whether a claim fell within the jurisdiction of the IAP. For example, there may be questions related to whether the allegations contained in a claim occurred during the "operating years" of a school. In such circumstances, the Government of Canada could request a jurisdictional review by an adjudicator, and the adjudicator could determine if a teleconference should be held to address these matters in advance of a hearing. These pre-hearing jurisdictional teleconferences provided a means of determining issues that could affect the processing of a claim as early as possible. Pre-hearing conference calls were also held for Complex Track claims and, under certain circumstances, for estate claims filed on behalf of deceased former students.

Negotiated Settlement Process:

The IRSSA allowed the option for claims to be settled without a hearing in a Negotiated Settlement Process (NSP). This process was available when both the claimant's counsel and Canada were amenable to it.[83] In such cases, once informed of the intention to pursue a negotiated settlement, the Adjudication Secretariat would share with both parties all of the evidentiary documentation that was available at that time. While a claim was active in the NSP, the parties were obliged to continue to collect any remaining mandatory documents, both for record-keeping purposes and in the event that the negotiations proved unsuccessful.[84] If a negotiated resolution of a claim was reached, it would not be subject to review by an adjudicator, but was implemented by the Government of Canada and compensation paid as the parties had agreed. If a settlement of the claim could not be reached in the NSP, the claim would then return to the normal adjudication process.

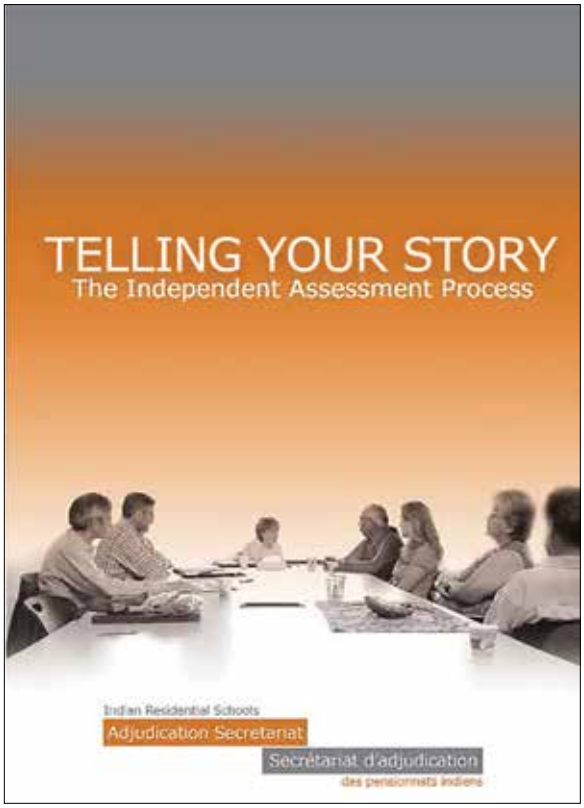
The IAP Hearing:

The scheduling of an IAP hearing was based on a number of criteria, including the claimant's stated preferences for the location of the hearing and/or the gender of the adjudicator, and the availability of all parties who would be attending the hearing. In the case of Complex Track claims, an adjudicator would conduct a pre-hearing conference call to determine if the file was ready for hearing or if additional information would be required.

Hearings were scheduled on an expedited basis for claimants where a medical doctor indicated that their health placed them at risk of passing away or of losing their capacity to provide testimony. Accelerated hearings were also offered in some circumstances where, for example, scheduling efficiencies warranted that a hearing be conducted prior to the collection of all mandatory documents. In those instances, the adjudicator would not prepare his/her decision until all documents and final submissions were completed and submitted following the hearing.

In the preferred scheduling process, hearing notices advising the parties of the date of the hearing would be issued three to five months in advance, to allow for logistical arrangements and to provide the claimant time to prepare for the hearing. Shortly after setting the hearing date, the Adjudication Secretariat would distribute to the claimant's counsel, the adjudicator, and Canada's representative, the evidentiary packages containing mandatory documents and the Government's records and research.

[82] This process was amended in 2013, when the Oversight Committee approved an "Accelerated Hearing Process" (AHP) where, even absent health issues, claims could be set down for hearing without all of the mandatory documents having been produced. The AHP is described on p. 14 below and discussed in greater detail in Chapter 5.
[83] The NSP was available only to those claimants who had legal representation. NSPs were not available in claims in which the alleged perpetrator wished to participate.
[84] However, if a hearing had been scheduled for a claim that subsequently entered the NSP, the hearing date was cancelled, and only re-scheduled if the NSP was unsuccessful.



The video, "Telling Your Story," provided claimants with information on what to expect at their IAP hearing.

Claimants could take a break from a hearing in a breakout room with an Elder and/or support people.

Prior to the hearing, claimants could view a video, on-line or on DVD, and read an accompanying booklet that provided information about the hearing. The video was not available at the outset of the IAP but was subsequently produced to help claimants prepare for their hearing and to help reduce any anxiety about the process.

The Adjudication Secretariat arranged and paid for all logistics related to the hearing itself. This included booking the hearing room, arranging for a language interpreter if required, and arranging travel for the claimant and up to two personal supporters – friends and/or family members – of the claimant's choosing, and an Elder if requested.[85] Claimants' travel could be scheduled to provide the opportunity for them to meet with their legal counsel the day before the hearing.

In Winnipeg and Vancouver, the Adjudication Secretariat had dedicated Hearing Rooms. These were intended to be safe, comfortable, welcoming and culturally appropriate spaces and provided room for the claimant to take a break from the hearing or meet with Elders or Health Support Workers. In other locations, hotel conference rooms or other appropriate facilities were utilized. All hearing facilities were intended to accommodate the needs of the claimant for private space, and the hearing room itself was arranged in an informal manner that facilitated discussion. Light refreshments were provided throughout the hearing.

The Adjudication Secretariat attempted to accommodate a claimant's preference for the hearing location, whether in his/her community or elsewhere in Canada. Where necessary, hearings were also held in correctional facilities, hospitals, outside of Canada, or other specific locations required by the claimant's circumstances.

In attendance at the hearing would be the claimant, his/her lawyer (if they were represented), a representative of the Government of Canada and the adjudicator. If the claimant chose, her/his personal supporters, a Resolution Health Support Worker, an Elder, and/or an interpreter could also attend. As a party to the process, the Churches had a right to attend the hearing. However, claimants were asked prior to the hearing if they had any objection to the Church's participation and any such requests were taken into consideration. As with all participants other than the claimant, Church representatives did not speak during the hearing; they could address the claimant at the end of the hearing in a manner to promote healing and provide pastoral care, if requested by the claimant.[86] Hearings were otherwise closed to the public, and all participants were required to sign a confidentiality form.

[85] All costs related to the implementation of the IRSSA, including those expended by the Adjudication Secretariat, were paid for by the Government of Canada.

[86] Presbyterian, Anglican, and United Churches adopted an approach that when a claimant requested that the church attend the hearing the church would participate in a supportive role, and if the claimant requested that the church not attend, the church would respect the claimant's wishes. Some Catholic entities – particularly in claims relating to Quebec schools and some schools in Ontario – regularly attended IAP hearings pursuant to their legal right under the Settlement Agreement.

Claimants could make an oath on a Bible or eagle feather at their hearing.

At the claimant's request, hearings would commence with an activity that would respect the claimant's beliefs and traditions, such as a song, ceremony, cleansing or blessing of the room, or a prayer. The claimant could make an oath on a Bible or eagle feather, or simply by affirming that she/he would speak the truth.

At the start of the hearing, the adjudicator would describe the process and explain what would take place during the hearing. The claimant would then tell their personal experience to the adjudicator. In the inquisitorial model of the IAP hearing, cross-examination was not permitted by the representatives of the Government of Canada or the Churches; only the adjudicator could ask questions of the claimant or witnesses. Nonetheless, hearings and the recounting of their experiences and the effects of their attendance at an Indian Residential School could still be traumatic, and claimants could at any time request a break and, if they wished, meet with their personal supports or Health Support Workers. As well, any party could request a caucus with the adjudicator; this could be to suggest questions for the adjudicator to ask or raise other issues. In cases involving self-represented claimants, the claimant attended the caucus sessions, which were recorded in those instances.

During the hearing, the adjudicator would make an electronic audio recording of the proceedings. In keeping with the confidentiality of the process, transcripts of those recordings were only made available to certain individuals, under specific circumstances. The adjudicator could request a copy of the transcript for his/her own reference, as could a review adjudicator or the Chief Adjudicator if the transcript was required in support of his duties as set out in the Settlement Agreement. If an expert was retained to conduct an assessment of the claimant following the hearing, he/she could receive a copy of the hearing transcript, along with the participants in the hearing. Participating parties could also request a transcript in some situations, including: if there was an adjournment longer than four months; if there was a change in legal representative; if a party sought to have a decision reviewed; if a claim was to be re-opened; or if there was an identified potential for a negotiated settlement.

Claimants could also receive a copy of the transcript of their own evidence for memorialization purposes.

At the end of the hearing, attendees could be invited to make closing comments to the claimant thanking them for their participation and/or offering an apology. The adjudicator and the parties would then discuss the evidence collected to that point and whether the claim was ready for final submissions.

Normally, Standard Track hearings would be concluded within one day, while Complex Track hearings would require two days to complete.[87]

[87] Hearings involving an Actual Income Loss claim would typically take four to five days.

Post-Hearing Processes:

Short Form Decisions:

If, at the end of the hearing, all of the evidence had been collected and parties agreed how the claim should be resolved, the adjudicator could consider issuing a Short Form Decision (SFD). Following approval by the Oversight Committee and the National Administration Committee in 2009, the SFD was implemented to reduce delays and expedite the decision-making and compensation stages of the IAP. Rather than a regular decision that would provide a detailed recounting of the testimony presented at the hearing, the SFD presented – in tabular form – a summary of the compensation categories and levels of compensation awarded by the adjudicator following the hearing. SFDs were available only in specific circumstances, in which: the claimant was represented by legal counsel; the claim was in the Standard Track; all research, document production, and testimony was complete; a future care plan (if any) and final submissions had been provided by the end of the hearing; and the claimant requested – and all parties consented – that the adjudicator render a Short Form Decision.

Even if a claim qualified on the above grounds for a Short Form Decision, a claimant could request a full narrative decision for memorialization or other reasons.

Expert and Medical Assessments:

In some cases, there were issues that remained to be decided or further evidence collected following the hearing. One such issue was the need to obtain input from psychological or medical experts. While the IAP explicitly sought - as distinct from civil litigation - to eliminate the prospect of competing reports from experts on the same issue, it did in some circumstances provide for expert witnesses when their evidence was determined to be essential. An adjudicator could order such an assessment and then only after hearing the claim, determining credibility, and deciding that the assessment was necessary to assess compensation fairly. As well, as a condition for making an award that the injury in question had resulted in serious dysfunction at harm level 4 or 5 or consequential loss of opportunity at levels 4 or 5 as described in the Settlement Agreement, the adjudicator was required to order a psychological assessment unless the Government of Canada waived that requirement.

When a psychological assessment was required, a psychiatrist or psychologist, drawn from a roster of professionals approved by the Oversight Committee, would meet with the claimant and prepare a report. At the request of any party, the Adjudicator could also subsequently schedule a conference call in which the parties could question the psychological expert. The psychological assessment process normally took several months following the conclusion of the hearing.

An adjudicator could also order that the claimant undergo a medical examination. This could occur when the claimant described a physical injury (for example, hearing loss) for which there was no evidence contained in their available medical records of the timing, cause, or impact of that injury. Medical examination or psychological assessments were also required for consequential loss of opportunity above level 3 and in the Complex Track where a claim was being advanced for actual loss of income.

In these instances, the Adjudication Secretariat would contract with a medical professional – either agreed to by the parties or selected through an external supplier – who would assess the claimant's injury and submit a report. The medical examiner could then be required to give evidence and be questioned by the adjudicator. Similarly, the medical examination process normally took several months following the conclusion of the hearing.

As mentioned earlier, some mandatory documents could be provided in the post-hearing process in claims that had been expedited due to health concerns for the claimant or were part of the accelerated hearing process.

Final Submissions:

Final submissions by the claimant or her/his lawyer and the representative of the Government of Canada could be presented to the adjudicator at the end of a hearing, but often occurred in a teleconference following the hearing at a point when the adjudicator had all of the evidence required to commence writing the decision. These submissions provided an opportunity to summarize the claimant's testimony and for the parties to give recommendations on where the claim should be placed within the categories outlined in Schedule D of the Settlement Agreement, and on funding of the claimant's Future Care Plan.

Alleged Perpetrator Hearings:

The Settlement Agreement provided those individuals named by a claimant as an alleged perpetrator the right to be informed of the allegations against them and to provide their own statement to the adjudicator. The Government of Canada, as defendant, had the responsibility of attempting to locate alleged perpetrators. Where an alleged perpetrator wished to participate in the claim, they were provided with extracts from the claimant's application related to the allegations against them, with all information related to the address of the claimant or other potential witnesses deleted. Alleged perpetrators did not have the right to attend the claimant's hearing but could request his/her own hearing - not at the same time or place as the claimant - accompanied by counsel and a support person. In practice, the alleged perpetrator's hearing occurred after the claimant's hearing. Alleged perpetrators were considered to be witnesses in a claim and not parties to the process. As such, they had the right to be informed of the results of the hearing regarding any allegations made against them, but not the amount of any compensation awarded.

Decisions and Compensation:

The Decision:

Adjudicators would prepare their decisions following the receipt of final submissions. The alleged acts cited in the claim and consequential harms and consequential loss of opportunity were proven on a "balance of probabilities" standard: the same standard used by the Courts in civil matters. In the standard track, the consequential harms and consequential loss of opportunity were then proven to be "plausibly linked" to those proven acts: the "plausible link" standard being less onerous than the court "causation" standards.

The adjudicator's decision would generally contain background information on the claimant, a summary of the allegations in the claim and the claimant's testimony, and the adjudicator's findings on the abuse acts and the harms that those acts had caused the claimant. The adjudicator would also discuss whether the claimant had suffered from a loss of opportunity due to her/his residential school experience. The decision would also discuss any Future Care Plan put forward by the claimant and the amount of funding that was awarded for that that Plan.

Based on the adjudicator's analysis of these elements, the decision would then set the points awarded for the claim and the dollar amount of compensation awarded. The IAP Model provided for compensation to be determined according to a point system defined in the Compensation Rules contained in Schedule D of the IRSSA. It directed adjudicators to award compensation based not only on the acts of abuse proven by a claimant, but also on the consequential harms, aggravating factors and, where proven, the loss of opportunity experienced by claimants as a result of the abuse. Discretion was given to adjudicators to adjust compensation within the range of points that were generated by the Model.

The IAP did away with the Alternative Dispute Resolution's two-tier regional grid, eliminated the concept of "standards of the day" in determining liability, and rectified the circumstance that claimants who had attended Catholic schools only received 70 per cent of their ADR award due to that Church's refusal to provide compensation.[88] Relative to the ADR, the IAP increased the maximum amount of compensation that could be awarded for opportunity loss; included compensation for actual loss of income; and expanded access to compensation for "other wrongful acts" that caused psychological harms and for abuses committed by other students.[89]

The decision would be sent to the claimant or the claimant's legal counsel and to Canada. Both parties would have 30 days to consider whether they would accept the decision or request a review. If the parties accepted the decision, the process to issue the compensation set out in the award would commence.

[88] As noted in the previous chapter, this was done for ADR claims by means of a top-up payment from the Government of Canada, when the IAP was implemented.

[89] Student-on-student (SOS) abuse claims were technically available but rarely awarded under ADR, due to a much more stringent test than what was provided for in the IAP. As mentioned earlier, claims related to abuses by other students and to consequential loss of opportunity that had been settled in the ADR could be re-opened in the IAP in certain circumstances. In all, there were 514 SOS re-openers resulting in $12.9 million in awards; and 562 "loss of opportunity" re-openers resulting in more than $1 million in awards.

Reviews:

The claimant or the Government of Canada could request a review of an adjudicator's decision to determine if the decision had failed to apply the IAP Model to the facts. The claimant could also request a review of an adjudicator's decision if it contained a "palpable and overriding error".[90] After the other party had responded in writing to this request, the Chief Adjudicator would assign another adjudicator to review the claim. No new evidence could be provided during the review process. Rather, the new adjudicator would review all of the documents on the file and the transcript of the hearing. The review adjudicator would then write a decision that would either uphold the original decision, change the original decision, or order a new hearing. If the review adjudicator changed the original decision, either party could request that the claim be re-reviewed. In those instances, the Chief Adjudicator would assign a Re-Review Adjudicator to the claim; the re-review would, like the first stage of review, be conducted on the basis of a review of the written material on file and would not consider new evidence. A re-review decision would constitute the final decision on an IAP claim; there was no right of appeal of an IAP decision to the Courts.

In rare and very exceptional circumstances, there could be a "limited right of judicial recourse" to the Courts from a final decision of the IAP, if that decision reflected a failure to apply the terms of the IAP and the compensation rules. In order to seek judicial recourse, claimants would also first have to exhaust all review rights within the IAP.[91]

Compensation Payment:

Once both parties accepted an adjudicator's decision, the process for implementing the award would begin. The Government of Canada was responsible for issuing the compensation amount awarded by the adjudicator to the claimant, via legal counsel. If the claimant had not been represented by a lawyer during the hearing, she/he would need to retain one at this stage – paid for by the Government of Canada - to provide independent legal advice as to the implications of accepting the award. Processing and issuing the compensation cheque would normally take four to six weeks.

When the compensation cheque was awarded, the Adjudication Secretariat would inform the Church involved. This provided the Church with the opportunity to send a letter from the Church Leader, along with the Apology of the respective Church.

Legal Fees and Fee Reviews:

In accordance with the IRSSA, Canada would pay an additional 15 per cent of the total compensation awarded as a contribution to the claimant's legal fees. These legal fees would not be deducted from the compensation award but would be paid in addition to the award itself. For example, if the adjudicator awarded $60,000 to the claimant, plus $10,000 funding for a future care plan, the claimant would receive $70,000 and the Government of Canada would pay up to an additional $10,500 for legal fees. The claimant would be responsible for paying GST/PST/HST on legal fees.[92]

The maximum amount that a lawyer could charge a claimant was 30 per cent of the compensation award. The claimant would be responsible for paying any amount in excess of the Canada's contribution towards legal fees. Lawyers were not permitted to deduct any third-party assignments, cash advances, directions to pay, disbursements, costs associated with the management of the file, or anything else, from the amount payable to the claimant.

In all cases, adjudicators reviewed legal fees to ensure that they were within the limits set out in the Court orders implementing the IRSSA. In addition, if the claimant requested, or on the adjudicator's own initiative, the adjudicator could review legal fees to determine if they were "fair and reasonable". If an adjudicator decided that the legal fees charged were not fair, he/she had the power to reduce those fees.[93] Both claimant and their counsel could appeal the legal fee ruling if they disagreed with its conclusions, in which case the legal fee ruling would be reviewed by another adjudicator who would make a final determination on the issue.

The IAP Administrative and Governance Framework

The IRSSA and the Courts' Implementation Order set out a governance structure that gave a number of bodies specific authorities to implement and oversee the IAP.

[90] In both Standard and Complex Track claims, either party could request a review if the IAP Model had not been properly applied. Only claimants could request a review of a Standard Track decision to determine if it contained a palpable and overriding error. The Defendant could request a review to determine if a decision contained a palpable and overriding error in a Complex Track claim only.

[91] The rules and parameters for seeking judicial recourse of an IAP decision were set out in several decisions including those by the Ontario Court of Appeal (Fontaine v. Duboff Edwards Haight & Schachter, 2012 ONCA 471 (CanLII), 111 O.R. (3d) 461), the Ontario Superior Court (Fontaine v. Canada (Attorney General), 2016 ONSC 4328 (CanLII), and the Supreme Court of British Columbia (Fontaine v. Canada (Attorney General), 2016 BCSC 2218), and the Supreme Court of Canada (J.W. v. Canada (Attorney General), 2019 SCC 20).

[92] Taxes were not payable if all legal work was done on reserve for a Status Indian.

[93] In rare cases – associated with substandard performance by claimant legal counsel – adjudicators reduced legal fees to less than Canada's 15% contribution.


Justice Warren K. Winkler

The Courts:

The Courts retained jurisdiction to supervise the implementation of the IRSSA, pursuant to the terms of the approval and implementation orders, legislation governing class actions, and the Courts' inherent jurisdiction. This authority was reiterated in the Baxter decision, in which then Ontario Regional Senior Justice Warren Winkler stated that: "The administration of the settlement will be under the direction of the Courts and they will be the final authority."[94] As noted above, however, ultimately the Courts would grant access to judicial recourse related to a final decision on an IAP claim only in exceptional circumstances. Throughout the course of the IAP, there were only six instances in which judicial recourse resulted in an adjudicator's decision being reversed.[95]

The Implementation Order of the Settlement Agreement appointed a Court Counsel "to assist the Courts in their supervision over the implementation and administration of the Agreement", with such specific duties as determined by the Courts.[96] The Court Counsel regularly attended meetings of the National Administration Committee and the Oversight Committee.

Court Monitor:

The Implementation Order put in place a Court Monitor (Crawford Class Action Services) to monitor the implementation of the Settlement Agreement, particularly regarding the IAP and CEP compensation programs. The Court Monitor had authority to gather information and, as directed, to report to the Courts on the administration of the IAP.

National Administration Committee:

Under the IRSSA, a National Administration Committee (NAC) was tasked with ensuring the Settlement Agreement was appropriately administered.[97] The NAC was composed of one representative from each of Canada, the Church organizations, the Assembly of First Nations, Inuit representatives, Merchant Law Group, and Independent Counsel. All NAC members were required to be legal counsel.

Although not a supervisory body, it was tasked with ensuring national consistency in the execution of the Agreement and overseeing the implementation of the Approval Orders. In addition to its primary responsibilities with respect to hearing appeals in relation to the Common Experience Payment, the NAC had the authority to apply to the Courts for orders to modify the processing rates for the IAP as set out in the Agreement or to request additional funding for the IAP from Canada, and to consider recommendations from the Oversight Committee on "changes to the IAP as are necessary to ensure its effectiveness over time".[98] Any substantive changes to the IAP had to receive the approval of the NAC before a Court order could be prepared.

The NAC remained in place throughout the life of the Settlement Agreement.

[94] *Baxter v. Canada,* para. 39. The Approval Orders established a protocol for parties requesting directions or orders from the Supervising Courts related to the implementation of the Settlement Agreement. A copy of the Court Administration Protocol can be seen at: http://www.classactionservices.ca/irs/documents/CourtAdministrationProtocol.pdf

[95] The IAP provided that persons with Actual Income Loss (AIL) claims that may exceed the $250,000.00 maximum available under IAP could apply to the Chief Adjudicator for access to the courts. As well, if there was enough evidence that the harms experienced were so complex, extensive, and catastrophic (such as a permanent significantly disabling physical injury) and that the compensation available through the courts may have been more than the maximum IAP compensation allowed, a request could be made to the Chief Adjudicator to allow a claim to be brought to the courts. In five instances, claimants sought leave from the Chief Adjudicator to access the courts to address AIL claims; three of these requests were granted. AIL claims in excess of the $250,000 maximum could also be addressed through the Negotiated Settlement Process.

[96] *Fontaine v. Canada (2007),* paras. 1, 2, 4, 12, and 13.

[97] A National Certification Committee, composed of members from each party to the Settlement Agreement, was established to work with the Courts to secure approval of the Agreement and was dissolved on the Settlement Agreement implementation date.

[98] *IRSSA,* Schedule D, Section III (r) (iii)

Oversight Committee:

Led by an independent chair, the IAP Oversight Committee was made up of eight other members, with two representatives from each of the following parties: former students (representatives for First Nations and Inuit), plaintiffs' counsel (one representing the National Consortium and the other representing Independent Counsel), Church entities (one representing the Catholic entities and one representing the Protestant Churches), and Canada (see Appendix V for a list of Oversight Committee members).[99] The IRSSA accorded the Oversight Committee several specific duties, including:

- Recruiting, appointing and, if necessary, terminating the appointment of the Chief Adjudicator
- Recruiting and appointing adjudicators, and approving training for them
- On the advice of the Chief Adjudicator, renewing or terminating the contract of an adjudicator
- Recruiting and appointing experts for psychological assessments
- Considering any proposed instructions from the Chief Adjudicator on the application of the IAP
- Providing advice to the Chief Adjudicator on any issues he/she brought forward
- Making process improvement recommendations to the NAC
- Monitoring the implementation of the IAP

Beyond the specific and exclusive authorities accorded it in Schedule D of the Settlement Agreement, the Oversight Committee acted in an advisory capacity related to the implementation of the IAP, and as a body to which the Chief Adjudicator could bring matters for advice or approval, at his discretion. Within the parameters established in Schedule D, it considered proposals from the Chief Adjudicator on the interpretation and application of the administration of the IAP Model, prepared its own instructions on such issues or forwarded proposed instructions to the NAC. The Oversight Committee also established a Technical Sub-Committee to research and discuss complex issues related to the administration of the IAP prior to consideration and decisions by the Oversight Committee, and a Bilateral Sub-Committee consisting of Canada and claimant counsel to address matters specifically related to issues between those parties. Both of these Sub-Committees reported back to the Oversight Committee.

While the IRSSA did not explicitly impose a general requirement of due diligence or a fiduciary obligation on members of the National Administration Committee or Oversight Committee, a Supervising Court noted its expectation that the Committees' decisions reflect a broader adherence to the integrity of the IAP than to the specific interests of the represented parties. The Honourable Madam Justice B.J. Brown observed that:

"The Court is aware that the committees are populated by representatives that may be perceived to have a conflict in any debate regarding new policies or guidelines. Indeed, the committees overseeing the settlement are structured in a way that superficially might lead one to conclude that those conflicts were considered acceptable. However, the better interpretation would be that there was an understanding that the ability to have differing, representative viewpoints would lead to a stronger administration, dedicated to ensuring integrity and that claimants who establish entitlement to compensation receive the entirety of that entitlement. Accordingly, the Court expects that any debate about policies or guidelines will be driven by those underlying principles and not the personal interests of the appointees to the committees."[100]

Chief Adjudicator:

Appointed by the Oversight Committee and confirmed by the supervising Courts, the Chief Adjudicator was accountable to the governing committees and the Courts for maintaining the integrity of the IAP and for setting policies and standards for the Adjudication Secretariat. As set out in the IRSSA, his specific accountabilities included:

- Assisting in the selection of adjudicators; assigning work and providing advice to adjudicators; implementing training programs and administrative measures designed to ensure consistency among adjudicator decisions; addressing performance issues, and renewing or terminating adjudicators
- Preparing instructions regarding the IAP for consideration by the Oversight Committee
- Conducting reviews of adjudicators' decisions when requested
- Setting policies and standards for the Adjudication Secretariat and directing its operations
- Hearing appeals from claimants whose claims were deemed ineligible for admission to the IAP
- Preparing reports to the Courts and the Oversight Committee

[99] Under the ADR, there had existed a "Chief Adjudicator Reference Group" (CARG) that was reconstituted as the Oversight Committee in the IAP. However, unlike CARG – which functioned within the framework of a government-run Dispute Resolution process – the Oversight Committee was a formal part of the IAP governance structure.

[100] *Fontaine v. Canada (Attorney General)*, 2012 BCSC 1671, para. 35.

Dan Shapiro (left, 2013-2021) and Dan Ish (right, 2007-2013) served as Chief Adjudicator in the IAP. Ted Hughes (middle) was the Chief Adjudicator in the ADR (2003-07).

Although not referred to in the IAP Model, Deputy Chief Adjudicators were appointed to assist the Chief Adjudicator in managing the adjudication function of the IAP.

Indian Residential Schools Adjudication Secretariat:

The Indian Residential Schools Adjudication Secretariat was responsible for the operations and administration of the IAP. With some 250 staff and 100 independent adjudicators at its peak, the Adjudication Secretariat provided information on the IAP to claimants, stakeholders, and the public; received and assessed the eligibility of claims; provided support to self-represented claimants; scheduled and made logistical arrangements for hearings; managed the Group IAP program; and measured and reported on the performance of the IAP.

The Executive Director of the Adjudication Secretariat had a dual reporting relationship: to the Chief Adjudicator on IAP operational or adjudicative matters, and to the Deputy Minister of Indigenous and Northern Affairs Canada on financial and resource management.[101]

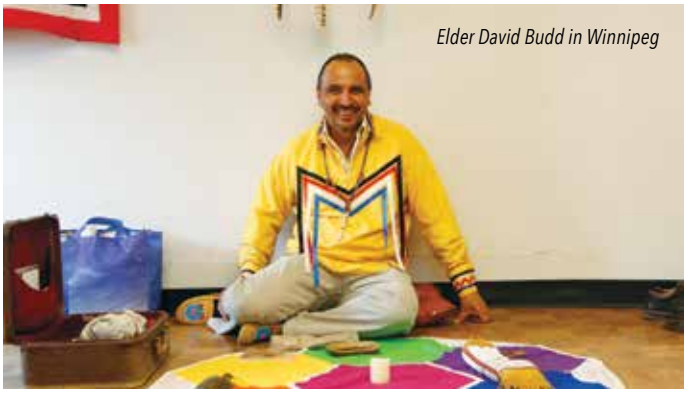
The Government of Canada:

Not only did the Government of Canada have responsibilities related to its role as defendant in IAP claims (such as document collection and attendance at hearings), it was also required by the IRSSA to provide sufficient resources to enable the IAP to achieve its operational targets. While the Adjudication Secretariat reported to the Chief Adjudicator on all operational and adjudicative matters, it was also accountable to the Government of Canada in the attainment and utilization of those resources. Adjudication Secretariat staff were employees of Canada, bound by adherence to Government policies and procedures regarding human resources, procurement, and financial management. They were similarly bound by their statutory obligations as Government employees in such areas as the exercise of financial authorities, employment equity and human rights, official languages, access to information and privacy, health and safety, and labour relations. Performance agreements between the responsible government department and senior Adjudication Secretariat management set objectives for financial and human resources management, the alignment of resources and business strategies, and development and support of a work culture that reflected Government values and ethics.

Thus, although the Government of Canada did not have a direct role in the governance of the IAP or the adjudicative process, it did have responsibility for and exercised oversight of the financial and human resource elements of the administration of the IAP.

[101] Prior to June 2008, the Indian Residential Schools Adjudication Secretariat was part of the Department of Indian Residential Schools Resolution Canada (IRSRC). At that point, with the merger of IRSRC into the Department of Indian Affairs and Northern Development (DIAND), the Adjudication Secretariat became subsumed within that latter Department. DIAND was subsequently renamed Aboriginal Affairs and Northern Development, then Indigenous and Northern Affairs Canada (INAC). In 2019, INAC was divided into two departments, with the Adjudication Secretariat becoming part of Crown-Indigenous Relations and Northern Affairs Canada.

IMPLEMENTING THE IAP: CHALLENGES, RESPONSES, AND IMPROVEMENTS



Elder David Budd in Winnipeg

As described in the previous chapter, the processes for conducting hearings and rendering decisions were detailed extensively in the Indian Residential Schools Settlement Agreement (IRSSA), and were informed by the experiences gained in litigation, in pilot projects, and in the Alternative Dispute Resolution process. However, the demands of an unprecedented number of claims, unanticipated procedural and substantive issues, and the varied circumstances of individual residential school survivors posed a number of challenges in implementing the IAP. These challenges necessitated ongoing reviews of IAP processes by the Oversight Committee, the Chief Adjudicator, and the Adjudication Secretariat. This in turn led to the development of processes designed to increase operational efficiency and effectiveness, to meet administrative demands, and to give best effect to the provisions of the IAP.

In its first year of operation, the Oversight Committee recognized the need to establish a Technical Subcommittee to address complexities that arose from the outset of the IAP. The Technical Subcommittee undertook the extensive work of analyzing issues, designing new and innovative approaches, and drafting consensus recommendations for consideration by the full Oversight Committee. Many of the improvements described in this chapter were developed through detailed research, discussions, and work by this Technical Subcommittee. In addition, a Bilateral Committee composed of claimant counsel and Government of Canada representatives met on occasion to discuss specific issues and processes.

Over the course of the IAP, 150 procedures and measures were developed to flesh out, interpret, administer, and apply the process set out in Schedule D of the IRSSA. This chapter will not describe all of these procedures; a summary list is provided in Appendix III. Rather, what follows is a description of the major challenges that arose in the implementation of the IAP and of those procedures that had the most significant impact in enabling the IAP to meet its objectives.

The Context: A Claimant-Centred Approach

The IAP was intended to be a process that positioned the claimant at its core and provided a safe, supportive, and culturally appropriate environment. Efforts to provide a claimant-centred approach ran throughout all aspects of the IAP and provided the context for analyzing and developing responses to challenges that arose in its delivery.

Once a claim was initially admitted, the claimant was given a hearing logistics form on which she/he could indicate their preferences for the hearing: its location; method of travel; whether they wanted support services, companions, Elders, a health support worker, and/or a Church representative at the hearing; cultural ceremonies at the hearing; the gender of adjudicator; and whether they needed an interpreter.

This information enabled the Adjudication Secretariat to try from the outset to ensure that, despite the overall volume of hearings held and complexities of logistical arrangements, each hearing was structured around the needs and expressed wishes of the individual claimant. For example, some claimants preferred that the hearing take place in their communities, while others preferred the anonymity of a larger centre away from where they lived. In addition, some claimants had requests for a specific location due to illness, work or family obligations, or because it held personal meaning for them.

Rather than in courtrooms, hearings were held in a variety of settings such as hearing centres, hotels, lawyers' offices, nursing homes, hospitals, correctional facilities, or the claimant's home. Hotels or other facilities were required to be accessible and allow traditional ceremonies. Correctional facilities and hospital rooms were also used when necessary. Hearings in Vancouver or Winnipeg could take place in one of the Adjudication Secretariat's dedicated Hearing Centres. These Centres were designed in conjunction with residential school survivors and legal counsel to offer a safe, culturally appropriate space for claimants.

Many claimants smudged before their hearings.

The Adjudication Secretariat developed mechanisms to arrange and pay for travel, accommodations, and meals for claimants and up to two personal support people to accompany the claimant to the hearing. The Adjudication Secretariat also covered the costs for the attendance of Elders and interpreters. This relieved the claimant of the responsibility and challenges of making arrangements and paying for travel.[102]

Health support workers – provided by Health Canada – were available throughout the hearing, if the claimant chose. Many health support workers were themselves survivors or affected by the intergenerational impacts of residential schools, often spoke the claimant's language, and were aware of cultural traditions and available health supports near claimants' home communities.

IAP hearings incorporated cultural ceremonies of the claimant's choosing, such as an opening prayer, smudge, or song. Claimants could also use an Eagle Feather when taking their oath, and could bring with them a sacred object that gave them strength, such as a stone or photograph. The ability for a claimant to have a traditional ceremony, to take an oath on the medium of her/his choosing, to be accompanied by an Elder or family or community members, and to speak in their own language allowed the claimant some control over the cultural context of the hearing.

In addition to cultural ceremonies and the presence of Elders and other support individuals, the physical set-up of the room was important in making the hearing as comfortable as possible for the claimant to share their experiences. Typically, the claimant sat to the side but facing the adjudicator to enable easier conversation. As discussed earlier, the adjudicator used an inquisitorial rather than an adversarial cross-examination approach to gathering information and assessing claims, in recognition of the emotional, physical, and spiritual toll that recounting these stories placed on the claimant.

The support services offered to claimants through Health Canada before and during the hearing remained available following the hearing as well. In addition, Canada funded a 24-hour toll-free crisis line operated by trained Indigenous crisis counselors.

Perhaps the overarching challenge of the IAP was less in making specific aspects of the IAP claimant-centred, but rather in adopting an approach that attempted to look at the entire process from the viewpoint of the claimant. This perspective was the prism through which the Oversight Committee, Chief Adjudicator, and Adjudication Secretariat assessed a range of measures that were implemented throughout the IAP, a number of which are described in greater detail below.

[102] All costs related to the implementation of the IRSSA, including those expended by the Adjudication Secretariat, were paid for by the Government of Canada.

Providing Information About the IAP

A print and electronic advertising campaign was launched when the Settlement Agreement was finalized.

The first challenge for the IAP was to ensure that Indigenous people knew about the Settlement Agreement and, in particular, that residential school survivors were aware that they could apply for compensation for the abuse suffered at the schools. It was important that claimants had a good understanding of the various stages of the IAP, such as completing an application, preparing for a hearing, the support services available to them, and what would happen during and after the hearing.

From 2006 through to 2012, there were four major court-ordered notice programs designed to ensure that those who attended residential schools were aware of the IRSSA.[103] These notice programs included:

- A "Hearing Notice" phase, launched in June, 2006, to provide notice of the Settlement Agreement to affected people residing on reserve, within other Indigenous communities or settlements, or in urban areas.
- An "Opt Out/Claims Notice" that commenced in March 2007 to ensure former students were notified prior to the deadline for individual class members to opt out of the Settlement Agreement.
- A "Common Experience Payment (CEP) Application Deadline Notice" that focused on the 2011 CEP application deadline.
- The "IAP Application Deadline Notice", started in March 2012, to ensure that former students were aware of the September 19, 2012, IAP application deadline.

All Notice Programs were conducted by Hilsoft Notifications, an experienced class action notice company, utilizing radio and television advertisements; direct mailings to Band Offices, Tribal Council Offices, and Friendship Centres; and a website and toll-free information line. Communications were produced in multiple languages appropriate to each medium, including English, French, Inuktitut, Innuinaqtun, Siglit, Oji-Cree, Déné (various dialects, such as Gwich'in and Dogrib), Ojibway, Innu, and Atikamekw. Together, the four phases of the Notice Program reached 98% of the target population an average of 14 times.[104]

In addition to the court-mandated notice programs, the Adjudication Secretariat developed its own outreach strategy, visiting communities to provide information on the IAP and to raise awareness of available support services, of the application deadline, and of the Group IAP program.

Outreach by the Adjudication Secretariat focused on communities where there was a significant gap between the number of CEP recipients and IAP applicants, indicating that there might be larger numbers of individuals who may have been eligible for the IAP but had not yet applied. Prior to their arrival in each community, outreach representatives arranged for the availability of support services, such as interpreter/translators, Elders, cultural support workers, and health support workers.

In support of its information activities, the Adjudication Secretariat developed a number of products that were approved by Oversight Committee, including a web site, pamphlets, fact sheets, a video providing information on what to expect at a hearing, and specific guides for claimants and stakeholders. The Adjudication Secretariat conducted more than 400 community information sessions: in Indigenous communities, with stakeholders, and also at in-care facilities such as federal and provincial correctional facilities, friendship centres, elder centres, and homeless shelters.

[103] Schedule K of the Settlement Agreement outlined Phases I and II of the Notice Plan.
[104] Indian Residential Schools Adjudication Secretariat, *The Indian Residential Schools Adjudication Secretariat's Independent Assessment Process (IAP) Outreach Activity Report: Raising Awareness about the IAP and the IAP Application Deadline,* (Ottawa: IRSAS, 2012), p. 4.; also Hilsoft Notifications, "Affidavit of Cameron R. Azario, Esq. on Completion of Phase IV of Notice Programme," submitted to the Ontario Superior Court of Justice (2012).

The Indian Residential Schools Adjudication Secretariat hosted information booths at National Events of the Truth and Reconciliation Commission.

The Adjudication Secretariat also maintained a presence at conferences, Truth and Reconciliation Commission national events, workshops, meetings, general assemblies, pow-wows, and educational institutions to reach out to residential school survivors and their families in as many settings as possible. Through these venues, more than 10,600 IAP information kits were distributed.

In addition to the activities undertaken by the Adjudication Secretariat, a number of stakeholder and partner organizations contributed to the distribution of information about the IAP. The Court Monitor - Crawford Class Action Services - maintained a toll-free telephone information line to respond to inquiries about the IAP. The Government of Canada also sponsored the Advocacy and Public Information Program aimed at providing information on, and raising awareness of, the Settlement Agreement. Health support workers from Health Canada provided information and support at the grassroots community level to survivors of residential schools. And many lawyers played a vital role in providing information on the IAP and assisting claimants in completing applications and in the hearing process, often travelling to remote communities to meet with residential school survivors.

Volume and Capacity

One of the initial challenges in implementing the IAP was to put in place the organization required to support the Chief Adjudicator in the administration of the process. This included creating the capacity to:

- build business processes and technological systems;
- receive, review, and admit applications;
- manage cases as they moved through the process;
- schedule, notify participants of, and arrange travel to hearings;
- arrange for the provision of health support and interpretation services, when required, at hearings;
- provide support to self-represented claimants;
- adjudicate the claims and issue decisions;
- arrange for the provision of expert assessments when required;
- conduct legal fee reviews;
- provide information on the IAP – including the application deadline – to potential claimants and the general public; and
- manage resource expenditures and maintain financial records and controls

To accomplish this required concerted and simultaneous activity on a number of fronts, including the selection and retention of adjudicators,[105] hiring staff, constructing a technological infrastructure, and securing office space to house a considerably expanded Secretariat.

The Settlement Agreement contemplated a six-month "start-up period" during which the Adjudication Secretariat and the IAP would be operational but not yet at full capacity. In addition, there was a sixteen-month gap between the date on which the parties signed the Settlement Agreement (in May 2006) and its implementation date (in September 2007), as the parties and the Courts undertook the approval process for the settlement. However, as there were delays in hiring staff, appointing a Chief Adjudicator, and allocating and expending resources, this proved to be insufficient time to build the organizational capacity necessary to adequately meet the significant operational demands.[106] The impact was that, at the outset, processes were relatively inefficient, the progress of existing ADR claims was delayed, and the Department (IRSRC) and the Adjudication Secretariat were unable to meet deadlines and service standards.

[105] As per Appendix III, Schedule D of the IRSSA, adjudicators who had been working under the ADR Model were subject to a new selection process in order to become IAP adjudicators.
[106] In this context, it should also be noted that there was a change in Government in the period between the signing of the Settlement Agreement and its implementation. In the same week that the federal Cabinet had approved the Settlement Agreement, the Liberal Government fell, requiring the Agreement and the policy framework for it to be revisited with and re-examined and approved by the new Conservative Government prior to implementation.

The IAP retained the services of 100 independent adjudicators at its peak.

Beyond the initial challenges of building the organization, capacity issues posed challenges on a number of fronts. These were exacerbated by the volume of applications and hearings in the IAP. Although disputed at the time by the AFN, Canada's initial estimates were that there would be in the region of 12,500 applications filed over the five years prior to the September 2012 deadline.[107] In fact, the 12,500-application mark was surpassed by the end of 2009, and by the application deadline more than 37,800 applications had been received.[108]

Similarly, the IRSSA contemplated that resources would be required to enable 2,500 hearings to occur each year, and to ensure that a hearing date for each claim would be within nine months of it being admitted to the IAP "or within a reasonable period of time thereafter" and that all cases would be processed by September 2013. In fact, 13,577 cases had already been resolved by 2012 (a year-and-a-half earlier than expected), and in that year the number of hearings held per year surpassed 4,100. In appreciating the magnitude of this volume, it must be remembered that all IAP hearings involved in-person gatherings of a number of individuals; this was in contrast to many other quasi-judicial settings in which adjudicators resolved cases following a review of the documentary evidence and written pleadings on a file.[109] It is also worth noting that, by comparison, targets under the ADR process were to hold 1,000 hearings per year: a level that was never achieved. While the Government of Canada paid all costs associated with the IAP, this level of performance required efforts by all parties not only to increase other resources allocated to the IAP, but also continuously to amend and enhance processes to more efficiently give effect to the provisions of the IAP.

For example, within the Adjudication Secretariat, initial staff levels of fewer than 50 were clearly inadequate to handle the increasing volume of claims. Within two years, staff levels had grown to approximately 200 and eventually to more than 270 located in four cities. However, throughout this period there were also vacancy rates at or in excess of twenty percent; occasionally, vacancy rates in key operational areas reached 50 per cent. While management attempted to mitigate this by cross-training, shifting internal resources to meet operational exigencies, utilizing agency personnel, and the retention of Crawford Class Action Services to assist in the admissions process, the chronic shortage of staff had an inexorable impact on the ability of the organization to meet stringent operational requirements.

[107] The AFN maintained in advance of the Settlement Agreement that the number of abuse victims would be at least 25,000 and that infrastructure planning for the IAP should be based on that expectation: see Mahoney, "The Settlement Process", p. 513.
[108] As described earlier, other applications were admitted pursuant to Court orders after the application deadline, bringing the total number of IAP applications to 38, 276.
[109] Approximately 90 per cent of IAP cases were resolved through hearings. The remainder were resolved through a Negotiated Settlement Process, discussed below.

Adjudicator capacity was also a recurring challenge, and was affected by the need and desirability to have female Adjudicators, francophone Adjudicators, and Indigenous Adjudicators.[110] At its peak, the IAP retained more than 100 Adjudicators, 8 Deputy Chief Adjudicators, and a Chief Adjudicator on a contractual basis. However, the initial recruitment of Adjudicators did not attract sufficient numbers of applicants, and the Oversight Committee was required to conduct four selection rounds (known as Requests for Proposals) over a four-year period.

Capacity issues posed a challenge not only for the Adjudication Secretariat, but for all other participants in the IAP. For the Government, the availability of staff to represent Canada at IAP hearings was occasionally a limiting factor in the number of hearings that could be scheduled in any given week or month. Similarly, other government Departments such as Health Canada (who provided health support workers) lacked sufficient human and/or systems resources to handle the initial demands. As a result, the Government of Canada augmented the human and financial resources dedicated to the IAP on several occasions over the following years in response to these volume and capacity challenges.[111]

While those claimants who wanted to have legal representation were generally able to retain a lawyer, those in remote communities faced greater challenges in the identification and selection of legal counsel. Some claimant counsel also faced challenges in their capacity to manage caseloads and their availability to attend hearings, resulting on occasion in senior Adjudication Secretariat staff conducting law firm visits to review and advise on business plans. Among the Churches as well, the scale of the IAP posed potential challenges to their capacity to participate fully in the process. At the outset, some Catholic Church entities did not propose to attend IAP hearings. Other Churches expressed an ongoing desire to attend hearings where claimants were amenable to their presence, and provided extensive training to those who would attend hearings on their behalf; however, their presence at hearings was limited by the right of claimants to request that Church representatives not attend.

Resolving Claims

A central objective and obligation of the IAP was to resolve all of the claims that were submitted. In order to accomplish this, a wide range of challenges needed to be addressed, and measures developed and adapted.

Mandatory Document Collection:

Schedule D of the Settlement Agreement set out requirements for documents that were necessary to allow claimants to proceed through the IAP and for a hearing to be scheduled. These "mandatory documents" included records related to medical treatment, workers' compensation, correctional services, income tax, Employment Insurance, Canada Pension Plan, and non-residential secondary and post-secondary school attendance. The number and types of mandatory documents required for each claim varied according to the levels of Harm and Loss of Opportunity claimed, as well as the complexity of the claim.

The collection of mandatory documents had a direct and significant impact on the ability of the IAP to resolve claims in accordance with the volumes and timeframes specified in the Settlement Agreement. The fact that document collection was not within the Oversight Committee's or the Adjudication Secretariat's sphere of control therefore posed particular challenges. Early experience under the IAP demonstrated that those institutions responsible for providing mandatory documents – such as local, provincial, or federal government bodies - did not have the personnel to meet those requests in a timely manner. For example, by the autumn of 2013, Correctional Service Canada had received some 9,000 requests for information, creating a two-year backlog. In the first years of the IAP, some 80 per cent of the document packages received by the Adjudication Secretariat in support of claims were incomplete and required significant and time-consuming follow-up to get the file hearing-ready.

Those responsible for administering the IAP undertook several process changes to address this issue. These included a series of tools aimed at strengthening communications with claimants' counsel to improve information about and maintain momentum in the document collection phase of the claim. In 2013 and 2014, the Adjudication Secretariat signed Memoranda of Agreements with provincial correctional facilities departments in Alberta and Saskatchewan that outlined priorities and measures to address backlogs, and held discussions with Correctional Service Canada to improve the provision of documents to counsel. The Adjudication Secretariat also worked with federal Government departments to develop an IAP-specific information request form to allow greater efficiencies in the processing of Canada Pension Plan documents. Internally, the Adjudication Secretariat established a dedicated team to work directly with self-represented claimants to obtain mandatory documents on their behalf.

[110] IAP claimants could request that a male or female adjudicator be assigned to their cases; linguistic ability also needed to be considered. To attempt to expand Indigenous Adjudicator capacity, the Oversight Committee utilized the Request for Proposals mechanism that allowed contracts to be "set-aside" for Aboriginal suppliers, and advertised Adjudicator opportunities through the Indigenous Bar Association. Notwithstanding these efforts, the number of Indigenous Adjudicators did not exceed 25% of the total.

[111] Information on the costs of the IAP is provided in the following chapter.

Inactive Claims:

In addition to delays engendered by the document collection process, another challenge in the IAP – and not uncommon in other quasi-judicial processes – was that some claims would become inactive and would not progress towards a hearing. This not only had an immediate detrimental effect on the claimants, it also raised concerns about the IAP's ultimate ability to resolve all of the claims that had been submitted.

In response, the Adjudication Secretariat introduced an "Intensive Case Management Project" to review all files that were on hold, incomplete, and older than two years; communicate with claimants' counsel to identify reasons why the claim was not progressing in the usual manner; address any outstanding issues where possible; and move the claim toward resolution or identify it for closing if the claim was withdrawn or the claimant was deceased. Intensive Case Management helped to indicate which documents were difficult to obtain, what institutions took a long time to respond to requests, what the status of the claims were with individual law firms, and what the Adjudication Secretariat could do to remove blockages. More generally, it helped to establish communications with claimants' counsel. Overall, in its first year of operation this process achieved a 90% response rate from claimants' counsel.

The information generated through Intensive Case Management in turn provided the foundation for other improvements such as the Incomplete File Resolution Process and the Lost Claimant Protocol (discussed below) to assist in the resolution and completion of IAP claims.

Incomplete Files:

Even with a case-specific and intensive approach to case management, some claims remained at a stage where they were not ready for a hearing to be scheduled. The IRSSA did not provide guidance or tools to allow a claim that had been admitted into the IAP to be closed unless it had been heard, settled, withdrawn or found to be outside of the jurisdiction of the IAP. Adjudicators did not have the authority to dismiss claims short of a hearing, even in circumstances where counsel had lost all contact with a claimant, where mandatory document collection was not possible, or where a claimant had passed away prior to providing sworn testimony. Moreover, due to the vulnerabilities of many residential school survivors – including incarceration, homelessness, and mental or physical health issues that could explain the lack of movement of claims – neither the Oversight Committee nor the Chief Adjudicator supported an approach that would see claims dismissed for "want of prosecution": the model used in the courts where a claim can be dismissed when it is inactive for a specified period of time. In an analysis of admitted claims conducted in 2011, the Adjudication Secretariat estimated that this would leave 1,000 to 1,500 claims unresolved at the completion of the IAP.

As a result, commencing in 2012 the Adjudication Secretariat, the Technical Subcommittee, the Oversight Committee, and the National Administration Committee (NAC) undertook a detailed examination and discussion of strategies, processes, and tools necessary to ensure that all IAP claims would be resolved and the IAP itself brought to completion. These new procedures were approved by the Oversight Committee and the NAC by the end of 2013, and submitted for Court approval. In June 2014, the Honourable Justice Perell of the Ontario Superior Court of Justice signed a consent order approving the Incomplete File Resolution Procedure (IFRP) as a component of the IAP "Completion Strategy Report", with the other supervising courts following suit.

The IFRP implemented a two-step approach to resolving claims that would otherwise have no prospect of proceeding. The first phase of the procedure essentially incorporated Intensive Case Management processes to a claim. If case management approaches were unsuccessful, the claim could then be referred – by the Adjudicator or by any party to the claim - to a File Management Adjudicator who could convene teleconferences with the parties, establish procedural timelines, and take other steps to progress the claim.

If that first phase of IFRP failed to move the claim forward, a "Special Resolution Adjudicator" was then appointed with the authority to receive submissions from the parties, decide about documents, set the claim for hearing with or without documents, and make a "Resolution Direction" that could, in some circumstances, involve dismissing the claim. This process included rights of review and a possibility for reconsideration by the Chief Adjudicator.

As of December 2018, of 1,233 claims referred to the IFRP, 706 - or nearly 60 per cent - were subsequently able to be returned to the normal hearing stream or other targeted approaches. Some 527 cases were the subject of a Resolution Direction. There were 26 requests to the Chief Adjudicator for reconsideration of IFRP Directions that had dismissed claims. Of these, 19 were granted, two were withdrawn, one was abandoned, and four were dismissed.

Lost Claimants:

Another key aspect of the Completion Strategy Report submitted to the Courts in 2014 was the introduction of a Lost Claimants Protocol. At that time, through information gathered in the Intensive Case Management Process, it had been determined that contact had been lost with approximately 300 claimants. This could have occurred for a number of reasons: a claimant may have passed away; may have been in a hospital or nursing home; may have become homeless or have changed address without informing their counsel or the Adjudication Secretariat. In its report to the National Administration Committee in June 2012, the Oversight Committee flagged this issue as one that needed to be addressed to ensure the ultimate completion of IAP.

Under the Lost Claimants Protocol, the Adjudication Secretariat would attempt to locate claimants with whom their counsel had lost contact using a progressively intrusive methodology, while at the same time protecting and respecting claimants' privacy. In the first instance, internet searches and a review of the information on file would be explored. Following that, if necessary, information would be sought from Aboriginal Affairs and Northern Development (e.g. Common Experience Payment, Indian Registry, Estates); Service Canada (e.g. Canada Pension Plan, Old Age Security, Guaranteed Income Supplement); Health Canada (e.g. health benefits, crisis intervention, medical transportation); Correctional Service Canada; Provincial and Territorial Motor Vehicle Registries; and Departments of Vital Statistics. Ultimately, information on a claimant's whereabouts could be sought from support persons identified in the claimant's file, Resolution Health Support Workers, police detachments, or other sources such as Veterans Affairs. To enable this, the Courts ordered that all public and private entities, institutions, and agencies operating in Canada must, if requested by the Adjudication Secretariat, provide contact information regarding the whereabouts of IAP claimants.

If a Lost Claimant was found, her/his file was returned to the regular IAP file flow. If a claimant could not be located, was non-responsive or unwilling to participate in the IAP, her/his file was moved into the Incomplete File Resolution Procedure (IFRP).

As of January 2019, the Lost Claimant Protocol had been used in 841 files, representing 771 unique claimants.[112] Of these, 546 claimants were located and their claims returned to the regular file stream or assigned to another targeted case management approach. Searches were exhausted on 225 referrals. The remaining unlocated claims were subsequently referred to the IFRP or were non-admitted.

Both the Incomplete File Resolution Process and the Lost Claimant Protocol constituted efforts unique among decision-making entities to locate and support its claimants, and provide a tangible and concrete illustration of the claimant-centred approach adopted in the implementation of the IAP.

Claims with Student-on-Student Allegations:

The IAP allowed for compensation to former students of Indian Residential Schools who had suffered abuse by fellow students. However, compensation in some of those claims required proof that staff knew of ought to have known about the abuse.[113] As this could be difficult for individual claimants to establish, Schedule D of the IRSSA stipulated that:

"With respect to student-on-student abuse allegations, the government will work with the parties to develop admissions from completed examinations for discovery, witness or alleged perpetrator interviews, or previous DR or IAP decisions relevant to the Claimant's allegations."[114]

The process for the management of claims with student-on-student allegations was the subject of discussion by the Technical Subcommittee and the Oversight Committee from the outset of the IAP. Initially, Canada did not disclose its list of all admissions for all residential schools; rather, it provided possible relevant admissions on a case-by-case basis for each claim.[115] Claimants' counsel maintained that once the onus had been met by the claimant that Canada and/or the Church knew or ought to have known about the abuse, Canada was obliged to share this information more broadly, rather than on a case-by-case basis.

In the summer of 2010, Canada proposed that it would share a Master List of all admissions with the Chief Adjudicator which would be made available to the adjudicators, but would not be shared with other parties. Canada also maintained that admissions that post-dated a claimant's attendance were not relevant to that claim. Subsequently, the Chief Adjudicator issued a Directive that gave adjudicators the authority to release potentially relevant admissions from the Master List to claimants' counsel. It also stipulated that the Chief Adjudicator had the authority to decide whether, and if so, on what terms the Master List should be made accessible to Claimant Counsel.

In June 2011, the Chief Adjudicator issued an Update in which he recommended against adjourning student-on-student hearings to await possible relevant admissions in the future.

In March 2013, the Chief Adjudicator issued another Directive that unless it was apparent at the time that a claim involving student-on-student allegations would be successful, adjudicators should in fact be receptive to requests to adjourn hearings, pending possible receipt of future admissions. The claim would be then adjourned for the sole purpose of keeping it alive until supplementary submissions arising from any new admissions were generated.

[112] In some cases, claimants were located and subsequently lost contact once again, leading to a second referral of the file to the Lost Claimant Protocol.
[113] In the IAP Model, there was no requirement to prove staff knowledge in cases of SL4/5 abuse that was predatory or exploitative.
[114] *IRSSA*, Schedule D, Appendix VIII.
[115] The Government of Canada made more than 4,500 admissions after relevant evidence or findings of adjudicators became available.

Many decisions about the IAP were made in British Columbia's Supreme Court.

In May 2013, the Chief Adjudicator released a decision that the Master List of admissions would be made available to all IAP claimant counsel. The Master List became available to counsel the following September.

However, each student-on-student claim still took into account admissions arising only from cases that had already been decided. It was recognized, though, that there might, in the future, be other claims that could generate admissions of assistance to preceding claims. This posed a challenge in that, once a decision was made on a claim, there was no avenue for a claimant to benefit from subsequent new admissions. Therefore, in December 2013, Canada proposed and the Oversight Committee approved a revised strategy and process designed to enable claims deemed likely to yield such admissions (based on information in the claim) to be heard prior to claims which might potentially benefit from them. Under this "Student-on-Student Admissions Project" strategy, Canada provided a list of almost 2,200 claims in the pre-hearing stage, of which 647 were identified as having the best potential to generate new admissions. A conference call would then be held to determine whether specific cases could be heard in advance of document completion.

The process for managing claims with allegations of student-on-student abuse was subject to further revision when, in September 2017, Canada submitted a Request for Direction (RFD) to the Courts in which it argued the Chief Adjudicator and his designates utilized "procedural fairness" as grounds for review or re-review of several of these claims that had been dismissed based on lack of proof of staff knowledge of student-on-student abuse. The Chief Adjudicator and adjudicators had decided that in some circumstances, adjudicators could consider post-decision admissions that, had they been available at the time of the initial adjudicator's decision, could have resulted in an award in favour of the claimant. Canada maintained that it was inappropriate to import the concept of procedural fairness into the IAP Model and to utilize it as grounds for the review of decisions.

The British Columbia Supreme Court agreed with Canada's position in its decision, concluding that the IAP was a "complete code" that did not contain the administrative or public law term of procedural fairness. The Court also ruled that the IAP contemplated "progressive disclosure" by requiring Canada to make admissions as the IAP unfolded; newly discovered information did not justify the re-opening of a decided IAP claim. Furthermore, only the Supervisory Courts of the Indian Residential Schools Settlement Agreement possessed the jurisdiction to re-open an IAP claim.[116]

Notwithstanding the Court's decision, on March 12, 2018, Canada announced that it would revisit student-on-student claims dismissed for lack of proof of staff knowledge, where post-decision admissions by Canada of staff knowledge might have assisted the claimant had they been available at the time of the decision. Canada stated that where it determined that cases were appropriate for settlement on this basis, such claims would be settled outside of the IAP.

Hearings

Infirm and/or Elderly Claimants:

Schedule D of the IRSSA specified that:

"In considering applications to the IAP … priority will be given, in order, to:

a) Applications from persons who submit a doctor's certificate indicating that they are in failing health such that further delay would impair their ability to participate in a hearing;

b) Applications from persons 70 years of age and over;

c) Applications from persons 60 years of age and over …"

[116] Appeals of this B.C. Supreme Court decision brought by the Assembly of First Nations and Independent Counsel were subsequently dismissed by the British Columbia Court of Appeal.

In practice, however, this posed several operational challenges. The first related to the determination of those claimants for whom a delay in a hearing could impair their ability to participate. In this regard, several issues arose, including:

- Some claimants' counsel requested expedited hearings for all of their clients, presumably in some instances as a means of getting ahead in the hearing queue. This created challenges for the Adjudication Secretariat in attempting to satisfy these requests.
- Some claimant counsel were utilizing form letters to identify medical circumstances that did not conform to the criteria as described in the Settlement Agreement.
- In remote communities, it could be difficult to obtain a doctor's certificate.
- A faster hearing did not necessarily mean faster resolution of the claims, as the collection of mandatory documents and expert/medical assessments still required the same amount of time.
- A significant proportion of all IAP claimants were over the age of 60, with some identified as being at significant risk due to diminishing capacity.

To address this problem, in 2010 the Adjudication Secretariat implemented a form to ensure that claimants who legitimately required an expedited hearing had access to one. Based on operational experience, the form was amended in 2011 and again in 2012. In its final format, the "Request for Expedited Hearing or High Priority Hearing Due to Failing Health" placed responsibility for assessing the claimant's medical needs in the hands of their attending physician, rather than their lawyer or the Adjudication Secretariat. The form removed the need for the doctor to explain the medical condition, merely to attest to it. The form also introduced a distinction between "expedited" and "high priority" hearings, with expedited indicating that a delayed hearing would result in a significant risk that the claimant may die or otherwise lose capacity to provide testimony, and "high priority" indicating that failing health could impair the claimant's ability to provide testimony.

For claimants in remote areas where doctors were not readily available, the Adjudication Secretariat could agree to proceed on an expedited basis, based on information from claimants' counsel and subject to the production of a medical certificate shortly after the hearing.

In addition, despite the priority accorded them in the IRSSA, some elderly claimants were having to wait a considerable time – up to or even in excess of two years – for a hearing to be scheduled. In large measure, this was due to the fact that although the Settlement Agreement gave elderly claimants priority for hearing dates, a claim still needed to be "hearing ready" (i.e., all required documents had to be gathered and submitted by the claimant and the Government of Canada) before it could be scheduled.[117] As a result, elderly claimants whose health was not failing and whose claims had not reached the hearing-ready stage could have their claims remain stagnant in the document collection stage.

To address this challenge, in 2012 the Oversight Committee approved an "Over-65 Pilot Project" to develop ways of processing claims more quickly for those claimants 65 years of age or older, including alternative scheduling approaches and more intensive case management by adjudicators. One key element of the Pilot Project entailed adjudicator-led pre-hearing teleconferences in which the parties could address issues regarding document collection and identify claims for which a hearing date could be scheduled, or that could be suitable for resolution through the Negotiated Settlement Process. The Pilot Project also involved block-scheduling of groups of hearings to take place over consecutive days in a single location in order to make the best use of resources. During a six-month period, more than 140 hearings were conducted through the Pilot Project. Based on those results, it was determined that the approach had merit, but that additional process improvements could help in accelerating hearings for elderly claimants.

As a result, the Oversight Committee approved an Accelerated Hearing Process (AHP) in June 2013. Based on the experience of the Pilot Project, this new process was aimed at realizing the requirement of the IRSSA to accord priority in scheduling and hearing claims of elderly claimants.

[117] The only exception to this requirement in the Settlement Agreement was where medical evidence demonstrated that the claim needed to be heard immediately due to the health of the claimant. Appendix IV, section iv of the IRSSA stated that: "No [hearing] date shall be set until the IAP Secretariat is satisfied that exchange of documents, including treatment notes and clinical records is as complete as reasonably necessary, unless a Claimant provides medical evidence that any delay in hearing their testimony involves a significant risk that they may die or lose the capacity to provide testimony. In such circumstances, the Secretariat may schedule a hearing for the limited purpose of taking such testimony, after which the hearing shall be adjourned to allow for the preparation of the case as otherwise provided for in this IAP."

IAP Hearing

Under the AHP, the Adjudication Secretariat identified files for potential inclusion in the process, giving particular priority to elderly claimants, claimants in failing health, or those with claims that had been awaiting a hearing for a longer time. Claimants' counsel (or self-represented claimants) would then consider whether to proceed with those files under the AHP. If so, an adjudicator would conduct a pre-hearing teleconference to identify issues with document production or that were otherwise delaying the process. Claimants' counsel or self-represented claimants would then be given a period of time in which to get the file hearing-ready, with the claim set down for hearing within a block schedule of hearings. AHP claims were scheduled into 5-day blocks of hearings held in the same location. In order to preserve those hearing dates, an AHP hearing could proceed as scheduled even if it was not yet hearing-ready if the parties agreed, subject to final submissions after adjournment.

In the final years of the IAP, in order to ensure the completion of the IAP, AHP became the default process for getting cases to hearing; claims were scheduled for hearing with or without the consent of the parties and whether or not the file was "hearing-ready" in terms of document collection.

Hearing Postponements, Cancellations, and Substitutions:

Based on a study in 2011, it was found that 20% of hearings did not proceed as scheduled and 40% of postponements and cancellations were avoidable. Given the volume of hearings that needed to be held and the tight timeframes for scheduling those hearings, this constituted a major obstacle to being able to realize the goals and objectives of the IAP. This challenge was exacerbated by the fact that the notice given for postponements and cancellations was often too short to allow for substitution with another claim due to the complexity of hearing logistics and diversity of geographical locations.

Following discussions by the Oversight Committee, new procedures were adopted and guidance provided to the parties aimed at reducing hearing postponements and cancellations and at ensuring that more hearings would proceed as scheduled.[118] These new processes included a requirement that all postponements requested within 10 weeks of the hearing date be approved by the presiding adjudicator. The adjudicator would work with the parties to attempt to prevent postponement, and could impose consequences if a participant failed to attend a hearing without proper cause.

In 2013, the Oversight Committee approved a policy that specifically addressed hearing cancellations related to claims that had entered the Negotiated Settlement Process (NSP) stream. Previously, hearing dates had been scheduled for claims that were in the NSP stream, and those dates were maintained until the claim actually settled. However, as is not uncommon in judicial or quasi-judicial processes, those settlements were most often reached close to the hearing. Approximately 50 per cent of NSP settlements occurred within six weeks – and 35 per cent within one month - of the hearing. Following direction of the Oversight Committee, the process for maintaining hearing dates was altered; once a claim entered the NSP stream, its hearing date was cancelled. In the rare instance that a claim did not settle in the NSP, it would be scheduled for hearing on an expedited basis. Any request for cancellation due to a claim entering into the NSP process that was made within six weeks of the hearing date would be subject to review and determination by an adjudicator.

As well, the Oversight Committee in 2013 approved changes that would facilitate the substitution of claims using previously scheduled hearing dates. In cases where an adjudicator had approved the postponement of a hearing, the same claimant counsel could propose utilizing that hearing date for another claimant whose file was hearing-ready, could be heard in the same location and who met other criteria in the policy. This approach was adopted to help preserve claimants' testimony, reduce the number of lost hearing dates, and reduce the likelihood of an adjudicator directing claimant counsel to pay costs associated with a postponement or cancellation.

Following the introduction of the hearing cancellation policy, the percentage of hearings that were cancelled or postponed declined from a peak of 20.5 per cent in 2010/11 to a rate of 16.8 per cent from 2011/12 to 2018/19.

[118] Guidance Paper "GP-7: Failure of Hearings to Proceed", issued by the Chief Adjudicator on November 22, 2011. Following continued monitoring by and discussion at the Oversight Committee, in 2015 the Chief Adjudicator enacted a number of modifications to the hearing postponement policy ("Guidance Paper 7r1: Failure of Hearings to Proceed") and new Guidance Papers to address postponements of assessments ("Guidance Paper 9: Regarding the Postponement of Assessments") and conference calls ("Guidance Paper 10: Attendance at Teleconferences").

Adjudication and Claim Resolution

Time Required to Issue Decisions:

In the IRSSA, Schedule D, Appendix XII to the IAP Model set out the format for decisions, indicating that a typical decision would be six to ten pages. Given the volume of claims anticipated in the IAP, the length of time taken on average to write a decision following a hearing, and the time required for decisions to be reviewed by the Chief Adjudicator and/or Deputy Chiefs, it soon became apparent to the Oversight Committee that a full decision in each case would take considerable time and resources, and could delay the receipt of the decision and compensation for claimants.

With this in mind, in 2009 the Technical Subcommittee (TSC) undertook to examine how, in some circumstances, the format for decisions and the length of time required to issue them might be reduced.

Based on experience with both the ADR process and the IAP, the Technical Subcommittee recognized that for some claimants, receiving a full decision that included a detailed narrative of evidence and the rationale supporting the decision was very important for memorialization and for personal healing. Other claimants, however, would appreciate receiving a decision as soon as possible following the hearing, both for marking an end to the process and for the receipt of any compensation that may be awarded. The TSC also determined that, at the conclusion of some hearings, there could be circumstances in which the adjudicator and the parties were in agreement as to how the claim should be resolved. A shorter form of decision could then be generated and signed by the parties at that time.

Given that the decision format had been prescribed by the Settlement Agreement, any change in format required consultations with the parties, discussions at the Oversight Committee and approval by the National Administration Committee. Following that, in November 2009, the Oversight Committee approved a process for Short Form Decisions, which was implemented in January 2010.

Short Form Decisions (SFDs) were available when certain requirements were met:

- the claim was in the standard track;
- all research, and mandatory document production was complete and submitted before the hearing, all testimony heard, and submissions taken place at the end of the hearing;
- the future care plan (if any) was submitted by the end of the hearing;
- the claimant requested in writing the use of an SFD; and
- the representatives of the parties attending the hearing consented in writing to the rendering of a SFD.[119]

A SFD was not available if the claimant was self-represented, an alleged perpetrator testified and disputed responsibility, or where a material issue remained with respect to credibility, liability, or compensation. All parties retained their rights to have the decision reviewed by another adjudicator.

Negotiated Settlements:

In addition to claims being decided by adjudicators at hearings, Schedule D of the Settlement Agreement provided that the Government of Canada and the claimant could resolve a claim without a hearing. This procedure – known as the Negotiated Settlement Process (NSP) - allowed the claimant's counsel and the Government of Canada to agree on an award within the compensation rules.

The circumstances in which an NSP could be used were not specifically described in the Settlement Agreement and were left to the parties to determine and agree. To this end, the Government of Canada established a Working Group in 2007 to develop the process, and settlements were reached beginning in 2008. Typically, settlement was reached based on evidence obtained through an interview conducted by a representative of Canada where:

- the claimant was represented by counsel; and
- the case was straightforward, such as in the standard track;

Negotiated settlements were a voluntary process within the purview of the parties. As such, the Chief Adjudicator and the Adjudication Secretariat were not directly involved in NSPs. However, adjudicators were required to approve legal fees in all NSPs.

[119] When a Church did not send a representative to the hearing, Canada could consent to an SFD on their behalf.

In 2011, Canada undertook a review of the Negotiated Settlement Process and implemented a number of improvements. As well, the Adjudication Secretariat began distributing evidentiary packages as new documents were received, rather than the original process where evidentiary packages were held until all documents were in place, in order to provide the parties with more time to determine if the claim could be settled. Overall, these changes resulted in more efficient and expeditious resolution of claims. The number of NSPs rose from 572 in 2011 to 742 in the following year.

Overall, negotiated settlements accounted for 4,415 file resolutions, or approximately 13 per cent of all admitted IAP claims. Careful selection by the parties of claims for this process resulted in more than 99 per cent of claims accepted into the NSP being resolved through negotiation.

Ensuring Consistency in Decisions:

While the IAP did not operate on a system of binding precedent, it was of course necessary to take measures to ensure consistency in decision-making among the more than 100 adjudicators across the country. Schedule D of the Settlement Agreement specified that: "Adjudicators … will attempt to conduct consistent sessions and produce decisions in a consistent fashion … The Chief Adjudicator shall implement training programs and administrative measures designed to ensure consistency among the decisions of adjudicators in the interpretation and application of the IAP."[120]

Accordingly, the Chief Adjudicator and his deputies conducted formal and informal training sessions and meetings of adjudicators to help them share experiences and best practices. While these meetings did not address the specifics of any individual claim, they were an essential means of promoting collegiality and consistency across the system.

As well, the IAP allowed either party to request a review if the adjudicator had not properly applied the IAP Model to the facts as found by the adjudicator. Claimants could also request a review if there had been an overriding and palpable error; this option was only available to Canada in complex track files.

In order to strengthen consistency of decision-making in the IAP, the Chief Adjudicator and his deputies also worked with the Oversight Committee and its Technical Subcommittee to develop directives and guidance papers on certain aspects of the process. These directives were made available to adjudicators and all parties through posting on the IAP web site. Over the course of the IAP, 11 Chief Adjudicator Directives provided instruction to adjudicators and parties on specific policies and procedures related to claims; 10 Guidance Papers suggested procedures to adjudicators and parties for dealing with issues regarding the administration of the IAP; and 2 Practice Directions provided guidance to practitioners on various issues including instructions to adjudicators regarding Short Form Decisions.

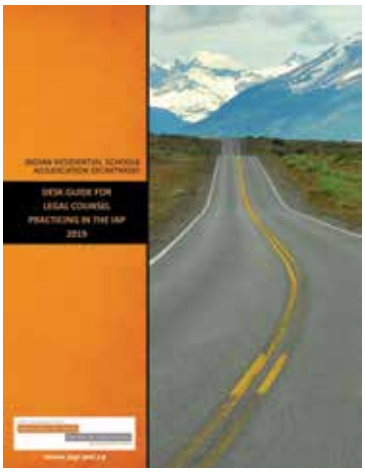
In addition, at the outset of the IAP, a database of decisions was available to adjudicators to enable them to refer to issued decisions by types of claims. Since IAP decisions did not have precedential value, the database was intended for research purposes only. However, the lack of a database that was also accessible by claimant counsel and the Government of Canada created an imbalance between the parties. Claimant counsel only had access to those decisions in which they were involved as counsel, while Canada - given that they were a party to all claims - had access within their own records to all IAP decisions. Therefore, in 2009, the Oversight Committee decided to seek to implement a secure, searchable, online database of IAP decisions for use by adjudicators, claimant counsel, Canada's representatives and Church entities to ensure equal access by all parties.

In 2010, the Supervising Court issued an order directing that the Adjudication Secretariat, with the assistance of Crawford Class Action Services, develop a database of important IAP decisions. As per the approval of the database by Oversight Committee, one key aspect was that extensive redaction of the included decision was required in order to protect the privacy of claimants, alleged perpetrators (living and deceased,) and other witnesses. This included redaction of:

- All proper names of individuals (other than adjudicators, party representatives, and names of schools)
- Any reference to a family relationship that would make any individual identifiable
- All staff positions
- Date of birth of the claimant or any individual
- The location of the residence or origins of the claimant
- The education of the claimant or any individual
- Any reference describing the employment of the claimant or any individual

Lists of important decisions were posted to the IAP Decisions Database at regular intervals. Decisions themselves were posted in the language in which they were written, but were translated on request by any of the parties subject to approval by the Chief Adjudicator.

[120] *IRSSA,* Schedule D, sec. III m (i) and (ii)



Claimants' legal counsel could consult a guide with detailed information on procedures and practices in the IAP.

Administrative and Process Management

Sharing Documents:

Due to the volume of anticipated claims and of the number of documents associated with each claim, it was of paramount importance to develop an electronic means for sharing and transferring those documents among all parties, adjudicators, and the Adjudication Secretariat. At the same time, while an electronic system would eliminate the risk associated with the physical transfer of documents, it was crucial that the system be secure so as to protect the privacy and confidentiality of IAP records. This was particularly important in that any such system would of necessity be managed by an independent body outside of the Adjudication Secretariat and would be accessible to a range of users.

Following Oversight Committee approval, a Court Order to establish an Electronic Document Interchange was issued in 2010. Crawford Class Action Services – the Court Monitor for the IAP – was tasked with providing a secure file transfer protocol that would enable the parties to electronically transfer protected documents housed on a secure website with secure links between all users. Crawford also was to provide training and technical support, measure and ensure quality control, and regularly destroy documents posted on the website according to timelines provided by the Chief Adjudicator.

The EDI system was rolled out in stages commencing in September 2010. Although some law firms with smaller IAP caseloads did not utilize EDI, the system was widely adopted and within three years the number of document packages transferred via EDI had exceeded 250,000. This represented not only considerable reductions in time but also in resources, with the savings of hundreds of thousands of dollars in courier costs. However, two gaps in its utility remained: EDI could not be used by claimants' counsel for submitting mandatory documents to the Adjudication Secretariat, and it was not available to self-represented claimants. In both of these circumstances, the Adjudication Secretariat determined that the submission process already in place was adequate.

File Management:

As noted earlier, one of the most significant ongoing operational challenges in the IAP was the slow rate of mandatory document production. Most claimants needed to submit medical, education, and income records to prove higher levels of harm and opportunity loss in the IAP, and could not have a hearing scheduled until those documents were produced. Many claimants' counsel experienced difficulty obtaining these documents or lacked appropriate information systems to track document production across a large number of claims.

In order to address both concerns, in 2011 a Court Order was issued for the implementation of an Interactive File Management System (IFMS). This secure web-based tool allowed authorized claimants' counsel and their office staff to view the status of their clients' claims in real time, and provided updated information directly into the system. This eliminated time-consuming rounds of correspondence and gave the Adjudication Secretariat valuable information on causes of delay that in turn could lead to targeted attempts to remove blockages.

In 2013, IFMS was expanded to provide additional tools that enabled users to view files in the scheduling stage; access an interactive calendar of hearings; electronically submit logistical requirements; view the status of post-hearing files; and obtain information on the progress of decisions, fee rulings, and reviews.

Ultimately, while a large number of law firms did utilize IFMS, those that already had a file tracking system in place did not embrace its use. Claimant counsel that adopted IFMS did indicate that the system greatly facilitated their understanding of the status of their files. As well, adjudicators and the Adjudication Secretariat found that it provided an efficient and effective file management tool.

Providing Information on IAP Processes to Claimants' Legal Counsel:

In 2011, the Adjudication Secretariat published a comprehensive "Desk Guide for Legal Counsel Practising in the IAP", providing specific and detailed information on all aspects of the IAP. The Desk Guide was in excess of 50 pages and intended as a tool to assist claimants' legal counsel by providing information on IAP procedures and processes, common issues, best practices, key resources, and technical assistance with claims at each stage of the IAP.

The Desk Guide was published on the IAP website in both HTML and PDF format, and modified as policies and procedures changed or new issues arose. Over the course of the IAP, the document was updated seven times.

While the Guide was developed primarily to benefit lawyers who were new to the process, it was also meant to provide a useful reference for any lawyer requiring information on matters of process. There are, however, no data that tracked the usage of the Guide by claimant counsel or others.

Misconduct of Some Claimants' Legal Counsel

Over the course of the IAP, there were numerous lawyers that served as legal counsel on behalf of claimants. Many of these had extensive previous engagement in Indigenous issues; some were themselves residential school survivors; and most were diligent, engaged, and ethical in their practice. However, the issue of lawyer misconduct by a minority of legal counsel was a significant challenge with far-reaching consequences that resulted in the ongoing attention and involvement of the Oversight Committee, the Chief Adjudicator, Bar Associations, Law Societies, and the Courts.

From the outset, it was recognized that IAP claimants would be best served by having legal representation. Although the Settlement Agreement explicitly provided for self-represented claimants,[121] IAP applicants were encouraged to hire a lawyer.[122] In information provided to former students, the Adjudication Secretariat noted that while the decision to hire a lawyer rested with each claimant, "every party who signed the Settlement Agreement encourages you to hire a lawyer to help with your IAP claim". The Adjudication Secretariat went on to advise: "If you do hire a lawyer, find someone you can trust."[123]

That in itself posed a considerable challenge, particularly for former students living in remote communities and for those who did not have experience in engaging legal counsel to represent them in civil actions. The Settlement Agreement stipulated that the National Administration Committee would compile a list of those lawyers who, at the time, had active claims related to Indian Residential Schools, and who agreed to be bound by the terms of the Settlement Agreement.[124] Inclusion on that list did not, however, require lawyers to adhere to a particular code of conduct relative to the specific nature of the claims or the claimants, nor did it advise former students as to what they should reasonably expect from their legal counsel.

In 2000, in recognition of the fact that "survivors of Aboriginal residential schools are often vulnerable and in need of healing as well as legal assistance", the Canadian Bar Association adopted a resolution pertaining to lawyers acting for survivors of residential schools.[125] The resolution urged Law Societies to adopt guidelines for the conduct of such lawyers stipulating that:

(a) Lawyers should not initiate communications with individual survivors of Aboriginal residential schools to solicit them as clients or inquire as to whether they were sexually assaulted;

(b) Lawyers should not accept retainers until they have met in person with the client, whenever reasonably possible;

(c) Lawyers should recognize that survivors had control taken from their lives when they were children and therefore, as clients, should be given as much control as possible over the direction of their case;

(d) Lawyers should recognize that survivors may be seriously damaged from their experience, which may be aggravated by having to relive their childhood abuse, and that healing may be a necessary component of any real settlement for these survivors. Lawyers should therefore be aware of available counselling resources for these clients to ensure that they have opportunities for healing prior to testifying;

(e) Lawyers should recognize that damage to the survivors of Aboriginal residential schools may well include cultural damages from being cut off from their own society, and should endeavor to understand their clients' cultural roots;

(f) Lawyers should recognize that survivors are often at risk of suicide or violence towards others and should ensure appropriate instruction and training for their own employees, including available referrals in time of crisis

Over the next few years, Law Societies in Ontario, Manitoba, the Northwest Territories, and the Yukon adopted guidelines that generally incorporated or built upon these concepts.

[121] *IRSSA,* Section 4.08 (4) and Schedule D, Section III (p)
[122] The Application Form was 21 pages long. To assist claimants in completing their IAP application, the Adjudication Secretariat developed a "Guide to the Application". However, at 44 pages, it was itself a lengthy and complex document.
[123] Indian Residential Schools Adjudication Secretariat, "Do I need a lawyer for my IAP claim?"
[124] *IRSSA,* Sections 4.08 (2) and 4.11 (12) (n)
[125] Canadian Bar Association, Resolution 00-04-A, August 19-20, 2000. In October 2000, the Oversight Committee adopted the CBA Guidelines in respect of a direction that counsel who committed to those principles would be invited to participate in the Adjudication Secretariat's outreach program. (The issue of the lack of formal engagement of legal counsel in that outreach program is discussed in Chapter 8).

The British Columbia Supreme Court removed lawyer David Blott and his law firm from representing claimants in the IAP following a hearing in 2012.

Manitoba Court of Queen's Bench in Winnipeg

In this context, the most public and significant example of the challenges created by lawyer misconduct was evidenced by the circumstances involving David Blott and his Calgary-based firm Blott & Company.[126] Blott & Company represented more than 5,600 claimants, by far the largest caseload of any law firm involved in the IAP. Most of these clients had been referred to Blott & Company by Honour Walk, an organization associated with Mr. Blott that recruited claimants and assisted them in filling out their application forms.[127] In 2009, Mr. Blott was the subject of a complaint to the Law Society of Alberta regarding the way in which he solicited clients and his relationship with Honour Walk. The Law Society's review of the complaint concluded that Mr. Blott had "taken appropriate steps to deal with these matters", and it did not proceed further with the complaint. In 2010, another Law Society complaint was filed by a client. IAP adjudicators also went on record with observations about the inaccuracy of some Blott & Company IAP application forms and discrepancies between the information contained on those forms and that provided by the claimants during their hearings. In 2010, the Chief Adjudicator initiated an internal investigation into Mr. Blott's practices. This investigation was still in progress when, in 2011, the Court Monitor raised its concerns over Blott & Company with the Supervising Courts, and was ordered by the Court to commence its own investigation. Based on the allegations contained in an interim report by the Court Monitor, the Law Society launched yet another investigation of Mr. Blott. Ultimately, the Supreme Court of British Columbia convened a hearing in June 2012 on the final report and recommendations made by the Court Monitor. Following that hearing, the Court ordered the removal of Mr. Blott and Blott & Company from the representation of claimants in the IAP or any other aspect of the Settlement Agreement.[128]

While the case of Blott & Company constituted the largest example – in terms of scale and impact on IAP claimants – of misconduct by lawyers or their agents, it was not an isolated instance. On several other occasions, the Chief Adjudicator reported concerns about claimant counsel to their respective Law Societies. Two of those complaints led to the disbarment of the lawyers concerned, including one who was alleged to have misappropriated nearly $1 million in fees from IAP clients.[129] Another Saskatchewan lawyer was convicted of professional misconduct and fined by the Law Society for his refusal to provide an adjudicator with a copy of the contingency fee agreement as required by Court orders. In February 2013, following a Request for Direction filed by the Court Monitor related to allegations of possible extortion of funds from IAP claimants and the falsification of applications, the Supreme Court of British Columbia ordered that an individual be removed from all participation in the IAP. The Court also ordered the Court Monitor to conduct a review of the law firm alleged to be involved.

The Chief Adjudicator also raised with the Courts concerns related to the practices of some firms that were assisting claimants with completing IAP applications and the allegedly improper fees levied by them on IAP claimants. In 2014, the Manitoba Court of Queen's Bench ruled that any service contracts requiring claimants to pay contingency fees to form fillers were null and void, as were contracts requiring claimants to pay non-lawyers for legal services.[130]

When the Court ordered the removal of Blott & Company from all IAP matters, it appointed a retired judge of the Supreme Court of British Columbia to oversee the transition of clients from that firm to other legal counsel. In order to ensure that these claimants would receive an appropriate level of representation from their new lawyers, this transition co-ordinator required that any lawyer accepting a case in this transition process first undertake to adhere to expectations set out by the Chief Adjudicator.

[126] Information on Blott & Company's operations is taken from the Supreme Court of British Columbia's Reasons for Judgment in *Fontaine v. Canada (Attorney General),* 2012 BCSC 839.
[127] Claimants signed a retainer with Honour Walk stating that if they did not hire Blott & Company, they would ultimately be responsible for the payment of Honour Walk's fees of $4,000. The retainer with Blott & Company further stipulated that if the client changed lawyers for any reason, he/she would be required to pay Blott & Company $8,000 plus disbursements.
[128] Supreme Court of British Columbia. *Fontaine v. Canada (Attorney General),* 2012 BCSC 839.
[129] Following the Chief Adjudicator's complaint, the Law Society reported that all the money owed had been repaid to the IAP claimants.
[130] *Fontaine v. Canada (Attorney General),* 2014 MBQB 113.

Accordingly, in August 2012, the Chief Adjudicator published a document entitled *Expectations of Legal Practice in the IAP,* that was posted on the IAP web site, provided to all legal counsel representing claimants in the IAP, and provided to current and potential claimants at outreach sessions. The document addressed such issues as contacting and working with claimants, preparing them for hearings, not participating in loan arrangements or assigning claimants' compensation, and respecting their client's right to change counsel. It stipulated that: "Lawyers must restrict their IAP practice to the number of cases they can competently and responsibly take on at any one time". In 2013, these "Expectations" were amended and strengthened with the introduction of "Special Direction" clauses in legal fee rulings that made it explicit that no deductions could be made from awards except as approved by adjudicators, and requiring successor counsel to protect claimants from fee claims by predecessor counsel.

Another element of the Court's intervention in the Blott & Company matter was the Court's explicit confirmation of the Chief Adjudicator's authority to implement policies and guidelines for the IAP and provide specific penalties or disciplinary measures where these were not complied with. The court also found that it was appropriate for adjudicators to ask claimants about the broad parameters of their relationship with their lawyer, such as the frequency of meetings and scope of services provided, where circumstances warranted. In tandem, these measures provided a new level of guidance and oversight for the quality of legal representation in the IAP and the conduct of counsel.

In addition, following discussions including the Chief Adjudicator, the Court Monitor, and Court Counsel, the Oversight Committee developed an "IAP Integrity Protocol" to serve as a model and mechanism through which complaints against legal counsel, or others purporting to act on behalf of claimants in the IAP, could be investigated and potentially resolved. In 2014, following unanimous consent of the National Administration Committee, the British Columbia Supreme Court granted an Order approving the Integrity Protocol and appointed an Independent Special Advisor to the Court Monitor. Over the remainder of the IAP, the Independent Special Advisor reviewed complaints on such issues as usurious loan arrangements and improper legal fees.

Disposition of IAP Records and Documents

Claim Records:

Schedule D of the IRSSA emphasized the confidential nature of IAP claim records and processes. It specified that:

"Hearings are closed to the public. Parties, an alleged perpetrator and other witnesses are required to sign agreements to keep information disclosed at a hearing confidential, except their own evidence, or as required within this process or otherwise by law."[131]

Schedule D also contained provisions regarding the confidential treatment of the IAP application form, required that applicants sign a declaration that committed the applicant to the private nature of the hearing, and stipulated that "all copies [of the application] other than those held by the Government will be destroyed on the conclusion of the matter, unless the Claimant asks that others retain a copy, or unless counsel for a party is required to retain such copy to comply with his or her professional obligations."[132]

At the same time, the Settlement Agreement provided that claimants would receive a copy of the decision in their case, redacted to remove identifying information about any alleged perpetrators. Claimants could also request a copy of their own evidence at the hearing, and had "the option of having the transcript deposited in an archive developed for the purpose."[133]

As well, Schedule N of the Settlement Agreement – that set out the mandate for the Truth and Reconciliation Commission (TRC) – accorded the TRC responsibility for establishing a research centre within five years and ensuring the preservation of its archives.

Over the course of several years, the Adjudication Secretariat, Oversight Committee, and the TRC discussed how best to ensure that IAP claimants could be provided information to enable them to grant informed consent about providing their IAP evidence to a centre for archival purposes. This proved particularly challenging as the terms of reference for such a centre had not yet been framed, making "informed consent" difficult to be articulated. In addition, as time passed, many thousands of hearings had already occurred in which participants had been accorded promises of confidentiality and in which permission for archiving testimony had not been sought or obtained.

In 2012, the TRC concluded that it would seek that all IAP documents should be deposited in the archive with or without claimants' consent, pursuant to Section 11 of Schedule N, which stated that "…Canada and the churches will provide all relevant documents in their possession or control for the use of the Truth and Reconciliation Commission…".

[131] *IRSSA,* Schedule D, sec. III 0 (i).
[132] *IRSSA, Schedule D, Appendix II (iv)*
[133] *IRSSA, Schedule D, sec. III o (ii)*

Supreme Court of Canada

As a result, the TRC and the Chief Adjudicator each brought Requests for Direction to the Supervising Court, seeking to clarify how IAP records should be treated at the conclusion of the IAP, and whether IAP documents and personal information could be shared and/or archived without the consent of the claimant. In its 2014 decision, the Ontario Superior Court of Justice ruled that specific categories of IAP claim records (identified as "IAP Retained Documents", and described below) were to be held by the Chief Adjudicator for a 15-year retention period during which individual IAP claimants could elect to have the records in their own file preserved. Following the retention period, IAP Retained Documents held by the Chief Adjudicator would be destroyed; all other documents were to be destroyed upon completion of the IAP claim.[134] This decision was substantially upheld by the Ontario Court of Appeal[135], but was then appealed to the Supreme Court of Canada by the Attorney General of Canada.

In 2017, the Supreme Court of Canada dismissed that appeal, and upheld the previous ruling of the Ontario Court.[136] The Supreme Court recognized the tension between commemoration and memorialization, on the one hand, and on the other hand the privacy that IAP claimants had been promised; or, as the Court described it, charting "an appropriate course between the Scylla of potentially unwanted destruction and the Charybdis of potentially injurious preservation". In the end, the Court upheld the supervising judge's finding that "the negotiators of the IRSSA intended the IAP to be a confidential and private process, that claimants and alleged perpetrators relied on the confidentiality assurances and that, without such assurances, the IAP could not have functioned." The Supreme Court went on to observe that:

The MyRecordsMyChoice.ca website was set up to provide information to IAP and ADR claimants on the choices they had regarding the disposition of their claims records.

"The high premium placed on confidentiality by the participants in the IAP becomes readily apparent when one considers the nature of the information disclosed during this process. As was made plain by the submissions of the Inuit Representatives before this Court, that information is – to put it mildly – of the most sensitive and private nature."

The Supreme Court ruled that residential school survivors were and should be "in control of their own stories", and that: "The position taken by the TRC, and later by the NCTR [National Centre for Truth and Reconciliation],[137] that these documents should be transferred to the National Archives and eventually shared with the NCTR, would defeat the principle of voluntariness underlying the IAP." To that end, the Court confirmed that all ADR and IAP documents held by the Adjudication Secretariat would be destroyed with the exception of:

- application forms
- printed transcripts of claimants' testimony
- voice recordings of claimants' testimony, and
- decisions on IAP claims

These "IAP Retained Documents" would be held for 15 years (specifically to September 19, 2027), during which time a claimant could voluntarily request a copy of her/his documents to preserve or share as they wished, and/or request that their documents be preserved for history, public education, and research at the NCTR.[138] Following that retention period, if a claimant did not request a copy of their documents or that they be transferred to the NCTR, those documents would then be destroyed.

[134] *Fontaine v. Canada (Attorney General)*, 2014 ONSC 4585 (CanLII).
[135] *Fontaine v. Canada (Attorney General)*, 2016 ONCA 241 (CanLII).
[136] *Canada (Attorney General) v. Fontaine*, 2017 SCC 47 (CanLII), [2017] 2 SCR 205.
[137] The NCTR was created as the permanent home for the records of the Truth and Reconciliation Commission, and has the responsibility to foster truth, reconciliation and healing. It is hosted at the University of Manitoba.
[138] Claimants who chose to preserve their records at the NCTR could choose between restricted access or open access. Under restricted access, the NCTR could use and share records with others for purposes such as public education, but only if the NCTR removed personal information. Personal information would be made available to the NCTR and researchers, but only under strict confidentiality conditions. Open access meant that the NCTR could use records and personal information (except addresses, phone numbers, band or disc numbers) in the way it deemed appropriate including by sharing with others.

The Indian Residential Schools Adjudication Secretariat sent out thousands of information packages to inform Indigenous communities, stakeholders and IAP claimants about the choices they had regarding their IAP or ADR records.

The Courts also directed that the Chief Adjudicator administer a notice program to inform IAP claimants of their right to choose what would happen with their IAP Retained Documents. Following a series of discussions at the Oversight Committee and consultations with representatives of the Assembly of First Nations, Inuit, the Government of Canada, lawyers representing former students, and the National Centre for Truth and Reconciliation, this notice program was developed by the Chief Adjudicator and Oversight Committee and its terms set out in a 2018 decision and Order by the Ontario Superior Court of Justice.[139] It comprised a multi-media information campaign of public service announcements on radio and television; print publication and online notices; videos, mail-outs of information packages; and engagement with community radio stations, local newsletters, and websites. The Court also ordered that Canada fund the participation of the Assembly of First Nations, Inuit Representatives, the NCTR, and Indigenous Services Canada Resolution Health Support Program Services in the implementation of the Notice Program. Crawford & Company (Canada) was appointed by the Court as Records Agent to assume responsibility for the safe care of IAP Retained Documents following the wind-up of the Adjudication Secretariat to the end of the Retention Period.

Non-claim Records:

Following the Supreme Court of Canada decision dealing with IAP claims records and "Retained Documents", questions remained as to how, at the conclusion of the IAP, to dispose of those records not related to specific IAP claims. In 2019, the Chief Adjudicator submitted a Request for Direction (RFD) to the Supervising Courts outlining a proposal for handling documents related to the establishment, governance, and operations of the IAP. These documents included Chief Adjudicator Reports to the Courts, Oversight Committee records, statistical reports, records of complaints, adjudicator personal records, information related to solicitor-client or litigation privilege, and the Adjudication Secretariat's administrative records dealing with financial and human resource management, communications, technology, and procurement processes.

In a decision issued in January 2020, the Ontario Superior Court of Justice ruled that the disposition of all IAP records – whether claim or non-claim in nature – was a matter of administering the Indian Residential Schools Settlement Agreement, but dismissed the proposal contained in the Chief Adjudicator's RFD. Rather, the Court directed Canada to develop a proposal for the Court's consideration for the archiving of copies of non-claim records at the National Centre for Truth and Reconciliation (NCTR). The Court further directed that Canada's proposal be based on the following principles regarding inclusion or exclusion of certain documents in the NCTR's Non-Claim Records Collection:

- Existing statistical reports on the IAP (those that were already in the public domain) should be included, but so-called "Static Reports" (i.e. final outcome statistical reports drawn from IAP documents) were not to be included in the Non-Claim Records Collection nor contained in the IAP Final Report
- Copies of publicly-published Oversight Committee minutes should be included but other Oversight Committee documents such as unpublished minutes of in camera meetings, agendas, document packages, emails and correspondence among members, and travel expense vouchers were to be excluded
- Redacted copies of Reports to the Courts were to be included
- Information and documents subject to solicitor-client or litigation privilege were to be excluded
- Complaints records; adjudicator personal, personnel, and performance records; IAP Personal Information; draft or duplicative records were to be excluded
- Claim records would continue to be dealt with in accordance with the previous Court "Claim Records" decisions[140]

The Court also ruled that, once the prerogatives of the Settlement Agreement were addressed according to the above principles and with the exception of Chief Adjudicator records subject to solicitor-client privilege, the retention and destruction of documents would be governed by the Library and Archives Canada Act and Canada's document retention policies.

At time of the writing of this IAP Final Report, Canada's proposal to the Courts was still pending, and the NCTR had appealed the decision.

[139] *Fontaine v. Canada (Attorney General)*, 2018 ONSC 4179.
[140] *Fontaine v Canada (Attorney General)* [Claims Records], 2014 ONSC 4585, aff'd 2016 ONCA 241, aff'd 2017 SCC 47.

THE INDEPENDENT ASSESSMENT PROCESS – STATISTICAL DATA

I: Applications Received and Resolved by Calendar Year[141]

From implementation through to October 1, 2020, a total of 38,276 IAP applications were submitted, of which 33,861 were admitted. Nearly one-quarter of all applications were received in the six-month period prior to the application deadline of September 19, 2012. The number of applications was fairly evenly split between men (50.9%) and women (48.9%). As of October 1, 2020, all applications had been resolved.

Calendar Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Applications Received	3,849	5,418	4,750	5,148	5,494	12,787	372	132	48	98	2	159	7	12	**38,276**
Applications Resolved	404	1,502	2,897	4,348	4,426	5,345	6,251	5,092	3,642	2,439	1,070	706	127	27	**38,276**
Adjudicator Decisions	322	1,081	2,086	3,210	3,377	3,935	3,938	3,739	2,646	1,494	534	284	112	16	**26,774**
Dismissals[142]	0	0	0	1	12	20	53	75	54	329	392	243	4	0	**1,183**
Negotiated Settlements	0	39	280	625	572	742	727	622	510	196	48	47	6	1	**4,415**
Ineligible/ Withdrawn	82	382	531	512	465	648	1,533	656	432	420	96	132	5	10	**5,904**

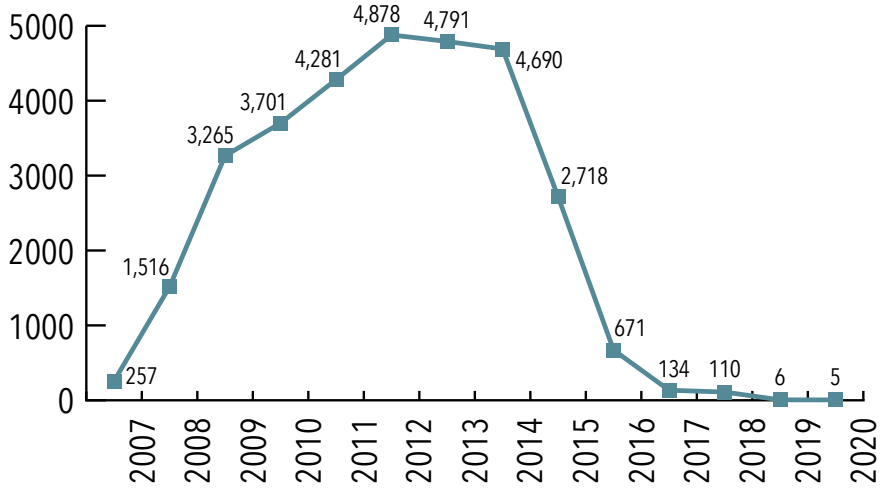
[141] Indian Residential Schools Adjudication Secretariat, *2019 Annual Report of the Chief Adjudicator to the Independent Assessment Process Oversight Committee (Ottawa: IRSAS, 2020),* Table 1, p. 14.
[142] This includes various types of dismissals including those proceeding from Jurisdictional Decisions, Failure to Appear, Estate Decisions, and Resolution Directions provided under the Incomplete File Resolution process.

II: Applications Received by Region[143]

Region	Applications Received
British Columbia	6,640
Alberta	8,376
Saskatchewan	8,897
Manitoba	5,492
Ontario	3,368
Quebec	2,200
Yukon Territory	556
Northwest Territories	1,545
Nunavut	529
Atlantic	305
Outside of Canada	368
Total	**38,276**

III: Applications Processed Per Calendar Year[144]

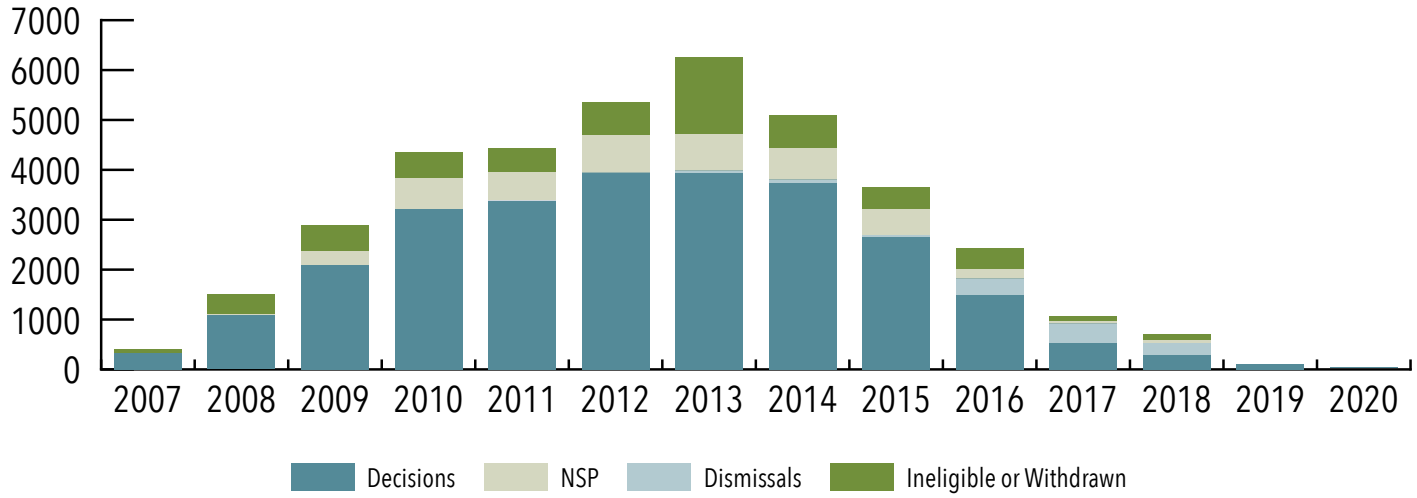
As of October 1, 2020, a total of 31,023 IAP applications had been processed. A claim was considered processed if a hearing or paper review was held or the parties entered into a Negotiated Settlement. The definition of "processed" did not include claims withdrawn, ineligible, or dismissed without a hearing.



[143] "Independent Assessment Process (IAP) Statistics from September 19, 2007, to September 30, 2020", Indian Residential Schools Adjudication Secretariat, September 30, 2020, http://www.iap-pei.ca/stats-eng.php
[144] Indian Residential Schools Adjudication Secretariat, *2019 Annual Report of the Chief Adjudicator,* Figure 2, p. 15.

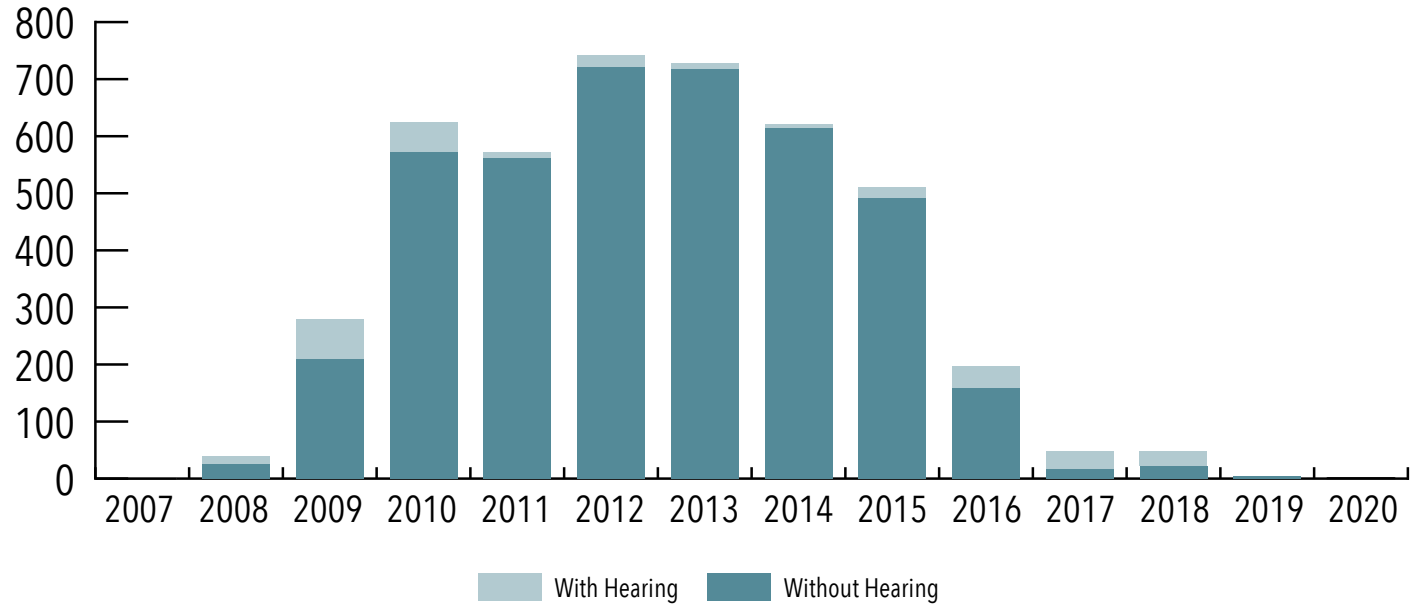
IV: Claim Resolutions by Calendar Year[145]

Nearly 90% of all claimants whose claims went to a hearing before an IAP adjudicator or into the Negotiated Settlement Process received compensation, with an average amount of $91,472.82.



V: Negotiated Settlements by Calendar Year[146]

Negotiated Settlements accounted for approximately 12% of all IAP file resolutions.



[145] Indian Residential Schools Adjudication Secretariat, *2019 Annual Report of the Chief Adjudicator,* Figure 1, p. 15.
[146] Indian Residential Schools Adjudication Secretariat, 2019 Annual Report of the Chief Adjudicator, Figure 3 p. 16. "Without Hearing" and "With Hearing" refers to those claims that were referred to the NSP process before or after an IAP hearing had taken place, respectively.

VI: Independent Assessment Process Costs[147]

Over its lifetime, costs of the Independent Assessment Process totaled approximately $4 billion.[148] Costs of the Indian Residential Schools Adjudication Secretariat amounted to $411 million, or approximately 10 per cent of the total IAP expenditures by Indian Northern Affairs Canada and its successor departments. About three-quarters of Adjudication Secretariat costs were spent directly on IAP hearings, with an additional 5 per cent spent on other support for claimants.

Government of Canada - CIRNAC (in millions of dollars)

	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20
IAP Compensation	$36.0	$75.3	$25.2	$288.7	$400.0	$446.1	$465.2	$452.3	$377.3	$221.6	$114.4	$40.9	$22.2	$13.0
ADR Compensation	$36.1	$111.2	$93.5	$32.6	$11.7	$1.6	$0.18	$	$	$	$	$	$	$
DoJ Legal Services	$16.8	$15.8	$12.9	$13.9	$14.7	$16.4	$19.8	$19.3	$17.7	$13.0	$7.0	$5.9	$3.2	$2.6
Other Legal	$2.9	$3.6	$3.6	$1.6	$2.2	$2.8	$2.4	$1.7	$1.9	$1.4	$1.4	$1.5	$1.8	$.61
Delivery Costs	$34.9	$23.8	$22.2	$26.5	$27.2	$33.0	$34.1	$40.3	$32.0	$25.1	$20.8	$16.7	$10.6	$10.0
Total (MM)	**$126.7**	**$229.7**	**$157.4**	**$363.3**	**$455.8**	**$499.9**	**$521.7**	**$513.6**	**$428.9**	**$261.1**	**$143.6**	**$65.0**	**$37.8**	**$26.2**

IRSAS (in millions of dollars)

	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20
IAP Compensation	$	$0.008	$0.55	$3.7	$6.2	$6.6	$7.1	$8.9	$8.4	$6.7	$2.7	$0.88	$0.48	$0.2
ADR Compensation	$	$	$	$	$	$	$	$	$	$	$	$	$	$
DoJ Legal Services	$	$	$	$	$	$	$	$	$	$	$	$	$	$
Other Legal	$	$	$	$0.14	$0.22	$0.22	$0.53	$0.66	$1.0	$0.41	$0.38	$0.36	$0.52	$0.18
Delivery Costs	$13.0	$19.8	$27.6	$36.4	$39.4	$44.9	$51.5	$50.9	$49.3	$38.4	$23.3	$17.2	$13.1	$8.7
Total (MM)	**$13.0**	**$19.8**	**$28.2**	**$40.2**	**$45.8**	**$51.8**	**$59.1**	**$60.5**	**$58.7**	**$45.5**	**$26.4**	**$18.4**	**$14.1**	**$9.1**
Grand Total (MM)	**$139.7**	**$249.4**	**$186.5**	**$403.5**	**$501.6**	**$551.7**	**$580.8**	**$574.1**	**$487.6**	**$306.6**	**$170.0**	**$83.4**	**$51.9**	**$35.3**

Notes

IAP Compensation – Canada
- Reported amounts include all payments made out of the Settlement Allotment funds
- Payments include, but are not limited to, amounts paid to claimants as compensation, legal fees and disbursements paid to counsel representing claimants

IAP Compensation – IRSAS
- Direct IAP hearing costs. Excludes costs for continuing ADR claims that the Adjudication Secretariat managed until the claims were resolved

DoJ Legal Fees
- Reported amounts are transfers to the Department of Justice to represent Canada at hearings to provide legal advice

Other Legal Fees - Canada
- Payments include, but are not limited to, departmental litigation management and legal services for alleged perpetrators

Other Legal Fees – IRSAS
- Payments include, but are not limited to, independent legal services

Delivery costs
- Amount includes overall costs for delivery of the IRSSA. Information is not available to separate these costs out

General comments
- Reported delivery costs do not include expenditures by Health Canada to provide health support services related to Indian Residential Schools nor do they include expenditures incurred by any other Government department
- All amounts shown above have been used in the preparation of the Public Accounts of Canada
- Excluded from this report: CEP payments, Internal Services costs, Employee Benefit Plan costs

[147] Canada, Standing Committee on Public Accounts. *Public Accounts of Canada 2017: Report of the Standing Committee on Public Accounts,* (Ottawa: House of Commons, 2017).
[148] This amount does not include expenditures by Health Canada to provide health support services related to Indian Residential Schools.

THE IAP EXPERIENCE – PERSPECTIVES OF CLAIMANTS, STAKEHOLDERS & PARTICIPANTS

Former Executive Director Shelley Trevethan conducts the first interview for the IAP Final Report with claimant Zepheria Joseph in Vancouver.

At the core of the IAP are the views of the IAP claimants themselves, and of individuals who were directly involved in the development and delivery of this element of the Settlement Agreement. This Report does not endeavour comprehensively to capture and reflect the perspectives of residential school survivors or even all IAP claimants; such an undertaking is beyond the scope of this Report and would arguably best be led by those who have been explicitly mandated to represent residential school survivors. Nonetheless, the perspectives of IAP claimants, stakeholders, adjudicators, and other participants in the IAP are important in understanding the IAP experience and the lessons to be drawn from it.

In order to reach out to and hear directly from people involved in the IAP, the Adjudication Secretariat conducted a two-phase process spanning several years and covering all regions of Canada. In the first phase, in late 2013 and early 2014 the Adjudication Secretariat conducted 23 focus groups with more than 125 participants nationwide. These consultations were aimed at determining their views on what, in retrospect, were the key objectives of the IAP and how to measure the success with which those objectives were met. The results of these discussions provided the framework for an extended second phase of meetings, interviews, and questionnaires.

In that second phase, a total of 37 focus groups were held with claimants, Indigenous organizations, community service providers (including health support workers, cultural support workers, and interpreters), Church representatives, Government of Canada representatives, adjudicators, and Adjudication Secretariat staff. Personal interviews were also conducted with 254 survivors, and with 72 individuals drawn from stakeholder groups and those responsible for implementing the IAP. As well, the Adjudication Secretariat sent out questionnaires to those claimant counsel who had each represented at least 100 IAP claimants; a total of 24 claimant counsel completed the questionnaires. (Appendix IV provides a list of many of the respondents who participated in focus groups, interviews, or questionnaires.)

The interview and focus group sessions were organized by the Adjudication Secretariat working with Indigenous community organizations, primarily those who provided health support services to survivors. Most participants were able to provide information in any way they felt comfortable: an in-person interview, telephone interview, participation in a focus group, or by providing written input. Those who participated in the interviews were given as much time as they wanted to answer questions; on average, each lasted about 1½ hours.[149] Claimants and stakeholders were asked to share their views on the challenges and successes of the IAP in:

- raising awareness and providing information about the IAP
- providing an efficient and effective approach to settling litigation
- offering a claimant-centred approach
- providing acknowledgement and validation for harms done to former residential school students
- contributing to healing and reconciliation

[149] Canada's representatives were generally invited to an in-person or telephone interview, which was often shorter in duration.

An IRSAS staff member interviews Resolution Health Support Workers in London, ON.

The data contained in this chapter are drawn exclusively from those interviews and questionnaires. As participation in interviews, focus groups and questionnaires was voluntary, it is important to remember that the results reported in this chapter reflect the views of those who chose to take part in this process. They may not be representative of all survivors and stakeholders. Nonetheless, they provided an opportunity for interested claimants, stakeholders, and other participants, in their own voices, to reflect and comment on the IAP experience.

Unless otherwise indicated, quotes included in this chapter are taken from these interviews, focus groups, or questionnaires.

Obtaining Information about the IAP

As described earlier, there were a number of initiatives aimed at ensuring that all potential IAP claimants were aware of the IAP and of how to apply for it. These included four court-ordered Notice Programs, the Adjudication Secretariat's National Outreach Strategy, a toll-free telephone information line and web site, distribution of information products, and the efforts of claimant counsel, Health Canada support workers, Band Councils, the Assembly of First Nations, and Inuit organizations. In total, the Notice Programs alone were estimated to have reached more than 98% of residential school survivors, an average of 14 times.[150]

Of those claimants who were interviewed by the Adjudication Secretariat, almost one-half (45%) indicated that they first heard about the IAP through some of the notification efforts. Others became aware through more informal routes, such as family members (34%), friends (26%) or Indigenous organizations/band offices (26%). A further 11% said they heard about the IAP from a lawyer.[151]

Among those who attended information sessions offered by the Adjudication Secretariat as part of its National Outreach Strategy, about three-quarters said that they were satisfied with the sessions: that they were thorough, useful, easy to understand, and culturally-sensitive. Similarly, 81% of those who received information on the IAP said it helped them move forward with their claim. Specifically, the Adjudication Secretariat's video "Telling Your Story" was appreciated for providing good information and increasing their comfort about what to expect at a hearing.

However, many stakeholders believed that there needed to be greater outreach in the North. As one Government of Canada representative noted:

"[In the North] there were not a lot of outreach programs… [and] not a lot of counsel getting into these communities."

As well, some 80% of claimants interviewed said that they knew someone who was aware of the IAP and met the criteria but chose not to submit a claim. It is difficult to determine why people did not participate in the IAP: a choice that could be affected by a wide range of personal reasons. But some claimants felt that the application deadline of five years was one limiting factor. As one community leader noted:

"There shouldn't have been a timeline, after seven generations of residential schools, some people - it takes them a while before they feel safe enough, secure enough, to talk about this. I know from talking with a few of the elderly people from the North, they say they still had a fear of talking about it. They felt they'd be punished. So the timeline shouldn't have been that short."

In more general terms, stakeholders agreed that there remained confusion about the Settlement Agreement overall, contributed to in part by the many different sources of information. One claimant counsel observed:

"There was some confusion among claimants about who exactly all the parties were. I don't know how coordinated the efforts were amongst the different groups tasked by the Federal Government with communicating about the Settlement Agreement."

[150] Hilsoft Notifications, "Affidavit of Cameron R. Azario, Esq. on Completion of Phase IV of Notice Programme," submitted to the Ontario Superior Court of Justice (2012).
[151] Multiple responses could be provided to this question; hence, totals add to more than 100%.

Claimant Laurel Curley, from the Six Nations of the Grand River FN, participated in an interview for the Final Report in Brantford, ON.

IAP Adjudicator Kathleen Keating

Applying for the IAP

Almost all claimants (94%) said they thought it was important to have help completing the forms because they were complicated and raised difficult memories.

"Everything was hard, hard to understand; [the] forms [were] not plain English; [I had] flashbacks, sensitive memories. [It was] hard to talk about it."

"[I] did my own [claim] but [it] would have been good to have had help. I didn't want to share information [because as I was filling it out, I] burst out crying; it was hard to write down. [I] needed someone [like a] counsellor. [I] was lucky that my husband helped me feel at ease."

Three-quarters (74%) of claimants reported that they had help completing their application form, mostly from legal counsel. Claimants who were not represented by a lawyer were positive about the information they received from the Adjudication Secretariat's Claimant Support Officers (CSOs); all of those interviewed expressed that they were satisfied with the service. Respondents said that Claimant Support Officers provided good communication, explained the process well, and were supportive. As noted by one claimant:

"[My] CSO made sure all relevant information was collected and included. He talked to me; he would always let me know things were confidential. [He] touched base and always asked how I was."

Some claimant counsel raised the concern that Claimant Support Officers sometimes went further than their role required, potentially providing advice to claimants rather than solely helping them to progress their claim to a hearing.

The IAP Hearing

As described earlier, one of the key aspects of the IAP was to provide a more positive hearing experience for claimants than would be the case in litigation. To help ensure that the process did not further traumatize claimants, the IAP gave them control over the location of their hearing; the ability to indicate a preference in the gender of the adjudicator; the use of cultural traditions; the availability of support services; and a less-adversarial and less-formal hearing.

Hearing Location:

In general, most claimants (78%) said they were satisfied with the physical location of their hearing. Of those who were not, the main issues were that the physical space should have been more positive or brighter. As one person noted, "The worst hearings were the ones that were done in the basement of a hotel." Support workers and stakeholders also expressed concerns about some hearing locations. Given that many claimants were elderly, it was problematic when it was difficult to get to the hearing room or back and forth to breakout rooms. Stakeholders mentioned that some rooms did not have enough privacy due to a lack of soundproofing.

The Adjudicator:

Claimants were given the option to indicate a preference for a female or male adjudicator, and the Adjudication Secretariat endeavoured to accommodate these requests. However, many claimants stated that they were not aware that they had this option, and eighty-one percent of those interviewed said they did not make such a request. Of those who did, close to 90% indicated that having this option helped them to feel more comfortable with the hearing process.

Elder Evelyn Finlayson in Kenora, ON

Aside from the issue of gender preference, large percentages of claimants expressed satisfaction with the adjudicator:

- 86% said the adjudicator was prepared and the hearing was well organized
- 76% said the adjudicator ensured that they understood their rights
- 75% said the questions the adjudicator asked were fair, reasonable and asked in a respectful manner
- 71% said they were satisfied with the role of the adjudicator at the hearing

Cultural Traditions:

More than three-quarters (78%) of claimants said that they were satisfied with the cultural aspects of the hearing. As one claimant expressed:

"The ceremonies and cultures helped a lot. I didn't know anything; I was surprised there's so much in our culture. I was surprised I was missing so much."

In general, stakeholders tended to agree that the IAP incorporated important cultural aspects into the hearing. However, some stakeholders, including cultural support workers and Elders, maintained that there should have been mandatory cultural awareness training for all participants in the hearings. As one suggested:

"All hearing participants need to be educated on IRS and Aboriginal communities."

Support Services:

Elders and Personal Supporters:

For many claimants, the hearing was not just a place to make a claim; it was an opportunity to share their personal histories, often for the first time. Claimants had the option of bringing support individuals, such as family members, friends, or Elders to their hearing. About one-third (30%) of the claimants interviewed had an Elder attend their hearing, and almost all of those (90%) said they were satisfied with the role the Elder played.

Slightly more than half of the claimants interviewed said they brought personal supporters with them. Among those that did not, some indicated that they felt more comfortable going through the hearing alone or did not want family members to have to hear about the abuse. As a claimant said, *"sometimes you don't want other people to know what you went through".*

Almost all claimants who did bring support people said that this made them feel more comfortable; 93% were very satisfied with their personal supporters. One claimant noted, *"I did things on my own with ADR, [it was a] big difference having someone with me, I didn't feel alone. [I] had my own people with me."* Another spoke of the positives and downsides of bringing support people, saying *"[I] felt supported [but it] was a mistake to bring her. She had to hear the abuse I suffered."* One claimant counsel observed:

"People appreciated the idea that they could bring support people with them. I certainly know some of my clients would not have come to a hearing had they not been able to do that. So that was a very important element. The health workers… were helpful…. Just being able to bring a support person and/or an Elder with them… that was really helpful."

Resolution Health Support Worker Ray Thunderchild of the Indian Residential Schools Survivors Society in British Columbia drums during meetings held in Vancouver.

Resolution Health Support Worker Debbie Cielen supported hundreds of claimants at IAP hearings.

Health Support Workers:

In addition to personal supporters selected by the claimant, Resolution Health Support Workers (RHSWs) – provided by Health Canada – could also be available throughout the hearing, if the claimant chose. Many health support workers were themselves survivors or affected by the intergenerational impacts of residential schools.

The vast majority of claimants (more than 90%) said they were satisfied with the services they received, as the health supporters helped them understand the process and cope with mental health issues. Further, more than three-quarters (77%) of claimants said that the services of support workers had an impact on their healing because they were helpful, supportive, and available to talk to.

"[The health support worker] was excellent. He helped me through the whole process. The fact that he was a survivor helped, he understood what I was saying. It made it easier. I believed in the confidentiality with him."

Stakeholders as well as claimants emphasized the importance of mental health support services in the healing process, and agreed that access to these services helped claimants prepare for, and benefit from emotional support and reassurance during and after the hearing. A Government of Canada representative commented:

"I can't speak highly enough of the resolution support workers… their ability to bring the claimants to a state of calmness, to reassurance, to feel that they always had someone in the room that was completely in support of them, and just professionally they were very good at what they did."

However, stakeholders had more mixed reviews of the role of health support workers. Some claimant counsel maintained that a claimant's first point of contact should be a health support worker or a Claimant Support Officer, while others felt that *"untrained RHSWs [were] giving legal advice"* and called for more training and higher qualifications for health support workers.

As well, some of those interviewed commented on inconsistency in their experiences with support services. One adjudicator observed:

"[I had a] wide range of experiences [with RHSWs]. It is an important role but some counsel tried to keep them out, some areas of the country they came late and didn't participate or support the claimant, some had familial relationships with the claimant that weren't known beforehand (confidentiality breach). [I] also had the opposite experience. Many were great and very thoughtful about making it an important day, offering prayers, support etc. It made a very big difference in how the claimant got through their day."

Health support workers themselves commented that they sometimes could have benefited from more time with the claimant to establish a relationship based on trust and support. For example, one health support worker said, *"The more we as health supports were able to embrace a connection and make a connection with the former students, a good three to four months at least, really showed an outcome of stability, security, and also furthering their healing process."*

Interpreters:

Another form of support that was available in IAP hearings were interpreters. While fewer than 10% of claimants said they requested the services of an interpreter at their hearing, 80% of those indicated they were satisfied with their interpreter and 88% felt that having the interpreter present helped them to feel more comfortable with the process.

Some participants in the IAP reported that occasionally there were incidents where interpreters did not speak the correct dialect, had difficulty interpreting the complex language of the IAP, knew the claimant, or went beyond the role of an interpreter. An adjudicator noted:

"…we have had issues with interpreters where the interpreter actually wasn't interpreting what the claimant was actually conveying, but was basically saying what she thought would help the claimant in her claim."

In 2013, extensive work was undertaken by the Adjudication Secretariat to improve the interpretation services. An approved list of experienced interpreters was developed, training on the IAP was provided to interpreters, an interpreter liaison position was created who conducted a dialect check prior to the hearing, and an interpreter handbook was developed. As a result of these changes, claimants were less likely to have the relating of their residential school experience interpreted by someone they knew, and hearing participants had greater confidence in the quality and authenticity of the translations provided.

The Inquisitorial Process:

Most respondents agreed that the inquisitorial model – where adjudicators asked questions and claimants were not subject to adversarial cross-examination by defendants - was important in providing a claimant-centred approach. To achieve this, adjudicators needed to balance support and kindness with fairness and impartiality. As one adjudicator explained:

"[You needed] to demonstrate ability to be understanding and supportive and kind while at the same time upholding the model and maintaining impartiality and being effective decision makers…. It was a tough balance to maintain."

Among claimants interviewed, 75% said that the questions the adjudicator asked were fair, reasonable and asked in a respectful manner, and 76% said that the adjudicator explained their rights to them. Almost three-quarters (71%) said that they were satisfied with how the adjudicators fulfilled their role during the hearings, made them feel comfortable, and listened. One claimant commented:

"The adjudicator was quite respectful in asking questions to me as a survivor of residential school. I had no problems with the way the questions were being asked. I answered them all, directly and concise, precise."

Stakeholders tended to agree with claimants, noting that in general adjudicators were impartial. However, many claimants and other stakeholders also said they found the process to be too legalistic and litigious, and that the language could be complex:

"Every bit of the language is all legal terminology - a hearing, an adjudicator, lawyer for Canada, lawyer for the claimant, cross-examination, appeal systems - and you've got people who might have anywhere from three days to 18 years in residential school who still don't understand those words. So definitely [use] plain language please."

Generally, the majority of claimants (60%) said they were satisfied with the Government of Canada's representative at the hearing.

Costs, Compensation and Awards

In addition to paying for costs associated with the hearing – such as the hearing location, interpreters, health support workers, Elders, and cultural ceremonies - the IAP covered the costs of travel, accommodation, and meals for claimants and for up to two personal support people to accompany each claimant. Almost one-half of claimants interviewed stated that they had to travel to their hearing. Of these, two-thirds said the Adjudication Secretariat paid for their expenses in advance. More than three-quarters (78%) of those who received payment for travel were satisfied with the expense payment process. Those who were dissatisfied said that the payment was slow or inadequate.

Regarding the results of the hearing itself, 90% of all claims that went to a hearing or a Negotiated Settlement Process interview resulted in some level of compensation. As a Government of Canada representative noted:

"The vast majority of claims have been found to be compensable and the payment has been made. There is no possible way that in the span of this last decade we would have accomplished that in litigation."

The IAP's method for assessing the compensation for harms experienced by claimants was based on a grid set out in the Settlement Agreement. The grid was developed in part to ensure consistency in awards. According to a claimant counsel who was involved in structuring the Agreement:

"The grid was put together with care. It was put together to recognize the factors that actually influenced real outcomes in real cases subject to court standards, so that the monetary outcome would be predictable and in line with what people could expect if they went through a gruesome litigation process with a higher causation standard."

However, some claimants and stakeholders criticized the grid method as being too restrictive. As one claimant said:

"It wasn't fair to put points to abuse. It should have never been a point system. What about the broken families now? What about mental abuse? It took survivors away from their families, broke families apart. My family is not whole."

It was also argued that "Other Wrongful Acts", income loss, and opportunity loss, were difficult to prove and not well-compensated. As noted by one claimant counsel:

"The other wrongful acts category could have been more effective…. There were people who came out of those schools never having been sexually assaulted or physically assaulted to the point of needing medical treatment, but who came out with huge psychological damage…. And that really was never compensated for. And you get a lot of people who just really were shattered by the experience, but had no compensable injuries."

Another criticism about the scope of the IAP – as set out in the Settlement Agreement - was that some schools were not included and that could mean that claimants who had suffered abuse were not compensated due to these exclusions. Abuse between students of the school that occurred off-premises was not compensable. As one claimant said:

"Even though it happened out of the school [the abuse] should have been accepted. It wasn't fair. No compensation because it happened away from school. It does not matter where it happened it happened to me and I am suffering today."

There was a difference of opinion among those interviewed as to whether the average award of just under $92,000 was comparable to what would have been received in court. For example, Frank Iacobucci, the Government of Canada's Chief Negotiator of the Settlement Agreement and a former Supreme Court of Canada Justice observed:

"Monetary awards were very genuinely, and it seems to me, seriously arrived at because if you look at the average award, it's not a puny award… I had heard of very serious sexual assaults, and the impression I got was these awards that were made were comparable to what one would get in a court outcome."

Others argued that the compensation received was less for some types of claims than would have been awarded by a court. One claimant asserted:

"We see many cases where abuse suffered were awarded more going through court system. The point-system impacted total awards and was unfair. The Courts would take longer but would have been awarded more."

At the same time, another claimant counsel noted that although the compensation was less than might have been awarded by a court, the IAP provided claimants with a speedier process and improved experience:

"[They] capped the compensation at a level that was less than would have been available in a court. The trade-off for that was that it provided a process which was less rigorous for claimants to experience, more attuned to their circumstances, and quicker than the outcome than they would have faced if they had to get into a queue of 36,000 people in the courts across the country."

For their part, about 60% of claimants interviewed indicated that they were satisfied with the decision and the compensation provided in their claim. A similar percentage of claimants said that the adjudicator's reasons for the decision were clear to them. About half of claimants (53%) said that their review rights were explained to them.

Overall, about one-half (52%) of claimants said that they were satisfied with the timeliness of the IAP. The same percentage said they were satisfied with the amount of time it took to get to a hearing. More than two-thirds (69%) were satisfied with the amount of time it took to receive compensation: about four months following the decision.

Following the hearing, adjudicators had the authority to review the fees charged by legal counsel for their services to IAP claimants. Generally, the issues of legal fees and legal fee reviews were contentious among those claimants and stakeholders interviewed.

Many said that they believed the legal fees should have been no higher than 15 per cent, so that it would be covered entirely by the Government of Canada. As noted by one claimant counsel, *"I would have to say from my experience that the case in the IAP does not exist where 15% is not a fair fee."*

Some claimant counsel disagreed, instead arguing that 15% was not reasonable because it did not cover the large number of non-compensable claims that claimant counsel dealt with.

"Maybe there are some lawyers who made a lot of money. It certainly wasn't me. But you have to appreciate that no matter what you do, probably three out of seven cases we advanced didn't go anyplace. I went to a hearing yesterday… it was 12 hours I will never see again. And we did that time after time, and place after place. So quite frankly, the 15%, which is basically the rate that most of the adjudicators were giving at the end of the day, was absolutely insulting."

Some also argued that the fee structure and fee review was a disincentive for lawyers to spend time with clients, and led to lawyers trying to maximize the number of cases that they handled. One claimant counsel noted that *"with the review of all the fees and lawyers not getting what had been agreed to in the retainers, there was a real disincentive for some people to spend any more time than they felt they really had to with their clients."*

Others felt that the legal fee review process went beyond what was intended in the Settlement Agreement. Some claimant counsel said that, rather than conducting legal fee reviews on most claims, as was the practice, adjudicators should have exercised discretion about doing fee reviews only when they appeared warranted.

"Instead of the fee review, the Chief Adjudicator could have set up criteria for the adjudicators… If you have a claimant who is clearly illiterate, if the person does not appear to have had any discussion with the lawyer, you should do a legal fee review."

Others suggested that legal fees should have been set at a specific rate and paid by the Government of Canada, so that claimants would not have to incur any legal costs out of their compensation and adjudicators would not need to do fee reviews that put lawyers in conflict with their clients. One stakeholder said:

"I like very much the structure that saw the 15% preliminary compensation come out of a pot, separate and apart from the award to the claimant.... The exception that allows counsel… feeling that they have been undercompensated… to then make the claim from the pool of award that the client has received puts the claimant… at odds in interest with their legal counsel. I would like to see that structure not repeated in a similar type of initiative."

While there was a wide variance of views among stakeholders as to the effectiveness of the legal fee review process, the majority of claimants (74%) expressed satisfaction with it.

Focus Group with Resolution Health Support Workers in Kenora, ON

Healing and Reconciliation

The IAP hearing presented important opportunities for healing and reconciliation: it provided claimants the opportunity to talk about their experiences; provided defendants and other participants the opportunity to hear and acknowledge those personal histories; and provided claimants an opportunity to have an impartial adjudicator validate those experiences through a written decision and compensation. As one claimant commented, *"Many survivors said 'all I needed to hear was that I was believed'."*

As noted earlier, almost 90% of claimants who attended a hearing or a Negotiated Settlement Process interview received some compensation. Most said, though, that the most important aspect of going through the IAP was not about the compensation, but was being able to talk about their experiences and be believed. As one claimant said:

"My priority was to tell a story about the loss of culture, loss of language, loss of Inuit shamanism, loss of parenting skills, and about the time that I was sexually abused by a Grey Nun. So that was the story I wanted to get out. So not for the money."

Similarly, a Support Worker observed:

"Compensation was really secondary in the minds of most people... for most, their well-being, the need to be heard, far outweighed the money. To be free of those chains, those memories, was compensation in itself…. For most, it was the first time they spoke about these things. It was really a grand unveiling, a grand statement about their truths. To witness this – that these people are no longer a victim – it gave me courage, it was very inspiring."

Almost three-quarters (73%) of all claimants interviewed said that those involved in the hearing listened respectfully and that the claimant's voice was heard. For some, the hearing was the first time someone showed that they cared about their experiences.

"I think the hearing process was really essential. It was probably the most important part of the IAP, it was the chance for people to… sit and tell their stories and have them validated…. That I think was worth more than the money that was paid out."

"I think a lot of people benefited from the hearings in a way that I didn't anticipate. There were any number of hearings I was at where, at the end of the hearing, the person would hug the adjudicator, they would hug the representative for the government, they would hug everyone, it was just sort of like somebody was completing a marathon and wanting to hug everybody there. There was a sense of achievement, there was a sense of vindication that you wouldn't have gotten from a system where there was no hearing."

Many stakeholders described how the hearing could enable claimants to realize that they had the strength to talk to others about what happened to them in residential schools.

"I think one of the things that comes out as being the most important is just having the opportunity to tell somebody other than people in your community. That's where a lot of it was hidden away. It's like nobody in the community wants to say anything because you're related to so-and-so or your friends with so-and-so, and what you say is going to get out."

William Herney, of the Eskasoni First Nation participated in claimant interviews in Nova Scotia.

According to a Government of Canada representative:

> *"It's a very important step in the hearing process… to have someone who is there on behalf of the government to tell them, 'I believe you're credible. I believe these things happened to you.' Just those words, you could hear and see the emotion on their face. For many years they didn't feel that [anyone] would believe them… you could tell they were very appreciative and it was almost like a relief that someone believed them and it was important for that to be said in the hearing."*

Adjudicators agreed that the opportunity for claimants to talk about harms such as loss of family and love was important, even if some of those harms were not covered by or compensated in the IAP. As one adjudicator said, "[the hearing is] a day to tell their story to somebody, a person of authority but in a setting where they are truly listened to. I think that is enormous." The adjudicator's decision was a key element of validation for claimants. However, some stakeholders noted that the positive effect of this dissipated if the claimant had to wait for many months for the decision to be received. The short-form decision, which was received at the hearing, was the most effective in this regard. As one claimant commented, "It would have been nice to know right away. It creates more trauma waiting for decision; I was in limbo."

Almost two-thirds (63%) of claimants said that they were offered acknowledgement of the harm and impact of residential schools.

One claimant said:

> *"I felt that the Canada person listened to what I was saying, they were respectful – they offered an apology for my experiences and abuse suffered."*

Almost all respondents indicated that apologies from the Churches and the Government of Canada were important, especially when it was in person. As a Government of Canada representative noted *"someone representing the Crown and/or the Church sitting across from you and apologizing may in fact be more powerful than any kind of money."*

Government of Canada representatives attended all hearings, and almost half of the claimants (45%) said that they received an apology from that representative. Only 12% of claimants surveyed said that a Church representative attended their hearing. One claimant counsel observed that *"I had very few hearings in which there was a Church representative present, [but] it was always positive."*

In addition to an apology at the hearing, claimants could also receive letters of apology from the Government of Canada and the Church. When they received a written apology, many said that it was important to them. However, as with written decisions, the timing of the written apology was also important; the sooner it was received, the more meaning it held.[152]

[152] In this regard, it should be noted that there was often a considerable delay in the Church being notified of the culmination of a hearing, resulting in a concomitant delay in the Church's provision of a written apology.

LESSONS LEARNED

Drawing from the experiences of the Independent Assessment Process described throughout this Report, this chapter aims to identify those lessons that can be learned from the efforts to fulfill the objectives of that component of the Settlement Agreement. Those objectives included providing residential school survivors compensation for any sexual and/or serious physical abuse that they suffered at the schools; offering an alternative means of resolving claims to traditional civil litigation; and providing IAP claimants with an experience that could aid in individual healing and broader reconciliation.

This chapter is not intended to be a comprehensive list of lessons to be learned from the residential school experience itself. These have been eloquently articulated by residential school survivors in a number of public first-hand accounts and in reports from the Truth and Reconciliation Commission, Aboriginal Healing Foundation, historians, and others. Rather, the following observations are specific to the IAP and are drawn from the experience of the Oversight Committee; from others responsible for the implementation and delivery of the IAP; and from IAP claimants themselves.

Offering a Claimant-Centred Process

Perhaps the overarching challenge in the IAP was adopting an approach that attempted to look at the entire process from the viewpoint of the claimant, while balancing it with the needs of the other parties and stakeholders. This perspective recognized that implementing a claimant-centred process was not the responsibility of one individual or organization but required the participation and input of health support workers, Indigenous organizations, Elders, legal counsel, adjudicators, Government and Church representatives, Adjudication Secretariat staff and, most importantly, claimants. This led to the implementation of a range of measures that, while they did not meet all of the challenges, strove to make the experience focused on the needs of the claimant.

Support for Claimants:

- Confronting past abuse can be traumatic for survivors, their families, former staff, or anyone who engages in a process such as the IAP. A positive aspect of the IAP was the support that it offered, both emotional and technical. Support workers helped to minimize the risk of re-traumatization of residential school survivors, enabled them to participate in the IAP, and helped to protect the survivors' health and well-being.

- Support workers drawn from the claimant's community could be familiar with appropriate cultural and traditional practices and with local support services. However, having a local support worker could pose issues of privacy and confidentiality. This was compounded as health support workers did not know the identity of the claimant – and vice versa – prior to the hearing.

- Support needed to be provided in a variety of forms: from trained health-care professionals, crisis call-lines, Elders, family members, interpreters, and in some instances the adjudicators themselves.

- Support needed to be available at all steps of the process: before, throughout, and after the hearing itself. Many claimants required assistance in completing application forms, preparing for and participating in hearings, receiving and understanding the adjudicator's decision and future care plan, or in continuing their healing process. It was important – but not universally the case – that Claimants were aware of their right to request support.

- At the hearing in particular, an important aspect of helping the claimant through a challenging process was having not only interpreters and professional health support workers but also personal supporters – such as family members – and Elders, available at no cost to the claimant.

- Specific and targeted efforts could have been further improved to ensure that supports – including trained legal counsel - were available early on in the process to those living in more remote locations, to those who were homeless, and to those who were in institutional settings.

- In the IAP, no-cost assistance was available for completing application forms: either through legal counsel or through the Adjudication Secretariat for those who were not represented by a lawyer. Nonetheless, a number of private-sector enterprises charged claimants for filling out their applications. While this practice violated the terms of the Settlement Agreement, the fact that some claimants used these services meant that there was at least a perceived need for them, indicating that more information and support specifically related to the application process could have been helpful.

Claimants could get help filling out their IAP Application form.

Raising Awareness and Providing information About the IAP:

A strategic and extensive approach to outreach and information sharing was a vital element in such a large-scale program as the IAP. Claimants needed to receive as much information as possible in a manner that was clear and understandable. The IAP utilized a variety of methods over a number of years to ensure that all potential IAP claimants were aware of the Settlement Agreement, the IAP, and the application process. These efforts were largely, although not universally, successful. Given the complexity of the process, even more information could have been provided to ensure survivors understood their rights and choices, the application process, and what to expect at and after a hearing.

- The video presentation of a simulated hearing ("Telling Your Story") helped claimants see and understand what to expect at a hearing and helped them feel more comfortable with the process.

- Ensuring that all residential school survivors and potential IAP applicants were aware of the application process and deadlines required a range of efforts, using a variety of media and outreach mechanisms (such as radio, television, print media, pamphlets and posters, videos, and community sessions). Information material needed to be available in Indigenous languages and written in plain language.

- To be effective and successful, outreach activities depended on first engaging and building relationships with community leaders.

- Specific and targeted efforts were required to ensure that information was available to those living in more remote locations, to those who were homeless, and to those who were in institutional settings.

- From the standpoint of potential claimants, information activities could have been more effective if they had been more coordinated. While the involvement of a number of parties and stakeholders was helpful in raising awareness about the IAP, a lack of co-ordination and consistency may have contributed to incomplete information or, at worst, to misinformation, leaving potential claimants unclear as to how the process worked and what to expect from the IAP experience.

- Efforts could have been made to make it easier for potential claimants in remote communities to obtain legal advice and the assistance of counsel: for example, by more actively encouraging and facilitating the participation of legal counsel in Adjudication Secretariat outreach activities. There were occasions, in complicated cases, where adjudicators adjourned hearings and assisted a claimant in finding counsel.

Support for Self-Represented Claimants:

- While all stakeholders recommended that claimants retain legal counsel, the Settlement Agreement did not require this, and included specific provisions for self-represented claimants. Nonetheless, given the complexity of the process and the requirement for mandatory documents, many self-represented claimants required assistance in preparing their claims for a hearing. The Adjudication Secretariat provided dedicated resources to assist claimants in this process, while not providing them with legal advice or representation at hearings. It was an important aspect of a claimant-centred process to recognize that self-represented claimants would still require support and assistance, and to have the necessary resources in place to provide this.[153]

[153] In 2013, Oversight Committee also initiated a project whereby they maintained a list of approved counsel willing to accept a referral from a self-represented claimant; this list was utilized by the Adjudication Secretariat in assisting self-represented claimants who wished to contact a lawyer.

Vancouver Hearing Room

Selection of Hearing Location and Gender of the Adjudicator:

Providing claimants the opportunity to choose the location of the hearing provided them with an important element of control and power, and the ability to select a place that was safe and appropriate to their individual circumstances. Accordingly, this was included in the IAP application form. However, it was not universally the case that the claimant selected the hearing location, as some legal counsel located hearings for their own convenience.

- Similarly, providing claimants the right to indicate their preference of the gender of the adjudicator in their hearing also provided them with an element of control in the process and respect for what would make the claimant most comfortable in sharing their history. This option was also included on the IAP application form signed by each claimant. It was also important to try to ensure that there was a sufficient roster of Anglophone and Francophone male and female adjudicators to accommodate claimants' preferences.

- The IAP had two designated Hearing Centres in Winnipeg and Vancouver, intended to provide a safe private location designed for the specific purpose of conducting an IAP, and an improvement on public courtrooms or meeting rooms in hotels, However, the location of the Vancouver facility, co-located with Government of Canada offices, distant from the lodging and meal sources for the claimant, and difficult to access by public transit, limited its value to claimants.

Claimant-Centred Case Management:

- Case management needed not only to address the efficiency and timeliness of the process, but also to maintain the focus on the claimant. As described above, such initiatives as the Lost Claimant Protocol and Expedited Hearings were examples of case management approaches that met the objectives of the process while at the same time addressing specific needs of the most vulnerable individual claimants.

Claimant Feedback Throughout the Process:

- The high volume of cases posed significant challenges not only to operational procedures, but also to the capacity of the process to offer claimant-focused attention to each claim. This required continual oversight by those responsible for administering the IAP, and benefitted from feedback from those directly involved in claims and hearings. In this regard, the presence and input of claimant representatives and counsel on such bodies as the Oversight Committee and the National Administration Committee – along with the ongoing outreach and community dialogue efforts by the Adjudication Secretariat – provided essential information and perspectives required to maintain and give best effect to the claimant-centred approach of the IAP.

Information About Compensation Awards:

- The IAP, combined with the Common Experience Payment, awarded large sums of money to claimants but did not provide information about or access to financial management services. This was a contentious issue for many. On the one hand, it was important for claimants not to feel as though they were being told in any way what to do with their money. On the other hand, while some legal counsel took on this role, it could also have been useful to assist claimants in a more consistent manner– perhaps through Aboriginal financial institutions - in being aware of the options and resources available to them for managing this money according to their own wishes. Measures to provide claimants with information that could help their own financial literacy may have been beneficial in protecting them from financial abuse and in ensuring that their compensation awards were used as they intended.[154]

[154] On approval of the Settlement Agreement, but before its implementation, the Indian Residential Schools Survivors' Society in British Columbia organized a series of public workshops involving health support workers, financial advisors, legal counsel, RCMP, and others to prepare individuals and communities to deal with the expected influx of funds. In addition, information circulars were included with CEP payments to caution against abusive behavior and to urge that complaints be lodged with the RCMP or police in abusive situations.

Incorporating Traditional Elements and Cultural Practices:

The incorporation of traditional elements and cultural practices was seen by many claimants as a key aspect of the IAP and one that helped them meet the challenges of the hearing and of sharing their histories.[155] One of the important lessons of the IAP was the extent to which judicial and quasi-judicial processes should be aware of and sensitive to the use of traditional practices to make the process more relevant, familiar, and helpful. This also illustrated the need for even more frequent consultation and engagement with claimants, residential school survivors, and their community representatives.

Providing an Alternative Approach to Adjudicating Compensation Claims

Inquisitorial Approach:

- The inquisitorial approach to hearings provided an effective and more sensitive means for adjudicating claims than would otherwise be handled through traditional civil litigation, particularly when dealing with victimized and injured persons. IAP hearings were completely private and offered a less formal, safer, and more respectful experience than the traditional adversarial approach.
- Parties to the IAP generally agreed that the process demonstrated that the truth could usually be ascertained by means other than cross-examination, competing evidence, and arguments. Overall, an inquisitorial hearing allowed adjudicators to test the credibility of a claim while minimizing the traumatization of the claimant that is inherent in any credibility-testing process.[156]
- Even in an inquisitorial model, claimants' needs could be overtaken by legal processes, attitudes, and requirements: particularly in a process such as the IAP which was based on modified litigation. Maintaining a non-adversarial approach required the engagement and commitment of all parties to the process and to ensuring that hearings were conducted with civility, respect, and a minimum of legal technicalities. This could have been further aided by including specific training for all hearing participants.
- Decision-makers are key to the success of any adjudicative process and of an inquisitorial approach in particular. The IAP vested considerable authority in the hands of individual adjudicators. As well, the parties to the Settlement Agreement were accorded the mandate of choosing the adjudicators who would work in the IAP, by unanimous vote. It was therefore essential that the selection criteria for adjudicators be extensive; in dealing with the particular sensitivities of abuse, human qualities were as important to find and nurture in decision-makers as were technical skills and expertise. As well, it required support and training. In this regard, ongoing training for adjudicators in conducting an inquisitorial hearing and in questioning skills could have been beneficial in ensuring greater consistency in the application of this approach across all hearings.

Validating Claims:

- Ensuring that decisions and the outcomes of each claim were valid and appropriate was essential to the integrity of the adjudicative process and was in the interest of all parties. Absent the ability to subpoena documents and witnesses, there needed to be other means of assessing the validity of claims. In the inquisitorial model, testing the credibility of claims required balancing documentary and assessment requirements with the objectives of claimant-centredness and timeliness. As discussed below, processes that supported this aspect of the IAP might have been more streamlined, while still maintaining the robustness of its credibility-testing.

Document Collection/Mandatory documents:

- Providing "mandatory documents" in advance of a hearing assisted all parties in an inquisitorial hearing. It helped claimants, in some instances, in recalling the incidents and extent of harms that they suffered; defendants in understanding the validity of claims; and adjudicators in decision-making.
- At the same time, not all pre-determined mandatory documents may have been required for all claims. The ability to tailor further the requirement for mandatory documents to meet the circumstances of a claim may have streamlined and expedited the adjudicative process.
- The volume of demand for document production overwhelmed the organizations and individuals – ranging from single medical practitioners to large correctional institutions and government departments– thus considerably slowing down the adjudicative process. As described in Chapter 5, the Adjudication Secretariat adopted several initiatives to address this; however, it would have been helpful to have had strategies and resources available to these document-providing bodies from the outset, to ensure that document production did not create a significant bottleneck and backlog.

[155] This also featured in the ADR process.
[156] For a broader discussion on inquisitorial processes, see Laverne Jacobs and Sacha Bagley, eds., *The Nature of Inquisitorial Processes in Administrative Regimes: Global Perspectives,* (London: Routledge, 2016).

Medical and Psychological Assessments:

Having a single expert assessor was substantially more streamlined, less adversarial, and an easier experience for the claimant than the standard litigation model of having the claimant and defendant present opposing medical or psychological opinions.

- Nonetheless, claims that required an expert assessment could still take considerably longer in the adjudicative process than those that did not. (A claimant or counsel may have decided that it was preferable to receive an earlier albeit reduced award than to wait several more months for an expert assessment and potentially receive more compensation.)

- While Oversight Committee maintained a pre-approved list of psychological assessors from the outset, a process to streamline the selection of medical examiners was not developed until 2014. It could have been helpful in reducing delays to have implemented such a list (including experts' availability) from the outset.

Hearing Location and Setting:

- As distinct from the Courts and most quasi-judicial processes, IAP hearings were held in many locations selected by claimants, including remote First Nations and Inuit communities, personal homes, hospitals, and prisons. Some were held outside of Canada. This demonstrated that, despite the obvious logistical challenges and given the necessary resources, the adjudicative process could be conducted in remote settings - in locations that were convenient to the claimant rather than the Adjudication Secretariat - within a reasonable timeframe.

- Providing travel costs for claimants and their personal supporters helped ensure equal access to the process, ensured that the choice of hearing location was not determined solely on a cost basis, and removed a potential source of stress for hearing participants. This also contributed to a more effective hearing and a healing experience.

The IAP Model:

- In the IAP, the Indian Residential Schools Settlement Agreement established an elaborate post-settlement adjudicative process. Despite a very large caseload, the IAP Model of a hearing-based, adjudicative approach to the settlement of abuse claims was able to resolve tens of thousands of cases as well as provide reviews and re-reviews of decisions as required. However, elements of the Model as set out in the Settlement Agreement also contributed to challenges in processing many claims expeditiously and in meeting time commitments.

- As the Settlement Agreement emanated at least in part from class action lawsuits, it was modeled on a civil litigation base. The IAP Model was very detailed and particularized, with a detailed framework of categories for wrongs and harms and the calculation of levels of compensation. As a result, the Model was complex and complicated to apply and interpret, and generated considerable demand for experts to guide the process and advance claims. The complexity of the Model also required regular engagement by the Oversight Committee, adjudicators, and all participants in the IAP to make the process work in as effective a manner as possible.

Addressing Challenges Raised by Certain Types of Claims

Claims Alleging Abuse by Other Students:

Claims alleging abuse by other students raised distinct challenges and difficulties. In the IAP Model, compensation in many of these claims required evidence that staff at the school in question had knowledge or should have had knowledge of that type of abuse at the time that it occurred. This requirement for evidence of knowledge could be satisfied by an admission of that knowledge. The Government of Canada made admissions of such knowledge after relevant evidence or findings of adjudicators became available.[157] In these circumstances, alternative mechanisms for addressing abuse by other students may have provided for a more equal process for all such claims, regardless of when the claim had been filed or heard.

- In that context, special consideration needed to be given and procedures applied to these types of claims. As described in Chapter 5, the Oversight Committee's "Student on Student Admissions Project" and resulting instructions from the Chief Adjudicator were successful in prioritizing claims with the greatest likelihood of producing decisions resulting in admissions of staff knowledge, that in turn could benefit those claimants whose claims had not been decided. However, this was not implemented until 2013 and did not address potential concerns arising from such cases resolved before that date. Ultimately, temporal fairness concerns arising in those earlier cases were addressed by the Government of Canada, outside of the IAP.

- Some claims alleging abuse by other students involved people known to each other and living in the same communities. This created particular challenges for healing and reconciliation between individuals or within communities. This was exacerbated by the requirement to notify alleged perpetrators of any claims implicating them, which could create a risk to communities even given the IAP's promises of confidentiality. Special attention needed to be paid to protect the identity of claimants and alleged perpetrators, and to provide support to residential school survivors while at the same time minimizing potential trauma at inter-personal or community levels.

Estate claims:

- With an ageing population of residential school survivors, the danger of claimants passing away or becoming too incapacitated to participate in a hearing meant that some would be unable to relate their personal histories of the abuse that they suffered at the schools. It was thus vital – through such mechanisms as the Over-65 Pilot Project and Accelerated Hearing Process described in Chapter 5 - to ensure that claims of the infirm or elderly were expedited to ensure that the claimant's testimony could be obtained as quickly as possible.

- Even with an expedited hearing process in place, some IAP claimants passed away before their hearing took place. There were occasions in which the Government of Canada, in addition to being the defendant, was also required to be the administrator of the estate and the claim, creating delays until it was able to appoint an independent administrator.

Efficiency and Effectiveness: Ensuring Fair and Timely Progress of Claims to Hearings and Resolution

- The IAP demonstrated that establishing a targeted adjudicative process, as an alternative to the courts, to address particular types of claims could provide for timelier resolution of claims than the standard civil litigation model. In addition to being more efficient, such a process was more effective than traditional civil litigation in providing an opportunity to address not only the specific tort, but also healing. It encouraged and permitted the development of processes that were more holistic and reflected the needs of its participants.

- Consistency in the treatment of claimants and in decisions was an essential goal and required specific focus and strategies. The effectiveness of the adjudicative process required not only that it provided resolutions to claims, but also that it process and resolve those claims in a fair and consistent manner. This was a particular challenge in a process that handled a large volume of cases over several years.

- Specific strategies, checks, and balances were needed to provide consistency while at the same time maintaining the independence of adjudicators and ensuring that each case was resolved on its own merits. In the case of the IAP, this was achieved in part by mechanisms in the Settlement Agreement to allow the parties to request reviews of decisions. It was further provided through the Chief Adjudicator's issuance of a number of Practice Directions and Guidance Papers on various topics to ensure that all adjudicators, claimant counsel, and Government of Canada representatives were operating with the same knowledge and understanding. In addition, the Oversight Committee and its Technical Subcommittee met on a regular basis to address and provide direction consistent with the IAP on several more complex procedural and interpretive issues as they arose. It was also important that ongoing opportunities were provided for adjudicators to receive training throughout the process, and to be able to discuss among themselves broad matters of policy and interpretation. Actions on all of these fronts and levels were required to support consistency and fairness throughout the process.[158]

[157] More than 4,500 admissions were made by Canada over the course of the IAP.
[158] Schedule D of the IRSSA specifically addressed measures to provide consistency in hearings and decisions in Section III (m), p. 14.

One item that was included in the Settlement Agreement's recital was that the Agreement would provide finality to all claims other than for those individuals that specifically opted out of it. This element of finality was essential not only to the timely resolution of claims but also to enabling the parties to move beyond litigation to other aspects of healing and reconciliation.[159]

- One element of the Settlement Agreement that created a challenge to finality – not of individual claims but of the process as a whole – was the ability to request, under Article 12, that an additional school be added to the Settlement Agreement. The IAP contemplated that further research would be conducted and provided a mechanism to consider the addition of schools. Although Article 12 included criteria for adding a school, it did not provide specific deadlines for making such a request or for when the Courts would need to render a decision. As a result, some residential school survivors were only able to file an IAP claim many years into the process. While it was important that all former students who should have been included in the Settlement Agreement were accorded the right to benefit from it, this not only delayed the ultimate finality of the resolution of all claims but also increased the likelihood that some survivors may have become too infirm to apply or attend a hearing. To ensure finality, specified timelines for actions that extended the process could have been helpful.[160]

- It is unlikely if not impossible that any model or procedural code would have anticipated all issues related to the effective and efficient processing of all claims. In the case of the IAP Model, governance bodies responsible for interpreting and implementing the model had powers and perspectives to enable them to adapt case management and other processes to meet unanticipated challenges.

Case Management:

- Case management was, not unexpectedly, labour-intensive. Determining the best ways to facilitate the progression of a file required hands-on, in-depth analysis of the case and strong communication with representatives of all parties. The timely completion of a process of the scale and complexity of the IAP could only be achieved with a significant focus on case management and with dedicated human and financial resources.

- Over the course of the IAP, literally dozens of new procedures and approaches to case management were implemented to respond to unforeseen challenges, to changing circumstances, or to address concerns that emerged. In order to ensure that a large volume of claims could be addressed in a fair and timely manner, a skilled and adaptive approach to case management was required. Mechanisms were put in place to promote continuous review and improvements in operational processes, and allowed the administrators to adjust quickly and creatively.

Expedited & Accelerated Hearings:

- The IAP adopted a process of expediting hearings for claimants with health issues that threatened their ability to attend a hearing. During the course of the IAP, the Adjudication Secretariat extended the expedited hearing process to those over the age of 65 to minimize the potential that claimants' testimonies might be lost due to ill health or death. Subsequently, as described in Chapter 5, the Oversight Committee developed an Accelerated Hearing Process giving particular priority to elderly claimants in failing health or with claims that had been awaiting a hearing for a longer time. This again demonstrated the need and effectiveness of claim-by-claim case management to ensure that these most vulnerable claimants could proceed as quickly as possible to a hearing.

"Lost" Claimants:

- The Lost Claimant Protocol was a unique initiative aimed at ensuring that every IAP claimant was provided the opportunity to have their claim resolved. The number of claimants that were located and whose claims were allowed to progress as a result of this initiative again demonstrated the importance of particularized and innovative case management, and for maintaining a focus on claimants and their individual needs.

Short-Form Decisions:

- Similarly, in a process that spanned several years and addressed a large volume of cases, there needed to be continuous exploration of methods to ensure that the decision-making process was as timely and fair as possible. The implementation of short-form decisions in cases where the parties agreed on how the claim should be resolved significantly reduced the amount of time claimants had to wait for their compensation and provided a measure of closure for claimants on the day of the hearing.

[159] However, as a court-supervised process, judicial recourse was available in the event of a failure to apply the terms of the Settlement Agreement.
[160] On July 27, 2015, the Hon. Madame Justice B.J. Brown of the B.C. Supreme Court barred any further proceedings to add an institution under Article 12 of the Settlement Agreement. The final school to be included pursuant to an Article 12 application was Kivalliq Hall in February 2017. Former students of Kivalliq Hall were given until January 25, 2020, to file an IAP application.

Elder Gertie Pierre worked with the Indian Residential Schools Survivors Society to help IAP claimants.

Negotiated Settlements:

The Negotiated Settlement Process (NSP) provided an alternative means of resolving claims in those cases where the claimant and the defendant agreed to enter into that process. While not applicable to all instances, and while it did not provide the parties with an adjudicator's decision, it often resulted in a more rapid resolution to appropriate claims and reduced administrative costs. Short Form Decisions and NSPs demonstrated that in certain circumstances alternative approaches to dispute resolution saved time and money.

Ensuring that All Claims were Resolved:

- It was to be expected that in the processing and resolution of a large volume of claims, there would be those claims that – due to their complexity; to legal or technical issues; to their inter-relationship with other claims; or to other process issues such as the availability of a claimant, of an expert, of an estate administrator, or of documentation – would not be addressed within the normal timelines and would remain unresolved approaching the end of the process.

- In order to ensure that all claims were ultimately resolved, and that the last claim would receive the same attention and sensitivity as the first, it was necessary to develop a targeted strategy identifying specific challenges to the completion of all claims and methods for addressing those challenges. As this involved prioritizing certain claims or revising operational procedures, this strategy had to be transparent and developed in conjunction with all parties and governance bodies.

Governance and Oversight

Oversight Committee

- The Oversight Committee – composed of representatives of the parties to the Settlement Agreement – was a governance body that was neither a board of governors nor board of directors, but rather more akin to a board of stakeholders. Given its representative nature, it could provide checks and balances in implementing the IAP. To be successful in that role, it required its members to bring disparate perspectives to bear while ultimately coming together as a collective protector of the IAP as codified in the Settlement Agreement.

- While many different constituencies were represented on the Oversight Committee – and their representatives changed over time - the consensus model of decision-making worked well in most cases. That Oversight Committee debates and discussion did not descend into factionalism was a testament to the commitment of those representatives to the overarching objectives of the IAP and to supporting and guiding its resolution. It also required an Independent Chair – not representative of any particular party – with strong skills, sensitivity, and a facility in consensus building.

- Given the large number of claims and the complexity of the IAP Model, it was incumbent upon those responsible for the governance of the IAP – notably the Oversight Committee and Chief Adjudicator – to address a number of challenging situations as they occurred. To a large extent, this was accomplished successfully through such means as Directives and Guidance papers from the Chief Adjudicator and decisions by the Oversight Committee that permitted the adoption of dozens of new procedures and process improvements.

The Courts

- As noted earlier, it was highly unlikely that any Agreement would have been able to anticipate and address all issues that may have arisen in its implementation. Given the complexity of the IAP, it was essential, that governance bodies retained authorities to respond to matters as they arose. In the IAP, some authorities in this regard were accorded to the Oversight Committee, while the Supervising Courts retained residual authority over the Agreement. In practice, the residual authority of the Courts was called upon - and the Courts were actively involved in the interpretation and administration of the IAP - more than had originally been anticipated, as evidenced by the large and increasing number of Requests for Direction that were put before the Courts. These Requests for Direction were required to help clarify the structure and authorities of the IAP.

At the same time, it should also be noted that some challenges - such as "Administrative Splits" and the re-examination of some "student-on-student" abuse allegations - were resolved, at least in part, by the Government of Canada creating a process to revisit these claims outside of the formal IAP process and without recourse to the courts. This demonstrated the need for continued, creative dialogue among the parties, and a shared commitment to the fair resolution of all claims.

- In the absence of an Ombudsperson or designated individual with the authority to receive and address internal complaints, the Courts effectively remained the first point of access for claimants to pursue certain issues.

Roles and Relationships of Various Governance Bodies

- In addition to the Oversight Committee and the Supervising Courts, there were a number of other bodies that played an important role in the governance of the IAP, including the National Administration Committee, Court Monitor, and Chief Adjudicator. While some of these had specific authorities set out in the Settlement Agreement and Implementation Order, there was no specific mechanism for providing co-ordination of governance and oversight other than the Supervising Courts themselves, who retained final authority in the administration of the Settlement Agreement. While there remained strong and neutral governance of the IAP, some advantages of potential synergies between these various bodies were perhaps missed. In addition, while the National Administration Committee was intended to have a superordinate governance role, it was also tasked with the responsibility of addressing some 4,600 Common Experience Payments; this activity, of necessity, consumed much of the NAC's focus and attention. As a result, the Courts were called upon with increasing frequency to resolve a number of governance issues, such as how IAP records would be handled at the close of the process.

- The large volume of post-Settlement matters that were raised before the Supervising Courts created an extensive commitment of judicial resources. In this context, the creation of the role of Court Counsel assisted in the co-ordination of these legal actions and in some instances provided an opportunity for the mediated resolution of issues either without or in conjunction with Court hearings. Having Court Counsel as part of the governance structure to assist the parties and the Courts helped to address these matters in a more timely and coordinated manner.

Actual and Perceived Independence

- Actual and perceived independence are crucial to the integrity of a neutral adjudicative process. In the context of the IAP, there were a number of safeguards in place to protect the independence of the adjudicative process. Adjudicators were recruited and appointed by an Oversight Committee composed of the parties to the Settlement Agreement and their performance was monitored by a Chief Adjudicator who had the exclusive authority to renew or recommend the termination of adjudicators' contracts and who was himself appointed by the Oversight Committee.

- The Government of Canada was not only a defendant in the process but also had administrative responsibility for the Adjudication Secretariat and for providing financial and human resources in support of the IAP. At the start of the IAP, it was difficult to envisage a body other than the Government of Canada that had the scope, infrastructure, and resources to undertake this responsibility. However, this led not only to some operational challenges where the needs of the IAP did not fit squarely within the administrative procedures of the Government, but also to the possibility of perceptions that the IAP did not enjoy independence from the Government of Canada.

- Given the Government of Canada's role in administering aspects of the Settlement Agreement the maintenance of actual and perceived independence required continued attention and vigilance, and an appreciation at all levels of Government of the importance of this independence.

Claimant Counsel Oversight

Claimant Counsel Legal Fees and Legal Fee Reviews:

- In the IAP, the legal fee structure for compensating claimant counsel was largely shaped by the civil litigation/class action model. Rather than charging a specific fee per case or an hourly rate, lawyers received fees that were calculated as a percentage of a successful claimant's award. An additional legal fee review process allowed adjudicators to review and, if they so decided, reduce the fees claimed by claimant counsel.[161] This model offered several advantages. It was rooted in existing practice in the legal profession; the percentage of an award that would be paid in legal fees was capped and was lower than some class action norms; it provided for a review process; and it made the Government of Canada – as defendant – responsible for paying some or all of the legal fees for each compensated claim.

[161] The legal fee review process was not contained in the Settlement Agreement reached by the parties but was introduced by the Courts in their approval of the Agreement.

However, the IAP's legal fee structure and fee review process were criticized on a number of levels. The fees themselves were considered by some to be, on average, overly generous given the lower level of financial risk and effort required to represent an IAP claim in an inquisitorial process compared to standard civil litigation. As such, potential legal fees were seen to have attracted some lawyers into the IAP process who did not have experience in or commitment to Indigenous issues in general or residential school litigation in particular.

- Allowing lawyers to charge more than the Government of Canada's contribution to fees (15% on top of the amount of the award) meant that for some claimants a portion of the legal fees was deducted from their award, leaving them with less than the amount actually awarded in the adjudicator's decision. In addition, claimants were required to pay taxes on legal fees.

- The legal fee review process was seen to be time consuming both for adjudicators and claimant counsel, and delayed finality in a claim's resolution. It also placed neutral adjudicators in a position of ruling on a conflict between the claimant and his or her lawyer, and put the claimant in a position of being in conflict with her/his lawyer without the benefit or support of legal counsel.

- Overall, the structure of legal fees in the IAP raised several questions. First, would it have been better for the process and fairer for claimants if fees were more in line with the actual risk and uncertainty about compensation faced by legal counsel in a process such as the IAP, which was governed by a specific model and award matrix (in other words, should fees have been capped at less than 30%)? Second, should legal fees have been limited to the amount that the defendant was obliged to pay (15% on top of the amount of the award) so that they did not in effect reduce the award that the claimant received?

Lawyer Conduct:

- While the vast majority of the more than 600 law firms involved in the IAP provided skilled, supportive, and sensitive service, the ethical conduct of some claimants' legal counsel created serious unanticipated challenges for the IAP and for claimants. This caused considerable hardship for some claimants, and time-consuming work for the Courts, Oversight Committee, and the Chief Adjudicator in addressing and rectifying claimant lawyer misconduct.

- Selection and retention of a legal representative often posed the first challenge for a claimant. For those unfamiliar with the legal process – and particularly for those in remote locations where the pool of lawyers was small - it could be difficult to identify a lawyer with the ability, experience, cultural awareness, and commitment to represent a claimant on matters of such sensitivity and importance. Partway through the IAP process, the Oversight Committee developed an approved list of lawyers and guidelines for claimants in selecting a lawyer, but this was not available from the very beginning. As well, approved counsel were not included in the Adjudication Secretariat's community-based outreach and information-providing activities.

- At various stages, several provincial Law Societies developed codes of conduct or guidelines for lawyers working on residential school issues, or offered professional development programs on such topics as cultural competency training. However, these were not mandatory for lawyers to be able to work in the IAP. As a result, not all legal counsel were required to commit to a specific code of conduct and practice guidelines, and to have an appropriate level of experience, professional development and/or training. Arguably, Chief Adjudicator and/or Oversight Committee-approved training for legal counsel could have been made a condition of representing claimants in the IAP. As the Truth and Reconciliation Commission observed: "The lack of sensitivity that lawyers often demonstrated in dealing with residential school Survivors resulted, in some cases, in the Survivors not receiving appropriate legal service. These experiences prove the need for lawyers to develop a greater understanding of Aboriginal history and culture as well as the multi-faceted legacy of residential schools."

- Alternatively, other methods of providing legal representation may have made it easier for claimants to identify and retain counsel that were trained in and committed to appropriate approaches to working with residential school survivors. These may have included having an approved group of lawyers - trained in the Settlement Agreement, the hearing process, cultural traditions, and the compensation model - retained on contract by the Administrator of the process and made available to claimants. Alternatively, a system of staff lawyers, with the appropriate knowledge and experience, could have provided free legal services for claimants. Another option might have been to provide the necessary resources to maintain a roster of trained and experienced "duty counsel" – either through Legal Aid Clinics or otherwise – to represent claimants. However, such methods of providing legal representation might have been perceived as depriving claimants of their freedom to choose in a process that attempted to be claimant-centred and respectful of claimants' choices, where possible.

- In the IAP, residential school survivors were able to submit a claim and attend a hearing without a lawyer; in those cases, the Adjudication Secretariat provided dedicated staff to assist them in submitting and supporting their claim. These staff, however, did not attend hearings and were not able to provide legal advice. Nonetheless, this was an important option for those who, for whatever reason, did not want or were not able to have legal representation.

There were more than 20 Indigenous Adjudicators and 3 Indigenous DCAs in the IAP

Finally, the IAP experience highlighted the need for more available and effective oversight of legal counsel to address instances of misconduct. For their part, claimants did not have an accessible place or process to raise concerns. It did not prove reasonable to expect individual claimants, largely unfamiliar with the legal process, to be able to approach a relevant Law Society with a complaint. As a result, the Chief Adjudicator became directly involved in issues related to the conduct of legal counsel: an engagement that he considered necessary in the circumstances but not ideal in terms of maintaining adjudicative neutrality. When made aware of problems, some Law Societies did initiate investigations but these did not prove sufficient to address issues of misconduct. In 2014, the Courts appointed an Independent Special Advisor to address lawyer misconduct, but this was several years into the process and followed instances of egregious behaviour on the part of some lawyers.

Administration

Building Operational Capacity:

- The IAP experienced many challenges related to capacity: challenges that were heightened by the large volume of claims. Initially, there was very little "ramp-up" time during which the Adjudication Secretariat needed to become operational, implementation processes and procedures developed, and adjudicators selected. This situation was exacerbated by the existing capacity with the Government of Canada to be able to build the organization at the pace that was required. Human Resources professionals could not meet the demands of a rapid-growth organization that was seeking to staff positions in locations across the country. These capacity challenges were further compounded by the Government of Canada's administrative procedures and rules that did not provide the flexibility and response times required.

- Capacity issues not only affected the Secretariat, but all other participants in the process. Some claimant counsel with very large numbers of clients lacked the capacity to process claims in a timely manner, or to provide each residential school survivor the attention they required as individuals who had suffered traumatic personal experiences. As the IAP deadline approached, many claimant counsel of necessity turned their attention to ensuring that potential claimants had the opportunity to submit applications, which reduced those firms' capacity to attend hearings on behalf of other claimants. The Government of Canada had challenges in retaining and making Canada's representatives available to attend IAP hearings in a timely manner. Other government departments such as Health Canada (who provided health support workers) lacked sufficient human and/or system resources to handle initial demands. And, over the course of the IAP, it took several different selection processes to retain sufficient numbers of adjudicators to meet the demand. As well, despite focused efforts to expand Indigenous Adjudicator capacity, the number of Indigenous Adjudicators working in the IAP remained relatively low.

Taken together, these capacity challenges affected the timeliness with which IAP claims could be processed, heard, and decided. Although at its peak, the IAP was conducting more than 4,000 hearings per year, capacity shortages anywhere in the system created bottlenecks that affected the entire process and could have had a negative effect on claimants awaiting resolution of their IAP claims. This was further exacerbated when thousands of claims were submitted just prior to the September 19, 2012, IAP application deadline.

- An undertaking as complex and sensitive as the IAP was only made possible on a daily basis by the dedication of the people who worked in support of it. This level of engagement – combined with the particular nature of its subject matter and its historical significance – in turn exacted a toll on those who dedicated their time and commitment to this issue. In particular, all those engaged in the delivery of the program were potentially subject to vicarious trauma. Thus, support of staff was as vital as support by staff. All organizations involved in the IAP needed to devote effort and resources to provide training, opportunities for staff input, and support for emotional and physical wellness.

- In the IAP, Elders provided considerable assistance in protecting the wellness of staff. Drawing on the skills and experience of Elders not only helped staff maintain a claimant-centred perspective but also allowed them to benefit personally from the wisdom and sensitivity of Indigenous community leaders.

Establishing Processes and Adjusting to Meet Unanticipated Challenges:

- Given the complexities of the IAP Model as set out in the Settlement Agreement, a primary challenge for the Chief Adjudicator and Adjudication Secretariat staff was to interpret the Model and develop the processes necessary to make it operational. This required drawing not only on the past experiences of modified litigation and Alternative Dispute Resolution, but also of creating new approaches, operational procedures, and administrative structures.

- As with any process as large-scale, long-term, and complex as the IAP - however well-intentioned and designed - unanticipated circumstances and unintended consequences did arise. As it was not possible to plan for all contingencies and eventualities, it was crucial to build organizational, managerial, and staff capacity to manage change and respond to realities as they evolved. As described earlier, the IAP needed to implement literally dozens of administrative process improvements to meet unanticipated challenges in order to achieve its objectives.

- An important element of this capacity to adapt was a robust framework for the identification, mitigation, and management of risk, including the determination of the levels of risk that were acceptable. Risk assessment and mitigation proved to be a more flexible and efficient management approach in these circumstances than attempting to control risk through rigid pre-approval and reporting requirements.

The Effects of Administrative Rules on Organizational Effectiveness:

- In addition to the issue of perceived independence discussed earlier, the role of the Government of Canada as administrator of the IAP posed operational and administrative challenges. Building and operating a high-volume, operationally-focused, time-sensitive enterprise such as the Indian Residential Schools Adjudication Secretariat required organizational nimbleness and flexibility. Having to operate with rigid adherence to a plethora of administrative procedures with lengthy approval processes was inimical to efficient and effective operations. Despite good will and hard work, the rules and regulations designed for administering large-scale, long-term Government programs were not conducive to managing an organization that needed to become operational quickly and respond rapidly to changing circumstances.

Wind-down:

- Despite the pressures of building and adapting a process to resolve tens of thousands of claims, attention also needed to be paid from an early stage as to how the process would be brought to completion. Due to their complexity or the time when some applications were filed, it was inevitable that some claims took longer to resolve and remained active right up to the end of the process. To address this, a comprehensive Completion Strategy was developed by the Chief Adjudicator, in consultation with the Oversight Committee and the National Administration Committee, years before the expected end of the IAP. This Strategy included human resources and financial projections and logistical planning, but most importantly case management approaches on the part of both the Adjudication Secretariat and the Government of Canada to ensure that all claims would be resolved. As with any planning strategy, this needed to be reviewed and revised regularly to monitor its progress, address new issues and challenges, and incorporate changing circumstances.

- Staff considerations within the Adjudication Secretariat and the Government of Canada were central in the wind-down phase: both the need to treat staff fairly and transparently, and also to ensure that sufficient resources remained at the end of the process to resolve all remaining claims. Striking this balance was difficult, as on the one hand staff needed to seek alternative employment as the IAP neared completion and, on the other hand, experienced staff were required right up to the end to address the final claims. As with any human resources issue, this element of the completion strategy required strong and clear communications, engagement of staff and staff unions, and the advice of human resources professionals. In the IAP, a commitment of continued employment was also extended to staff occupying a small number of key positions to aid in their retention, in order to fulfill the IAP's commitment to claimants and operational objectives.

Indian residential school survivor Geronimo "Fish" Henry shows the spot where he carved his name into the brick at the Mohawk Institute while he was a student at the school in Brantford, ON.

Contributing to Healing and Reconciliation

Providing an Opportunity for Residential School Survivors to Tell their History

For many residential school survivors, the ability to talk about their personal experiences to an adjudicator in a safe, fair, impartial, supportive, and culturally appropriate and respectful hearing was a healing opportunity and a step towards reconciliation. For many claimants, this was the first time they had spoken about these things, and it was the beginning of a new journey. This important step would not have been available if the process had been designed only to provide financial compensation through a paper-based claim process.

Validation of the Survivor's Personal Experience

- Each compensated IAP claim not only resulted in a monetary award, it also represented the validation of the claimant's personal history by an independent and neutral third party. For residential school survivors, being able to relate their experiences and have their histories and the harms that they suffered acknowledged, accepted, and validated was an essential step in their personal healing.

- Conversely, as in any individual-based compensation process, there were some claimants whose claims were not compensated, sometimes for jurisdictional or technical reasons. In those instances, some claimants found this difficult to accept, while others found some benefit in the opportunity to talk about their experiences to a person in authority who truly listened.

- Collectively, the acknowledgement of the experiences of tens of thousands of residential school survivors was an essential step in a broader awareness of the history of residential schools in Canada, and toward national-level reconciliation.

Apologies

- The power of apology in the healing and reconciliation process cannot be overstated. It may well be argued that there could not have been restorative justice or reconciliation without expressions of remorse and regret.

- Then-Prime Minister Stephen Harper's apology to former students of Indian Residential Schools – recognizing the Government's responsibility for and the consequences of the residential school system - was seen by many as an opportunity to begin the act of healing. IAP hearings provided an opportunity for Government and Church representatives to apologize directly and personally to each claimant. The Government of Canada and the relevant Church also delivered personalized statements of apology to individual claimants in the form of a letter if desired by the claimant. This reinforced the validation of their histories, and was an important element of the IAP's contribution to individual healing.

However, the potential positive impact of the apology was reduced by the fact that Church representatives rarely were invited to or attended hearings and thus were not able to extend this expression of remorse and responsibility. On the one hand, it was important not to traumatize survivors by having individuals or organizations represented at their hearing with whom the claimant was not comfortable. On the other hand, if handled sensitively and transparently, improved processes - such as ensuring that the relevant Church was notified that a hearing had occurred to enable it to provide a written apology to the claimant in a timelier manner - could have facilitated the positive engagement of the Church. This could not only have contributed to individual healing but could have sent, in a stronger and more consistent way, the message that those entities too were part of the process and wanted to play a constructive role in reconciliation efforts.

Future Care Plans

- Most stakeholders felt that the provision of treatment following the IAP hearing, through the Future Care Plan, was important for claimants' continued healing. While the pursuit of Future Care was the choice of each individual claimant, it was important to provide and fund an identified post-hearing treatment plan for those who wished it. This recognized that the hearing and award were not the culmination, but just one aspect, of the road to recovery.

- In practice, though, there were several areas in which this aspect of the IAP could have been improved. At the outset, claimants and/or their counsel were expected to prepare future care plans without expertise in what treatment was required and how to access it. Some community-based programs became more difficult to find once funding for the Aboriginal Healing Foundation ended. Also, it was sometimes difficult to obtain adjudicator approval for future care plans that focused on traditional healing and could not be shown to be "equivalent" to a western-style treatment.

- Also, having a single cap for future care plans for all claimants did not take into account that people living in the North or in remote communities would have to spend considerably more to access some treatments than those in southern, urban areas.

- Overall, the importance of the future care dimension of a hearing and compensation program warranted more planning and preparation of these healing plans. It could also have benefited from a more explicit recognition of the value and validity of traditional healing practices by not requiring such care to be the equivalent of a recognized "western" treatment, and by allowance for the differential costs of obtaining treatment depending on the claimant's location.

Individual vs. Collective Healing

- The IAP was, by intent and design, focused primarily on the individual. It enabled individual residential school survivors to recount their experiences and receive compensation for the harms that were specifically done to them. Other elements of the Settlement Agreement acknowledged that everyone who resided at a residential school was wronged, and that the residential school system itself – and not only those instances in which individual students were abused - was the problem that needed to be acknowledged and rectified. Accordingly, the Common Experience Payment (CEP) - providing compensation to all former residential students in recognition of the common experience and impacts of having resided at a residential school, irrespective of whether they also suffered harms from sexual, physical, or emotional abuse - and the Truth and Reconciliation Commission - which organized community-based gatherings and documented the full collective history of residential schools - were focused more on the community and the collective of residential school survivors. In terms of individual and collective healing, the IAP must be considered in the context of being only one aspect of the broader Settlement Agreement.

- At the same time, some aspects of the IAP did contribute to collective healing. Notably, the Group IAP program was explicitly intended to bring together community members and to experience healing activities in their language, in ceremonies reflective of their culture, with friends and family members.

- However, Group IAP was relatively under-utilized, in part due to limited awareness of it among claimants, and in part due to administrative burdens in accessing it, particularly in the early years of the IAP. Better information about this program, especially at the community level, and more streamlined administrative rules, could have contributed to more collective healing opportunities.

- It is also worth noting that the Alternative Dispute Resolution program specifically set aside money for group activities and community-based commemoration. This group engagement provided for shared support and healing, and a lasting legacy. Where they occurred, commemorative community-based activities had a strong resonance and provided opportunities for healing and reconciliation that were not available solely through individual hearings and redress.

Adjudicators made a Statement of Reconciliation at a National Event of the Truth and Reconciliation commission in Edmonton.

Intergenerational Healing

The powerful effect of Indian Residential Schools is well known to have affected not only those who attended the schools but their family members, children, and grand-children. Therefore, support and healing efforts needed to extend to intergenerational survivors. Some elements of the IAP offered this: the telephone crisis line was available to all who were affected by residential schools, and family members could – if the claimant wanted – attend a hearing where they would have the support of Resolution Health Support Workers and/or Elders.

- Many claimants expressed that going through the IAP had a positive impact on their families and family relationships, allowing them, often for the first time, to talk with their families about their residential school experiences. This in turn also helped family members understand the impact of the schools on the survivors, and on themselves. Thus, the opportunity to share one's experiences with family members in a supportive and validating environment could be an important step in intergenerational healing as well.
- Other elements of the Settlement Agreement, such as the work of the Truth and Reconciliation Commission (TRC) and the Aboriginal Healing Foundation (AHF), focused efforts directly at intergenerational healing. However, there may have been scope to extend more explicitly aspects of the IAP process – such as the post-hearing apology, future care plans, group programs, and health care support – to family members of survivors to aid in their own healing.

Public Information and Education

- Although they were all parts of the Settlement Agreement, the IAP, TRC, CEP, and AHF operated for the most part as separate entities and programs, and conducted their own outreach and information activities. As a result, there remained some confusion among residential school survivors as to what all these elements were, and what they were intended to offer. Better co-ordination in the provision of information about the Settlement Agreement and all of its components could have assisted residential school survivors in better understanding the Settlement Agreement as a whole, and in taking full advantage of all of its elements.

In addition, it was important that information about the legacy of residential schools and the Settlement Agreement extended not only to former students and Indigenous communities, but also to the entire general public. Healing and reconciliation required the awareness, acknowledgment, and understanding of all Canadians. In the Settlement Agreement, the Truth and Reconciliation Commission undertook considerable effort in addressing this need for public information and education. Much of this public information and education work of the TRC was transferred to and remains with the National Centre for Truth and Reconciliation. Outreach by the IAP, as a confidential and individual-based process, was focused more on ensuring that residential school survivors were aware of their entitlement to file compensation claims. At the same time, better awareness of the IAP could have assisted the general public in understanding the role of compensation in healing and reconciliation, and the importance of providing survivors the chance to have their histories heard and validated. Unified direction of the Settlement Agreement as a whole and co-ordination in the provision of information about it might have contributed to a fuller understanding of the legacy of residential schools by all Canadians.

The Role of Compensation in Healing and Reconciliation

- One of the most complex issues emanating from the Settlement Agreement and the IAP was understanding the role of financial compensation in healing and reconciliation. Many claimants noted that they did not choose to participate in the IAP for the prospect of a financial award, but rather that they needed to share their personal experiences and the impact of Indian Residential Schools. Personal and community healing could only have occurred when the past was acknowledged in a supportive environment. National reconciliation required not only this acknowledgement but also an understanding of the responsibility for and the impacts of the residential school system.

- At the same time, it is vital to remember that the Settlement Agreement was reached at least in part as a method for resolving a number of class action lawsuits on behalf of residential school survivors. While the Settlement Agreement explicitly stated that it was not to be construed as an admission of liability, it was a resolution of civil litigation and as such would normally include a compensation component.[162]

- Moreover, given that those class actions and individual lawsuits existed, would it have been reasonable to expect that the Settlement Agreement would not have included a means of resolving them? Could healing and reconciliation have progressed had the "wrongdoers" apologized and established some form of public inquiry or truth and reconciliation process, while at the same time continuing to deny in litigation their legal and financial liability for those wrongs?

- Compensation was a concrete way of demonstrating the validation of and the responsibility for the residential school experience. It was a judicially-styled and recognized measure, and had a significant impact on individual survivors and claimants.

- At the same time, though, while the IAP was designed to resolve civil litigation, it should also be seen as an essential component of a broader reconciliation process. Receiving compensation of itself could not eliminate past harms.

- This underlines the importance of those involved in the process – adjudicators, claimant counsel, and defendants' representatives – who had experience and training not solely in law, litigation, and contract interpretation but also in Indigenous issues. Their engagement enabled a more purposive perspective to be brought to bear on the process and on the legal, technical, and administrative issues that arose.

[162] Preamble H of the IRSSA stated that: "This Agreement is not to be construed as an admission of liability by any of the defendants named in the Class Actions or the Cloud Class Action."

In a similar vein, it is important to recognize that the purposes of the Indian Residential Schools Settlement Agreement were varied and complex. These ranged from addressing sweeping historical issues, to achieving social justice, to assisting in individual and collective healing, to providing individual redress, and to resolving litigation claims and quantifying liabilities. Among and within the parties to the Settlement Agreement, there were those who had broad political or social perspectives and goals, and others whose goal was to ensure that the Agreement was technically sound and protected their legal interests. Thus, even after the agreement was achieved, there remained the ongoing challenge of harmonizing those voices and perspectives – both across and within organizations – in order that the overarching objectives of the Settlement Agreement were realized to their fullest. It was important that the more partisan adversarial mindset that preceded the Settlement Agreement needed to be tempered after the settlement was reached to ensure that goodwill was maintained, that the consensus among the parties was protected, that there were a minimum of ongoing legal or technical distractions, and that the objectives of the Agreement were met.

Preserving the Historical Record

- The Settlement Agreement was based in no small measure on the importance of acknowledging and attempting to redress the impacts of the residential school history and experience. On a societal level, it has been widely acknowledged that without understanding and addressing this collective past, it would not be possible either to understand our current realities or move towards a more positive future. Similarly, on an individual basis, many former students have stated that only through sharing their personal residential school experiences – with family members, elders, support workers, the Truth and Reconciliation Commission, or in an IAP hearing – have they been able to confront and begin to move beyond the impact of those experiences on their lives and the lives of their children.

- In the Indian Residential Schools Settlement Agreement, the mandate for creating and preserving that historical record was given to the Truth and Reconciliation Commission. The TRC not only compiled millions of documents, but also gathered thousands of first-hand accounts from residential school survivors of their experiences at the schools and the effects of the residential schools on their lives and the lives of their families. Much of this historical record of the TRC was transferred to and remains with the National Centre for Truth and Reconciliation.

- The primary focus of the IAP was to determine compensation for those students that suffered abuse at the schools. Claimants were required to share their histories with an adjudicator, and were promised confidentiality in that process. Many claimants in the IAP agreed to tell of their personal experiences only after they were promised that their privacy would be protected. Privacy also was promised to others who were identified in claims, including adults and students who were accused of abuse, witnesses who volunteered to testify, and family and community members whose personal histories may have been discussed. Anyone who was accused of abuse was notified, if they could be identified and found. But many had passed away or were too old or frail, or had their own reasons for not testifying. Many of these people never knew they were mentioned in an IAP claim.

- The question remained, however, as to what would be done with the records generated in the IAP and which if any would form part of the historical record. This question was only answered in October 2017 - years after the vast majority of IAP hearings were held – when the Supreme Court of Canada confirmed that most IAP documents (medical records, and so on) must be destroyed. It also confirmed that four types of records - the IAP application, audio recordings and transcripts of testimony, and the adjudicator's decision - must be kept for 15 years. In that time, claimants could decide if they want their records to be preserved.

- The delay and uncertainty in knowing what would ultimately be done with IAP records and the effect of that on promises of confidentiality as well as on the historical record was an ongoing source of concern for claimants and those involved in the Settlement Agreement. This demonstrated that it would have been preferable to have had a clear approach to the disposition of records in place at the outset of the process, so that all those involved – most notably survivors and claimants – had a clear understanding of what would happen to their personal documents, records, and histories.

CONCLUSION

A public policy and legal initiative as large and historic as the Independent Assessment Process can be analyzed from a myriad of viewpoints and measured against a range of objectives. This report has endeavored to set out the context for and origins of the IAP; to describe its processes, challenges, innovations, and results; to share some perspectives of those responsible for the oversight of the IAP, stakeholders, and claimants; and to draw out lessons that can be learned from this experience.

As part of the ground-breaking Indian Residential Schools Settlement Agreement, the IAP was the culmination of years of struggle by residential school survivors and their representatives and advocates to obtain compensation for the wrongs that the residential school system had inflicted. As such, it was also an essential part of a larger continuum of efforts to heal the wounds of the past, move towards a broader reconciliation of its legacy, and build a more positive future.

The experience of implementing and delivering the IAP generated many notable aspects that bear reflection and consideration. There are, of course, the numbers: 38,276 claims filed, 25,707 hearings held, $3.232 billion in compensation awarded. The scale of the IAP indicated not only the magnitude of the residential school experience and the abuse suffered in those schools, but also the ongoing impact on contemporary Indigenous communities and on Canada as a whole. The management of that large volume of claims presented challenges to all those involved in the process, and required continuous oversight, review, and adjustment. It demonstrated the need for flexibility, and the vital importance of maintaining a shared commitment to resolving claims while keeping a firm focus on the circumstances and experiences of each individual claimant.

There were also many aspects of that process itself – such as the inquisitorial approach, the approach to expert testimony and document production, approaches to negotiated settlements, cultural sensitivity, and the availability of support for claimants - that bear further contemplation. The IAP provided a significant alternative to traditional civil litigation: one that attempted to provide a path to justice that was sympathetic to the claimant's circumstances while respecting defendants' rights. In that way, it demonstrated approaches and lessons that may have broader implications for the civil justice system.[163]

However, beyond the numbers, beyond the administrative challenges and achievements, and beyond the procedural innovations in giving effect to the provisions of the IAP Model, what the Indian Residential Schools Settlement Agreement and the Independent Assessment Process was truly about was people: children who were assaulted; parents who lost their families; survivors who somehow found a core of strength; others who were still trying to come to terms with their past and overcome the harms that were inflicted; leaders of Indigenous communities who provided support to residential school survivors and, on a daily basis, who address its intergenerational impacts; Church leaders who were attempting to reconcile their belief and their ministry with the legacy that they bear; Government officials who attended hearings, listened, and apologized to former students; adjudicators who provided a space for healing while also trying to link that with financial compensation; those who answered telephone calls twenty-four hours a day, seven days a week, from people in crisis over the residential school experience or its memories; lawyers who traveled to remote communities or hospitals to provide counsel and help get justice; public servants who spent their work days talking with survivors about the most intimate and troublesome aspects of their lives and helped them navigate their way through the system; and countless friends, family members, Elders, and spiritual leaders, who stood with and supported residential school survivors. The story of the IAP was above all an amalgam of literally tens of thousands of personal stories, experiences, and journeys.

[163] The Hon. Rosalie Silberman Abella recently observed: "In a speech to the American Bar Association called The Causes of Popular Dissatisfaction with the Administration of Justice, Roscoe Pound criticized the civil justice system's trials for being overly fixated on procedure, overly adversarial, too expensive, too long and too out of date. The year was 1906." Rosie Silberman Abella, "Our civil justice system needs to be brought into the 21st Century", *The Globe and Mail*, 24 April 2020.

It might be tempting at this stage, after the conclusion of the IAP along with the Common Experience Payment and the Truth and Reconciliation Commission, to consider that the Settlement Agreement and all that it contained is now a thing of the past. However, it is important to remember that even in 2020, nearly three-quarters of Canadians were living while an Indian residential school remained in operation.[164] To Indigenous peoples, the effects of those schools on former students, their families, and their communities remain well-known and acutely felt. Many non-Indigenous Canadians, however, were not even aware of the history and legacy of Indian Residential Schools.

Recognition of the existence and impacts of the residential school system took a significant step forward when the then Grand Chief of the Assembly of Manitoba Chiefs, Phil Fontaine, spoke on national television about his personal experience in residential school. It progressed even more when the Settlement Agreement was announced, and when the then Prime Minister apologized on behalf of the Government of Canada in the House of Commons. It grew with the development by the Aboriginal Healing Foundation of curricula on Indian Residential Schools for use in our public schools. It was greatly encouraged when the Truth and Reconciliation Commission held events, provided a forum for people to share their histories, and garnered media attention that helped commemorate the residential schools experience. That commemoration brought knowledge; knowledge breeds understanding; and understanding can provide a basis for justice, healing, and reconciliation.

The IAP did not share the same level of publicity as some of these other landmark events. It was designed as an individual compensation system and, indeed, one of its main strengths is that it did not subject claimants to the public exposure that they would face in a civil litigation process. It was intended to be private, supportive, and to offer a protected space in which people could talk about intimate and damaging experiences in their lives. But, at the same time, it was an integral part of the Settlement Agreement, which in its entirety undoubtedly changed the conversation in Canada about Indian Residential Schools.

The Settlement Agreement – and the IAP – have not "fixed" the legacy of the residential schools. Reconciliation is not a fait accompli, nor is it a linear process; there is progress and there are setbacks. There have, over the past few years, been literally thousands of media reports related to Indian Residential Schools, not only about the wounds of the past but also about present frustrations and as-yet-unfulfilled hopes for the future. Perhaps most of the work towards reconciliation still lies ahead. But the Settlement Agreement and the IAP did represent a concerted effort by Indigenous leaders, by Government and Church representatives, and by residential school survivors who shared their histories and shared of themselves, to build the foundation on which healing and reconciliation can grow. And that effort is replicated on a daily basis in the motivation and commitment of those who continue to work on these issues.

The task is historic, the challenges significant, and the rewards immeasurable.

There is an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future … This is a profound commitment to establishing new relationships embedded in mutual recognition and respect that will forge a brighter future. The truth of our common experiences will help set our spirits free and pave the way to reconciliation.

- Indian Residential Schools Settlement Agreement, Schedule "N"

[164] Statistics Canada, *Population estimates on July 1st, by age and sex, Table 17-10-0005-01,* April 27 2020, https://doi.org/10.25318/1710000501-eng.

LIST OF INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT SCHOOLS[165]

St. Paul's Indian Residential School, in Cardston, AB

The site of the Shubenacadie Indian Residential School in Nova Scotia, which closed in 1967, was designated as a National Historic Site in 2020.

Alberta

- Assumption (Hay Lakes): Assumption
- Blue Quills (Saddle Lake, Sacred Heart, formerly Lac la Biche): St. Paul
- Crowfoot (St. Joseph's, Ste. Trinité): Cluny
- Desmarais (St. Martin's, Wabasca Roman Catholic): Desmarais-Wabasca
- Edmonton (formerly Red Deer Industrial): St. Albert
- Ermineskin: Hobbema
- Fort Vermilion (St. Henry's): Fort Vermilion
- Grouard (St. Bernard's, Lesser Slave Lake Roman Catholic): Grouard
- Holy Angels (Fort Chipewyan, École des Saints-Anges): Fort Chipewyan
- Joussard (St. Bruno's): Joussard
- Lac la Biche (Notre Dame des Victoire, predecessor to Blue Quills) (1893 to 1898): Lac la Biche
- Lesser Slave Lake (St. Peter's): Lesser Slave Lake
- Morley (Stony): Morley
- Old Sun: Gleichen
- Sacred Heart: Brocket
- St. Albert (Youville): Youville
- St. Augustine (Smoky River) (1900 to 1907): Smoky River
- St. Cyprian's (Queen Victoria's Jubilee Home): Brocket, Peigan Reserve
- St. John's (Wabasca Anglican/Church of England): Wabasca
- St. Joseph's (Dunbow): High River
- St. Mary's (Blood, Immaculate Conception): Cardston
- St. Paul's (Blood, Anglican/Church of England): Cardston
- Sarcee (St. Barnabas): T'suu Tina
- Sturgeon Lake (St. Francis Xavier): Calais
- Whitefish Lake (St. Andrew's): Whitefish Lake

British Columbia

- Ahousaht: Ahousaht
- Alberni: Port Alberni
- Anahim Lake Dormitory (September 1968 to June 1977): Anahim Lake
- Cariboo (St. Joseph's, Williams Lake): Williams Lake
- Christie (Clayoquot, Kakawis),:Tofino
- Coqualeetza (1924 to 1940): Chilliwack / Sardis
- Cranbrook (St. Eugene's, Kootenay): Cranbrook
- Kamloops: Kamloops
- Kitimaat: Kitimaat
- Kuper Island: Kuper Island
- Lejac (Fraser Lake): Fraser Lake
- Lower Post: Lower Post
- Port Simpson (Crosby Home for Girls): Port Simpson
- St. George's (Lytton): Lytton
- St. Mary's (Mission): Mission
- St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home): Alert Bay
- St. Paul's (Squamish, North Vancouver): North Vancouver
- Sechelt: Sechelt

Manitoba

- Assiniboia (Winnipeg): Winnipeg
- Birtle: Birtle
- Brandon: Brandon
- Churchill Vocational Centre: Churchill
- Cross Lake (St. Joseph's, Jack River Annex - predecessor to Notre Dame Hostel): Cross Lake
- Dauphin (McKay): The Pas / Dauphin
- Elkhorn (Washakada): Elkhorn
- Fort Alexander (Pine Falls): Fort Alexander

[165] Includes schools listed in Schedules E and F of the Indian Residential Schools Settlement Agreement, schools added to the IRSSA through Article 12, and schools added to the IRSSA by the Courts. Source: "List of Indian Residential Schools", *List of Schools,* Indian Residential Schools Adjudication Secretariat, n.d. http://www.iap-pei.ca/schools-eng.php {Listing format: School Name (alternative schools name/s) (dates *if applicable*): Location}

- Guy Hill (Clearwater): The Pas, formerly Sturgeon Landing
- Norway House United Church: Norway House
- Notre Dame Hostel (Norway House Roman Catholic, Jack River Hostel, replaced Jack River Annex at Cross Lake): Norway House
- Pine Creek (Camperville): Camperville
- Portage la Prairie: Portage la Prairie
- Sandy Bay: Marius

Northwest Territories

- Akaitcho Hall (Yellowknife): Yellowknife
- All Saints (Aklavik Anglican): Aklavik
- Bompas Hall (Fort Simpson Anglican): Fort Simpson
- Breynat Hall (Fort Smith): Fort Smith
- Federal Hostel at Fort Franklin: Déline
- Fleming Hall (Fort McPherson): Fort McPherson
- Grandin College: Fort Smith
- Grollier Hall (Inuvik Roman Catholic): Inuvik
- Hay River (St. Peter's): Hay River
- Immaculate Conception (Aklavik Roman Catholic): Aklavik
- Lapointe Hall (Fort Simpson Roman Catholic): Fort Simpson
- Sacred Heart (Fort Providence): Fort Providence
- St. Joseph's (Fort Resolution): Fort Resolution
- Stringer Hall (Inuvik Anglican Hostel): Inuvik

Nova Scotia

- Shubenacadie: Shubenacadie

Nunavut

- Chesterfield Inlet (Turquetil Hall): Chesterfield Inlet
- Federal Hostel at Baker Lake, Qamani'tuaq: Qamanittuaq
- Federal Hostel at Belcher Islands: Sanikiluaq
- Federal Hostel at Broughton Island: Qikiqtarjuaq
- Federal Hostel at Cambridge Bay: Cambridge Bay
- Federal Hostel at Cape Dorset: Kinngait
- Federal Hostel at Eskimo Point: Arviat
- Federal Hostel at Frobisher Bay (Ukkivik): Iqaluit
- Federal Hostel at Igloolik: Igloolik/Iglulik
- Federal Hostel at Lake Harbour: Kimmirut
- Federal Hostel at Pangnirtung (Pangnirtang): Pangnirtung / Panniqtuuq
- Federal Hostel at Pond Inlet: Mittimatalik
- Federal Tent Hostel at Coppermine: Coppermine
- Kivalliq Hall: Rankin Inlet

Ontario

- Bishop Horden Hall (Moose Fort, Moose Factory): Moose Island
- Cecilia Jeffrey (Kenora, Shoal Lake): Kenora
- Chapleau (St. John's): Chapleau
- Cristal Lake High School (September 1, 1976 to June 30, 1986): Cristal Lake
- Fort Frances (St. Margaret's): Fort Frances
- Fort William (St. Joseph's): Fort William
- McIntosh: McIntosh
- Mohawk Institute: Brantford
- Mount Elgin (Muncey, St. Thomas): Munceytown
- Pelican Lake (Pelican Falls): Sioux Lookout
- Poplar Hill: Poplar Hill
- St. Anne's (Fort Albany): Fort Albany
- St. Mary's (Kenora, St. Anthony's): Kenora
- Shingwauk (Wawanosh Home): Sault Ste. Marie
- Spanish Boys School (Charles Garnier, St. Joseph's, formerly Wikwemikong Industrial): Spanish
- Spanish Girls School (St. Joseph's, St. Peter's, St. Anne's formerly Wikwemikong Industrial): Spanish
- Stirland Lake High School/Wahbon Bay Academy (September 1, 1971 to June 30, 1991): Stirland Lake
- Wawanosh Home (January 1, 1879 to August 5, 1892): Sault Ste. Marie

Québec

- Amos (Saint-Marc-de-Figuery): Amos
- Federal Hostel at George River: Kangirsualujjuaq
- Federal Hostel at Great Whale River (Poste-de-la-Baleine): Kuujjuaraapik / Whapmagoostui
- Federal Hostel at Payne Bay (Bellin): Kangirsuk
- Federal Hostel at Port Harrison (Inoucdjouac, Innoucdouac): Inukjuak
- Fort George (St. Philip's): Fort George
- Fort George (St. Joseph's Mission, Résidence Couture, Sainte-Thérèse-de-l'Enfant-Jésus): Fort George
- Fort George Hostels (September 1, 1975 to June 30, 1978): Fort George
- La Tuque: La Tuque
- Mistassini Hostels (September 1, 1971 to June 30, 1978): Mistassini
- Pointe Bleue: Pointe Bleue
- Sept-Îles (Notre-Dame, Maliotenam): Sept-Îles

Saskatchewan

- Battleford Industrial School (December 1883 to May 1914): Battleford
- Beauval (Lac la Plonge): Beauval
- Cote Improved Federal Day School (September 1928 to June 1940): Kamsack
- Crowstand: Kamsack
- File Hills: Balcarres
- Fort Pelly: Fort Pelly
- Gordon's, Gordon's Reserve: Punnichy
- Lebret (Qu'Appelle, Whitecalf, St. Paul's High School): Lebret
- Marieval (Cowesess, Crooked Lake): Grayson
- Muscowequan (Lestock, Touchwood): Lestock
- Prince Albert (Onion Lake Church of England, St. Alban's, All Saints, St. Barnabas, Lac La Ronge): Prince Albert
- Regina: Regina
- Round Lake: Stockholm
- St. Anthony's (Onion Lake Roman Catholic): Onion Lake
- St. Michael's (Duck Lake): Duck Lake
- St. Philip's: Kamsack
- Sturgeon Landing (Predecessor to Guy Hill, MB): Sturgeon Landing
- Thunderchild (Delmas, St. Henri): Delmas

Yukon

- Coudert Hall (Whitehorse Hostel/Student Residence - Predecessor to Yukon Hall): Whitehorse
- St. Paul's Hostel (September 1920 to June 1943): Dawson City
- Shingle Point (Predecessor to All Saints, Aklavik): Shingle Point
- Whitehorse Baptist: Whitehorse
- Yukon Hall (Whitehorse/Protestant Hostel): Whitehorse

IAP COMPENSATION RULES

	ACTS PROVEN	COMPENSATION POINTS
SL5	• Repeated, persistent incidents of anal or vaginal intercourse. • Repeated, persistent incidents of anal/vaginal penetration with an object.	45-60
SL4	• One or more incidents of anal or vaginal intercourse. • Repeated, persistent incidents of oral intercourse. • One or more incidents of anal/vaginal penetration with an object.	36-44
SL3	• One or more incidents of oral intercourse. • One or more incidents of digital anal/vaginal penetration. • One or more incidents of attempted anal/vaginal penetration (excluding attempted digital penetration). • Repeated, persistent incidents of masturbation.	26-35
PL	• One or more physical assaults causing a physical injury that led to or should have led to hospitalization or serious medical treatment by a physician; permanent or demonstrated long-term physical injury, impairment or disfigurement; loss of consciousness; broken bones; or a serious but temporary incapacitation such that bed rest or infirmary care of several days duration was required. Examples include severe beating, whipping and second-degree burning.	11-25
SL2	• One or more incidents of simulated intercourse. • One or more incidents of masturbation. • Repeated, persistent fondling under clothing.	11-25
SL1	• One or more incidents of fondling or kissing. • Nude photographs taken of the Claimant. • The act of an adult employee or other adult lawfully on the premises exposing themselves. • Any touching of a student, including touching with an object, by an adult employee or other adult lawfully on the premises which exceeds recognized parental contact and violates the sexual integrity of the student.	5-10
OWA	• Being singled out for physical abuse by an adult employee or other adult lawfully on the premises which was grossly excessive in duration and frequency and which caused psychological consequential harms at the H3 level or higher. • Any other wrongful act committed by an adult employee or other adult lawfully on the premises which is proven to have caused psychological consequential harms at the H4 or H5 level.	5-25

LEVEL OF HARM	CONSEQUENTIAL HARM	COMPENSATION POINTS
H5	**Continued harm resulting in serious dysfunction.** *Evidenced by:* psychotic disorganization, loss of ego boundaries, personality disorders, pregnancy resulting from a defined sexual assault or the forced termination of such pregnancy or being required to place for adoption a child resulting therefrom, self- injury, suicidal tendencies, inability to form or maintain personal relationships, chronic post-traumatic state, sexual dysfunction, or eating disorders.	20-25
H4	**Harm resulting in some dysfunction.** *Evidenced by:* frequent difficulties with interpersonal relationships, development of obsessive-compulsive and panic states, severe anxiety, occasional suicidal tendencies, permanent significantly disabling physical injury, overwhelming guilt, self-blame, lack of trust in others, severe post-traumatic stress disorder, some sexual dysfunction, or eating disorders.	16-19
H3	**Continued detrimental impact.** *Evidenced by:* difficulties with interpersonal relationships, occasional obsessive-compulsive and panic states, some post- traumatic stress disorder, occasional sexual dysfunction, addiction to drugs, alcohol or substances, a long term significantly disabling physical injury resulting from a defined sexual assault, or lasting and significant anxiety, guilt, self-blame, lack of trust in others, nightmares, bed-wetting, aggression, hyper-vigilance, anger, retaliatory rage and possibly self-inflicted injury.	11-15
H2	**Some detrimental impact.** *Evidenced by:* occasional difficulty with personal relationships, some mild post-traumatic stress disorder, self-blame, lack of trust in others, and low self-esteem; and/or several occasions and several symptoms of: anxiety, guilt, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.	6-10
H1	**Modest Detrimental Impact.** *Evidenced by:* Occasional short-term, one of: anxiety, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.	1-5

AGGRAVATING FACTORS - ADD 5-15% OF POINTS FOR ACT AND HARM COMBINED *(ROUNDED UP TO THE NEAREST WHOLE NUMBER)*
Verbal abuse
Racist acts
Threats
Intimidation/inability to complain; oppression
Humiliation; degradation
Sexual abuse accompanied by violence
Age of the victim or abuse of a particularly vulnerable child
Failure to provide care or emotional support following abuse requiring such care
Witnessing another student being subjected to an act set out on page 3
Use of religious doctrine, paraphernalia or authority during, or in order to facilitate, the abuse
Being abused by an adult who had built a particular relationship of trust and caring with the victim (betrayal)

FUTURE CARE	ADDITIONAL COMPENSATION ($)
General – medical treatment, counselling	Up to $10,000
If psychiatric treatment required, cumulative total	Up to $15,000

	CONSEQUENTIAL LOSS OF OPPORTUNITY	ADDITIONAL COMPENSATION (POINTS)
OL5	Chronic inability to obtain employment	21-25
OL4	Chronic inability to retain employment	16-20
OL3	Periodic inability to obtain or retain employment	11-15
OL2	Inability to undertake/complete education or training resulting in underemployment, and/or unemplyment	6-10
OL1	Diminished work capacity – physical strength, attention span	1-5

COMPENSATION POINTS	COMPENSATION ($)
1-10	$5,000 - $10,000
11-20	$11,000 - $20,000
21-30	$21,000 - $35,000
31-40	$36,000 - $50,000
41-50	$51,000 - $65,000
51-60	$66,000 - $85,000
61-70	$86,000 - $105,000
71-80	$106,000 - $125,000
81-90	$126,000 - $150,000
91-100	$151,000 - $180,000
101-110	$181,000 - $210,000
111-120	$211,000 - $245,000
121 or more	Up to $275,000

Proven Actual Income Loss

Where actual income losses are proven pursuant to the standards set within the complex issues track of this IAP, an adjudicator may make an award for the amount of such proven loss up to a maximum of $250,000 in addition to the amount determined pursuant to the above grid, provided that compensation within the grid is established without the allocation of points for consequential loss of opportunity. The amount awarded for actual income loss shall be determined using the legal analyses and amounts awarded in court decisions for like matters.

Source: Indian Residential Schools Settlement Agreement, Schedule D, 3-6.

IMPLEMENTATION OF IMPROVEMENTS BY CATEGORY

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Alternative Dispute Resolution (ADR)	2007-2008	Issuance of Guidance Paper (GP)-3 regarding re-opening a hearing to adjust a DR award for loss of opportunity
	2009-2010	Development and implementation of procedures for transferring claims from ADR to IAP
Case Management	2009-2010	Implementation of new procedures for admitting claims to the complex track
	2009-2010	Processes for early track assessment of complex track claims
	2009-2010	"Performance Framework" initiatives to improve tracking of claims, services standards, quality controls and reporting mechanisms
	2009-2010	Case management strategies for files "on hold" without mandatory documents over 145 days
	2009-2010	Procedures to provide for a secondary review of applications within 30 days
	2010-2011	Preliminary deployment of secure web-based system for Electronic Document Interchange (EDI) to enable users electronically to transfer protected documents
	2010-2011	Full implementation of EDI with access expanded to all adjudicators, 34 claimants' counsel representing large caseloads, and representatives of defendant Churches and Canada
	2011-2013	Design, pilot project, and implementation of on-line Interactive File Management System (IFMS) to provide real-time communication between claimants' counsel and the Adjudication Secretariat on the status of individual claims
	2012-2013	Development of special IFMS module for use by Transition Coordinator in assignment of Blott & Company cases
	2012-2013	Development of special intensive case management procedures to assist in getting claims ready for hearing
	2013-2014	Expansion of IFMS functionality to include scheduling, post-hearing, intensive case management, and incomplete file resolution processes
	2014-2015	Oversight Committee approval of "Completion Action Plan"; Requests for Directions submitted to and approved by Court for an Incomplete File Resolution Process (IFRP) and Lost Claimant Protocol (LCP) to address claims that had been unable to reach resolution
	2014-2015	EDI made mandatory for electronic document submission
	2014-2015	Further enhancement of IFMS functionality and processes.
	2015-2016	Oversight Committee and Court approval of second phase of IFRP allowing a "Special Resolution Adjudicator" to receive submissions from the parties and make a "Resolution Direction"

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Communications and Outreach	2008-2009	Design, development of communications procedures, and launch of IAP website and Adjudication Secretariat intranet
	2009-2010	Development of Outreach Strategy to provide information on the IAP focusing on regions where the number of IAP applications was low relative to the number of Common Experience Payment applications
	2009-2010	Development of improved processes for responding to claimants' telephone inquiries
	2011-2012	Enhancements to IAP Info-Line processes
	2011-2012	Development and implementation of notice program re. IAP Application Deadline
	2013-2014	Development and implementation of revised Outreach Strategy
	2013-2014	Development and implementation of revised Strategic Communications Plan focusing on IAP information products for claimants, claimant counsel, stakeholders and Canadians; re-launch of the internal staff newsletter
	2014-2015	Launch of social media presence and development of social media processes
	2014-2015	Development and implementation of notice program re. Lost Claimants Protocol
	2015-2016	Development and implementation of Strategic Partnership Engagement Plan in disseminating information about the IAP and in searching for lost claimants as provided in the LCP
	2015-2016	Partnership with Health Canada to provide claimants' counsel with information on services offered by Health Support Services Program
	2015-2016	Development and implementation of Post-Secondary Engagement Project to offer specially designed information materials about the IAP to colleges and universities to contribute to indigenous studies courses
	2016-2018	Development and implementation of notice program re. Records Disposition
Decisions	2007-2008	Clarification of policy and procedures re. redaction of decisions
	2007-2008	Oversight Committee approval of Chief Adjudicator Direction (CAD)-2 re. processes for adjudicators in dealing with consequential loss of opportunity compensation top-ups from ADR to IAP
	2008-2009	Oversight Committee approval of CAD-3r2 revising, consolidating, and clarifying policies regarding the redaction of names in decisions
	2008-2009	Issuance of GP-5 setting policy for internal reviews of adjudicators' decisions by the Chief Adjudicator
	2008-2009	Process changes to expedite distribution of unredacted decisions to Canada and Churches
	2008-2009	Development and implementation of database to improve content and access to existing Adjudicators' Web-site of Decisions
	2009-2010	Oversight Committee and National Administration Committee approval of PD-2 establishing the process and procedures for issuing Short Form Decisions, followed by pilot project and full implementation
	2014-2015	Expansion of Decisions Database to include the most up-to-date school history narratives, and making these accessible to all registered legal counsel and adjudicators

APPENDIX III

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Estate Claims	2009-2011	Establishment of procedures and implementation of pilot projects for admitting claims of deceased claimants
	2015-2016	Full Implementation of estate claims procedures
	2016-2017	Formation of Estate Claims Working Group to review and revise processes
Finance and Administration	2008-2009	Restructuring of financial systems to improve administrative efficiency
	2008-2009	Process-Flow Mapping for Chief Adjudicator's office
	2009-2010	Procedures to improve security effectiveness of monitoring process for transcripts and audio cards
	2009-2010	Hearings Management process review to address invoice backlog
	2009-2010	Development of protocols to improve management of claims
	2009-2010	Quality Assurance Assessment of application intake by Crawford
	2010-2011	Implementation of quality control mechanisms for hearing logistics
	2010-2012	Audits and development of action plans of core management practices of governance, risk management, stewardship, and accountability
	2013-2014	Development and implementation of procedures to enhance data protection and security measures; development of adjudicator security manual
	2013-2014	Initiative to enhance the quality and effectiveness of operational plan preparation procedures
	2014-2015	Transfer of contracts to PWGSC to obtain higher funding authorities and ensure service continuity
	2014-2015	Implementation of procedures identified in external consultant's Security Audit
	2014-2016	Review and revision of processes to monitor contracts to strengthen fiscal accountability; revision of adjudicator billing guidelines
	2015-2016	Development with PSPC of limited tendering process for legal firms to support the Chief Adjudicator, Executive Director, and Chair of the Oversight Committee
	2015-2016	Development and implementation of Comprehensive Integrated Document Management System (CDIMS) to store emails and documents
Group IAP	2007-2008	Established processes for the program
	2013-2014	Update of Group IAP terms and conditions and redesign of Group IAP application process
	2014-2015	Launch of online toolkit to assist Group Coordinators in forming groups, financial reporting, final reporting, planning, implementing, and evaluating funded activities
Hearings and Hearing Scheduling	2007-2008	Oversight Committee approval of CAD-1 setting procedures for adjudicators to flag potential movement of a claim from ADR to IAP in certain circumstances
	2007-2008	Oversight Committee approval of CAD-4r1 setting policy regarding responses to statements from alleged perpetrators

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Hearings and Hearing Scheduling	2008-2009	Clarification of policy and process for selecting hearing location and implementation of new claimant's preference form
	2008-2009	Oversight Committee approval of CAD-7 to clarify policy and procedures re. hearing transcripts
	2008-2009	Series of process changes to increase efficiencies in arranging hearings
	2008-2009	Development of processes to align resources through "block hearings" based on analysis of distribution of claims by locations and law firms
	2008-2009	Oversight Committee approval of CAD-6 and CAD-6r1 setting policy and procedures for scheduling hearings for alleged perpetrators
	2008-2009	Establishment of hearing targets & scheduling horizon to maximize adjudication capacity and increase effectiveness/efficiency for scheduling hearings
	2009-2010	Establishment of Winnipeg Hearing Centre to offer claimants a safe and culturally-appropriate hearing location
	2009-2010	Oversight Committee approval of GP-6 regarding preparation of Other Wrongful Acts claims
	2009-2010	Implementation of new scheduling process for alleged perpetrator hearings
	2009-2010	Travel policy and process changes to improve effectiveness of approval of hearing travel arrangements
	2009-2010	Scheduling strategy and processes to accommodate travel and logistical challenges posed by the Vancouver Olympics
	2010-2011	Establishment of Vancouver Hearing Centre
	2010-2011	Revision and clarification of policy and process for request and approval of expedited hearings, including new "Expedited Hearing Request Form"
	2011-2012	Following directions from Oversight Committee and the Courts, issuance of GP-7 setting new procedures for hearing postponements
	2011-2012	"Over 65" Pilot Project and associated processes (pre-hearing teleconferences, adjudicator-led teleconferences)
	2013-2014	"5-Day Block" Pilot Project to increase volume of hearings for claimants of same age and health status
	2013-2014	Oversight Committee approval of initiative to minimize the impact of hearing postponements by coordinating hearing substitutions among represented claims
	2013-2014	Oversight Committee approval and implementation of the Accelerated Hearings Process (AHP)
	2013-2014	New procedures re. hearings in correctional facilities to address security requirements
	2013-2014	Extension of Hearing Postponement Policy to Negotiated Settlements
	2014-2015	Oversight Committee approval of initiative to minimize impact of hearing postponements by coordinating hearing substitutions among represented claims
	2014-2015	Implementation of strategy to engage qualified, objective, and sensitive interpreters for hearings

APPENDIX III

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Hearings and Hearing Scheduling	2014-2015	Oversight Committee approval and implementation of "Over 80" initiative implemented permitting claimants over 80 years of age to proceed to hearing in advance of mandatory document completion
	2014-2015	Integration of AHP into other targeted initiatives to increase number of hearing-ready files
	2014-2015	Expansion of the AHP to Include Self-Represented Claimants
	2015-2016	Oversight Committee approval of mandatory scheduling of hearings using AHP when required
	2015-2016	Improvements in complex track hearing scheduling processes
	2015-2016	Issuance of GP-7r1 providing modifications to and additional details re. hearing postponement policy
Human Resources	2007-2019	Commencing with vicarious trauma training for staff and adjudicators from the outset of the Adjudication Secretariat, the development and implementation of a range of processes and activities aimed at protecting and enhancing the well-being of staff and a healthy work environment; further formalized in 2011-12 with the development of an evergreen Wellness Strategy and implementation of action plans
	2013-2014	Agreement between Adjudication Secretariat and AANDC on new staffing processes to enable more rapid filling of vacant positions
	2015-2016	Development and implementation of strategies and procedures for wind-down of Adjudication Secretariat including workforce adjustment sessions, developmental training, and skills enhancement initiatives
	2016-2017	Development and implementation of Knowledge Retention Strategy to identify areas at greatest risk, strategies to protect information and knowledge, and to retain key staff required for completion of IAP
Legal Representation	2009-2010	Establishment of processes for legal fee reviews and appeals of decisions
	2010-2011	Issuance of GP-1r2 providing information to claimants about legal fees and requests for legal fee reviews or challenges
	2011-2012	Publication of comprehensive Desk Guide for Legal Counsel providing information on all aspects of the IAP
	2012-2013	Contingency plan to Address the removal of Blott & Co. from the IAP
	2012-2013	Development of processes to encourage high quality legal representation for claimants, including publication of information for claimants on what they have a right to expect from and how to work effectively with their lawyer, and centralization of handling of complaints
	2012-2013	Oversight Committee approval of CAD-10 re. procedures for withdrawal of legal counsel from a claim
	2013-2014	Issuance of GP-1r3 revising guidance to adjudicators on factors to consider in legal fee reviews
	2014-2015	Implementation of IAP Integrity Protocol as approved by the Court, appointing Independent Special Advisor and establishing processes for lodging, investigating, and resolving complaints against lawyers
	2015-2016	Update of Desk Guide for Legal Counsel to include various procedural and legal matters and information on Health Support services

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Negotiated Settlements Process	2008-2009	Clarification of policy and rules regarding the selection of claims and procedures for the conduct of Negotiated Settlement Processes (NSPs)
	2011-2012	Changes in processes to allow earlier distribution of evidentiary packages
	2013-2014	Oversight Committee approval of new processes for NSP-related hearing cancellations
Post-Hearing Processes	2008-2009	Revisions of processes to increase effectiveness/efficiencies in acquiring services of medical experts
	2009-2010	Process changes to increase post-hearing efficiency (assessments, transcript requests, scheduling of hearings for witnesses or alleged perpetrators)
	2010-2011	Revision of contracting model for psychological experts and Request for Proposals to manage medical assessment contracts
	2010-2011	Implementation of procedures and reports to enhance effectiveness of tracking decision status, post-hearing submissions, and legal fee reviews
	2011-2012	At the request of the Court, revision of procedures and supplemental reports to track hearing process
	2015-2016	Revision of processes to improve scheduling of final submission teleconferences
	2015-2016	Implementation of strategies to address post-hearing claim delays
	2015-2016	Issuance of GP-9 establishing procedures regarding the postponement of assessments
Pre-Hearing Processes	2007-2008	Oversight Committee and National Administration Committee approval of Practice Directive (PD)-1 setting policies and procedures for preliminary case assessments of complex track claims
	2008-2009	New processes to streamline mandatory document production
	2008-2009	Oversight Committee and National Administration Committee approval of GP-2 providing guidance and procedures regarding Actual Income Loss claims
	2008-2009	Oversight Committee approval of CAD-5 to increase efficiencies in dealing with complex track cases through pre-hearing teleconferences
	2009-2010	Process improvements related to jurisdictional pre-hearing teleconferences
	2009-2010	Memoranda of Understanding and/or development of IAP-specific processes with Alberta Corrections, Saskatchewan Corrections, Corrections Canada, and Service Canada to improve provision of mandatory documents
	2010-2011	Development and implementation of procedures for progressing files on-hold at scheduling phase
	2010-2011	Introduction of processes to work with claimant counsel to address missing mandatory documents
	2011-2012	Oversight Committee approval of CAD-9 to codify procedures for resolving jurisdictional issues
	2012-2013	Oversight Committee approval of GP-8 setting procedures for the withdrawal of IAP claims

APPENDIX III

CATEGORY	FISCAL YEAR	PROCESS IMPROVEMENT
Pre-Hearing Processes	2013-2014	Revision to Schedule P processes allowing represented claims requiring Schedule P to proceed through document collection to a hearing
	2015-2016	Revisions of pre-hearing logistics procedures to improve efficiencies
	2015-2016	Issuance of GP-10 establishing procedures to permit adjudicators to proceed with a case despite lack of participation by claimants in teleconferences
	2016-2017	Oversight Committee approval of CAD-11 establishing deadline to appeal decisions denying admission of claims into the IAP, and notification of non-admit decisions for lost or deceased claimants with no estate identified
	2016-2017	Oversight Committee approval of GP-8r1 revising procedures for the withdrawal of IAP claims
Self-Represented Claimants	2008-2009	Procedures & services standards for providers of support to self-represented claimants
	2009-2010	Project to ensure effective structure and processes in place to assist with document collection for self-represented claimants
	2010-2011	Pilot Project to improve document collection for self-represented claimants in the North
	2010-2011	Introduction of early track assessment teleconferences for self-represented claimants
	2011-2012	Contracts with the AFN and NTI to help self-represented claimants in the Arctic complete IAP applications
	2013-2014	Pilot Project to assist self-represented claimants in finding counsel
	2014-2015	Analysis of and procedures to address outstanding pre-hearing self-represented claims
	2014-2015	Pilot project designed to educate self-represented claimants on the role and potential benefits of legal counsel
	2014-2015	Oversight Committee approval of list of lawyers accepting referrals of self-represented claimants
	2015-2016	Combination of Early Track Assessment and Pre-hearing conference calls for self-represented claims in the complex track
	2015-2016	Project to identify barriers and assist in moving claims forward for claimants with capacity or mental health issues
	2015-2016	Project to develop adjudicator expertise in dealing with the volume of documents for self-represented claimants produced as a consequence of the Court Direction re. St. Anne's school
	2015-2016	Processes to assign specially-trained adjudicators where involuntarily unrepresented claimants had been unable to retain counsel
Student-on-Student (SOS) Claims	2007-2008	Issuance of GP-4 to establish processes and mechanisms to identify and address re-openers of ADR SOS claims
	2008-2009	Oversight Committee approval of CAD-8 to clarify policy, process and options for sharing of information re. admission of staff knowledge in SOS claims
	2013-2014	Oversight Committee approval of strategy to enable SOS claims deemed likely to yield admissions of staff knowledge (based on information available in the application) to be heard prior to claims which might potentially benefit from them

FOCUS GROUP, INTERVIEW, AND QUESTIONNAIRE PARTICIPANTS

CLAIMANTS

Hundreds of claimants and family members participated in individual one-on-one interviews or focus groups with the research team. The interviews were conducted confidentially; therefore, names of these participants will not be identified in this report except in cases where they gave explicit permission to provide an attributed quote. The following are the locations of interviews and focus groups:

- Eskasoni First Nation, Nova Scotia
- Montreal, Quebec
- Kenora, Ontario
- London, Ontario
- Sault Ste. Marie, Ontario
- Six Nations (Brantford), Ontario
- Thunder Bay, Ontario
- Stony Mountain Institution, Manitoba
- Winnipeg, Manitoba
- Saskatoon, Saskatchewan
- Cardston (Blood Tribe), Alberta
- Buffalo Sage Treatment Centre, Alberta
- Edmonton, Alberta
- Kainai Treatment Centre, Blood Reserve, Alberta
- Port Alberni, British Columbia
- Vancouver, British Columbia
- Behchokǫ̀, Northwest Territories
- Inuvik, Northwest Territories
- Yellowknife, Northwest Territories

PARTNERS/STAKEHOLDERS/STAFF – FOCUS GROUPS/QUESTIONNAIRES

The following partner, stakeholder, and staff groups provided information for this report through focus groups or questionnaires:

Health Support Workers:

- Eskasoni First Nation, Nova Scotia
- Montreal Friendship Centre, Quebec
- Atlosha Healing Family Services, London, Ontario
- Indian Residential Schools Support Services of Ontario
- Aboriginal Health and Wellness Centre of Winnipeg, Manitoba
- Saskatoon Tribal Council, Saskatchewan
- Edmonton Institution For Women
- Native Counselling Services of Alberta
- SAPAATSIMA-PII Health Centre, Alberta
- Indian Residential Schools Survivors Society of BC
- Quu'asa, Port Alberni, British Columbia
- Vision of Hope, Yellowknife

Cultural Support Workers/Elders/Interpreters:

- Eskasoni First Nation, Nova Scotia
- Montreal Friendship Centre, Quebec
- Atlosha Healing Family Services, London, Ontario
- Indian Residential Schools Support Services of Ontario
- Aboriginal Health and Wellness Centre of Winnipeg, Manitoba
- Saskatoon Tribal Council, Saskatchewan
- Edmonton Institution for Women, Alberta
- Native Counselling Services of Alberta
- SAPAATSIMA-PII Health Centre, Alberta
- Indian Residential Schools Survivors Society of BC
- Quu'asa, Port Alberni, British Columbia
- Vision of Hope, Yellowknife

APPENDIX IV

IRSAS staff participated in an honour ceremony held by the Indian Residential Schools Survivors Society in Vancouver.

Community Leaders:

- Eskasoni First Nation, Nova Scotia
- Six Nations, Ontario
- Winnipeg, Manitoba
- Saskatoon, Saskatchewan
- Saskatoon Tribal Council, Saskatchewan
- Cardston (Blood Reserve) Elders, Alberta
- Indian Residential Schools Survivors Society of British Columbia – Board of Directors
- NCTR Survivor Circle

Adjudication Secretariat:

- Adjudicators (4 focus groups)
- IRSAS staff (3 focus groups)

Government of Canada:

- Health Canada RHSW Coordinators
- Health Canada National Representatives
- Resolution Managers/Department of Justice Representatives (2 focus groups)

Church:

- United Church Representatives

Claimant Counsel:

- McKiggan Hebert Lawyers, Nova Scotia
- Éric Lépine Avocat Inc, Quebec
- Carol Robitaille et Pierre Garon, Quebec
- Carroll Law Office, Manitoba
- Duboff Edwards Haight & Schachter Law Corporation, Manitoba
- Troniak Law Office, Manitoba
- Aboriginal Law Group, Saskatchewan
- Cabott & Cabott, British Columbia
- Stevens & Company, British Columbia Field Law, NWT
- Daniel S. Shier Law Office, Yukon

Other:

- Crawford (now called Epiq) Class Action Services

INDIVIDUAL INTERVIEWS[166]

The following are a list of individuals who were interviewed individually for the report:

Claimants – with consent to use their name:

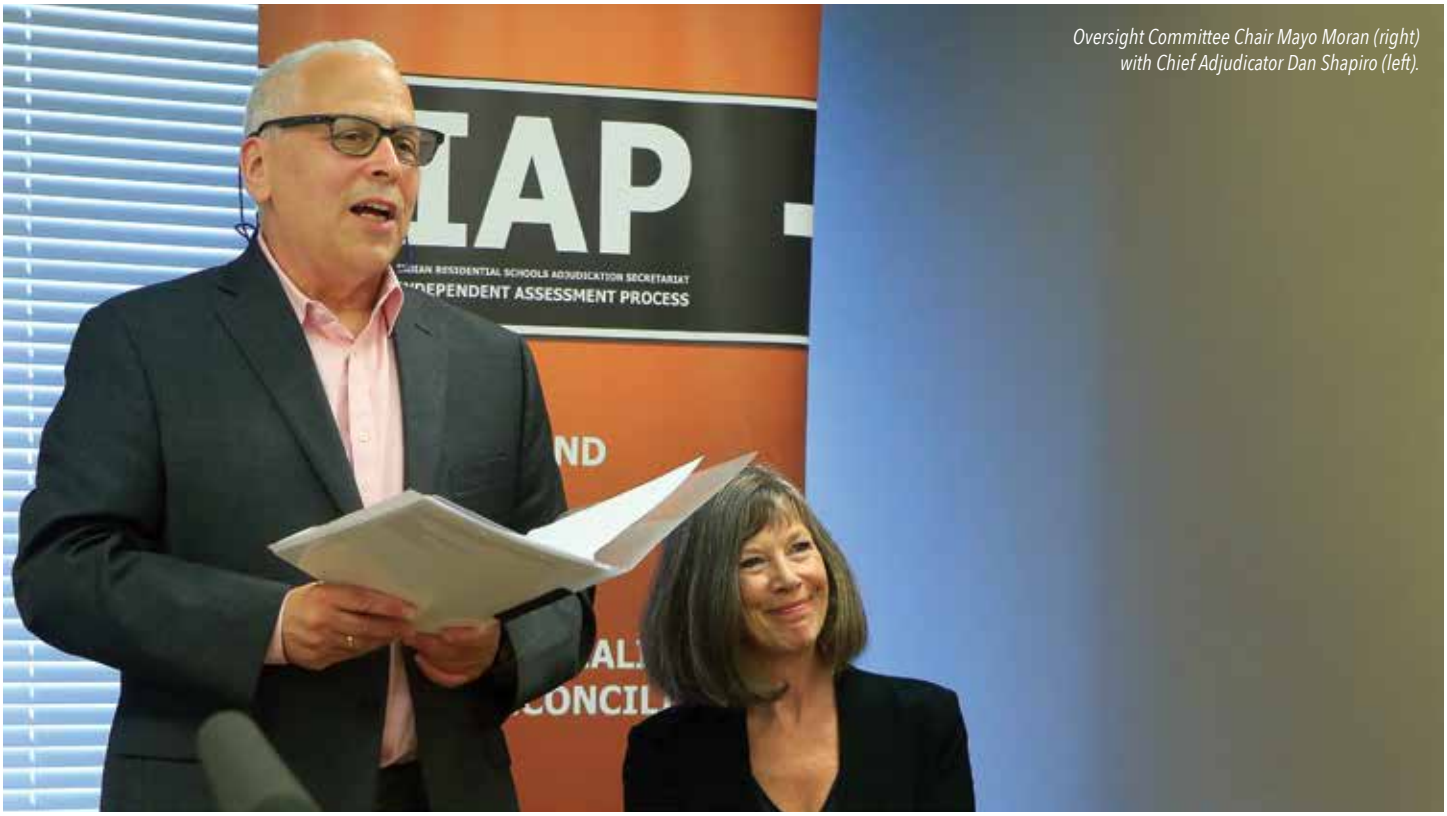
- Laurel Curley
- Johnny Heavyshields
- Rex Lumberjack
- Andrew Reuben
- Grace Smallboy

Indigenous Organizations/Representatives:

- Jarred Baker, Director of Programs Aboriginal Wellness Centre of Winnipeg, Manitoba
- Mike Cachagee, OIRSSS, Ontario
- Claudette Chevrier, OIRSSS, Ontario
- Debbie Cielen, Aboriginal Wellness Centre of Winnipeg, Manitoba
- Michael R. Denny, RHSW, Eskasoni, Nova Scotia
- Carolyn Doxtator, Intergenerational, Ontario
- Inuit Tapiriit Kanatami (ITK)
- Kelly Eagle Tail Feather, Blood Tribe of Alberta
- Jill Green, Intergenerational, Ontario
- Marlene Green, Elder/Intergenerational, Ontario
- Nunavut Tunngavik Inc
- Joanne Hansenn, Sapaatsima-PII Health Centre, Alberta
- Duane Hill, Intergenerational, Ontario
- Piita Irniq, NCTR Survivor Circle
- Janice Knighton, Coordinator IRSSS of BC
- Rex Lumberjack, Saskatoon Tribal Council, Saskatchewan
- Diane Maluorno, Coordinator, Vision of Hope, NWT
- Ida Martin, OIRSSS, Ontario
- Ry Moran, NCTR, Manitoba
- Tony Rebesca, Addictions Counsel, Behchokǫ̀, NWT
- Peter Sakaney, OIRSSS, Ontario
- Melba Thomas, OIRSSS, Ontario
- Ray Thunderchild, Elder, IRSSS of BC
- Barney Williams, NCTR Survivor Circle
- Beverly Wise, IRS Coordinator, Saskatoon Tribal Council

[166] Note: some respondents are noted twice because they represent different groups.

APPENDIX IV



Oversight Committee Chair Mayo Moran (right) with Chief Adjudicator Dan Shapiro (left).

Oversight Committee:

- Les Carpenter, Inuit Organizations
- Karen Cuddy, Government of Canada
- Paul Favel, AFN
- Mitch Holash, Catholic Church
- David Iverson, United Church
- Len Marchand, former Claimant Counsel
- Mayo Moran, Independent Chair
- David Paterson, Claimant Counsel
- Tara Shannon, Government of Canada
- Diane Soroka, Claimant Counsel

National Administration Committee:

- Catherine Coughlan, Government of Canada
- P. Jonathan Faulds, Independent Counsel
- Peter Grant, Chair
- Kathleen Mahoney, AFN
- Jane Ann Summers, Independent Counsel

Court:

- Brian Gover, Court Counsel
- Michael Mooney, Court Monitor
- Perry Schulman, Retired Justice of the Court of Queens Bench
- Warren Winkler, Retired Ontario Chief Justice

Independent Assessment Process:

- Irene Fraser, former Manager
- Ted Hughes, former Chief Adjudicator (ADR)
- Jeffrey Hutchinson, former Executive Director
- Dan Ish, former Chief Adjudicator
- Catherine Knox, former DCA
- Michel Landry, DCA
- Rodger Linka, DCA
- Peggy Martin-McGuire, former Manager
- Wes Marsden, DCA
- Delia Opekokew, DCA
- Harold Robinson, Adjudicator
- Susan Ross, DCA
- Michael Simpson, former Manager
- Akivah Starkman, former Executive Director
- John Trueman, former Senior Advisor
- Lisa Weber, DCA

Truth and Reconciliation Commission:

- Kim Murray, Executive Director
- Murray Sinclair, Commissioner
- Marie Wilson, Commissioner

Church:

- Cecile Fausak, United Church
- Mitch Holash, Catholic Church
- David Iverson, United Church
- Sister Margaret Hayward, Anglican Church
- Stephen Kendall, Presbyterian Church
- Rev. Bill Gillis – Winnipeg
- Rev. Pat Wotton – Winnipeg
- Rev. John Badertscher – Manitoba
- Rev. Jim Manly – Nanaimo, BC
- Ms. Eva Manly – Nanaimo, BC

Claimant Counsel:

- Dale Cunningham, Field Law
- John Dooks, Alberta Law Society
- P. Jonathan Faulds, Field Law
- Leah Kosokowsky, Law Society of Manitoba
- David Paterson, Claimant Counsel
- Diane Soroka, Claimant Counsel
- Jane Ann Summers, Claimant Counsel

Government of Canada:

- Karen Cuddy, OC Rep
- Mario Dion, former DM, IRSRC
- Doug Ewart, former Advisor, IRSRC
- Brad Favel, DOJ Counsel and NSP Coordinator
- Frank Iacobucci, Government of Canada's Negotiator for Indian Residential Schools Settlement Agreement
- Helene Laurendeau, INAC Deputy Minister
- Tara Shannon, OC Rep
- Colleen Swords, former INAC Deputy Minister
- Michael Wernick, former INAC Deputy Minister

INDEPENDENT ASSESSMENT PROCESS: OVERSIGHT COMMITTEE, ADJUDICATORS, AND ADMINISTRATION

Oversight Committee Members:

- Mayo Moran, Independent Chair
- David Paterson, Claimant Counsel Representative
- Diane Soroka, Claimant Counsel Representative
- Len Marchand, past Claimant Counsel Rep
- Kerry O'Shea, past Claimant Counsel Rep
- David Iverson, Church Representative (Protestant Churches)
- Mitch Holash, Church Representative (Catholic Entities)
- James Ehmann, past Church Representative
- Julie McGregor, AFN Representative
- Paul Favel, past AFN Representative
- Bobby Joseph, past AFN Representative
- William Wuttunee, past AFN Representative
- Carol Brzezicki, past Indigenous Representative
- Lucy Kuptana, Inuit Representative
- Les Carpenter, past Inuit Representative
- Rosemarie Kuptana, past Inuit Representative
- Juliet Donnici, Canada Representative
- Karen Turcotte, Canada Representative
- Tara Shannon, past Canada Representative
- Karen Cuddy, past Canada Representative
- Luc Dumont, past Canada Representative
- Alison Molloy, past Canada Representative
- Line Pare, past Canada Representative
- James Ward, past Canada Representative

Chief Adjudicators:

- Daniel Ish
- Daniel Shapiro

Deputy Chief Adjudicators:

- Kay Dunlop
- Catherine Knox
- Michel Landry
- Rodger Linka
- Wes Marsden
- Delia Opekokew
- Susan Ross
- Lisa Weber

Adjudicators:

- André Bachand
- Kevin E. Ball
- Susan Barber
- Evelyn J. Baxter
- Michael Bay
- Jean-Pierre Beauchesne
- Normand G (Rusty) Beauchesne
- Vivienne G. Beisel
- Ronald Gordon Bell
- Leslie Belloc-Pinder
- David Bennett
- Peggy Blair
- M. Anne Bolton
- Hugh Braker
- Joan Bubbs
- Peter Burns
- Dennis Callihoo
- Ruth Campbell
- William J. Campbell
- Jack M. Chapman
- Lawrie Cherniack
- Terrance Chinn
- N. Paul Cloutier
- Jean Charles Coutu
- Paulah Dauns
- Wilfred DeGraves
- Sheila Denysiuk
- Max Dokuchie
- Arlene Doll
- Firoz R. Dossa
- Jean L. Dutil
- Paul Fraser
- Carolyn J. Frost
- Lyall Gardiner
- Matthew Garfield
- Michelle Gelfand
- Caron George
- Larry Gilbert
- Scott P. Gray
- Richard W. Grounds
- Ken Halvorson
- Silas Halyk
- Carol Ann Hart
- William Hartzog
- J. Richard Hatchette
- Maria G. Henheffer
- John C. Hill
- John (Jack) D. Hillson
- Richard Hornung
- Thomas A. B. Jolliffe
- Bertha L. Joseph
- Cynthia Joseph
- Roy M. Kahle
- Kathleen Keating
- Robert Kominar
- Pamela Large-Moran
- David Garth Leitch
- J. Paul Lordon
- Paul Love
- Cheryl Macdonald
- Kelly A. MacDonald
- Dawn Marie McBride
- Hugh McCall
- Myrna McCallum
- Anne McGarry
- Jill H. McIntyre
- Kathleen McIsaac
- Elizabeth M. B. Mckall
- Kathleen Mell
- Joan Mercredi
- Lore Marie Mirwaldt
- John M. Moreau
- Gloria Morgan
- Jane Morley
- Teri Mosher
- Donald Murray
- Cheryl Mustard Berry
- Theodore Nemetz
- Rober Neron
- Kurt Neuenfeldt
- Patricia O'Connor
- John M. Orr
- Phillipe Patry
- Bonnie Pelletier-Maracle
- Robert Pelton
- Lawrence Richard Plenert
- James R. Posynick
- Christopher Poudrier
- Karen Prisciak
- Joe Quarton
- Douglas Racine
- Merrilee Rasmussen
- Kabir P. Ravindra
- Pamela M. Reilly
- Yvon Roberge
- Carol Roberts
- Harold Robinson
- John P. Sanderson
- Rita Scott
- Helen G. Semaganis
- Kelly Serbu
- Dirk Silversides
- Karen L. Snowshoe
- Roxane Stanners
- Huguette St-Louis
- Troy Sweet
- Ian Szlazak
- M. Gwendolynne Taylor
- Roxane Vachon
- Shirley R. Wales
- Anne Wallace
- Theresa M. Walsh
- Gavin Wood
- Milton (Mickey) Woodard
- Adrian C. Wright
- Barbara J. Yates
- Leanne Young
- Lennard Young
- Angela Zborosky
- Catherine Zuck

Adjudication Secretariat

Executive Directors:

- Jeffrey Hutchinson
- Akivah Starkman
- Shelley Trevethan
- Roger Tetreault

Hundreds of staff worked at the Adjudication Secretariat over the years. We would like to express our gratitude to all of the staff who put in long hours and tireless work to ensure that claimants were provided with excellent service during a very difficult time for them.

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