

Indian Residential Schools

Adjudication Secretariat

Secrétariat d'adjudication

des pensionnats indiens

Annual Report 2008

About the Indian Residential Schools Adjudication Secretariat

The Indian Residential Schools Adjudication Secretariat is an independent, quasi-judicial tribunal providing impartial claims processing and decision-making for claims of sexual and physical abuse at federally-administered Indian Residential Schools.

The Adjudication Secretariat was established in 2003 to support adjudicators hearing claims in the government's Alternative Dispute Resolution (ADR) process. Upon implementation of the Indian Residential Schools Settlement Agreement in September 2007, the Secretariat began receiving claims in the Independent Assessment Process (IAP). The IAP is a non-adversarial, out of court process for claims of sexual abuse, serious physical abuse, and other wrongful acts causing serious psychological injury to the claimant. The IAP is the only option for former residential school students to resolve these claims, unless they opted out of the Settlement Agreement.

The Adjudication Secretariat reports to the Chief Adjudicator, Daniel Ish, Q.C., who was appointed by the IAP Oversight Committee and confirmed by the courts.

Daniel Ish, Q.C.
Chief Adjudicator

Kaye E. Dunlop, Q.C.
Rodger W. Linka
Delia Opekokew
Daniel Shapiro, Q.C.
Deputy Chief Adjudicators

Jeffery Hutchinson
Executive Director

From the Chief Adjudicator

This is my first Annual Report to the Oversight Committee. While I meet regularly with the Committee and provide ongoing reports, the terms of the Independent Assessment Process in the Settlement Agreement require that I provide a formal report annually. This first Annual

Report covers the period from September 19, 2007 (Implementation Day) to December 31, 2008.

The past 16 months have been marked by a period of growth in the Adjudication Secretariat, both in adjudicative and

administrative resources. Since inception, 80 adjudicators have been appointed and trained. Adjudicators are appointed by contract after an open process that involves all of the stakeholders.

The administration of the Adjudication Secretariat is composed of Federal public

servants headed by the Executive Director. The Adjudication Secretariat inherited approximately 33 staff members from the former Alternative Dispute Resolution program and that number has grown to approximately 150 in numerous locations across Canada, with the greatest

number in the Regina office. It is anticipated that the number of staff in the Adjudication Secretariat will ultimately increase to approximately 220.

Although the staff of the Adjudication Secretariat are members of the

federal public service, the Secretariat is clothed with independence pursuant to the orders of the supervising Courts and the IAP provides that the Secretariat reports to the Chief Adjudicator. However, although the adjudicative process is fully independent, the Adjudication Secretariat follows the

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financial accountability requirements of government and relies upon Indian and Northern Affairs Canada (INAC) for the provision of “corporate services.”

Corporate Services include financial processes, human resources and procurement of goods and services mechanisms.

The Secretariat continues to work on ‘calibrating’ its relationship with the government. This work took a new twist in June 2008 when INAC absorbed the former Indian Residential Schools Resolution Canada. We recognize our responsibility to provide sound and reliable reporting for our financial accountability; at the same time, it is imperative that proper implementation of the IAP is not inappropriately delayed or impaired by the government’s requirements.

This report is intended to give an overview of operation of the Adjudication Secretariat and to provide specific information to the Oversight Committee and the stakeholders represented in the IAP. It has been written in anticipation that it will be shared with a broader audience and, toward that end, an attempt has been made to provide information with as much clarity as possible.

The initial months of the IAP have been very challenging largely because of the rapid growth of the organization that has

occurred while simultaneously striving to meet the significant substantive, procedural and production requirements of the historic Settlement Agreement.

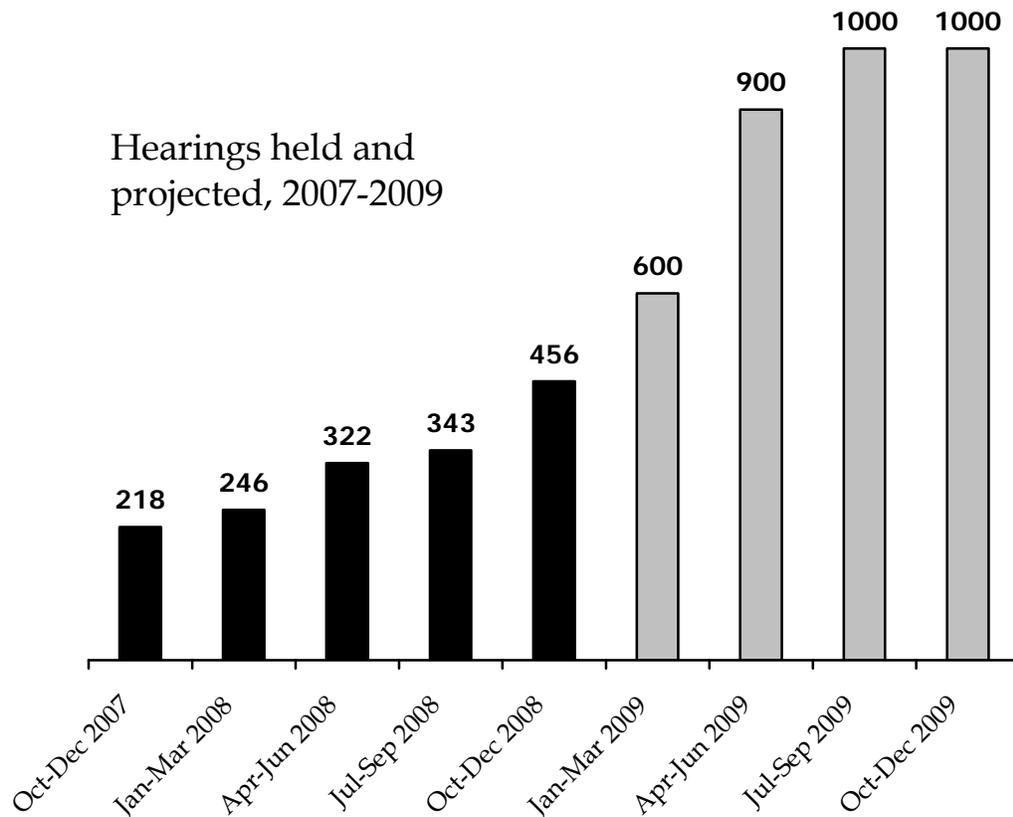
Over the last 12 months the Secretariat has essentially doubled the rate at which hearings are being scheduled, and will see this rate continue to climb in 2009. All of the necessary processes and resources are being put in place to ensure that the number of hearings held in 2008 (over 1500) will more than double in 2009. In addition to this growth, the Secretariat remains committed to delivering a quality process for claimants and, despite growing pains, is taking measures to ensure that rapid growth does not come at the cost of lower quality. The Secretariat continues to work in collaboration with a range of parties and stakeholders to ensure that the IAP remains a quality process for all involved.

The challenges will continue in the years ahead as the IAP proceeds to conclusion. The common denominator of all concerned – stakeholders, adjudicators, staff – is the commitment to the most worthy mission that we have accepted arising out of Canada’s tragic legacy of Indian Residential Schools.

Daniel Ish, Q.C.
Chief Adjudicator

Claims received	9375	5542 New claims 1205 ADR transfers 2271 Continuing ADR 357 Re-openers
Hearings held	1736	1068 ADR 104 ADR Model B reviews 564 IAP
Decisions issued	1397	1279 ADR 118 IAP
Negotiated settlements reached	55	55 IAP
Compensation awarded	\$92,603,660	\$81,899,609 ADR \$10,604,051 IAP

All figures September 19, 2007 to December 31, 2008



Implementing the IAP

The Independent Assessment Process (IAP) was launched September 19, 2007. Since that date, the Adjudication Secretariat has been responsible for the remaining Alternative Dispute Resolution (ADR) claims, as well as Independent Assessment Process claims. 2008 marked a fundamental shift for the Adjudication Secretariat, away from the 'building' mode that marked implementation of the Settlement Agreement and toward a culture of managing for results.

“Managing for results” means getting as quickly as possible to a higher rate of hearings per month. To achieve this result, every function in the Secretariat has developed specific, quantifiable measures of performance. We seek to build a management culture in which new ideas and approaches for managing claims are welcomed and encouraged. Some actions taken over the past year to better fulfill our role include:

- We have reviewed the approach to scheduling hearings and making

logistical arrangements, as the Adjudication Secretariat moves from lower levels of productivity to unprecedented levels in 2009.

- We redesigned document management protocols in 2008 to eliminate critical “bottlenecks” in the process.
- A total of 78 adjudicators were appointed by the end of 2008 to meet the increasing workload.

As a result of these and other initiatives, the rate of hearings per month at the start of 2009 is more than double the rate at the start of 2008.

In reaching these results, the IRSAS continues to uphold its core values of excellence, client-centredness and impartiality. We seek to provide a quality experience to every claimant, but also to fulfill the desire of all claimants to have their claims dealt with as quickly as possible.

results

Key challenges

Implementation of the IAP has not been without its challenges, however. Some of the major issues encountered this year include:

- It has taken longer than expected to put critical corporate supports in place. At the end of 2008 the Adjudication Secretariat is better supported in terms of human resources, procurement, and financial management than at any previous time. However, these delays leave the Adjudication Secretariat with significant lost ground to make up in coming years.
- The Adjudication Secretariat did not achieve full staffing in 2008. Approximately 25% of the total staff complement remain to be filled in 2009. The Secretariat experienced delays in hiring new staff due to the integration of corporate systems with INAC. At the same time, however, HR support increased during 2008 and new staffing is expected to proceed briskly starting in April 2009.
- The Secretariat continues to review the application of government

procurement tools to the unique work of the IAP. The goal is to have robust, efficient and appropriate mechanisms in place to deliver items required by the Settlement Agreement, such as medical and expert assessments.

- The integration of the Adjudication Secretariat into INAC has placed a particular burden on our management and staff as it aligns reporting structures, processes and management practices with INAC, especially during a period of rapid growth and internal change.

Despite these challenges, the integration of the Adjudication Secretariat into INAC is well underway. Senior leadership of both organizations are committed to ensuring that the independence of the Chief Adjudicator and the Secretariat is respected. Practical solutions are being developed to achieve this goal.

In 2009, we will continue to work with the highest levels within INAC to ensure an adequate level of corporate support for the IAP.

Admissions

The admissions process, as prescribed in the IAP Model, ensures that only eligible claims enter the Independent Assessment Process. In order to ensure that the majority of claims could be dealt with expeditiously while dealing with more difficult claims with care and sensitivity, the services of Crawford Class Action Services were engaged to receive applications and perform an initial, primary review to determine eligibility.

The Adjudication Secretariat has been afforded the independence required to render impartial decisions on eligibility that are faithful to the Settlement Agreement. Of the 5542 applications received from implementation day to the end of 2008, 76% were admitted directly by Crawford. The remainder were referred to the Adjudication Secretariat's Admissions Unit, where further information is requested from the applicant. Ultimately, only 5% of claims have been refused admission.

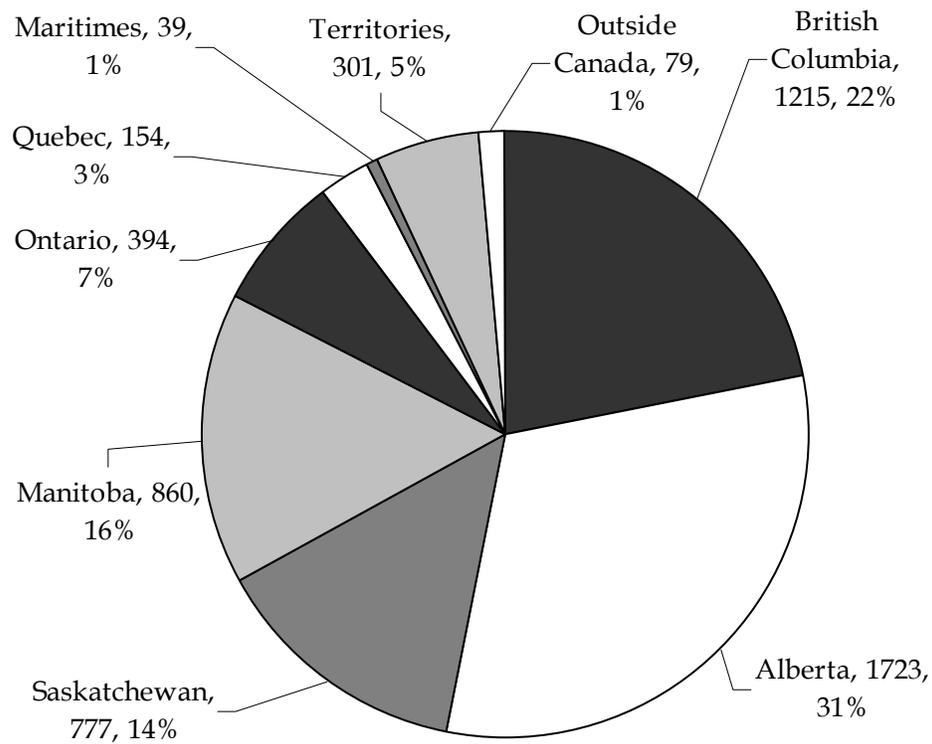
An applicant who is not admitted to the IAP has the right to appeal to the Chief

Adjudicator, who will confirm or reverse the Secretariat's decision. By the end of 2008, seven appeals had been filed and two decided; in both cases, the Chief Adjudicator confirmed the decision not to admit the claim.

Reasons for claims not admitted to the IAP	
School not covered by Settlement Agreement	148
Declaration not signed	2
Claim already settled in ADR (not eligible for re-opener)	58
Claim already settled in litigation	59
Claim dealt with at trial	1
Claimant opted out of Settlement Agreement	1
No continuing claim	67
Total non-admit letters sent	336

eligibility

IAP applications received by province



Total IAP applications received to December 31, 2008: 5542

Case management

Once a claim is admitted to the IAP or screened in to the ADR process, it must be prepared for a hearing. The claimant will submit their mandatory documents and any other material to support their claim. Canada, meanwhile, will produce its documents on the claimant's attendance at an IRS and records of any alleged perpetrators. Canada will also attempt to locate and contact any living alleged perpetrators as required by the IAP.

In the ADR process, Canada coordinates case management and refers hearing-ready cases to the Adjudication Secretariat for scheduling. The Secretariat performs case management for IAP claims.

In mid-2008, the Adjudication Secretariat significantly restructured its case management process to function more effectively as a sophisticated court registry. At the time an IAP claim is admitted, claimants' counsel are provided with all the information required to make the file ready for a hearing. Counsel submit a complete documentary package that complies with the Settlement

Agreement, along with a 'request for hearing' certifying that all necessary documents have been submitted.

Initially about 80% of the document packages received by the Secretariat were incomplete, and required further staff follow-up before a hearing could be scheduled. This has improved dramatically in 2008 to the point that fewer than 40% of document packages now require further follow up. In 2009, we will continue to improve communication with counsel to ensure a common understanding of the document requirements.

During the year, the case management unit certified 858 IAP claims as ready for scheduling. A further 359 claims were scheduled for hearings on an expedited basis – without a complete package of claimant documents – because of significant risk to the claimant's health. The readiness of claimants' document packages remains a primary challenge to achieving a higher rate of hearings each year.

readiness

Hearings

For most claimants, a hearing is the central event in the resolution of an IAP or ADR claim. It is an opportunity to meet face-to-face – with Canada, with the church organization, and sometimes even with the alleged perpetrator – and tell the intimately personal story of their experience at residential school. 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.

The Adjudication Secretariat arranges hearings across the country, in the largest cities and the smallest communities. Hearings are held in boardrooms and living rooms, in law offices and band offices, and in nursing homes and hospitals. Travel costs are paid for up to two support people to accompany the claimant, and arrangements are made for elders, interpreters, and traditional ceremonies or prayers when desired by the claimant. The goal throughout is to provide a hearing experience in which the claimant feels safe, respected, and able to discuss their residential school experience.

The Adjudication Secretariat's scheduling and hearings management units arranged 1632 hearings held between September 19,

2007 and December 31, 2008. In addition, a further 406 hearings had been arranged by the end of the year, to be held in early 2009.

Negotiated settlements

The IAP also allows claims to be settled without a hearing, when the claimant and the government are able to agree on an award within the compensation rules. While any claim can be settled through negotiation, this process is especially useful in cases where the claimant has already given evidence in another forum, such as an examination for discovery in litigation. In 2008, 55 negotiated settlements were concluded.

The Adjudication Secretariat sees negotiated settlements as an important tool to resolve claims expeditiously. In 2009, we will work with the parties to explore new possibilities for settlements. The success of negotiations, however, ultimately depends on the parties' capacity to negotiate and willingness to provide reasonable settlement mandates in a timely way.

flexibility

Client services

Although the IAP was designed with the expectation that most claimants will have legal counsel, the process is open to self-represented claimants. To date, about 13% of claimants have chosen to apply without a lawyer.

The Adjudication Secretariat recognizes its special responsibility to assist self-represented claimants in navigating the IAP, and has developed several programs to assist:

- The outreach program ensures that former students are aware of their options for resolving claims of abuse at Indian Residential Schools. Trained community relations officers provide community information sessions and answer questions about the IAP.
- The information line provides basic information about the IAP and how to apply.
- The claimant support provider program ensures that claimants who choose to proceed without a lawyer have a single point of contact to assist

them while they resolve a claim in the IAP. Support providers, most of whom are Aboriginal, are available throughout the process to answer questions and provide assistance to self-represented claimants in preparing for and participating in an IAP hearing.

All former students have access to services of the Resolution Health Support Program, administered by Health Canada. These include a 24-hour crisis line, trained resolution health support workers to support former students while resolving a claim, and access to professional counseling, elder services, and funding for transportation costs.

Because of the complexities involved in resolving a claim in the IAP, the Adjudication Secretariat continues to recommend that all claimants retain legal counsel. However, whether a claimant is represented or not, we strive to ensure that claimants and other participants are treated with fairness and sensitivity throughout the resolution process.

sensitivity

Adjudication

Providing fair, impartial decision-making is at the heart of the Adjudication Secretariat's role in helping resolve the legacy of residential schools. The adjudicator is central to the non-adversarial nature of the ADR and IAP: he or she manages the hearing and poses all questions to the claimant and other witnesses. There is no cross-examination. After the hearing, the adjudicator makes all findings of fact and awards compensation according to a scale in the Settlement Agreement.

Since Implementation Day, the Secretariat has retained a total of 78 adjudicators selected by the stakeholders.

Adjudicators are chosen by a competitive process that stresses not only legal competence, but their awareness and understanding of Aboriginal cultures and their sensitivity to the needs of claimants. In 2009, we will ensure that adjudication capacity is sustained in order to hold hearings in a timely way.

Legal fee reviews

A new activity in 2008 was the review of claimants' legal fees by adjudicators. This process, which was included in the court orders implementing the Settlement Agreement, ensures that fees are fair, reasonable, and within the 30% cap set by the courts. Canada will always pay 15% of the claimant's award as a contribution toward legal fees if the claimant is represented. The Chief Adjudicator or his designate hears appeals of adjudicators decisions on legal fee reviews.

impartiality

Looking ahead

The year 2008 saw significant progress in implementation of the Indian Residential Schools Independent Assessment Process. 'Construction' of the Adjudication Secretariat's machinery – one of the largest specialized tribunals ever assembled in Canada – was substantially achieved, despite significant the challenges described in this report.

Over 5000 new IAP applications have been received. Over 1600 hearings were held across the country – but more importantly, the rate of hearings scheduled by December 2008 was more than double the rate when the year began.

Significant progress has been achieved. Yet, we know that much more will be required in the coming years to meet the expectations of former students and the other parties to the Settlement Agreement.

The Adjudication Secretariat is ready to

meet this challenge. Several significant goals have been set for 2009:

- Resources are being secured to double the number of hearings held in 2009. This will address the implementation delays during the start-up phase. It will, however, require the sustained commitment of all the parties to prepare claims that are ready for hearings in a timely fashion.
- Adjudication capacity will be sustained to meet the projected demand for hearings.
- The Secretariat will complete its staffing to the planned total of 220 employees.
- The Secretariat will restructure its 'back office' financial systems to improve administrative efficiency. In so doing, we hope to improve service to parties and ensure the more prompt

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reconciliation

payment of invoices.

- The Secretariat will review its processes based on a Claimant-Centred Service Strategy.

As we look forward to 2009 we see tremendous potential for increasing the number of hearings and decreasing the waiting time for claimants. To do so will require a concerted effort by all stakeholders. The rate of submission for documents and research will need to improve, and more efficient ways of scheduling hearings will need to be tested. All of this, however, must be done while remaining true to the values articulated through the Settlement Agreement: providing a process that promotes healing and reconciliation while being fair, compassionate, impartial and claimant-centered. For its part, the Indian Residential Schools Adjudication Secretariat will proceed in 2009 with the idea of "continuous improvement" at the fore.

Group IAP

The Settlement Agreement also provides for IAP claimants to proceed together through the process. Group IAP empowers claimants to determine for themselves the services they need to make the resolution journey a supportive experience.

The Adjudication Secretariat administers a contribution program, enabling groups of eligible claimants from the same community to obtain funding for healing and reconciliation activities, as well as other support services as they proceed through the IAP.

Groups develop their own resolution plan, which can include meetings of members, workshops, healing activities and ceremonies. In 2008, one such group was funded. Many more groups are coming forward and will receive contribution funding in future years.

Indian Residential Schools ♦ Pensionnats indiens

The **Independent Assessment Process**
Le **Processus d'évaluation indépendant**

fair ♦ consistent ♦ compassionate
impartial ♦ claimant-centered
équité ♦ cohérence ♦ compassion
impartialité ♦ souci du requérant

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Indian Residential Schools

Adjudication Secretariat

Secrétariat d'adjudication

des pensionnats indiens

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