Independent
Assessment
Process

SUMMARY OF THE

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

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]

One component of that agreement was an Independent Assessment Process (IAP) to settle claims of sexual abuse, serious physical abuse, or other wrongful acts suffered by former students while attending a residential school. Over the next 13 years, the IAP held more than 26,700 claimant hearings, issued more than 27,800 awards, and paid $3.23 billion in compensation.[3] 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.

Background – The History and Legacy of Indian Residential Schools:

In 1883, the Government of Canada formalized a policy of creating residential schools for Indigenous children. 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".[4] By 1900, 61 schools were in operation in all provinces and territories except for New Brunswick and Prince Edward Island. By the time the final federal residential school closed in 1997, more than 150,000 First Nations, Inuit, and Métis children had attended 140 of these schools.[5]

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 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.

4 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.

5 Over the past several years, there have been numerous in-depth examinations of Indian Residential Schools in Canada: see for example 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).

Lighting of an Inuit lantern

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. But for most, the residential school system was profoundly negative and had a lasting impact on the children, on their families, and on their culture. Many of the students were subject to physical, psychological, and sexual abuse.

As a result, civil law suits were launched by former residential school students seeking compensation from the Government of Canada and/or the Churches. Prior to the Indian Residential Schools Settlement Agreement, there were as many as 20,000 active cases in litigation and approximately a dozen class actions filed on behalf of former students.[6] Increasingly, though, traditional civil litigation was seen as not sustainable for resolving the outstanding claims. It was costly, time-consuming, and presented significant legal hurdles.

Parallel to these legal processes, many individuals and organizations had been exploring other means for acknowledging and addressing the legacy of residential schools. Over a number of years, various bodies issued apologies for their involvement in residential schools.[7] In 1998, the Federal Government established a Royal Commission on Aboriginal Peoples, whose report observed that "Redressing the wrongs associated with the residential school system will involve concerted action on a number of fronts" and recommended the establishment of a public inquiry, compensation for communities to help in the healing process, and funding for treatment of individuals and their families.[8] In its response, the Government of Canada "committed to assisting in community healing to address the profound impacts of abuse at Residential Schools" and to "negotiate rather than litigate".[9]

In 1998-99, Government representatives, Church officials, Indigenous organizations, and former students engaged in "exploratory dialogues" to develop principles for the resolution of residential school claims outside of litigation.[10] This led to a series of pilot projects to test alternative approaches to dispute resolution for abuse claims that adopted a number of features that distinguished them from the traditional civil litigation model. A review of these pilots generated recommendations regarding the design of future such dispute resolution processes.[11]

[6] 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).
[7] These included the Catholic Missionary Oblates of Mary Immaculate (1991); the Anglican Church of Canada (1993); the Presbyterian Church of Canada (1994); the United Church of Canada (1998); the Royal Canadian Mounted Police (2004). In 1998, the Minister of Indian Affairs and Northern Development wrote in a "Statement of Reconciliation" that the Government of Canada was "deeply sorry" to those that had "suffered this tragedy" of physical and sexual abuse at residential schools.
[8] Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Minister of Supply and Services, 1996).
[9] 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).
[10] 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).
[11] Thomas Kaufman & Associates, *Review of Indian Residential Schools Dispute Resolution Projects: Final Report* (Toronto: Indian Residential Schools Resolution Canada, 11 October 2002).

In 2001, Canada established the Office of Indian Residential Schools Resolution Canada (IRSRC), to co-ordinate resolution of residential school abuse claims and, following further consultations, it introduced the Alternative Dispute Resolution (ADR) program in 2003. An Indian Residential Schools Adjudication Secretariat, headed by a Chief Adjudicator, was established within IRSRC to administer the dispute resolution process. More than 7,600 ADR claims were filed between November 2003 and March 2007.

Many of those who worked with ADR considered it a significant improvement over litigation. The Assembly of First Nations (AFN) noted some positive aspects including ADR's attempt to validate claims in a non-adversarial manner, a compensation process that was faster with less stress and expense than litigation, and the provision of access to commemorative activities. However, the AFN also identified criticisms of ADR including costs, delays, differences in compensation based on geographic regions and religious denomination of schools, the exclusion of some types of claims, and a perceived lack of independence from the Government.[12]

These observations were echoed by witnesses who appeared before the House of Commons Standing Committee on Aboriginal Affairs and Northern Development. That Committee's 2005 report recommended that the ADR program be terminated.[13] A House of Commons vote subsequently adopted this call for a replacement to the ADR, and required the Government to formulate a proposal within forty days.


Phil Fontaine

The Indian Residential Schools Settlement Agreement:

Following these developments, in May 2005 the Government of Canada and the AFN signed a Political Agreement with the goal of achieving a Court-sanctioned, global resolution to all outstanding litigation. Following negotiations among the Government of Canada, representatives of the AFN and Inuit communities, residential school survivor groups, and legal counsel representing former students and Churches, the Indian Residential Schools Settlement Agreement was signed on May 10, 2006. After provincial and territorial Courts approved the agreement and a six-month opt-out period had passed, the IRSSA – 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 by providing financial and non-financial benefits to those affected by the residential school experience. It contained a number of different components, including a Truth and Reconciliation Commission and funding for commemorative initiatives, for the Aboriginal Healing Foundation, and for supports provided by Health Canada.

There were also two components in the IRSSA to provide direct compensation to residential school survivors. 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, and provided $1.6 billion in compensation, with each former resident receiving an average award of $20,457.[14]

The Independent Assessment Process was the process to settle the claims of sexual abuse, serious physical abuse, and other wrongful acts experienced while attending a residential school. Individual compensation of up to $275,000 was provided, based on the nature of the abuse and the level of harm suffered by each student.[15] IAP applications were accepted from September 19, 2007 to September 19, 2012.[16]

[12] 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). See also K. Mahoney, "The Settlement Process: A Personal Reflection."

[13] 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.

[14] "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.

[15] 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 the $250,000 maximum could also be addressed through the Negotiated Settlement Process.

[16] 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.

Objectives of the IAP:

An agreement as far-reaching as the IRSSA had a range of objectives reflecting the various interests and hopes of the parties, and the broader social, political, and legal context within which it was framed. Similarly, the IAP also had a number of objectives that provided the guiding principles for its Oversight Committee in implementing the IAP:

Resolving Litigation: As part of an agreement to settle litigation, the IAP was intended to:

- Provide fair and meaningful financial compensation for sexual, and serious physical abuses and other wrongful acts suffered by individual former residential school students;
- Consolidate and finalize the civil legal actions arising out of the residential school experience, and;
- Ensure that claims were subject to a validation process, including the right of alleged perpetrators to be informed of allegations and to be heard.

Reconciliation: It was difficult to progress towards reconciliation while survivors were required to pursue compensation through adversarial legal actions. As the Royal Commission on Aboriginal Peoples stated, "There can be no peace and harmony unless there is justice."

Healing – A Claimant-Centred Process: A principal foundation of the IAP was its design as a claimant-centred process. 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."[17]

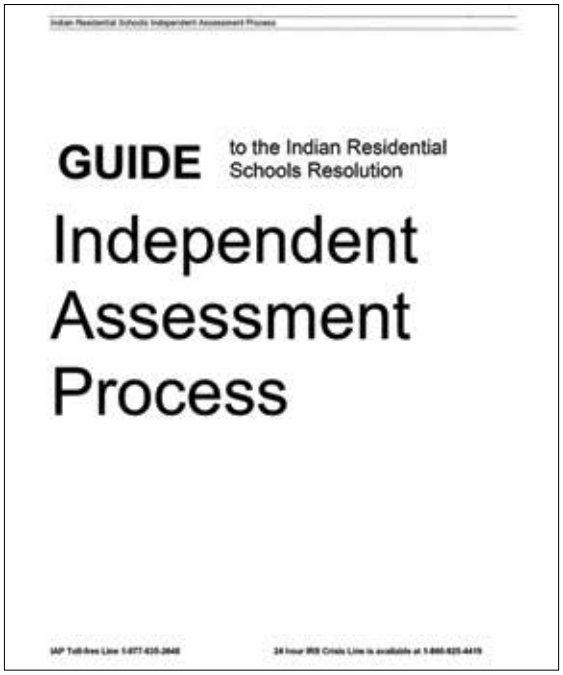
More than 26,000 hearings were held in the IAP.

A support telephone line provided assistance to all those affected by the residential school experience. Claimants had access to health support workers and could be accompanied at their hearing by Elders, interpreters, and/or family or community members. Claimants who chose not to have legal representation were assigned Claimant Support Officers. Each claimant could indicate a preference in the location of her/his hearing and the gender of the adjudicator. Hearings were held in private and informal settings and incorporated traditional and ceremonial elements such as smudges, songs, and/or prayers. The hearing itself could provide transformational moments for all of those present, as claimants had the opportunity to relate their history and have their experience validated in a decision. At the end of each hearing, representatives of Canada and the Church would often present a personal acknowledgement or apology to the claimant for her/his experience. As well, compensation awards could contain, at the claimant's request and design, additional "Future Care" funds dedicated to assist them in their healing.

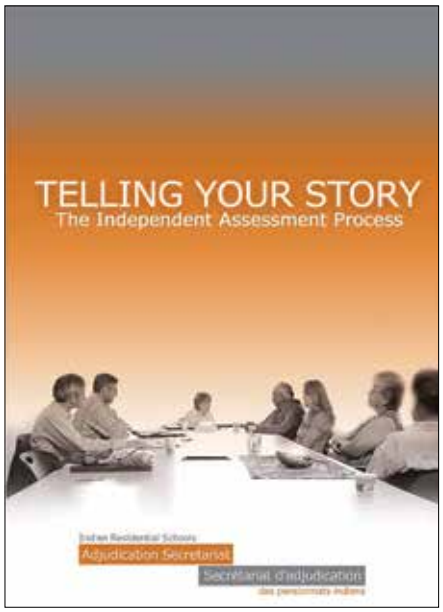
Outreach to Claimants: The IRSSA required that efforts be undertaken to ensure that members of the class were notified of the Settlement Agreement. This process included a Notice Plan, a toll-free telephone information line, and an Outreach program to raise awareness of the application deadline and ensure that people were aware of available supports.

Operational Objectives: The IRSSA mandated that IAP claims would be processed at a minimum rate of 2,500 per year. It also stipulated that claimants would be offered a hearing date within nine months of their application "or within a reasonable period of time thereafter" and that all claims would be processed within one year following the IAP application deadline.[18] As well, it specified that adjudicators provide a written decision to the claimant within 30 days of the hearing for Standard Track, or 45 days for Complex Track, claims.[19] The Court's Implementation Order also provided that the fees charged by a claimant's counsel could be subject to review by the Adjudicator for "fairness and reasonableness".[20]

[17] Indian Residential Schools Adjudication Secretariat, *Annual Report 2008* (Ottawa: IRSAS, 2008), p. 11.
[18] *IRSSA,* Article 6.03
[19] *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)).
[20] *Fontaine v. Canada (Attorney General),* Court File 00-CV-192059CP, ONSC, 8 March 2007, paras. 18 and 19.



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



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

The Independent Assessment Process:

The IAP Claim and Pre-Hearing Process: An IAP claim was initiated by an application form identifying the school(s) attended, the abuse suffered, and the harm that those experiences caused. It required the former student, if possible, to provide the names of those who perpetrated that abuse, so that efforts could be undertaken to notify them that a claim had been filed.

It was strongly recommended (but not required) that claimants hire a lawyer. Applications were reviewed for admission based on priorities set out in the IRSSA. The first priority was those claimants who had a significant health risk such that they might pass away or lose the capacity to provide testimony at a hearing.

Prior to each hearing, the claimant was required to provide a number of mandatory supporting documents, such as records from Workers' Compensation, Income Tax, Corrections, or medical treatment. Canada was responsible for providing records related to the claimant's attendance at the school and records related to any named alleged perpetrator(s).[21]

In some instances, pre-hearing teleconferences were held to address issues as to whether a claim fell within the jurisdiction of the IAP, for Complex Track claims and, under certain circumstances, for estate claims on behalf of deceased former students.

The IRSSA allowed an option for claims to be settled without a hearing in a Negotiated Settlement Process (NSP), when both the claimant's counsel and Canada were amenable to it.[22] If a settlement could not be reached in the NSP, the claim would then return to the normal adjudication process.

The IAP Hearing: The scheduling of the hearing was based on a number of criteria, including the claimant's preferences for the location of the hearing and/or the gender of the adjudicator, and the availability of all parties. Prior to the hearing, claimants could view a video and read an accompanying booklet that provided information about the hearing.[23]

The Adjudication Secretariat arranged and paid for all logistics related to the hearing, including travel for the claimant and up to two personal supporters of the claimant's choosing and an Elder if requested.[24] Hearings were held in hotel conference rooms, private homes, correctional facilities, hospitals, dedicated hearing rooms in Winnipeg and Vancouver, or other locations (including outside of Canada) as required by the claimant's circumstances.

[21] This process was amended in 2013, when the Oversight Committee approved an "Accelerated Hearing Process" where claims could be set down for hearing without all of the mandatory documents having been produced.
[22] 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.
[23] 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.
[24] All costs related to the implementation of the IRSSA, including those expended by the Adjudication Secretariat, were paid for by the Government of Canada.

In attendance at the hearing would be the claimant, his/her lawyer (if they were represented), a representative 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. 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.[25] Hearings were otherwise closed to the public, and all participants were required to sign a confidentiality form.

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.

During the hearing, the claimant would tell their personal experience to the adjudicator. In the inquisitorial model of the IAP hearing, only the adjudicator could ask questions of the claimant or witnesses and cross-examination was not permitted. Nonetheless, hearings 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. 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.

Normally, Standard Track hearings would be concluded within one day, while Complex Track hearings would require two days to complete.[26]

Many claimants smudged before their hearings.

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

Post-Hearing Processes: In some cases, there were issues that remained following the hearing, such as the need to obtain missing documents or input from psychological or medical experts. While the IAP sought to eliminate the prospect of competing reports from experts, it did in some circumstances provide for expert witnesses, to be instructed not by the parties but by the adjudicator, when their evidence was determined to be essential. Psychological assessments and medical examinations normally took several months following the conclusion of the hearing.

The IRSSA provided those individuals named as an alleged perpetrator the right to be informed of the allegations and to provide their own statement to the adjudicator. Alleged perpetrators were considered witnesses, not parties to the process. They did not have the right to attend the claimant's hearing but could request their own hearing accompanied by counsel and a support person.

[25] For further information on the participation of various Church entities in IAP hearings, see "The Role of Churches in the IAP", *Publications: Independent Assessment Process (IAP) Fact Sheets,* Indian Residential Schools Adjudication Secretariat, 12 March 2014, http://www.iap-pei.ca/pub-eng.php?act=factsheets/church-role-eng.php.

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

Decisions and Compensation: Adjudicators would prepare their decisions following the receipt of the parties' final submissions. The decision would contain background information on the claimant, a summary of the allegations and the claimant's testimony, and the adjudicator's findings. (In a process introduced in 2009, a "Short-Form Decision" could under specific circumstances be issued by an adjudicator at the conclusion of a hearing. More information on Short-Form Decisions is provided later in this Summary.)

The decision would specify the amount of compensation awarded. In the IAP Model, compensation was determined according to a point system contained in the Settlement Agreement, based on proven acts of abuse, consequential harms, aggravating factors, and 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 decision would also discuss any Future Care Plan put forward by the claimant and the amount of funding that was awarded for that Plan.

The decision would be sent to the claimant or the claimant's legal counsel and to Canada. Both parties could consider whether they would accept the decision or request a review.[27] If a review was requested, the Chief Adjudicator would assign another adjudicator who would review the documents on file and the transcript of the hearing. If the review adjudicator changed the original decision, either party could request that the claim be re-reviewed by another adjudicator. 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.[28]


IAP Hearing

When the decision was accepted or finalized, Canada issued the compensation amount. 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 Canada - to provide independent legal advice as to the implications of accepting the award. Issuing the compensation cheque would normally take four to six weeks. When the compensation was awarded, the Adjudication Secretariat would inform the Church involved, providing it an opportunity to send a letter from the Church Leader and the Church's apology.

Canada would pay an additional 15 per cent of the total compensation awarded as a contribution to the claimant's legal fees. The claimant would be responsible for paying GST/PST/HST on legal fees.[29] The maximum amount a lawyer could charge a claimant was 30% of the compensation award. The claimant would be responsible for paying any amount in excess of Canada's contribution towards legal fees. Lawyers were not permitted to deduct any third-party assignments, cash advances, or costs associated with the management of the file from the amount payable to the claimant.

Adjudicators reviewed legal fees to ensure that they were within the limits set out in the Court orders implementing the IRSSA, or to determine if they were "fair and reasonable". If an adjudicator decided that the fees were not fair, he/she had the power to reduce them.[30] Both claimant and their counsel could appeal the legal fee ruling, in which case the ruling would be reviewed by another adjudicator.

[27] 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.

[28] 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.

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

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

Supreme Court of Canada

The IAP Governance and Administrative 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.

The Courts: The Courts retained jurisdiction to supervise the implementation of the Settlement Agreement.[31] However, the Courts granted access to judicial recourse related to a final decision on an IAP claim only in exceptional circumstances. Throughout the IAP, there were only six instances in which judicial recourse resulted in an adjudicator's decision being reversed.[32] The IRSSA Implementation Order also appointed a Court Counsel "to assist the Courts in their supervision over the implementation and administration of the Agreement".[33]

Court Monitor: The Implementation Order put in place a Court Monitor (Crawford Class Action Services) to monitor the implementation of the IRSSA, particularly the IAP and CEP. 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 (NAC): 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. It was tasked specifically with hearing appeals in relation to the Common Experience Payment but also with ensuring national consistency in the implementation of the IRSSA. Any substantive changes to the IAP had to receive the approval of the NAC before a Court order could be prepared.

[31] The Approval Orders established a protocol for parties requesting directions or orders from the Supervising Courts.
[32] As noted earlier (footnote 15), the IAP contained the possibility for a claimant to proceed through the Courts in three circumstances set out in the IRSSA, including AIL claims that may exceed $250,000. In five instances, claimants sought leave from the Chief Adjudicator to access the courts to address AIL claims; three of these requests were granted.
[33] *Fontaine v. Canada (2007),* paras. 1, 2, 4, 12 and 13.

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

- Recruiting, appointing and terminating the appointment of the Chief Adjudicator
- Recruiting, appointing, and approving training for adjudicators
- 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 and providing advice on any issues brought forward
- Making process improvement recommendations to the NAC
- Monitoring the implementation of the IAP

The Oversight Committee established a Technical Sub-Committee to discuss complex issues related to the administration of the IAP and a Bilateral Sub-Committee consisting of Canada and claimant counsel to address matters specifically related to issues between those parties.

Chief Adjudicator: Appointed by the Oversight Committee and confirmed by the supervising Courts, the Chief Adjudicator was accountable for maintaining the integrity of the IAP and for setting policies and standards for the Adjudication Secretariat. These accountabilities included:

- Assisting in the selection of, assigning work and providing advice to adjudicators; implementing training programs; and addressing performance issues
- Preparing instructions regarding the IAP for consideration by the Oversight Committee
- Conducting reviews of adjudicators' decisions when requested
- Directing the operations of the Adjudication Secretariat
- Hearing appeals from claimants whose claims were deemed ineligible for admission
- Preparing reports to the Courts and the Oversight Committee

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

Indian Residential Schools Adjudication Secretariat: The Adjudication Secretariat was responsible for the operations and administration of the IAP. It provided information on the IAP; assessed the eligibility of claims; provided support to self-represented claimants; scheduled and made 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 reported to the Chief Adjudicator on IAP operational or adjudicative matters, and to the Deputy Minister of the responsible Department of the Government of Canada on financial and resource management.[34]

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).

[34] Prior to June 2008, the Adjudication Secretariat was part of the Department of Indian Residential Schools Resolution Canada (IRSRC). When IRSRC merged into the Department of Indian Affairs and Northern Development (DIAND), the Adjudication Secretariat became subsumed within DIAND. 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 (CIRNAC).

Government of Canada: In addition to its role as defendant in IAP claims, the Government of Canada was required by the IRSSA to provide sufficient resources to enable the IAP to achieve its operational targets. Adjudication Secretariat staff were employees of Canada, bound by Government administrative and financial policies and procedures. Thus, although the Government of Canada did not have a direct role in the adjudicative process, it did have responsibility for and exercised oversight of the financial and human resource elements of the administration of the IAP.

Implementing the IAP: Challenges and Responses

The demands of an unprecedented number of claims, unanticipated issues, and the circumstances of individual residential school survivors posed a number of challenges in implementing the IAP. These necessitated ongoing reviews by the Oversight Committee, the Chief Adjudicator, and the Adjudication Secretariat to give best effect to the provisions of the IAP.

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 maintain a claimant-centred approach ran throughout all aspects of the IAP.

In advance of a hearing, the claimant could indicate preferences for its location; the gender of adjudicator; whether they wanted support services, companions, Elders, a health support worker, and/or a Church representative to attend; and if they needed an interpreter. This enabled the Adjudication Secretariat to try to ensure that each hearing was structured around the expressed wishes of the individual claimant. The process also relieved the claimant of the responsibility and challenges of making arrangements and paying for travel to the hearing.

Health support workers – provided by Health Canada – were available throughout the hearing, if the claimant chose. Many 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. In addition, Canada funded a 24-hour toll-free crisis line operated by trained Indigenous crisis counselors.

IAP hearings incorporated cultural ceremonies of the claimant's choosing, and claimants could bring with them a sacred object that gave them strength. The physical set-up of the room contributed to making the hearing as comfortable as possible, with the claimant typically sitting to the side but facing the adjudicator to enable easier conversation. The adjudicator used an inquisitorial rather than adversarial approach in recognition of the emotional, physical, and spiritual toll that recounting these stories placed on the claimant.

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

Providing Information About the IAP:

From 2006 through to 2012, there were four court-ordered Notice Programs designed to ensure awareness of the IRSSA. These provided information on the Settlement Agreement; the deadline for class members to opt out of the settlement; the CEP application deadline, and the IAP application deadline. They utilized radio and television; direct mailings to Band Offices, Tribal Council Offices, and Friendship Centres; and a website and toll-free information line. Communications were produced in 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.[35]

In addition, the Adjudication Secretariat developed its own outreach strategy, visiting more than 400 communities, TRC events, pow-wows, and assemblies. In support of this outreach, 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.

As well, a number of other organizations distributed information about the IAP. The Court Monitor maintained a toll-free telephone information line to respond to inquiries about the IAP. Canada sponsored the Advocacy and Public Information Program to provide information on the IRSSA. Health Canada provided information and support at the grassroots community level. Many lawyers also played a vital role in providing information on the IAP, often travelling to remote communities to meet with residential school survivors.

Volume and Capacity:

The volume of applications and hearings posed a number of capacity issues. Canada's initial estimates were that there would be some 12,500 applications filed prior to the September 2012 deadline.[36] 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.[37] Similarly, the IRSSA contemplated that resources would be required to hold 2,500 hearings each year, 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, more than 12,500 cases had already been resolved by 2012 and in that year the number of hearings held surpassed 4,100.[38] This required efforts by all parties not only to increase resources allocated to the IAP, but also continuously to enhance processes to more efficiently give effect to the provisions of the IAP.

Adjudicator capacity was a recurring challenge and was affected by the need to have female adjudicators, francophone adjudicators, and Indigenous adjudicators.[39] At its peak, the IAP retained more than 100 adjudicators, 8 Deputy Chief Adjudicators, and a Chief Adjudicator on a contractual basis. To accomplish this, the Oversight Committee was required to conduct four selection rounds over a four-year period.

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

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

[35] 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).

[36] 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.

[37] Other applications were admitted pursuant to Court orders after the application deadline, bringing the total number of IAP applications to 38,276.

[38] Approximately 90 per cent of IAP cases were resolved through hearings. The remainder were resolved through a Negotiated Settlement Process, discussed below.

[39] 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.

Resolving Claims:

A central obligation of the IAP was to resolve all of the claims that were submitted. In order to achieve this, a wide range of challenges needed to be addressed.

Inactive or Incomplete Claims:

Occasionally, claims remained at a stage where they were not ready for a hearing. In some claims, this was due to difficulties in collecting mandatory documents. Institutions - such as local, provincial, or federal government bodies - did not have the personnel to meet requests for these documents 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. To address this, the Adjudication Secretariat signed Memoranda of Agreements with provincial correctional facilities departments in Alberta and Saskatchewan and worked with the federal Government to develop greater efficiencies in the provision of documents. Internally, the Adjudication Secretariat established a dedicated team to work with self-represented claimants to obtain mandatory documents on their behalf.

The Adjudication Secretariat also 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 why the claim was not progressing; and move the claim toward resolution or identify it for closing if the claim was withdrawn. In its first year of operation, this process achieved a 90% response rate from claimants' counsel.

Even with an intensive approach to case management, however, some claims did not progress. Under the IRSSA, adjudicators did not have the authority to dismiss claims without a hearing, even where counsel had lost contact with a claimant, where mandatory document collection was not possible, or where a claimant had passed away prior to providing sworn testimony. In an analysis in 2011, the Adjudication Secretariat estimated that this would leave 1,000 to 1,500 claims unresolved at the completion of the IAP.

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

As a result, the Adjudication Secretariat, the Technical Subcommittee, the Oversight Committee, and the NAC undertook an examination of how to ensure that all IAP claims would ultimately be resolved. New procedures were approved by the Oversight Committee and the NAC, and in 2014 the Ontario Superior Court of Justice issued a consent order approving the Incomplete File Resolution Procedure (IFRP) as a component of the IAP "Completion Strategy Report". The IFRP implemented a two-step approach to resolving claims that would otherwise have no prospect of proceeding. The first phase incorporated Intensive Case Management processes. If those were unsuccessful, the claim could then be referred to a File Management Adjudicator who could convene teleconferences with the parties and take steps to progress the claim.

If that failed to move the claim forward, a "Special Resolution Adjudicator" was appointed with the authority to receive submissions from the parties, 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.

Nearly 60 per cent of claims referred to the IFRP were subsequently able to be returned to the normal hearing stream or other targeted approaches.

Lost Claimants:

Another aspect of the Completion Strategy Report was the introduction of a Lost Claimants Protocol. At that time, it was determined that contact had been lost with approximately 300 claimants, who may have passed away, been in a hospital or nursing home, become homeless, or changed address without informing their counsel.

Under this Protocol, the Adjudication Secretariat would attempt to locate "lost" claimants using a progressively intrusive methodology while at the same time protecting privacy. First, internet searches and a review of the information on file would be explored. Following that, information would be sought from various government departments. Ultimately, information could be pursued from support persons identified in the claimant's file, Resolution Health Support Workers, police detachments, or others. To enable this, the Courts ordered that all public and private entities, institutions, and agencies 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.[40] Of these, 546 claimants were located and their claims returned to the regular file stream or assigned to another targeted case management approach. The remaining claims were referred to the IFRP or were non-admitted.

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 or ought to have known about the abuse. As this could be difficult for individual claimants to establish, 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."[41]

Initially, where relevant admissions of staff knowledge existed, Canada provided them on a case-by-case basis for each claim.[42] Canada also maintained that admissions that post-dated a claimant's attendance were not relevant to that claim. Over several years, the Chief Adjudicator issued a number of Directives addressing how these admissions should be made available to claimants' counsel and how claims involving student-on-student allegations should be handled. This culminated in a decision in May 2013 that a Master List of Admissions, prepared by Canada and previously only available to adjudicators, would be made available to counsel.

However, each student-on-student claim still took into account only those admissions arising 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. Therefore, in December 2013, the Oversight Committee approved a "Student-on-Student Admissions Project" process in which Canada provided a list of claims in the pre-hearing stage that were identified as having the best potential to generate new admissions that could possibly benefit other claims. Conference calls were then held to determine whether specific cases could be heard in advance of document completion.

This process was subject to further revision when, in September 2017, Canada submitted a Request for Direction to the Courts. Canada argued the Chief Adjudicator and his designates had inappropriately utilized "procedural fairness" as grounds for review of claims that had been dismissed based on lack of proof of staff knowledge, when later admissions - had they been available at the time of the initial decision - may have resulted in an award in favour of the claimant. Canada's position was affirmed by the British Columbia Supreme Court, which held that only the Supervisory Courts of the Indian Residential Schools Settlement Agreement possessed the jurisdiction to re-open an IAP claim.

Notwithstanding the Court's decision, in March, 2018, Canada announced that it would revisit student-on-student claims dismissed for lack of proof of staff knowledge, where post-decision admissions of staff knowledge might have assisted the claimant. Canada stated that where appropriate on this basis, such cases would be settled outside of the IAP.

[40] 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.
[41] *IRSSA,* Schedule D, Appendix VIII. In the IAP Model, there was no requirement to prove staff knowledge in cases of abuse that was predatory or exploitative.
[42] The Government of Canada made more than 4,500 admissions after relevant evidence or findings of adjudicators became available.

Winnipeg Hearing Centre

Hearings:

Expedited and Accelerated Processes:

The IRSSA stipulated that applications from elderly claimants and those in ill health would be given priority. In practice, this posed several operational challenges. The first was determining those claimants for whom a delay could impair their ability to participate. To address this, a form was developed so that a claimant's doctor could attest to their failing health without having to explain the claimant's medical condition.

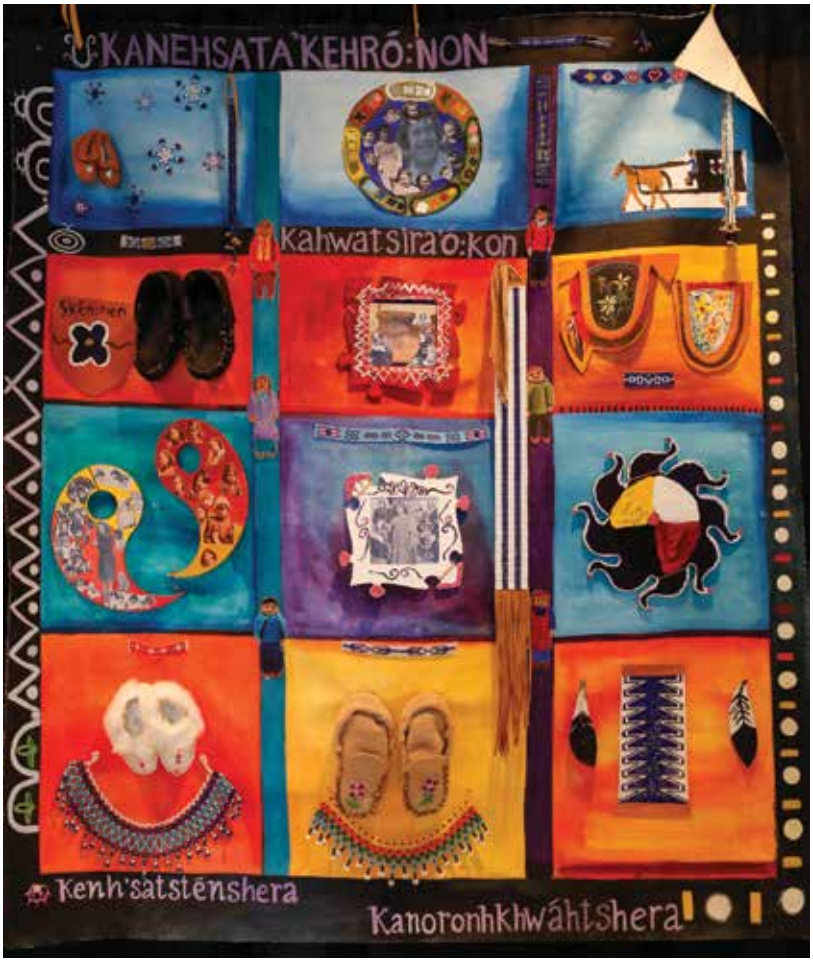
In addition, some elderly claimants were having to wait a considerable time for a hearing due to the fact that a claim still needed to have all required documents before it could be scheduled. To address this, in 2012 the Oversight Committee approved an "Over-65 Pilot Project" to develop ways of processing claims more quickly for those claimants. This included pre-hearing teleconferences led by an adjudicator 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 groups of hearings 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, the Oversight Committee approved an Accelerated Hearing Process (AHP) in 2013, giving priority to elderly claimants, claimants in failing health, or those with claims that had been awaiting a hearing for a longer time. If claimants' counsel (or self-represented claimants) wished to proceed under the AHP, an adjudicator would conduct a pre-hearing teleconference to identify issues that were delaying the process. They would then establish a time-frame in which to progress the claim. 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 its final years, in order to ensure the completion of the IAP, the Accelerated Hearing Process became the default procedure 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. Following discussions by the Oversight Committee, procedures were adopted aimed at ensuring that more hearings would proceed as scheduled. These 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, Oversight Committee approved an additional policy addressing hearing cancellations related to the Negotiated Settlement Process, and in 2015 approved a Guidance Paper addressing the failure of expert assessments to proceed.



The IAP was one component of the Settlement Agreement.

Adjudication and Claim Resolution:

Short-Form Decisions:

The IRSSA set out the format for decisions, indicating that a typical decision would be six to ten pages. Given the volume and complexity of claims, it became apparent to the Oversight Committee that a full decision in each case would take considerable time and could delay the receipt of compensation for claimants. It recognized that, for some claimants, receiving a full decision that included a detailed narrative of evidence and the rationale supporting the decision was important for memorialization and for personal healing. Other claimants, however, would appreciate receiving a decision as soon as possible, both for marking an end to the process and for the receipt of any compensation. As well, at the conclusion of some hearings, the adjudicator and the parties may be 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.

Following consultations with the parties and approval by the NAC, the Oversight Committee approved a process for Short Form Decisions (SFDs) which was implemented in January 2010. The SFD presented a summary of the compensation categories and levels of compensation awarded by the adjudicator. SFDs were available when certain requirements were met, including: the claim was in the standard track; all document production, testimony, and final submissions were complete; the future care plan (if any) was submitted; and the claimant and representatives of the parties attending the hearing consented in writing to the rendering of an SFD.[43] 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. Even if a claim qualified for an SFD, a claimant could request a full decision for memorialization or other reasons. All parties retained their rights to have an SFD reviewed by another adjudicator, although in practice this rarely occurred.

Negotiated Settlement Process:

In addition to claims being decided by adjudicators at hearings, the IRSSA provided that Canada and the claimant could resolve a claim in a Negotiated Settlement Process (NSP). The NSP was typically based on evidence obtained through an interview conducted by a representative of Canada, and allowed the claimant's counsel and Canada to agree on an award within the compensation rules.

Following the implementation of a number of procedural improvements, the number of NSPs rose from 572 in 2011 to 742 in the following year. Overall, negotiated settlements accounted for more than 4,400 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 NSP claims being resolved through negotiation.

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

Ensuring Consistency in Decisions:

The IRSSA specified that: "Adjudicators … will attempt to conduct consistent sessions and produce decisions in a consistent fashion."[44] Accordingly, the Chief Adjudicator and his Deputies held training sessions and meetings of adjudicators to share experiences and best practices, and to promote collegiality and consistency across the system.

In order to strengthen consistency of decision-making in the IAP, the Chief Adjudicator and his Deputies worked with the Oversight Committee and its Technical Subcommittee to develop directives and guidance papers on certain aspects of the process. Over the course of the IAP, the Chief Adjudicator issued 11 Directives, 10 Guidance Papers, and 2 Practice Directions.

In addition, in 2010 at the request of the Oversight Committee, the Supervising Court issued an order directing that a secure, searchable, online database of IAP decisions be developed for use by adjudicators, claimant counsel, Canada's representatives and Church entities. Important decisions were posted to the IAP Decisions Database at regular intervals, redacted in order to protect the privacy of claimants, alleged perpetrators, and other witnesses.

The IAP allowed either party to request a review if an 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.

Misconduct of Some Claimants' Legal Counsel:

Although the IRSSA allowed claimants to represent themselves, it was understood that IAP claimants would be best served by having legal representation. Information provided by the Adjudication Secretariat noted that "every party who signed the Settlement Agreement encourages you to hire a lawyer to help with your IAP claim".[45]

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

In 2000 the Canadian Bar Association, recognizing that "survivors of Aboriginal residential schools are often vulnerable and in need of healing as well as legal assistance", urged Law Societies to adopt guidelines for the conduct of lawyers working in this area.[46] Over the next few years, Law Societies in Ontario, Manitoba, the Northwest Territories, and the Yukon introduced such guidelines.

Over the course of the IAP, several hundred lawyers served as claimants' legal counsel, most of whom were diligent and ethical. 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 involvement of the Oversight Committee, the Chief Adjudicator, Bar Associations, Law Societies, and the Courts.

The most significant example of these challenges involved the Calgary-based firm Blott & Company, which represented more than 5,600 claimants. Following two Law Society complaints, a Court-ordered investigation by the Court Monitor and a hearing by the Supreme Court of British Columbia, the Supervising Court in 2012 ordered the removal of Blott & Company from the representation of claimants in any aspect of the Settlement Agreement.[47]

While this was the largest example of misconduct by lawyers or their agents, it was not unique. On several occasions, the Chief Adjudicator reported concerns about claimant counsel to their respective Law Societies, two of which led to the disbarment of the lawyers concerned. In February 2013, the Supreme Court of British Columbia ordered an individual to be removed from all participation in the IAP. The Chief Adjudicator also raised concerns related to the practices of some firms that were assisting claimants with completing IAP applications and the fees they charged for those services. In 2014, the Manitoba Court of Queen's Bench ruled that any contracts requiring claimants to pay contingency fees to form fillers were null and void.[48]

[44] *IRSSA*, Schedule D, sec. III m (i) and (ii)
[45] Indian Residential Schools Adjudication Secretariat, "Do I need a lawyer for my IAP claim?"
[46] Canadian Bar Association, Resolution 00-04-A, August 19-20, 2000.
[47] Supreme Court of British Columbia. *Fontaine v. Canada (Attorney General)*, 2012 BCSC 839.
[48] *Fontaine v. Canada (Attorney General)*, 2014 MBQB 113.

When the Court ordered the removal of Blott & Company from all IAP matters, it appointed a retired judge to oversee the transition of clients from that firm to other legal counsel. The "transition coordinator" required that any lawyer accepting a case adhere to expectations set out by the Chief Adjudicator. Accordingly, in August 2012, the Chief Adjudicator published a document entitled Expectations of Legal Practice in the IAP that were further strengthened, along with special directions regarding legal fee rulings, the following year. The Adjudication Secretariat also published a Desk Guide for Legal Counsel providing information and technical assistance on IAP procedures, best practices, and key resources.

In addition, the Oversight Committee developed an "IAP Integrity Protocol" to serve as a mechanism through which complaints against legal counsel, or others acting on behalf of claimants in the IAP, could be investigated and potentially resolved. In 2014, following unanimous consent of the NAC, 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.

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.

Management and Disposition of IAP Records and Documents:

Document Management:

Due to the volume of claims, it was necessary to develop an electronic means for sharing and transferring associated documents among all parties. Following Oversight Committee approval, the Supervising Court in 2010 ordered the Court Monitor to develop a secure website for the parties to transfer protected documents. Within three years, more than 250,000 document packages were transferred on this Electronic Document Interchange.

In addition, a Court Order was issued in 2011 for the implementation of an Interactive File Management System: a secure web-based tool that allowed claimants' counsel to view the status of their claims in real time and update information directly into the system. This provided valuable information on the progress of claims that could assist in targeted attempts to remove blockages.

IAP Records:

The IRSSA emphasized that IAP hearings would be closed to the public and that IAP claim records would be confidential.[49] At the same time, it stated that claimants had "the option of having the transcript [of their hearing] deposited in an archive" to be established by the Truth and Reconciliation Commission (TRC).[50]

Over several years, the Oversight Committee, Adjudication Secretariat, and the TRC discussed how to provide information to IAP claimants to enable them to grant informed consent about placing their IAP evidence in an archive. This proved challenging as the terms of reference for such an archive had not yet been developed, making "informed consent" difficult. In addition, as time passed, thousands of hearings occurred in which participants had been promised confidentiality and in which permission for archiving testimony had not been sought or obtained.

[49] *IRSSA*, Schedule D, sec. III 0 (i) and Appendix II (iv)
[50] *IRSSA*, Schedule D, sec. III o (ii)

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.

In 2012, the TRC concluded that it would seek to have all IAP documents deposited in the archive with or without claimants' consent. As a result, the TRC and the Chief Adjudicator each brought Requests for Direction to the Supervising Court to clarify how IAP records should be treated at the conclusion of the IAP.

Following decisions by the Ontario Superior Court of Justice and the Ontario Court of Appeal, the Supreme Court of Canada ruled that residential school survivors were and should be "in control of their own stories".[51] The Supreme 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 until September 19, 2027, during which time a claimant could request a copy of her/his documents and/or request that their documents be preserved for history, public education, and research at the National Centre for Truth and Reconciliation (NCTR).[52] After that date, if a claimant did not request a copy of their documents or ask that they be transferred to the NCTR, those documents would be destroyed.

Following the decision dealing with IAP claims records, questions remained as to how to dispose of those records not related to specific IAP claims. In a decision issued in January 2020, the Ontario Superior Court of Justice directed Canada to develop a proposal for the Court's consideration for the archiving of copies of non-claim records at Library and Archives Canada and the NCTR. 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.[53]

The IAP Experience – Perspectives of Claimants, Stakeholders, and Participants

At the core of the IAP are the views of claimants and those responsible for the delivery of this element of the IRSSA. In order to hear directly from people involved in the IAP, the Adjudication Secretariat conducted a two-phase process spanning several years. In 2013 and 2014, it convened 23 focus groups across Canada with more than 125 participants to determine their views on the objectives of the IAP and how to measure its success. Based on that input, the Adjudication Secretariat worked with Indigenous community organizations to hold another 37 focus groups with claimants, Indigenous organizations, health support workers, cultural support workers, interpreters, Church representatives, Canada representatives, adjudicators, and Adjudication Secretariat staff. Interviews were also conducted with 254 survivors and 72 individuals from stakeholder groups and those responsible for implementing the IAP. As well, the Adjudication Secretariat received questionnaires from 24 counsel who had each represented at least 100 IAP claimants.[54]

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

[51] *Canada (Attorney General) v. Fontaine*, 2017 SCC 47 (CanLII), [2017] 2 SCR 205.
[52] 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. 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: *Fontaine v. Canada (Attorney General),* 2018 ONSC 4179.
[53] *Fontaine v Canada (Attorney General)* [Claims Records], 2014 ONSC 4585, *aff'd* 2016 ONCA 241, *aff'd* 2017 SCC 47.
[54] Data and quotes contained in this section are drawn exclusively from those interviews and questionnaires.

As noted 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. Almost one-half (45%) of claimants interviewed by the Adjudication Secretariat indicated that they had first heard about the IAP through the notification efforts. Others became aware through more informal routes, such as family members, friends, Indigenous organizations/band offices, or from a lawyer. About three-quarters of participants said that they were satisfied with outreach sessions, saying they were thorough, useful, easy to understand, and culturally-sensitive. More than 80% said that the information they received on the IAP helped them move forward with their claim, and specifically appreciated the IAP hearing video. However, many stakeholders believed that there needed to be greater outreach in the North.

Stakeholders generally agreed that the different sources of information about the Settlement Agreement overall led to some unclarity. 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."

Almost all claimants (94%) said they thought it was important to have help completing the forms because they were complicated and raised difficult memories. The vast majority of claimants received that help 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):

"[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."

As for the hearing itself, most claimants (78%) said they were satisfied with the 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." More than three-quarters 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."

However, some support workers and Elders felt 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."

Almost all claimants who brought support people to their hearing were satisfied, saying it made them feel more comfortable. Some, however, indicated that they preferred 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".*

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

Claimants could get help filling out their IAP Application form.

William Herney, of the Eskasoni First Nation participated in claimant interviews in Nova Scotia.

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

More than 90% of claimants said they were satisfied with the health supporters, who helped them understand the process and cope with mental health issues. More than three-quarters of claimants said that 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."

Large percentages of claimants expressed satisfaction with the adjudicator at their hearing, saying that the adjudicator was prepared (86%), ensured they understood their rights (76%), and asked questions in a fair, reasonable, and respectful manner (75%). Most respondents agreed that the inquisitorial model was important in providing a claimant-centred approach. 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."

However, many also said they found the process to be too legalistic and that the language could be complex.

Regarding the results of the hearing, 90% of all claims that went to a hearing or a Negotiated Settlement Process interview resulted in some level of compensation. As a 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."

However, some claimants and stakeholders criticized the grid method for assessing compensation for harms experienced by claimants as being too restrictive. 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."

About 60% of claimants indicated that they were satisfied with the decision and compensation. A similar percentage said that the adjudicator's reasons for the decision were clear to them. About one-half said that they were satisfied with the timeliness of the IAP. More than two-thirds were satisfied with the amount of time it took to receive compensation following the decision.

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%, so that they would be paid entirely by 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 number of non-compensable claims that claimant counsel dealt with. While there was a wide variance of views among stakeholders as to the effectiveness of the legal fee review process, 74% of claimants expressed satisfaction with it.

Most claimants said, though, that the important aspect of going through the IAP was not about 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."

For most claimants telling their story was the most important aspect of the IAP.

Lessons Learned:

As the Independent Assessment Process draws to a conclusion, it is important to identify those lessons that can be learned from the efforts to fulfill the objectives of this component of the Indian Residential Schools Settlement Agreement.

Offering a Claimant-Centred Process:

- Confronting past abuse can be traumatic for survivors, their families, former staff, or anyone who engages in a process such as the IAP. 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 needed to be available at all steps of the process. Targeted efforts could have been further improved to ensure that supports – including trained legal counsel - were available to those living in more remote locations, to those who were homeless, and to those who were in institutional settings.
- Claimants needed to receive as much information as possible in a manner that was clear and available in Indigenous languages. Ensuring that all residential school survivors were aware of the application process and deadlines required a range of efforts using a variety of mechanisms. From the standpoint of potential claimants, information activities could have been more effective if they had been coordinated among all parties and stakeholders.
- While it was recommended that claimants retain legal counsel, it was important to recognize that self-represented claimants would still require assistance, and to have resources in place to provide this.
- Giving claimants the right to indicate their preferences for the gender of the adjudicator and the hearing location provided them with an important element of control appropriate to their individual circumstances. IAP hearings were held in many diverse locations, demonstrating that the adjudicative process could be conducted in locations that were convenient to the claimant.
- Providing travel costs for claimants and their supporters helped ensure equal access to the process and removed a potential source of stress for hearing participants.
- The incorporation of traditional elements and cultural practices helped claimants meet the challenges of the hearing.
- Initiatives such as the Lost Claimant Protocol, Expedited Hearings, and the Accelerated Hearing Process 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 claimants.
- The presence of claimant representatives and counsel on the Oversight Committee and the National Administration Committee – along with ongoing outreach efforts by the Adjudication Secretariat – provided essential perspectives required to maintain and give best effect to the claimant-centred approach of the IAP.
- Measures to provide claimants with information that could help their own financial literacy may have been beneficial in ensuring that their compensation awards were used as they intended and in protecting them from financial abuse.[55]

[55] 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 and some workshops and information were provided to claimants, it could also have been useful to assist claimants in a more consistent manner in being aware of the options and resources available to them for managing this money according to their own wishes.

Providing an Alternative Approach to Adjudicating Compensation Claims:

- The inquisitorial approach provided an effective and more sensitive means for adjudicating claims than traditional civil litigation, particularly when dealing with victimized and injured persons. IAP hearings were private and offered a less formal, safer, and more respectful experience. Parties to the IAP generally agreed that the process demonstrated that the truth could be ascertained by means other than cross-examination and competing expert evidence.
- Even in an inquisitorial model, maintaining a non-adversarial approach required the commitment of all parties to ensuring that hearings were conducted with respect and a minimum of legal technicalities. This could have been further aided by including specific training for all hearing participants.
- 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, the ability to tailor further the requirement for mandatory documents to meet the circumstances of an individual claim may have expedited the process for some claims.
- Having a single expert assessor was substantially more streamlined and less adversarial than the standard litigation model of having the claimant and defendant present opposing opinions. Nonetheless, claims that required an expert assessment could still take considerably longer than those that did not.
- The IAP demonstrated that a hearing-based approach was able to resolve tens of thousands of abuse claims. At the same time, the complexity of the IAP Model required regular engagement by the Oversight Committee, adjudicators, and all participants in the IAP to meet unanticipated challenges and changing circumstances.

Elder David Budd in Winnipeg

- Claims alleging abuse by other students raised distinct challenges, including the process and timing for establishing, sharing, and applying admissions of staff knowledge of that abuse. 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.
- 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. Special attention needed to be paid to protect the identity of claimants and alleged perpetrators, and to provide support to minimize potential trauma at inter-personal or community levels.
- With an ageing population of residential school survivors, there was a danger of claimants passing away or becoming too incapacitated to participate in a hearing. It was vital to ensure that claims of the infirm or elderly were expedited so that the claimant's testimony could be obtained as quickly as possible.
- The implementation of Short-Form Decisions (SFDs) in cases where the parties agreed on how the claim should be resolved significantly reduced the amount of time claimants had to wait for compensation and provided a measure of closure for claimants on the day of the hearing.
- While not applicable to all instances, a Negotiated Settlement Process (NSP) often resulted in a more rapid resolution to appropriate claims and reduced administrative costs. The Accelerated Hearing Process, SFDs and NSPs demonstrated that in certain circumstances alternative approaches to dispute resolution could save time and money.
- The effectiveness of the adjudicative process required that it process and resolve claims in a fair and consistent manner. Specific strategies - such as review decisions, practice directions, and training - were needed to provide consistency while maintaining the independence of adjudicators and ensuring that each case was resolved on its own merits. 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.

One element that created a challenge to the completion of the IAP as a whole was the ability to request, under Article 12, that an additional school be added to the IRSSA. 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 IRSSA 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.[56]

- 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, Oversight, and Administration:

- The Oversight Committee – composed of representatives of the parties to the IRSSA –provided 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 IRSSA. It also required an Independent Chair – not representative of any party – with sensitivity and a facility in consensus building.

- While the Supervising Courts retained residual authority over the IRSSA, the Courts were actively involved in the interpretation and administration of the IAP more than had perhaps originally been anticipated. In the absence of a designated individual with the authority to receive and address internal complaints, the Courts also effectively remained the first point of access for claimants to pursue certain issues.

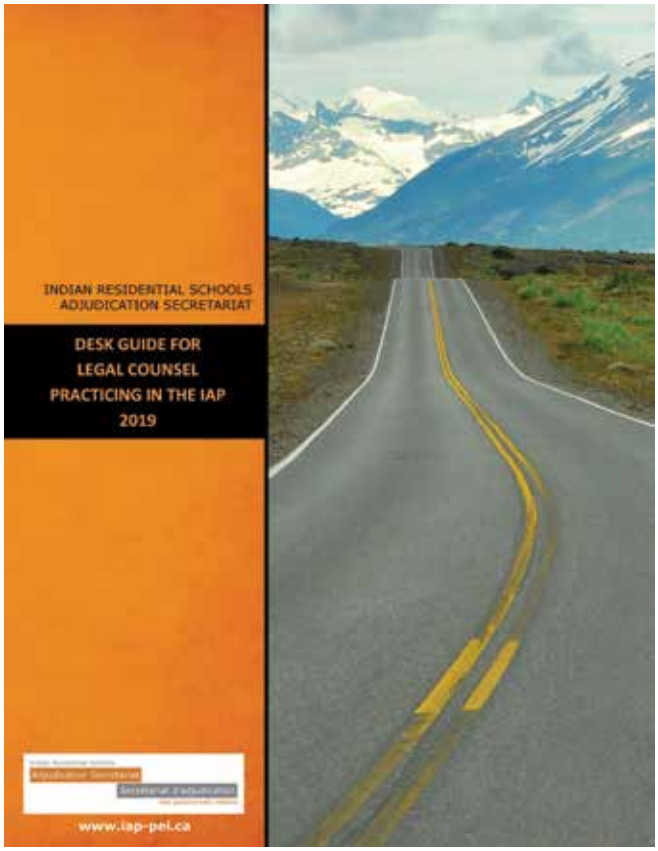
- At the same time, some challenges - such as jurisdictional issues related to "Administrative Splits" and the re-examination of some student-on-student abuse allegations - were able to be resolved, at least in part, by Canada creating a process to revisit these claims outside of the formal IAP. This demonstrated the need for continued, creative dialogue among the parties, and a shared commitment to the fair resolution of all claims.

- In addition to the Oversight Committee and the Supervising Courts, there were a number of other bodies involved in the governance of the IAP, including the National Administration Committee, Court Monitor, and Chief Adjudicator. While some had specific authorities set out in the IRSSA and Implementation Order, there was no specific mechanism for providing coordination of governance and oversight other than the Supervising Courts themselves. While there remained strong and neutral governance of the IAP, some advantages of potential synergies between these various bodies were perhaps missed.

Oversight Committee Chair Mayo Moran (right) with Chief Adjudicator Dan Shapiro (left).

[56] On July 27, 2015, the Hon. Madam 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.

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



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 IRSSA and their performance was monitored by a Chief Adjudicator.

- Canada was not only a defendant in the process but also had responsibility for providing financial and human resources in support of the IAP. Given Canada's role in administering aspects of the IRSSA, 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.

- The claimant counsel legal fee structure and process were subject to some criticism. Allowing lawyers to charge more than Canada's contribution (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. The legal fee review process was seen to be time-consuming both for adjudicators and claimant counsel, placed neutral adjudicators in a position of ruling on a conflict between the claimant and his/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.

- While the vast majority of law firms involved provided skilled and sensitive service, the ethical conduct of some claimants' legal counsel created serious unanticipated challenges for the IAP and for claimants. Although several Law Societies developed specific codes of conduct, these were not mandatory for lawyers to be able to work in the IAP. Chief Adjudicator and/or Oversight Committee-approved training for legal counsel could have been made a condition of representing claimants in the IAP.

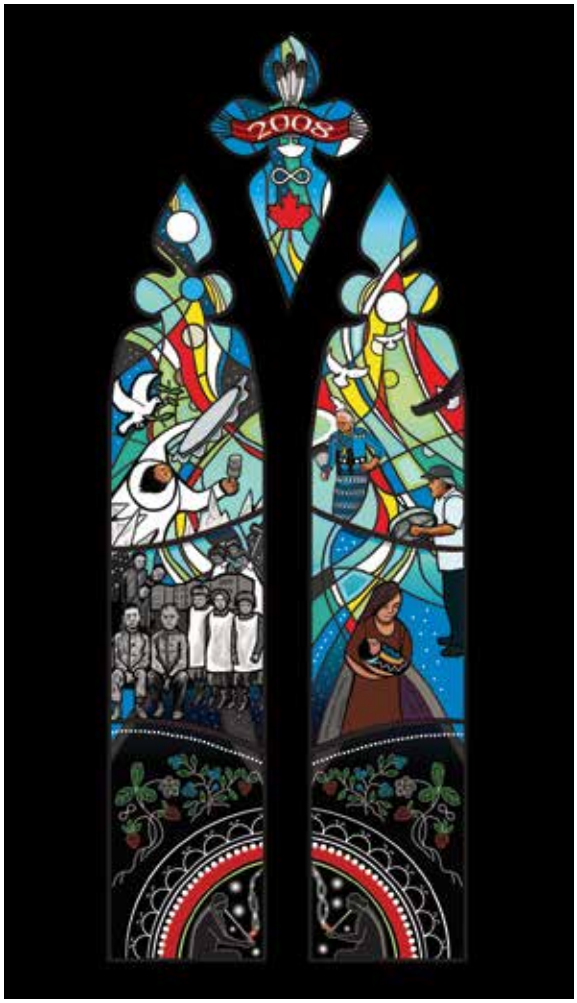
- Claimants did not have an effective process to raise concerns about the conduct of their legal counsel. In 2014, the Courts appointed an Independent Special Advisor to address lawyer misconduct, but this was several years into the process.

- With the large volume of claims, the IAP experienced challenges related to capacity that affected the timeliness with which claims could be heard and decided. Capacity shortages anywhere in the system created bottlenecks that could have a negative effect on claimants awaiting resolution of their claims. This was exacerbated when thousands of claims were submitted just prior to the September 19, 2012, application deadline.

- As it was not possible to plan for all contingencies, it was crucial to build organizational capacity to manage change and respond to realities as they evolved. This required a robust framework for the identification, mitigation, and management of risk, including the determination of the levels of risk that were acceptable.

- Staff considerations were central in the wind-down phase of the IAP: both the need to treat staff fairly and transparently, and also to ensure that sufficient resources were in place at the end of the process to resolve all remaining claims. This required clear communications, engagement of staff and staff unions, and the advice of human resources professionals. 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.

IRSAS staff participated in an honour ceremony held by the Indian Residential Schools Survivors Society in Vancouver.



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

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 and significance of its subject matter – exacted a toll on those who committed themselves to this issue. All organizations involved in the IAP needed to devote effort and resources to provide support for the emotional and physical wellness of their employees.

- 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.

Contributing to Healing and Reconciliation:

- For many residential school survivors, the ability to talk about their personal experiences to an adjudicator in a safe, impartial, supportive, and respectful hearing was a personal healing opportunity and a step towards reconciliation.

- 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.

- There were some 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.

- The power of apology in the healing and reconciliation process cannot be overstated. It may be argued that there could not have been justice or reconciliation without expressions of remorse and regret. Canada and the relevant Church 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 hearings and thus were not able to extend this expression of remorse and responsibility. It was important not to traumatize survivors by having individuals or organizations represented at their hearing with whom the claimant was not comfortable. However, if handled sensitively, improved processes - such as ensuring that the relevant Church was notified that a hearing had occurred to enable the Church to provide a written apology to the claimant in a timelier manner - could have supported the message that those entities were part of the process and wanted to play a constructive role in reconciliation efforts.

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

Most stakeholders felt that the provision of treatment following the IAP hearing was important for claimants' continued healing. In practice, though, Future Care Plans could have benefited from a more explicit recognition of the value and validity of traditional healing practices, and of the differential costs of obtaining treatment depending on the claimant's location.

- The IAP was, by intent and design, focused primarily on the individual. It enabled individual residential school survivors to receive compensation for the harms that were specifically done to them. At the same time, 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 and more streamlined administrative rules could have contributed to more collective healing opportunities.

- The powerful effect of Indian Residential Schools 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. 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. The opportunity to share one's experiences with family members in a supportive and validating environment could be an important step in intergenerational healing. However, there may have been scope to extend more 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.

- Although they were all parts of the IRSSA, the IAP, Truth and Reconciliation Commission, Common Experience Payment, and Aboriginal Healing Foundations operated for the most part as separate entities, and conducted their own information activities. As a result, there remained some confusion among residential school survivors as to what all these elements were intended to offer. Better co-ordination in the provision of information about all of the components of the IRSSA could have assisted residential school survivors in better understanding and taking full advantage of the Settlement Agreement as a whole. This might also have contributed to a fuller understanding of the legacy of residential schools by all Canadians.

One of the most complex issues emanating from the IRSSA 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 a financial award, but rather to share their personal experiences of the impact of Indian Residential Schools. In this way, 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 could not of itself eliminate past harms.

- At the same time, compensation was a concrete way of acknowledging the impact of the residential school experience.[57] Could healing and reconciliation have progressed had those responsible for the Indian Residential Schools continued to challenge in litigation their legal and financial responsibility for the harms that the schools caused?
- The delay and uncertainty in knowing what would ultimately be done with IAP records and the effect of that on promises to claimants of confidentiality as well as on the historical record was an ongoing source of concern for claimants and those involved in the IRSSA. It would have been preferable to have had a defined 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.

Adjudicators made a Statement of Reconciliation at a National Event of the Truth and Reconciliation Commission in Edmonton.

Conclusion:

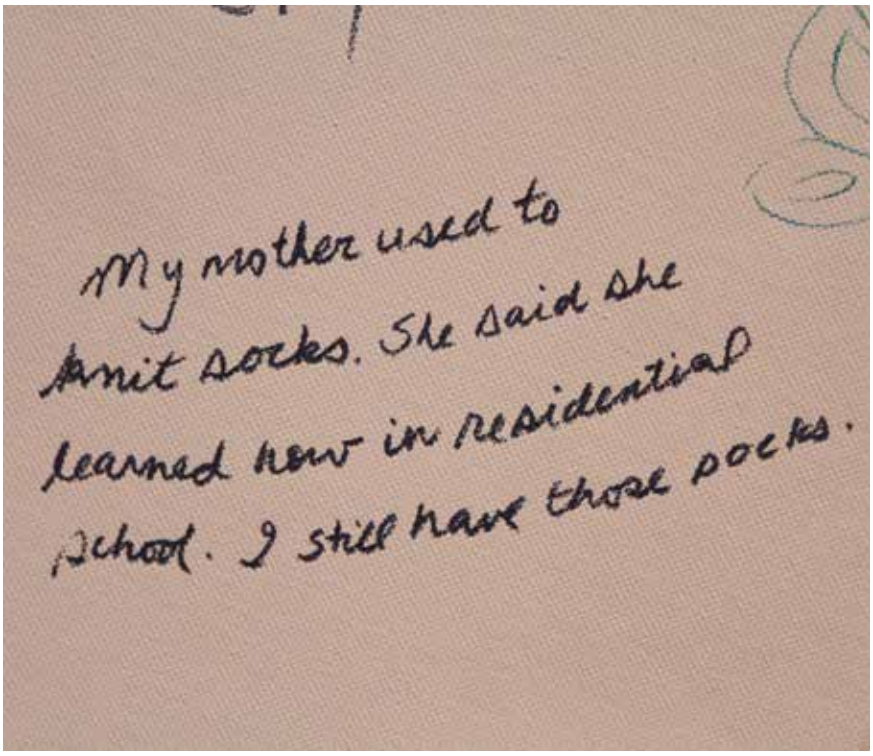
As part of the ground-breaking Indian Residential Schools Settlement Agreement, the IAP was the culmination of years of struggle by survivors to obtain compensation for the wrongs that the residential school system had inflicted. It was also an essential part of a larger continuum of efforts to heal the wounds of the past, move towards a broader reconciliation of its legacy, and build a more positive future.

The experience of implementing 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, $3.233 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.

There were also many aspects of that process itself – such as the inquisitorial approach, the approach to expert testimony and document production, negotiated settlements, cultural sensitivity, and the availability of support for claimants - that provided lessons that may have broader implications for the civil justice system.

However, beyond the numbers, the challenges and the achievements, what the Indian Residential Schools Settlement Agreement and the Independent Assessment Process were 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 overcome the harms that were inflicted; leaders of Indigenous communities who provided support to residential school survivors and who, on a daily basis, addressed 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.

[57] 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."



It might be tempting at this stage to consider that the IRSSA 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.[58] 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 steps forward with Phil Fontaine's (then Grand Chief of the Assembly of Manitoba Chiefs) public sharing of the abuse he had endured; with the Indian Residential Schools Settlement Agreement; with the Prime Minister's apology; and with the work of the Aboriginal Healing Foundation. 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 intended to be private 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 IRSSA – 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 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 IRSSA 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.

[58] 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.

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.

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"

Photos by Michael Tansey, Eric Lefebvre, Christi Belcourt and *IRSAS Telling Your Story* video