

TELLING YOUR STORY

The Independent Assessment Process



Indian Residential Schools

Adjudication Secretariat

Secrétariat d'adjudication

des pensionnats indiens

Telling Your Story

Length: 17:30 minutes
Produced by BearPaw Communications

Telling Your Story is a 17 minute video created to help Independent Assessment Process (IAP) claimants prepare for their hearing. A claimant is any former student of an Indian Residential School whose application has been admitted to the Independent Assessment Process before the deadline of September 19, 2012.

The deadline for Independent Assessment Process applications has passed, but there are still thousands of claims to be settled in hearings across the Canada.

If you are a claimant, family member, friend or support person for a claimant, this DVD is for you. Please share it with the claimant to help prepare them for their hearing.



Crisis Line

1-866-925-4419

www.iap-pei.ca

Information Line

1-877-635-2648

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1-877-635-2648

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***DVD Guidebook: Telling Your Story: The Indian Residential Schools
Independent Assessment Process***

This Guidebook will assist former students of Indian Residential Schools who have made a claim in the Independent Assessment Process (IAP) to prepare for their hearing. The DVD provides former students of Indian Residential Schools with information about what to expect at their IAP hearing, including their rights in the IAP. It also explains the roles and responsibilities of all of the participants at a hearing, including the adjudicator, Elders, Canada's representative, Resolution Health Support Workers, the church representative, the claimant and their lawyer. In addition, the DVD outlines the relationship between the IAP and the Indian Residential Schools Settlement Agreement, and outlines the role of each of the Parties to the Agreement.

Claimants in the IAP can expect a fair, impartial, safe, supportive, culturally appropriate and respectful IAP hearing. The hearing is the claimant's opportunity to provide detailed testimony to explain what happened to them at residential school and how it affected their lives.

The information provided in the DVD includes:

- Where can the hearing take place?
- Who are the hearing participants?
- What are claimant's rights at the IAP hearing?
- Who can attend the hearing with the claimant?
- How will a hearing unfold?
- What support services are available to the claimant?

Introduction to the Independent Assessment Process (IAP)

The Settlement Agreement established the Independent Assessment Process (IAP) a claimant-centred, non-adversarial, out-of-court process for the resolution of claims of sexual abuse, serious physical abuse, and other wrongful acts suffered at Indian Residential Schools (IRS). The Indian Residential Schools

Adjudication Secretariat (Adjudication Secretariat) deals with most claims through a hearing conducted by an adjudicator (neutral decision-maker) who listens to the claimant's story. The adjudicator uses the rules set out in the Settlement Agreement and decides on the compensation. Survivors have access to emotional and wellness supports through the Indian Residential Schools Resolution Health Support Program provided by Health Canada.

The deadline for applying for the IAP was September 19, 2012. In accordance with Settlement Agreement, applications are not accepted after this date.

In the IAP, there are three parties to each claim: the claimant, the person who has applied for compensation under the IAP; the Government of Canada, represented by an employee of Aboriginal Affairs and Northern Development Canada or a lawyer from the Department of Justice; and the church which was involved in the operation of the applicable residential school.

Claimants' rights in the Independent Assessment Process (IAP)

What claimants should know when going through the Independent Assessment Process

- Claimants may contact a Resolution Health Support Worker (RHSW) for their own emotional support or for the emotional support of their family, either in person or by telephone.
- Claimants may access a Crisis telephone line at 1-866-925-4419 (toll free) that is open 24 hours, seven days a week.
- Claimants may have a lawyer represent them in the IAP if they wish (recommended). Claimants may contact the following link if they need to find a lawyer:
<http://www.residentialschoolsettlement.ca/lawyers.html>

- Claimants may represent themselves in the process. Once their IAP application is accepted into the process, a Claimant Support Officer (CSO) will be assigned to their case. The CSO will assist the claimant through each step of the process. The CSO does not offer legal advice.
- If the claimant has any concerns with their lawyer, he/she may contact the Law Society in their region:
http://www.cba.org/cba/info/faq/law_society.aspx
- If the IAP claim goes to a hearing, the claimant may:
 - Request where they would like their hearing to take place; it may be in their community or a location in close proximity to their community or the nearest urban centre.
 - Have the Adjudication Secretariat pay for travel, hotel costs, and meals and incidentals incurred while travelling to and from a hearing location.
 - Request the following people to attend the hearing with them at no cost:
 - ✓ two support people of their choice. Claimants may bring more than two support people, but the Adjudication Secretariat will only pay for two;
 - ✓ a Resolution Health Support Worker to provide emotional support before, during and after the hearing, if requested; and
 - ✓ an Elder (or other spiritual person) to offer an opening prayer or ceremony before the hearing.
 - Request a male or female adjudicator.
 - Begin their hearings in a way that respects their beliefs and traditions; for instance, a traditional ceremony, a prayer or song.
 - Give their testimony in their language, and the Adjudication Secretariat will pay to have an interpreter attend the hearing.
 - Choose how they make an oath - they can take an oath on a Bible, an Eagle Feather, or simply affirm they will tell the truth.
 - Request breaks whenever they need one.

Independent Assessment Process (IAP) Hearing

Most claimants will attend an IAP hearing. Claimants can expect a fair, impartial, safe, supportive, culturally appropriate and respectful IAP hearing. For many, a hearing is not just a place to provide testimony. It also gives an opportunity to share their experiences, often for the first time. The hearing is the opportunity for claimants to explain what happened to them at residential school in detail and how it affected their lives.

The parties that participate in every hearing are:

- **Adjudicators** – have been selected by the parties to the Indian Residential Schools Settlement Agreement to adjudicate IAP hearings. Adjudicators are independent decision-makers who hear a claimant's evidence, ask questions, and decide if a claim receives compensation or not. They are usually lawyers.
- **Claimants** – are former students of Indian Residential Schools who made a claim under the IAP. They provide testimony about the abuse that happened as well as how the abuse affected their lives. It is in the best interest of the claimant to be as thorough as possible as this will help the adjudicator make a decision.
- **Claimant's Lawyer** – they represent the interests of the claimant. Their role is to listen closely to a claimant's testimony to make sure the claimant has every opportunity to provide the evidence necessary to ensure all the legal tests are met. They are not allowed to question the claimant directly, but may recommend the adjudicator examine a certain aspect of a claimant's experience.
- **Government of Canada representatives** – they represent the interests of the defendant, the Government of Canada. Their role is to listen closely to a claimant's testimony and to raise any concerns that the government may have about a claim. In addition, they make sure the adjudicator follows the rules and processes of the IAP. They are not allowed to question the claimant directly, but may recommend the adjudicator examine a certain aspect of a claimant's experience.

- **Church representative** – as a party to the Settlement Agreement, the church has the right to attend hearings, although some church organizations will respect a claimant's request that a church representative not attend the hearing. Most church representatives will provide pastoral support and offer the claimant a personal apology.

Other people who may attend the hearing, but only at the consent of the claimant, include:

- **Claimant's Support People** – Claimants have the right to bring two people of their choice to the hearing with them. The Adjudication Secretariat will pay for their travel expenses.
- **Resolution Health Support Worker (RHSW)** – Claimants have the right to request an RHSW to attend the hearing. They provide emotional support to the claimant that may arise before, during, and after the hearing.
- **Elders** – Claimants have the right to have an elder with them at the hearing. They may help a claimant prepare for their hearing, provide cultural support through prayers or ceremonies, and help a claimant through an emotional day. The Adjudication Secretariat will pay for an elder's travel expenses.
- **Interpreters** – Claimants have the right to provide testimony in the language of their choice, including any First Nations or Inuit dialect. The Adjudication Secretariat will select and pay for a qualified interpreter to assist at hearings for claimants who need one.

At the hearing, the adjudicator will ask the claimant questions. This helps the adjudicator to better understand what happened, to clear up any concerns, and to decide if there is enough evidence to support the claim. As the adjudicator is the only person allowed to question the claimant, a hearing is more like a conversation with the adjudicator, and not like an adversarial court process.

Adjudicators will work to build trust and allow claimants every opportunity to provide their full story about what happened at residential school and the impact of these events on their life. Every effort will be made to make the

hearing as comfortable as possible so that claimants may provide testimony in a safe and respectful environment. Claimants only have one hearing, so it is important that claimants be prepared to tell the adjudicator all that happened at residential school and how it affected their lives.

Hearings will never take place in a courtroom. They are closed to the public, and the people who attend will sign a confidentiality agreement.

At the hearing, claimants will be recalling painful events. Claimants often find this experience difficult and emotional. To ease anxiety and promote healing, claimants can make choices about how the hearing is arranged. Claimants may request a male or female adjudicator. Claimants may request where they would like their hearing to be; it may be in their community, or somewhere that is safe, comfortable, and private. The Adjudication Secretariat also has hearing centres in Winnipeg and Vancouver.

Claimants may choose how the hearing begins in a way that respects beliefs and traditions; for instance, a ceremony or a prayer. Claimants may also choose how they make an oath – they may take an oath on a Bible, an Eagle Feather, or simply affirm they will tell the truth.

If there are no issues raised at the hearing, the adjudicator then has 30 to 45 days to write a decision. However, if issues are raised, this may result in an adjourned hearing where Post-Hearing Activities need to be completed.

If an alleged abuser chooses to participate in the IAP, he or she will have a hearing on a different day. The claimant may attend the alleged abuser's hearing if they wish, but the alleged abuser cannot attend the claimant's hearing.

Legal Representation

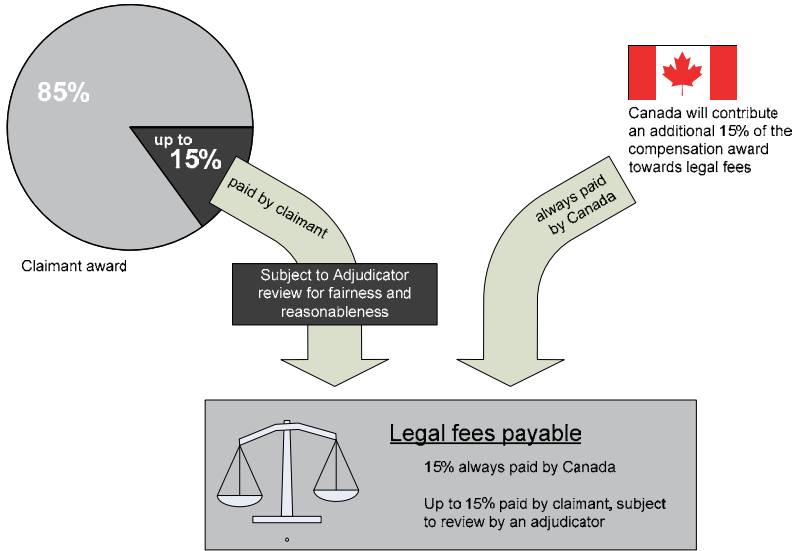
Claimants may decide to hire a lawyer or to be self-represented in the IAP. Most claimants hire a lawyer because the IAP involves complex legal concepts and processes. This is why all of the parties who signed the Settlement Agreement recommend hiring a lawyer to help with an IAP claim. As well, claims with lawyers may be processed more quickly and with higher compensation awarded than claims from self-represented claimants.

If a claimant decides to hire a lawyer, it is important to find one that is trustworthy. A claimant trusts a lawyer to not only deal with a sensitive topic, but to represent their interests in a fair and ethical manner. A claimant will have to speak openly and honestly about their experience at residential school and the impact to their life, because a lawyer will need to know all the facts about a claim, in order to fully represent the claimant in the IAP process.

There are more than 600 law firms across Canada that have represented IAP claimants, but any practising lawyer can take on these claims. To find one, the claimant may contact their provincial/territorial law society and/or lawyer referral service at the numbers below. Please note some lawyer referral services charge a fee, so the claimant must be sure to confirm when speaking with them.

Lawyers, legal fees and the IAP

In the IAP, most lawyers do not charge by the hour. They provide representation in return for a percentage of any compensation awarded to the claimant.



If a claimant has a lawyer, the Government of Canada will top up the compensation awarded by 15% to help pay for legal fees. The claimant is responsible for paying any legal fees above that, up to an additional 15%. The claimant may also have to pay GST/HST or PST. As an example, if the claimant receives a \$100,000 settlement and their lawyer charges 15%, the claimant will not have to pay any additional fees to their lawyer. If the claimant receives \$100,000 and their lawyer charges 20% (\$20,000), the claimant will have to pay their lawyer \$5,000 (20%-15% = 5%) out of their settlement, plus any taxes on the legal fees.

The maximum a lawyer may charge is 30 % of any compensation awarded to the claimant (the 15% paid by the Government of Canada, plus another 15% from the claimant's compensation award).

How does the claimant know if their lawyer is charging an amount that is fair?

Claimants have the right to ask their adjudicator to review their legal fees to ensure they are fair and reasonable. The claimant's lawyer must provide the fee agreement to the adjudicator. If the adjudicator decides the fees are not fair, he or she may reduce the amount the lawyer may charge the claimant.

The claimant will receive a copy of the adjudicator's legal fee ruling. It will state the amount of compensation the claimant should receive taking into account the legal fee ruling. The lawyer is bound by that ruling unless it is overturned on appeal.

How can Claimants learn more about legal fees and the IAP?

It is important for claimants to know their rights on legal fees. Claimants can request a review of their fees. The IRSAS provides information on legal fees as part of every IAP hearing.

For more information about legal fees, please visit www.iap-pei.ca or call this toll-free number: 1-877-635-2648.

**Provincial/Territorial Law Societies & Lawyer Referral Services
Contact Information**

Province/Territory	Law Society	Lawyer Referral Service
Alberta	1-800-661-9003 1-403-229-4700	1-800-661-1095 1-403-228-1722
British Columbia	1-800-903-5300 1-604-669-2533	1-800-663-1919 1-604-687-3221
Manitoba	1-204-942-5571	1-800-262-8800 (outside Winnipeg) 1-204-943-2305 (Winnipeg)
New Brunswick	1-506-458-8540	1-506-458-8540
Newfoundland and Labrador	1-709-722-4740	1-888-660-7788 1-709-722-2643
Northwest Territories	1-867-873-3828	1-867-873-3828
Nova Scotia	1-902-422-1491	1-800-665-9779 (outside Halifax) 1-902-455-3135 (Halifax)
Nunavut	1-867-979-2330	1-867-979-2330
Ontario	1-800-668-7380 1-416-947-3300	1-800-268-8326 (all Ontario) 1-416-947-3330 (within GTA)
Prince Edward Island	1-902-566-1666	1-902-566-1666
Quebec	1-800-361-8495 1-514-954-3400	1-514-866-2490 (Montreal) 1-418-529-0301 (Quebec, Beauce and Montmagny) 1-866-954-3528 (all other regions)
Saskatchewan	1-306-569-8242	1-306-569-8242
Yukon	1-867-668-4231	1-867-668-4231

Indian Residential School Crisis Line: 1-866-925-4419

Former Indian Residential School (IRS) students in crisis may call the IRS Crisis Line, a national, 24-hour toll-free support services operated by trained Aboriginal crisis counselors. The toll-free telephone number provides access to emotional and crisis referral services in both French and English. Counsellors can also provide information about accessing other health supports available to claimants.

<http://www.hc-sc.gc.ca/fniah-spnia/services/indiresident/irs-pi-eng.php>

**For further information about the IAP,
please call the Independent Assessment Process (IAP)
toll free information line at 1-877-635-2648**

www.iap-pei.ca

Twitter: @IRSASInfo