

## **CHIEF ADJUDICATOR DIRECTIVE 9**

### **PROCEDURES FOR JURISDICTIONAL REVIEW IN THE IAP**

The procedures set out in this document are intended to assist participants in the IAP to resolve jurisdictional issues that might prevent a claim from succeeding in the Independent Assessment Process (IAP). It is important that claimants do not invest substantial emotional effort, time and financial resources only to find out at the end of the process that their claims do not fall within the scope of the IAP. For this reason most Jurisdiction Pre-Hearing Teleconferences (JPHTs) will deal with jurisdictional concerns at the earliest stages of the process.

A jurisdictional issue is one where the Secretariat or any participating party asserts that the claim falls outside of the scope of the Indian Residential Schools Settlement Agreement, as such, should not receive a hearing in the IAP. Any party wishing to request a jurisdictional review or raise a jurisdictional issue on a claim by an Adjudicator can do so by emailing the IRS Adjudication Secretariat by via email at [ph-pa@irsad-sapi.gc.ca](mailto:ph-pa@irsad-sapi.gc.ca) or by writing to the Adjudication Secretariat at the address below:

Request for Jurisdictional Review  
Office of the Chief Adjudicator  
Indian Residential Schools Adjudication Secretariat  
#100 – 1975 Scarth Street  
Regina, SK S4P 2H1

All documents submitted will be distributed to all participating parties.

#### **1. Jurisdictional issue identified prior to admittance**

The Secretariat will admit claims to the IAP as of right where the application is complete and sets out allegations which if proven would constitute one or more continuing claims [IAP, Appendix II, para. i – page 19].

If the claim is not admitted into the IAP the Claimant will be advised why and given a chance to provide additional information. At the request of the Claimant, the Chief Adjudicator may review any final decision to refuse to admit an application into the IAP, and may confirm or reverse that decision. [IAP, Appendix II, para. ii – page 19].

## **2. Jurisdictional issue identified after admittance, but before the file is assigned to an Adjudicator**

After a claim has been admitted, any party or the Secretariat may identify a jurisdictional issue to be referred to Admissions or the Chief Adjudicator's Office (contact information above).

Should a file be found to have been admitted by administrative error, the Manager of Admissions may "unadmit" the claim, in which case, the Claimant will have the option of seeking a review of the admission decision by the Chief Adjudicator.

In all other cases where a jurisdictional issue arises, the Chief Adjudicator's Office will refer the matter to an Adjudicator for review, and the process outlined in section 3 (below) will be followed.

In cases where a jurisdictional review is referred on a file, whether to Admissions or the Chief Adjudicator's Office, the parties will be notified and the next steps set out.

## **3. Jurisdictional issues referred to an Adjudicator for determination**

After a claim has been admitted, where the Secretariat or any party raises issues of jurisdiction under the IAP, the Chief Adjudicator's Office will assign an Adjudicator to review the file. Participating parties will be notified of the request. The Adjudicator will review the file to determine whether a JPHT is necessary. The adjudicator has the following options, and his or her decision as to which option to exercise is not subject to review:

### **(a). Continue in the regular stream.**

Following a review of the documents, where an Adjudicator determines that a JPHT is not warranted, he/she will notify the parties by letter and set out a list of all the materials considered. The claim will continue in the regular stream toward a hearing.

### **(b). Proceed to JPHT.**

Where the Adjudicator decides that a JPHT is warranted, the parties will be notified in writing. The parties will provide their submissions on the issue of jurisdiction and any materials on which they rely within 30 days of the date of the receipt of the Adjudicator's written notice, or such further time as the Adjudicator may allow. Any party wishing to provide materials in reply will have 10 days from receipt of such materials, or such further time as the adjudicator may allow, within which to do so. All submissions / materials the parties may wish to provide must be received at the Chief Adjudicator's Office and circulated to the other participating parties not later than ten days prior to the JPHT.

**(c). Holding a JPHT**

A scheduler will contact all parties to canvass availability for a JPHT. The Adjudicator will hear submissions from the parties and ask additional questions as required. Represented claimants do not have to participate in the JPHT, however self-represented claimants must be included in the teleconference. An IAP Support Provider will participate with the self-represented claimant. The self-represented claimant may also invite personal support and/or health supports to sit in on the call if they choose.

All JPHTs will be recorded and available for transcription.

**(d). Outcome of JPHT**

Following the JPHT, the Adjudicator's determination will be distributed to all parties by the Office of the Chief Adjudicator.

**(i). JPHT determination – claim continues**

Where the adjudicator decides that jurisdictional issues should be left to be determined during the hearing, a *letter* will be sent to all parties indicating that the claim will continue in the IAP. The file will then be returned to the general file stream to allow for the preparation of the case as otherwise provided in the IAP. **If the claim continues in the IAP, the parties' rights to request a review will apply only after the final decision of the Adjudicator in accordance with para. III, l of the IAP (page 14).**

**(ii). JPHT determination – claim will not continue**

If the Adjudicator decides that the claim is outside the jurisdiction of the IAP a *decision* will be sent to all parties informing them that the claim will not continue. The decision will be produced in accordance with para. III, k of the IAP (page 13). **If a decision is made that the claim is outside of the jurisdiction of the IAP, the parties may seek a review in accordance with the provisions found on page 14 of Schedule D to the IRSSA.**

**4. Jurisdictional issue identified after the file has been assigned to an Adjudicator**

Where a jurisdictional issue is raised after a file has been assigned to an Adjudicator, the matter will be brought to the attention of the assigned Adjudicator. The Adjudicator may determine that a JPHT is warranted or may proceed to the claimant's hearing.

Jurisdictional issues that emerge during a hearing will be dealt with through submissions. Adjudicators must address any jurisdictional issues in their decision.

-----  
Nothing in this policy precludes an Adjudicator from agreeing to an expedited hearing, in order to preserve the evidence of the claimant while the jurisdictional issues are resolved.

(Approved by IAPOC 02/25/11)