Indian Residential Schools
Adjudication Secretariat
Secrétariat d'adjudication
des pensionnats indiens

Bringing closure, enabling reconciliation: *Update on the completion strategy for the Independent Assessment Process*

Chief Adjudicator's Update to the Supervising Courts

May 9, 2017

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1. Introduction

This is an update to the December 2013 report entitled "*Bringing closure, enabling reconciliation: A plan for resolving the remaining IAP caseload*" (also called the "Completion Strategy"). The Chief Adjudicator developed the Completion Strategy in consultation with the Oversight Committee (OC) and the National Administration Committee (NAC), and submitted it to the supervising courts in January 2014 for their information. The report outlined a proposed plan for resolving the remaining Independent Assessment Program (IAP) caseload in a fair, impartial, and claimant-centred manner.

The supervising courts were not asked to approve an extension to the timelines of the IAP because the IAP must continue until all claims are resolved. However, the Completion Strategy accompanied the Chief Adjudicator's application for approval of specific measures to help ensure the timely completion of the IAP. These included two Requests for Direction (RFDs) submitted with consent of all parties: the Lost Claimant Protocol (LCP) which provided the Indian Residential Schools Adjudication Secretariat ("IRSAS" or the "Secretariat") with additional authorities to search for claimants who have lost contact with their lawyer or the Secretariat; and, the Incomplete File Resolution (IFR) procedure which allowed the Chief Adjudicator to resolve claims that could not proceed to a hearing. These RFDs were approved by the supervising courts on June 19, 2014.

The Completion Strategy provided an update on the progress of the IAP, including the fact that over three times more applications were received than had been originally estimated, and described activities put in place to improve the rate of claims resolution. The report also noted the need to provide support to self-represented claimants, provide funding to allow healing activities for groups of claimants, and engage claimants and key partners/stakeholders to foster a culturally sensitive approach to identify and address claimants' needs and build awareness of claimants' rights in the IAP. Finally, the report identified several factors that could put the completion timelines at risk, including issues with moving claims to resolution, availability of parties to attend hearings, capacity of the Secretariat to arrange hearings, funding, and other issues.

The plan envisioned that:

- all first claimant hearings would be completed by the spring of 2016
- all post-hearing work would be concluded by the spring of 2018
- post-decision work (i.e., reviews, legal fee rulings/appeals) would be finished during 2018-19
- administrative closure of the Secretariat would occur during 2019-20

It has been over three years since the Chief Adjudicator brought the Completion Strategy to the supervising courts, and much has happened during this time which has impacted on the IAP. This report provides an update on the Completion Strategy, including progress made to date in resolving IAP claims, initiatives undertaken to ensure timely resolution of claims, and challenges/risks to resources and to completion of the IAP in the estimated timeline provided to the courts in January 2014.

2. Background

The Indian Residential Schools Settlement Agreement ("IRSSA" or the "Settlement Agreement") was implemented on September 19, 2007 as a comprehensive and lasting resolution of the legacy of Indian Residential Schools, to resolve the largest class action settlement in Canadian history. The IAP is one of two individual compensation components within the Settlement Agreement[1]. The IAP resolves 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 students of residential schools to resolve these claims, unless they opted out of the Settlement Agreement[2].

Chief Adjudicator Daniel Shapiro, who was appointed by the IAP OC and confirmed by the supervising courts in 2013, is responsible for the administration of the IAP. The Chief Adjudicator is supported by the Secretariat, the independent, quasi-judicial tribunal providing impartial application processing and decision-making in the IAP. The Secretariat became one of Canada's largest tribunals, at its peak holding 4,200 face-to-face hearings each year with the support of over 100 adjudicators and over 250 staff.

IAP applications were accepted from September 19, 2007 to September 19, 2012[3]. Over 38,000 IAP applications have been received, over three times Canada's original estimates.

[1] *The Settlement Agreement also includes a Common Experience Payment for eligible class members, as well as non-monetary measures including a Truth and Reconciliation Commission, Healing funding, and a Commemoration program.*

[2] *The IRSSA provides that persons who did not pursue a claim may be entitled to go to court after the last day for filing in the IAP even if they fall within the IAP class [Articles 4.06(i) and 11.02(3]).The IAP also provides that a claimant may ask the Chief Adjudicator to grant access to the courts to resolve a continuing claim (Schedule D, III(b)(iii), on p. 8).*

[3] *The supervising courts 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, and the supervising courts deemed some applications from the Blott RFD to be submitted after the deadline.*

3. Progress towards Completion of the IAP

As of March 6, 2017, 96% (36,664) of all IAP claims had been resolved, a substantial increase from the 58% reported in the 2013 Completion Strategy.

There remain 1,432 claims in progress (4%), about one-half of which (774) are at the pre-hearing stage, and the other one-half (658) are post-hearing. Over one-third (542) of the remaining claims are on hold, primarily because Canada has asked the IRSAS to put them on hold while it resolves issues such as jurisdiction for deceased persons.

The following discusses progress at each stage of the IAP.

3.1. Applications

Initial planning for the IAP anticipated a total of 12,500 applications, including new claims originating in the IAP, claims transferred from the ADR process[4], continuing ADR claims[5], and applications to re-open settled ADR claims[6]. In early 2011, the Secretariat developed a revised forecast of 29,700 IAP applications, based on the actual experience to that date.

The application deadline was September 19, 2012, and the number of applications received was far higher than anticipated. By March 6, 2017, a total of 38,096 applications were received. This number includes 760 claims received after the September 19, 2012 deadline, which could not be processed. It also includes a small number of claims which the supervising courts allowed in after the application deadline. To date, two court orders have been granted of this type. Mistassini Hostels is a residential school that the supervising courts added to the list of Indian Residential Schools in 2013. In addition, a June 2012 court order regarding Blott and Company deemed that any claim from a former Blott client has met the deadline[7].

Four applications to add institutions to the Settlement Agreement using the criteria in Article 12 remain before the courts: Teulon Residence (Manitoba) is waiting to see if an application for leave to appeal to the Supreme Court of Canada will be granted; Timber Bay Children's Home (Saskatchewan) is awaiting decision on an appeal; Kivalliq Hall (Nunavut) is being appealed by Canada; and Fort William Sanatorium School (Ontario) is awaiting a decision. The Chief Adjudicator is not a party to these cases. At this time it is not possible to predict the outcome or

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[4] *Article 15.02 of the Settlement Agreement provides that certain pre-hearing claims could be transferred from the ADR process to the IAP.*

[5] *On the Implementation Date, September 19, 2007, there were 2,298 unresolved claims in the ADR process. The Secretariat continued to adjudicate ADR claims until the conclusion of the final claim in 2013.*

[6] *Article 15.01 of the Settlement Agreement allows certain ADR claimants to apply to have their settled claim re-opened to reconsider specific matters (student-on-student abuse and opportunity loss) that were not addressed in the ADR. Some of these "re-openers" require new hearings, while others are decided based on the application materials. Almost 1,040 ADR claims have been re-opened. Most "re-opener" applications were received in the early years of the process. Article 15.01 also provides for monetary top-ups of certain ADR awards, which were administered by Canada.*

[7] *On June 19, 2012 the Honourable Madam Justice Brown of the BC Supreme Court ordered the removal of Blott and Company from further participation in the Settlement Agreement. Further, Justice Brown ordered the expeditious transfer of all Blott and Company clients' claims to other qualified lawyers. Amongst the Blott and Company files were 630 unsubmitted application forms.*

timetable for conclusion of these cases, but the addition of any schools to the IAP at this late date will have an impact on resource requirements and timelines for completion of the IAP. The risks associated with this issue are discussed in more detail in Section 5.

3.2. Claims Admitted

While the number of applications received is a key driver of activity in the IAP, only those claims that are admitted to the process – that is, applications that describe at least one eligible act of abuse at an eligible Indian Residential School – receive a hearing or negotiated settlement. The Secretariat is responsible for admitting claims to the IAP (Schedule D to the Settlement Agreement). Applications are admitted where the application is complete and sets out allegations which, if proven, would constitute one or more continuing claims, and where the claimant has signed the declaration in the application form, including the confidentiality provisions[8].

The admissions process was substantially concluded by the spring of 2015. As of March 6th, approximately 33,800 claims had been admitted into the IAP, representing almost 90% of all claims received. Fewer than 30 applications were awaiting an admission decision and all are reactivated claims (e.g., re-established contacts from the LCP, newly identified estates for deceased claimants), those newly admitted into the IAP as the result of a court order (i.e., Blott), or claims on hold. About one-third of the applications are on hold because the claimants cannot be found or because Canada is determining if it has jurisdiction over the claim for a deceased claimant.

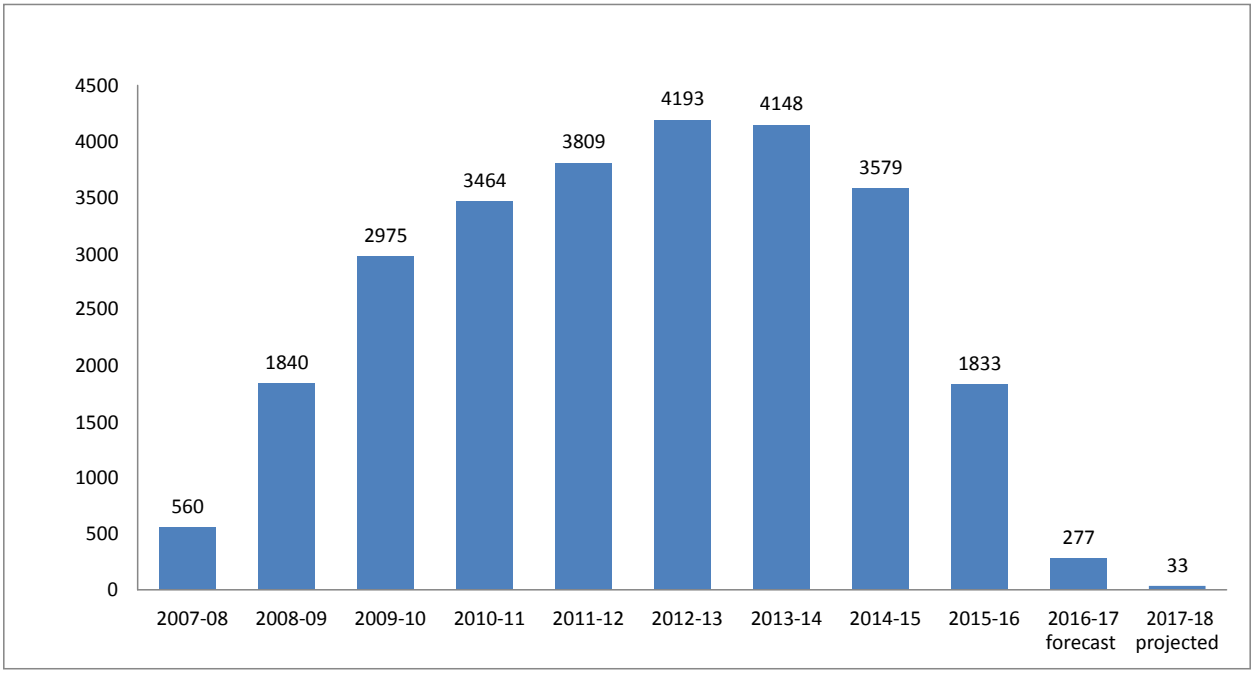
3.3. Hearings Held

The IAP was initially designed to meet the ambitious target, set in the Settlement Agreement, of holding 2,500 hearings[9] per year. When it became clear that the volume of applications would far surpass expectations, work began to increase capacity to hold more hearings each year. As Figure 1 illustrates, the number of hearings increased rapidly in the first three years, and continued to increase by at least 10% per year until 2012-13, at which time the number of hearings began to decrease as the volume of hearing-ready claims declined.

[8] *Settlement Agreement, Schedule D, Appendix II, found on page 19.*

[9] *Throughout this report, "hearings" refers to first claimant hearings, or the first hearing required on each claim, where the claimant provides his or her evidence to the adjudicator. Some claims require additional hearings, including hearings for alleged perpetrators or other witnesses, to cross-examine medical or expert assessors, or to obtain further evidence from the claimant. These additional hearings are modelled in the rate and timing of decisions issued.*

Figure 1: Number of first claimant hearings held, per year



In 2011, the OC agreed upon a target of 4,500 hearings per year beginning in 2012-13. However, at various times the Secretariat faced a number of challenges in increasing the number of hearings, including:

- a shortage of hearing-ready files due to delays in obtaining mandatory documents from document-providing agencies (e.g., employment records);
- claims where the Secretariat and/or claimant counsel could not locate the claimant;
- deceased claimant files that could not move forward to resolution without an administrator;
- some claimants who did not feel ready to attend a hearing;
- some claimants who struggled to represent themselves due to physical or mental health issues;
- some claimants who could not obtain legal counsel;
- some claims that had jurisdictional issues;
- insufficient capacity among claimants' counsel, adjudicators, Canada's representatives, health support workers, or Secretariat staff; and,
- difficulty hiring Secretariat staff due to insufficient support from INAC human resources.

Each of these factors, at some point, limited the ability to hold more hearings and impacted on the ability to meet the obligation of Article 6.03(1)(b), (c) and (d) of the Settlement Agreement which established performance standards for timely processing of claims. Although it was not possible to reach the 4,500 target, in 2012-13 and 2013-14, the number of hearings reached almost 4,200.

As discussed in Section 4, a number of targeted approaches were developed to try to find solutions for many of these issues (see Appendix A for more detail).

In the 2013 Completion Strategy, it was projected that all first claimant hearings would be held by the spring of 2016. This target was substantially met, with the exception of a small number of unexpected claims that have come back into the process, as a result of the Blott court order or targeted approaches.

In particular, the Lost Claimant Protocol has been very successful, resulting in many claims coming back into the hearing stream.

As of March 6, 2017, it was estimated that about 50 remaining claims will have a hearing, a small number of which will occur in 2017-18. Of the 774 remaining pre-hearing claims, over 90% (approximately 720 claims) are not expected to get to a hearing, and will likely be resolved through a withdrawal, non-admit, negotiated settlement, or a dismissal.

3.4. Post Hearing

After the first claimant hearing, many other activities must take place before a decision can be rendered. These include:

- hearing from any alleged perpetrators who have been contacted and wish to participate;
- waiting for production of mandatory documents that were not submitted before the hearing;
- conducting medical or expert assessments ordered by the adjudicator, including receiving testimony from the assessor if required;
- obtaining any further testimony from the claimant that may be required as a result of post-hearing activities;
- receiving final submissions from the parties; and,
- writing the decision.

There are currently 658 claims at the post-hearing stage. Efforts are now being focused on moving these files to resolution as quickly as possible. Each claim requires a unique combination of activities dependent on its particular features, resulting in substantial variation in the length of time required to prepare each claim for decision.

3.5. Claims Resolved

While hearings are an important measure of activity in the IAP, the hearing alone does not end the claim. A *whole system* approach to the IAP is necessary, recognizing that the goal is not merely to hold hearings but to resolve claims.

As Figure 2 illustrates, the number of adjudicator decisions increased every year from implementation of the IAP until 2013-14, generally following the proportion of hearings completed[10]. Adjudicator decisions account for approximately 67% (24,707) of all resolved claims. Negotiated settlements also represented an important way of resolving claims, and

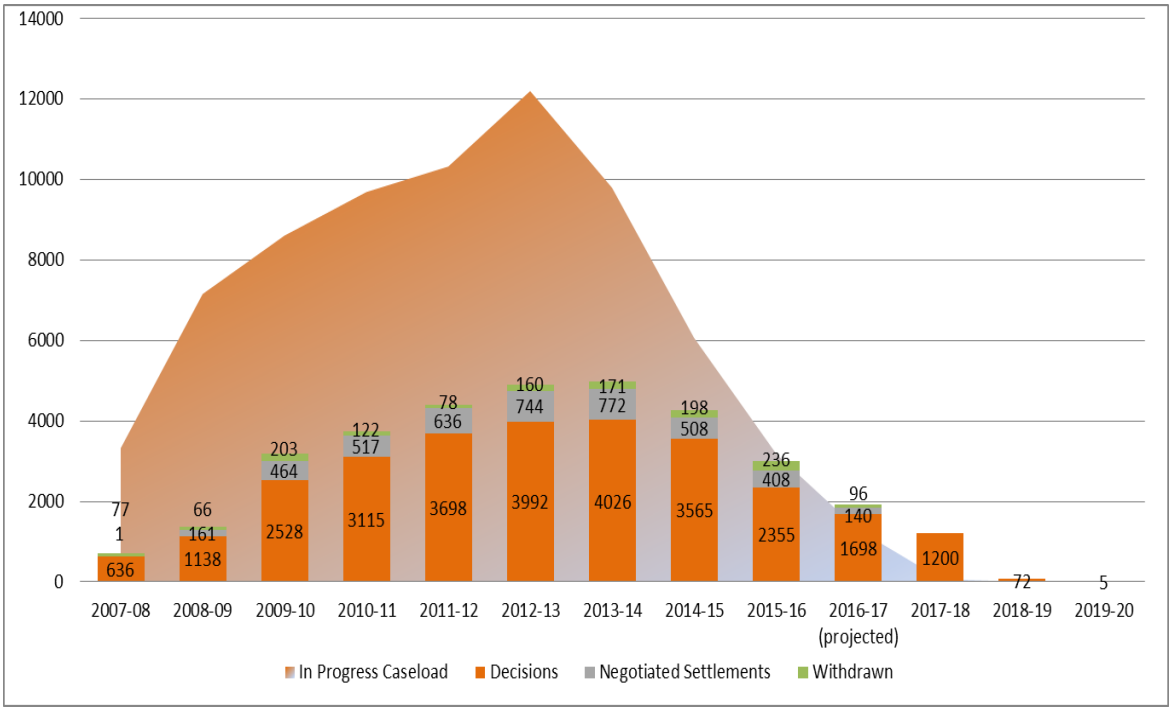
[10] *In 2007-08, the number of decisions exceeded the number of hearings because of decisions issued after September 19, 2007, for cases that were heard before that date.*

account for almost 12% (4,344) of resolved claims. Approximately 16% (5,689) of claims have been withdrawn or were deemed ineligible[11].

Of the claims resolved through an adjudicator's decision or negotiated settlement, close to 90% resulted in compensation for the claimant[12].

Based on information available to date, it is projected that negotiated settlements will be completed by the end of 2016-17[13], but a small number of adjudicator decisions will run into 2019-20.

Figure 2: Projected rate of claim resolution, by year



3.6. Post Decision

Once all post-hearing work has been completed and a final decision has been rendered by an adjudicator, there are additional activities that the Secretariat is responsible for administering:

- Reviews (approximately 5% of claims): as per the Settlement Agreement[14], any party may ask the Chief Adjudicator or designate to determine whether an adjudicator's decision properly applied the IAP model to the facts as found by the adjudicator, and if not, to correct the decision. In addition, claimants may require a second adjudicator review a decision to determine whether it contains a palpable and overriding error and the review adjudicator has the authority to substitute his/her own decision or order a new hearing.

[11] *Claims deemed ineligible include those that are not admitted, are withdrawn, or are not accepted.*

[12] *Decisions that resulted in no compensation for the claimant make up 10.7% (2,619) of all IAP claims that were resolved with an adjudicator's decision.*

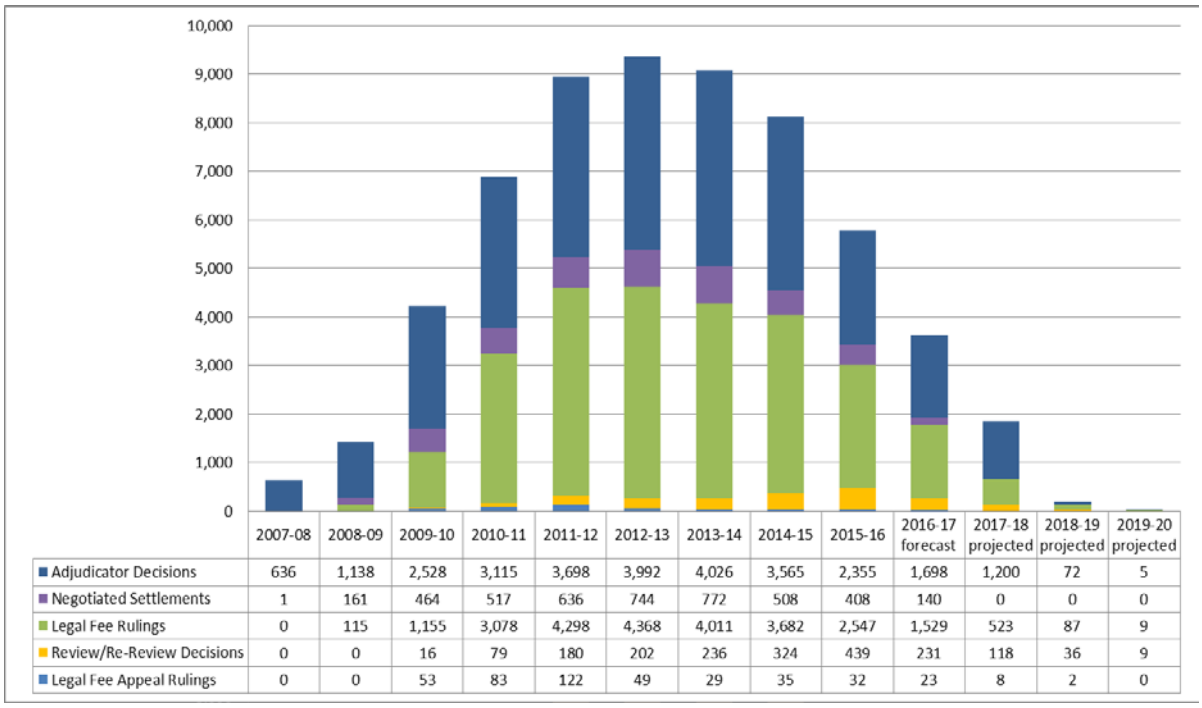
[13] *Canada has indicated that there is a possibility for more NSPs after 2016-17.*

[14] *Settlement Agreement, Schedule D, III(l), on p. 14.*

- Re-reviews: following an unsuccessful review decision, any party may request a re-review, where a second adjudicator reviews both the initial decision and the review decision to determine whether the adjudicator's or reviewing adjudicator's decision, properly applied the IAP model to the facts as found by the adjudicator, and if not, to correct the decision.
- Legal Fee Rulings: adjudicators must assess the legal fees charged by lawyers. The adjudicator's ruling takes place following an adjudicator's decision or a negotiated settlement[15], and considers numerous factors (e.g., complexity of the claim, time spent on the claim, risk factors, size of the award, competency/experience of lawyer). In every case, the adjudicator must confirm that the legal fees are within the allowable limits (in addition to the 15% payable by Canada, the 15% cap allowed by the courts - Schedule 1). When a claimant requests it, or on the adjudicator's own motion, the adjudicator will assess the fairness and reasonableness of the proposed legal fees (Schedule 2).
- Legal Fee Appeals (1% of claims): Schedule 2 rulings on legal fees may be appealed to the Chief Adjudicator or designate.

As illustrated in Figure 3, it is projected that the final reviews and legal fee rulings/appeals will be issued in 2019-20.

Figure 3: Projected decision activity, per year



	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17 forecast	2017-18 projected	2018-19 projected	2019-20 projected
Adjudicator Decisions	636	1,138	2,528	3,115	3,698	3,992	4,026	3,565	2,355	1,698	1,200	72	5
Negotiated Settlements	1	161	464	517	636	744	772	508	408	140	0	0	0
Legal Fee Rulings	0	115	1,155	3,078	4,298	4,368	4,011	3,682	2,547	1,529	523	87	9
Review/Re-Review Decisions	0	0	16	79	180	202	236	324	439	231	118	36	9
Legal Fee Appeal Rulings	0	0	53	83	122	49	29	35	32	23	8	2	0

3.7. Outreach

The Secretariat has always been committed to ensuring that claimants, their families and communities receive timely, consistent and reliable information about the IAP. This has included

[15] *Under the implementation orders, a claimant's legal fees must be assessed by an adjudicator even if the claim was settled through negotiation. Thus, the number of legal fee rulings can exceed the number of adjudicator decisions.*

conducting community information sessions and dissemination of IAP information products to increase understanding and awareness of the IAP.

The Secretariat continues to build and maintain strong working relationships with stakeholders and partners such as national Indigenous organizations, friendship centres and federal government departments to promote access to timely and accurate information about the IAP.

3.8. Healing

The Group IAP program funds activities that support healing and reconciliation for claimants, their families, and communities. Group IAP funding is completely separate from any compensation received under individual IAP claims, or future care money.

This funding supports healing activities such as pow-wows, healing circles, ceremonies, and more. The Chief Adjudicator has committed to fund this contribution program until the major work of the IAP is completed because it has been a very successful way of helping claimants engage in healing activities.

3.9. Wind-down of the Secretariat

It is assumed that the IAP will be completed once all claims are resolved, processes and procedures for handling records are put into place, and there is no further work related to the IAP. The 2013 Completion Strategy anticipated a gradual wind-down, with closure of the Secretariat by the spring of 2020. The Secretariat has been preparing for its eventual sun-setting based on those timelines. This has included:

- Estimating timelines for completion;
- Looking for efficiencies within the organization as some work ends;
- Estimating human and financial resources required as the workload decreases;
- Examining activities that need to be undertaken to reduce the staff complement and close down activities as they are no longer required; and,
- Examining risks to the anticipated closing.

Following the 2013 Completion Strategy, a Completion Action Plan was prepared in 2014, with the objective of being a comprehensive, inclusive and transparent plan for the orderly wind-down of the Secretariat. At the centre of the Completion Action Plan is the claimant, who is the primary focus of our mandate. The Plan consists of five themes: Governance, People, Caseload Resolution, Information, and Corporate Services. Each theme is critical to the successful completion of the mandate. Surrounding the themes and integral to each is Communications and Wellness. The Completion Action Plan is being implemented, with activities identified under each of the themes which focus on areas that need to be addressed during wind-down.

4. Improvements to Claims Resolution

From the time of implementation of the Settlement Agreement, the Secretariat, OC, and the parties have identified and implemented initiatives to increase the rate of claims processing and resolution.

In 2011, the OC, with the support of the Secretariat, undertook a comprehensive review to identify ways of processing a larger number of claims per year, as well as to reduce the time required to process each claim. This was the most wide-ranging review of the IAP since the Settlement Agreement was implemented. The goal was to identify all measures that might be adopted to expedite the process and its completion, while enhancing the claimant-centred approach and quality of hearings that promote the healing and reconciliation dimensions central to the IAP. Following considerable discussion by the OC, several changes were implemented to support continued improvement.

Since then, proposed initiatives have been brought to the OC on a continuous basis, with many implemented. These include important and complex process improvement changes. A 2014 report identified over 90 major process changes implemented by the Secretariat[16]. The following is a list of the some of the initiatives put in place over the years (see Appendix A for more detail):

- Desk Guide for legal counsel on the IAP
- Initiative to reduce delays in producing mandatory documents
- Helping self-represented claimants with mandatory documents
- Working with claimant counsel to move files to hearing
- Intensive case management of files
- Lost Claimant Protocol
- Addressing jurisdictional issues before they get to a hearing
- Working with claimants who struggle to represent themselves
- Working with claimants who cannot obtain legal counsel
- Resolving deceased claimant files
- Student-on-student claims project
- Improved scheduling flexibility
- Over 65 pilot project
- Accelerated Hearing Process
- Ensuring hearings take place as scheduled
- Incomplete File Resolution procedure
- Short Form Decisions
- Post hearing resolution unit
- Enhancing the efficiency of expert assessments

Taken together, these initiatives have made a substantial contribution to improving the efficiency and effectiveness of the IAP and ensured claims were resolved as quickly as possible.

[16] *Bond, M. (2014, March). Report on process improvements for the IAP. Note: this list does not include process changes relating to financial or administrative processes.*

5. Challenges and Risks to IAP Completion

The Chief Adjudicator is striving to ensure completion of the IAP in a timely manner, while maintaining a quality hearing experience, sound and principled decision-making, a claimant-centred approach, and opportunities for healing. Current deadlines in place for the IAP include:

- January 31, 2017: non-admit appeal deadline
- August 1, 2017: reconsideration deadline for IFR Resolution Directions dismissing a claim
- February 1, 2018: last possible first hearing
- Spring 2018: post-hearing work completed
- September 1, 2019: all claims resolved
- March 31, 2020: Secretariat closes

Due in large part to the various initiatives put in place, the timelines identified in the 2013 Completion Strategy have substantially been met up to this point. However, several factors beyond the Secretariat's control pose a risk to the corporate administration of the IAP and/or put completion timelines at risk. The following provides a summary of potential risks to IAP completion and/or Secretariat closure due to ongoing litigation and various other matters.

5.1. Issues with Remaining IAP Files

Nearing the end of the IAP caseload has meant that the complexity, rather than the volume, of the files has become the primary challenge. In the past, the processing of claims was relatively straightforward, involving: receiving applications, determining admission, receiving mandatory documents, scheduling and holding hearings, conducting post-hearing work, writing decisions, legal fee rulings, and any reviews/re-reviews. However, the majority of the remaining claims are complex and time-consuming to resolve, with various issues affecting each of them. At this point, the main challenges to resolving the remaining claims are:

- some claims have an issue blocking them from getting to a hearing (e.g., the Secretariat and/or claimant counsel are unable to locate the claimant);
- self-represented claimants make up a large proportion of the remaining claims (42%), which increases the amount of work required by staff and the length of time it takes to bring these cases to conclusion;
- many claims require post-hearing activities such as expert assessments, alleged perpetrator hearings, or mandatory document collection, which cause delays in resolving the claim; and,
- some claims are on hold (e.g., estate claims while Canada determines whether they have jurisdiction and finds an administrator; administrative split files; student-on-student claims).

As of March 6, 2017, 542 claims were on hold, over one-third of the remaining IAP caseload. These are comprised primarily of IFR directions which are on hold while Canada determines whether it has jurisdiction of estate claims (223, 41%), other estate claims on hold (93, 17%), student-on-student claims on hold while it is determined if there are additional admissions

which may impact these claims (22%, 118 claims), administrative split files on hold while Canada identifies a mechanism to address the issue (14%, 75 claims), and claims on hold for a variety of other reasons (6%, 33 claims).

Impact: delays due to targeted approaches and issues with post-hearings, as well as claims on hold, may cause claimants to wait longer for their claim to be resolved, require staff and funding to remain in place longer, and impact on the completion timelines for the IAP.

Mitigation:

- The Secretariat is monitoring all remaining pre-hearing claims and addressing any blockages if possible.
- The Secretariat is continuing to implement the targeted approaches to ensure claims get to hearing or move into the IFR procedure.
- The Secretariat has developed tracking and reporting tools to assist adjudicators, and the Deputy Chief Adjudicators who supervise them, to track the status of active cases. The Chief Adjudicator is re-assigning files to other adjudicators as required.
- The Chief Adjudicator removed files that were on the hold awaiting Canada's review of administrative split files, except for those that Canada has requested stay on hold while it resolves them.
- The Secretariat is working with Canada to advance the SOS project and is trying to address issues so that other claims can be taken off hold.

5.2. Article 12 Applications

Article 12 of the Settlement Agreement allows the addition of an eligible Indian Residential School to Schedule F of the Agreement. Canada may agree to add the proposed institution, or if Canada declines to do so, the applicant may bring a Request for Direction (RFD) to one of the supervising courts. Several institutions have been added pursuant to Article 12. The Chief Adjudicator is not a party to these proceedings.

Mistassini Hostels (Quebec) was added to Schedule F of the Settlement Agreement on August 22, 2012, and the IAP application deadline was extended until September 2, 2013 for former students of Mistassini, which resulted in a small number of applications from this institution. A court order dated July 27, 2015 barred any future requests, applications and RFDs seeking to add an institution to Schedule F of the Settlement Agreement under Article 12[17].

There are currently four Article 12 cases that could impact on the IAP:

- Kivalliq Hall, Nunavut (estimate 100 potential class members): on December 14, 2016, the Nunavut Court of Justice added Kivalliq Hall to the list of eligible Indian Residential Schools – Canada filed an appeal in March 2017.
- Fort William Sanitorium School, Ontario (estimate 610 potential class members): written submissions deadline scheduled for June 2017.

[17] *Fontaine v. Attorney General of Canada. Order of Justice Brown, Vancouver Registry, L0151875.*

- Timber Bay Children's Residence, Saskatchewan (estimate 650 potential class members): awaiting decision on the appeal heard September 27, 2016 by the Saskatchewan Court of Appeal.
- Teulon Residence, Manitoba (estimate 980 potential class members): the Manitoba Court of Appeal decision was rendered January 4, 2017, dismissing this Article 12 application – awaiting a decision as to whether the Supreme Court of Canada will grant leave to appeal.

Impact: any additions to the list of eligible Indian Residential Schools via successful Article 12 could require extensions to the application deadline for the eligible schools, increase the number of IAP claims to be resolved, and lead to hearings held and decisions issued later than the planned completion of the IAP. This will also impact on planned staff reductions and the need for funding over coming years. These Article 12 institutions could add up to 1,200 IAP claims and could extend the completion of the IAP significantly. For instance, if Fort William Sanatorium were to be added to the list of eligible Indian Residential Schools, and if all avenues of appeal are utilized, the closure of the Secretariat could be as late as August 2023[18]. It is prudent to make certain assumptions in the event of any schools added to the list. After all appeals are exhausted, it is reasonable to anticipate 2 months to issue an order establishing a deadline by which all claims would need to be filed, 6 months for an application period, and 2 or more years to complete all steps in the IAP in cases where all steps are required.

Mitigation: the Secretariat has prepared estimated timelines should any of these Article 12 applications be added to the IAP. The Secretariat will continue to monitor Article 12 cases and report to the supervising courts on the operational impact, if any, on the IAP.

5.3. Estate Claims

In 2014, the Chief Adjudicator released three IAP review (J-14246) and re-review (D-15417; E-12325) decisions that permitted IAP estate claims in certain circumstances. The Chief Adjudicator noted that the Settlement Agreement clearly indicates that hearsay evidence is not sufficient to meet the evidentiary requirements and standard of proof in the IAP. However, this does not preclude the claims of deceased claimants. In the decisions, the Chief Adjudicator laid out three conditions under which deceased claims may proceed through the IAP: the claimant must have submitted testimony in the IAP; the claimant must have provided sworn testimony in some other format in which Canada had the opportunity to meaningfully participate; or an eye witness can provide testimony about proven acts (but not its subjective aspects, such as harms and opportunity losses).

In early 2015, Canada indicated that it may be in a conflict of interest in some cases given that Canada is a defendant party yet the Minister may have statutory jurisdiction in relation to an estate claim if the claimant has been ordinarily resident on reserve at the time of death. On March 2, 2016, the Chief Adjudicator agreed to put all deceased claimant files "with no administrator identified" on hold until April 29, 2016, to allow Canada time to identify an approach to deal with files where Canada may have statutory jurisdiction.

[18] *Note: this scenario assumes that all appeal options are utilized, including to the Supreme Court of Canada.*

As of May 3, 2017, out of a total of 1,467 deceased claimant files, Canada has identified 59 claims where INAC is the estate administrator, 194 where INAC has jurisdiction and an estate representative needs to be appointed, and 63 where it still needs to be determined if INAC has jurisdiction. Some of these claims are at the pre-hearing stage (121), some are post-hearing (20), and some are resolved (175).

If Canada has jurisdiction, Canada is responsible for appointing an estate administrator to manage the file, or for finding a family member to act as the estate administrator[19]. Until this work is completed, Canada has asked that the Secretariat not move these files to resolution.

Impact: the longer it takes for Canada to determine if it has jurisdiction, and to find or appoint an estate administrator for these cases, the longer it will take to resolve the remaining IAP claims. This will impact on the human and financial resources required within the Secretariat. Based on estimated timelines prepared by the Secretariat, this could potentially delay the completion of the IAP until October 2020 or later.

Mitigation: the Secretariat has prepared estimated timelines for the completion of this work. In addition, the Secretariat is working to identify any barriers, and is intensively monitoring Canada's progress.

5.4. Student-on-Student (SOS) Claims

In cases with SOS abuse, compensation depends significantly on the existence of evidence or admissions that are required to be made by Canada. The IAP requires that the claimant prove, among other things, that school staff had knowledge, or reasonably should have had knowledge of such abuse occurring. Schedule D, Appendix VIII of the Settlement Agreement requires that Canada develop admissions regarding staff knowledge of SOS abuse. Due to the difficulties faced by claimants in meeting the burden of proof required for SOS claims, in September 2010 the OC approved Chief Adjudicator Directive 8 (CAD-8), requiring that Canada provide the SOS Admissions Master List to adjudicators, which would be updated and shared bi-monthly after the IAP application deadline.

In May 2013, the Chief Adjudicator decided that, pursuant to the September 2010 decision of the OC, it was appropriate to release the SOS Admissions Master List to claimant counsel via the internal IAP Decisions database in order to facilitate claims involving SOS abuse.

In 2014, Canada requested that SOS claims be adjourned for 6 months to allow for review. As of May 2017, 246 claims still remain in the SOS project, a 70% reduction since January 2016. A review of all remaining in-progress IAP claims linked to SOS abuse is underway to try to move the remaining claims to resolution. Although there are only 12 "Priority 1" claims remaining, lesser priority cases may continue to block the flow of cases beyond 2017.

Impact: there remain approximately 88 SOS files on hold awaiting admissions from other files. Although progress is being made on these claims, based on timelines prepared by the

[19] *Canada has implemented a special mechanism to appoint third party (independent) lawyers to handle IAP estate claims as the way to resolve the conflict of interest issue.*

Secretariat, there is concern that these files will delay the completion of the IAP by up to a year. Based on estimated timelines prepared by the Secretariat, this could delay completion of the IAP until November 2020. Another risk to completion is that resolved claims could be nullified on review or re-review, and the claim returned to the adjudicator to determine if a new SOS admission should be considered. To this point, the parties have not been able to agree on an approach that would allow the remaining claims to be resolved while building in protections for claimants whose dismissed claims might have benefited from subsequent admissions.

Mitigation: the Secretariat has prepared estimated timelines for the SOS project, based on the best available information, and is examining ways to move these files more quickly. The Secretariat meets with Canada weekly to discuss these files and try to move them to resolution. If agreement can't be reached by the parties on how to fairly address previously dismissed and pending SOS claims, one option may be to bring an RFD, asking the supervising courts how they would like this issue to be addressed.

5.5. Administrative Splits

On February 3, 2016, the Minister of Indigenous and Northern Affairs made a commitment in the House of Commons to have officials conduct an urgent review of the administrative split issue. At that time, the Chief Adjudicator put all files with jurisdictional issues on hold, pending the review by INAC. An "administrative split" refers to the separation of the school component from an existing Indian Residential School, such that the school component, which was once part of the Indian Residential School, becomes a separately administered day school.

On February 3, 2017, the Globe and Mail reported that the review found fewer than 200 files from 22 Indian Residential Schools that had been affected by the administrative split issue and the Minister undertook to announce the government's recourse for these files in the near future. On February 3, 2017, the Chief Adjudicator advised that the hold currently in place on jurisdictional files would be lifted as of March 6, 2017. Canada provided the Secretariat with a list of administrative split files and asked that these be left on hold until Canada addresses affected files. Canada has indicated that it intends to address pre-decision files through the Negotiated Settlement Process and post-decision files through a settlement process outside of the IAP. The remaining files will move to resolution.

Impact: the Secretariat had 132 files on hold for over a year awaiting the results of Canada's review on administrative splits. During this time, the Secretariat had to prepare for the possibility that the Minister's decision could have resulted in the re-opening of several hundred cases. This has had an impact on adjudicators and staff because work on these files that would have been completed a year ago has had to wait. This, with the work to examine the impact of the issue, has impacted on human and financial resources. Based on initial information provided by Canada, it does not appear that the timelines for completion of the IAP will be delayed based on this issue, but further information is required before this can be confirmed. In addition, should other claims not currently included in Canada's list (such as non-admitted, withdrawn, or not submitted claims) need to be considered, it could impact on resources and the timelines for completion. As of March 10, 2017, the Secretariat had 40 files that Canada has asked the Chief Adjudicator to keep on hold while Canada approached claimants with offers. As of March 27,

2017, Canada indicated they had reached a settlement with 12 claimants and made an offer to 6 others. Canada has also indicated that it is contacting approximately 150 other claimants who have resolved decisions in order to offer a resolution on their administrative split claim outside of the IAP.

Mitigation: the Secretariat has prepared estimated timelines for the administrative split issue, based on the best available information and is monitoring progress.

5.6. Disposition of Records

In August 2013, the Chief Adjudicator and the Truth and Reconciliation Commission (TRC) sought the Court's direction with regard to the proper disposition and appropriate privacy controls for IAP documents under the Settlement Agreement. The Ontario Court of Appeal ruled that certain IAP documents (i.e., applications, hearing transcripts, audio recordings, decisions) should be retained for 15 years after the completion of the claim and then destroyed unless the claimant consents to having them archived at the National Centre for Truth and Reconciliation (NCTR). The Court also ruled that the Chief Adjudicator should conduct a notice program to advise the survivors of their choice to transfer these documents to the NCTR instead of having the documents destroyed. This case is being appealed by Canada to the Supreme Court of Canada, with a hearing scheduled for May 25, 2017.

Impact: if a notice program is required, it will impact on the completion of the IAP, although not necessarily on the closure of the Secretariat since the current plan would be, subject to court approval, for the administration of the notice program to be transferred to another organization for the remainder of the retention period. Any processing of records, as may be directed by the courts, could be a time-consuming and labour-intensive exercise requiring monetary and human resources.

Mitigation: the supervising courts have indicated that the Secretariat should do some pre-planning in the event that a notice program or long-term archiving should be required following the Supreme Court of Canada's decision. In addition to planning for a potential Notice Program, the Secretariat has commenced sorting IAP retained documents, so that these documents can efficiently be located and forwarded to the appropriate disposition, should this be the Court's direction.

5.7. Judicial Recourse Requests for Directions (RFDs)

Judicial recourse refers to a decided IAP claim being re-opened by the courts. Some claimants have filed RFDs seeking judicial recourse from the courts in order to have their claim re-opened and a different outcome achieved.

a. Judicial Recourse ("Bundled RFDs" & Spanish RFD)

   Five RFDs seeking judicial recourse to re-open decided IAP claims for various reasons were denied in a decision dated November 29, 2016 by Justice Brown of the Supreme Court of British Columbia. Two of the cases have been appealed and are currently awaiting an appeal

hearing[20]. In her decision, Justice Brown ruled that judicial recourse for IAP decisions is subject to the same "exceptional circumstances" threshold established by Schachter[21]. The decision also set deadlines for the filing of other RFDs attempting to re-open decided IAP claims. For cases with re-reviews decisions prior to the court's decision, the deadline was February 27, 2017. For re-review decisions that are rendered after the court's decision, the parties have 30 days from the date of the re-review decision.

There is a risk that other RFDs may seek judicial recourse, although each case would have to satisfy the *Schachter* threshold of "exceptional circumstances", which was affirmed again by the Ontario Court of Appeal in the Spanish (F-13421) decision[22].

b. SL1.4

An RFD was filed in February 2016 which challenged a decision at the SL1.4 level, alleging misapplication of the IAP model with regard to requiring the claimant to prove sexual intent. Canada has appealed the Court decision. A stay pending appeal has been granted, which may impact the conclusion of other such pending claims. If the decision of the court is upheld, there is a risk that other decided SL1.4 files may need to be re-opened. The number of potential files to be re-opened cannot be determined without a manual review of SL1 decisions (i.e., statistical data does not capture the level of abuse within the SL1 category).

c. St. Anne's

There are two RFDs recently before the courts relating to St. Anne's Indian Residential School (but not relating to individual claims) which seek various forms of relief, including: to re-open decided St. Anne's residential school claims, and to extend the IAP application deadline for St. Anne's claimants. Should files be re-opened, or an extension to the IAP application deadline be granted, it could impact on the timely completion of the IAP. There are 504 filed St. Anne's claims (admitted and non-admitted). One of these RFDs was dismissed on April 24, 2017 but may be appealed.

Impact: it is difficult to assess the impact of these fact-specific scenarios, presented in these Judicial Recourse RFDs, as each one of them could have many different impacts depending on the decision of the court, and whether the decision affects other decided claims. Any new RFDs that successfully overturn adjudicator decisions could substantially impact on human and financial resources, as well as the timeline for completion of the IAP.

Mitigation: the Secretariat has increased capacity in its legal analysis unit, and put in place contracts with a number of legal firms in the event that the Chief Adjudicator determines that there is a need to participate in any RFDs. Contingency planning capabilities have been refined and the Secretariat has a strong crisis response mechanism in place in order to prepare for

[20] *N-10762 and R-11791.*

[21] *Fontaine v. Duboff Edwards and Schachter, 2012 ONCA 471 ("Schachter"). Schachter held: "(l)n the very limited circumstances where the final decision of the Chief Adjudicator reflects a failure to comply with the terms of the IRSSA or the implementation orders, the aggrieved party may apply to the Administrative Judges for directions" (para. 57).*

[22] *Fontaine v. Canada (Attorney General), 2017 ONCA 26.*

unanticipated events. The Secretariat will continue to monitor court cases that could impact on IAP claimants or operations, and the completion of the IAP.

5.8. Other RFDs

There are currently 15 RFDs before the courts seeking recourse for individual IAP claims. The Chief Adjudicator does not participate in most RFDs; however, in some cases, he may choose to provide written submissions as a 'friend of the court'.

Eleven of the 15 RFDs were submitted in anticipation of the February 27, 2017 deadline set by Justice Brown, all of which are pending a hearing or a decision. Not all of the cases have exhausted all of the avenues available in the IAP, so may not be accepted; and two of them relate to the Administrative Split and therefore may be withdrawn. Of the 4 RFDs submitted before Justice Brown's decision, three are awaiting a decision and one has been adjourned and is currently dormant.

In addition to the 15 active cases, one relating to St. Anne's IRS was recently dismissed (together with another St. Anne's IRS case cited in section 5.7) and may be appealed. Another, the Scout RFD, was dismissed but is currently under appeal.

The Scout RFD was filed in June 2016, seeking to overturn a decision to not admit an IAP application that was received on September 20, 2012, one day after the IAP application deadline. The requestor alleged that the IAP implementation date was calculated incorrectly, which resulted in an incorrect application deadline. The applicant sought admission to the IAP and requested that the IAP application deadline be broadly re-opened for a 24-hour window to allow new applications to be filed. On March 15, 2017, the court barred the RFD by the doctrine of *res judicata*, saying that the Requestor was attempting to re-litigate a decided matter using different arguments, and therefore declined to make a decision regarding the calculation of the IAP deadline. It is possible that this argument may be raised in another RFD for other IAP claims that missed the IAP deadline by one day.

None of the 15 RFDs currently before the courts are anticipated to greatly impact the completion of the IAP. However, there is the potential for other RFDs to be filed, thus delaying the closure of the IAP.

Impact: an extension of time to the IAP could have an impact on the completion of the IAP, as well as human and financial resources.

Mitigation: same as 5.7.

5.9. Corporate Administration Risks

While Canada has provided sufficient funding to cover the requirements for the IAP, from the time of implementation the Secretariat has encountered difficulties and delays in receiving support from INAC Corporate Services. This has impacted on the creation and extension of contracts for adjudicators and legal services, support for security, and staffing. These difficulties often arise from requirements imposed by the federal government and INAC:

- the human resources advisory capacity provided by INAC has been insufficient for the amount of staffing required;
- the staffing process under the *Public Service Employment Act* is slow and cumbersome, taking six months or more to fill positions;
- in 2013, the Secretariat became subject to INAC's Workforce Management Board, creating another layer of approvals and causing further delay. At times, the Secretariat had a 25% vacancy rate and, as late as 2014, had a 19% vacancy rate;
- it has taken years to get contracts in place for adjudicators and independent legal counsel, due to government approval processes; and,
- conflicts with the need to implement the IAP as per the Settlement Agreement and the rules of the government of Canada regarding contracting and security.

In addition, planning and executing the wind-down of the Secretariat's operations has introduced new risks. These include:

- the loss of experienced staff and adjudicators, creating vacancies and lost productivity;
- loss of corporate memory; and,
- government-imposed restrictions on hiring replacement staff and adjudicators to fill vacancies during a wind-down process, and the difficulty recruiting qualified individuals to work on a short-term basis.

As the IAP winds down, the Secretariat is experiencing significant departures of experienced staff and adjudicators. The Chief Adjudicator is concerned about similar departures of experienced Canada representatives, Health Support Workers, and others involved in the hearing process. Introducing new cases or re-introducing claims currently considered decided into the IAP could be affected by this lack of resources. At this point in time, it is believed that there are a sufficient number of adjudicators to complete the claims.

The upcoming expiration of the Secretariat's funding authorities is an additional risk to the Secretariat's financial capacity.

Impact: if the Secretariat reduces staffing complements as planned, or loses experienced staff, this could prolong the period of time required to resolve the remaining caseload and will require Canada to provide funding for this work to be concluded in later years.

Mitigation:

- The Secretariat switched its contracting to Public Works in 2014 in order to gain access to that department's increased contracting authorities to reduce the risk that procurement delays would lead to failures in the delivery of the IAP. The Secretariat also contracted with its own procurement specialist in order to ensure the Secretariat's interests were being addressed.
- The Secretariat has created a stronger independent security function, in order to address conflicts with INAC security.
- While adjudicator availability has not been a limiting factor to date, the Chief Adjudicator continues to monitor availability to ensure there is sufficient adjudicator capacity.

- The Secretariat has developed and is implementing a Completion Action Plan to ensure a well-planned closure of the Secretariat.
- The Secretariat has developed and implemented a staff retention strategy, as well as a knowledge retention strategy.
- The Secretariat is analyzing different scenarios for staff/funding requirements and is working with Canada on a budget for the remaining years of the IAP.

5.10. Maintaining the Confidence of Claimants, Partners and Stakeholders

The IAP is a complex and, consequently, time-consuming process. This can create a negative impact when the time taken for a claim to move through the process does not meet the expectations of former students or the Indigenous community. The time required to resolve the very high volume of claims may cause claimants, partners and stakeholders to lose confidence in the IAP.

Impact: a loss of confidence in the IAP could increase public scrutiny, and require a diversion of resources from critical areas within the Secretariat to address the issue.

Mitigation: a National Outreach Strategy is in place to help communicate realistic expectations by providing stakeholders and partners with timely and transparent information about processing timelines.

5.11. Other External Events

Events outside the Secretariat's control, such as issues regarding ethical conduct of legal counsel, new government initiatives that impact on claimants, or other events, could materially impact the processing of claims. For example, the court-ordered removal of Blott & Company in June 2012 consumed thousands of person-hours of Secretariat staff time. Other investigations have impacted the Secretariat in similar ways. Another example is the impact that the Missing and Murdered Indigenous Women and Girls inquiry had on the Secretariat. When it began, large numbers of former students called the IAP 1-800 line and contacted the Secretariat's Client Services staff requesting information.

Impact: It is impossible to assess the impact of these fact-specific scenarios, but each investigation or event could consume a great deal of staff time.

Mitigation: the Secretariat has refined its contingency planning and crisis response capabilities based on recent experience, in order to prepare for unanticipated events. A field response capability is also being prepared to provide information to claimants and communities during unexpected situations. The Secretariat will continue to monitor court cases that could impact on IAP claimants, operations, and the completion of the IAP.

6. Moving Forward

With fewer than 1,500 claims that remain in progress, the last remaining pre-hearing claims are being processed, post-hearing activities are ongoing, and claims which the Secretariat has been unable to resolve in the standard process are undergoing targeted initiatives to enable resolution. A great deal of the focus now is trying to resolve claims that are not progressing. At every stage, barriers to claim progress are being identified and strategies to overcome them are being proposed.

In completing the remaining caseload, the Secretariat will build on the strengths of the process and the lessons learned over the past ten years. There will be a concerted effort to resolve the remaining claims while ensuring that every claim is dealt with in a fair, impartial, and expeditious manner in accordance with the Settlement Agreement.

The following describes the approach to move forward to resolve the remaining claims in the IAP, and the impact that the risks may have on resource requirements and completion of the IAP.

6.1. Unheard Claims

Of the over 38,000 applications, 774 claims are still pre-hearing. However, it is projected that over 90% of these (approximately 720) are not expected to get to a hearing. A small number may be resolved through a negotiated settlement, withdrawal or be not admitted. However, the largest number will likely be resolved through a dismissal, after going through the IFR procedure. Most of these are deceased claimant files where no estate administrator has come forward.

The biggest obstacle to resolving the remaining unheard claims is that there are claims on hold, mostly estates or student-on-student claims.

The Secretariat conducts ongoing analyses on all claims that have not yet had a hearing, and almost all of them are in a targeted approach to address whatever issues are blocking the claim from getting to a hearing. This approach will continue and, if required, additional targeted approaches will be developed.

6.2. Post-hearing and Post-decision Activities

The Secretariat will continue to focus on post-hearing and post-decision activities in order to resolve the remaining claims as expeditiously as possible. To improve the timeliness of decision writing and reduce the number of post-hearing claims waiting for decisions, the Chief Adjudicator has instructed adjudicators to complete overdue submissions, letters of instruction, decisions and legal fee rulings. He has also asked Deputy Chief Adjudicators (DCAs) to increase efforts to review caseloads with adjudicators and conduct necessary follow-up, reassigning caseload if required. To this end, IRSAS staff provide the DCAs regular reports on adjudicator caseload.

Once again, the biggest obstacle to resolving post-hearing and post-decision activities is the number of claims on hold.

6.3. Maintaining a Claimant-centred Approach

The goal of the Settlement Agreement to provide a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools remains at the heart of the IAP. The Secretariat will continue to provide support to self-represented claimants as they make their way through the IAP. In addition, the Secretariat will continue to work with Indigenous communities, key partners and stakeholders, and the general public to foster a culturally sensitive approach to identify and address claimants' needs and build awareness of claimants' rights in the IAP.

6.4. Addressing Risks

As discussed in Section 5, there are a number of risks, many where the impact is not fully known, which may impact on the Chief Adjudicator's ability to complete the IAP in the timelines provided to the courts in the 2013 Completion Strategy. At this point in time, it is unclear how many of these risks will come to fruition.

However, some of the risks are already impacting on the timelines. Indeed, based on the current projections some work on claims is projected to run into 2019-20, albeit in small numbers. Therefore, it is reasonable to believe that the closing date for the Secretariat may need to be moved into 2020-21 in order to wind-down various activities after all claims are resolved.

The Secretariat is examining the risk areas and analyzing the implications for the IAP, and bringing the information to the OC to discuss. For instance, timelines have been prepared for some of the risk areas, which demonstrate the impact on completion of the IAP. The following discusses the potential impact on currently-set deadlines:

Non-admit appeal deadline

The non-admit appeal deadline of January 31, 2017 has already passed. However, there are currently a small number of claims where an admission decision has not yet been made. Furthermore, if the courts permit new IAP applications to be filed (e.g., through Article 12 applications), a new non-admit appeal deadline will need to be established.

At this point, rather than changing the non-admit appeal deadline, when individual claims are not admitted into the IAP, applicants are given 30 days once they receive their non-admit letter to submit an appeal to the Chief Adjudicator to reconsider the non-admission decision. This approach will probably remain, unless there are a large number of new claims that come into the IAP.

Reconsideration deadline for IFR Resolution Directions dismissing a claim

The reconsideration deadline, approved by the OC, for IFR Resolution Directions dismissing a claim is August 1, 2017. It will not be possible to process all remaining claims that make their way into the IFR in time to allow claimants to receive an IFR Resolution Direction and exercise the reconsideration right by August 1, 2017[23].

[23] *The assumption is that at least one month is required following an IFR dismissal before the Reconsideration Deadline.*

At this time, it is not possible to set a new reconsideration deadline which will take into account all of the uncertainties about litigation and other external factors impacting on the IAP. For instance, if the court decides to add Fort William Sanatorium as an Article 12 school under the IAP, the reconsideration deadline could be as late as November 2021.

One option is to modify the current reconsideration deadline for existing claims, and create a new deadline for new categories of claims if required (e.g., if new Article 12 schools are added). Additional discussions will need to occur with the OC as information about the risks crystallizes.

Last possible date for a first hearing

The last possible date for a first hearing was identified as February 1, 2018. As discussed with the OC, this is based on the requirement for six months following a request for a reconsideration to process the request, and if accepted, to get a claim to a hearing. If it is necessary to revise the Reconsideration Deadline for claims dismissed under the Incomplete File Resolution (IFR) procedure, the last possible date for a first hearing will also need to be adjusted by approximately six months.

Post-hearing work completed

The 2013 Completion Strategy projected that all post-hearing work would be completed by the spring of 2018. Based on current projections, a small amount of post-hearing work will continue into 2019-20. However, if any of the Article 12 schools are added, or if there are impacts due to other risks (e.g., RFDs which could re-open claims), this timeline may extend significantly further into the future.

All claims resolved

The 2013 Completion Strategy projected that all claims would be resolved by September 1, 2019, including any review and re-review decisions, as well as legal fee rulings and any legal fee appeal rulings. Based on current projections, a small number of these decisions may continue into 2019-20. Once again, if some of the risks identified come to fruition, this timeline could extend substantially further.

Secretariat closes

Finally, the 2013 Completion Strategy estimated that, based on the completion of all claims, the Secretariat would close by March 31, 2020. Even based on the current projections, it looks like the Secretariat may need to stay open beyond this period, since the projection is that there will be some post-hearing and post-decision work in 2019-20, and about 6 months is needed to close down after all claims are resolved. The Secretariat has prepared timelines for some of the larger risk areas, and determined that some of the risk areas could delay the completion of the IAP.

6.5. Administrative Closure of the Secretariat

The Secretariat will continue to implement the Completion Action Plan to ensure the orderly wind-down of its operations. An appropriate infrastructure will remain in place as long as

necessary to support the Chief Adjudicator and carry out the functions assigned to the Secretariat by the Settlement Agreement[24].

Conclusion

The IAP has been operating for nearly ten years and is nearing completion of its mandate. It has delivered results beyond most expectations: after receiving more than three times the number of applications expected, 96% of the over 38,000 applications received have been resolved. At the peak, over 6,200 cases were resolved in a single year[25]. At the same time, a high-quality, personal, and claimant-centred hearing process that aimed to support claimants in their healing journey was maintained. Partnerships with stakeholders and partners were maintained, and funding was provided so groups of claimants could participate in healing activities.

Over the years, the OC has been instrumental in advising the Chief Adjudicator and Secretariat in implementing important and complex improvement changes. There has been a continuous movement to achieve a greater level of efficiency, effectiveness and transparency in all processes. If it had not been for all of these improvements, the opportunities to improve claimants' experience and meet their specific needs would have been lost in the operational machinery of the IAP. Working collaboratively and engaging in problem-solving with all parties has enhanced the value of services and support provided to claimants.

The current update demonstrates that the Secretariat would have been well-placed to wind-down in the timelines projected in 2013, were it not for the external risk factors that are hampering the resolution of files, and potentially creating new claims. It will be important over the coming year to assess the impact on claims as decisions about various RFDs are rendered and, working with the OC, discuss the best approaches to move claims to resolution.

It is important that every claimant receives the full benefit of the process that has been negotiated to bring closure to the legacy of Indian Residential Schools, while ensuring that that closure takes place at the earliest practical time.

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[24] Article 16.02 of the Settlement Agreement specifies that "this Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled."

[25] For 2013-14, this includes 4,026 adjudicator decisions, 772 negotiated settlements, and 1,453 claims withdrawn or not admitted.

Appendix A: Progress Towards Completion of the IAP

Desk Guide for Legal Counsel on the IAP

A Desk Guide for Legal Counsel was created as a user friendly and comprehensive tool to assist legal counsel with their work in representing claimants through the IAP. Among other things, the guide was developed to enhance legal counsels' understanding of the Secretariat's processes and procedures, common issues that occur with moving claims forward to the next stage, best practices, key resources, as well as technical assistance. Although written primarily for legal counsel, it has also been a helpful resource for legal assistants and support workers. The information contained within it is current, reliable and trustworthy and, all approved changes to the IAP are reflected in the guide in a timely manner.

Reducing Delays in Producing Mandatory Documents

Since implementation, the most significant barrier to scheduling more hearings has been the time required to obtain mandatory documents, such as medical, education, corrections, and income records. The Settlement Agreement provides that a claim cannot be scheduled for a hearing at certain harm or opportunity loss levels until the claimant has obtained these documents and submitted them to the Secretariat. In practice, virtually all claims require mandatory documents of some sort. Often, claimant counsel are unable to determine what level of harm or opportunity loss to claim until they have examined the applicable documents.

To help claimant counsel manage their caseloads, the Secretariat implemented a web-based tool, the Interactive File Management System (IFMS). The system enables detailed tracking of documents required for IAP claims. It also provides the Secretariat with more timely information on the status of claims.

In the fall of 2013, the Secretariat analyzed information in IFMS and gathered feedback from claimant counsel, in order to identify blockages created by IAP claims with specific document-holding agencies. The Secretariat then worked with document-holding agencies to overcome barriers to the timely production of documents for claimant counsel. In some cases, the Secretariat developed Memoranda of Understanding with agencies to address backlogs of IAP-related document requests, and in other cases the Secretariat was able to provide claimants' counsel with detailed information and forms to help them obtain mandatory documents more quickly.

Helping Self-represented Claimants with Mandatory Documents

The Secretariat's Client Services function is to provide support to unrepresented claimants and act as a single point of contact to help guide them through the process. Originally, support provided to unrepresented claimants consisted of providing information on the IAP and guidance on specific requirements to have their claims brought before an adjudicator. In 2009, it became clear that claimants were struggling trying to gather the necessary mandatory documents to get their claim ready for a hearing. Therefore, in May 2009 a mandatory

document collection team was created to provide hands-on services to unrepresented claimants. This initiative has been an effective way to help unrepresented claimants move their claims to resolution.

Working with Claimant Counsel to Move Files to Hearing

Precipitated by the submission of the Completion Strategy and court approval of the IFR procedure and the LCP, the Executive Director and senior Secretariat staff conducted a series of visits to legal counsel from July 2014 to May 2015. The visits included discussion of the Completion Strategy, updates on initiatives undertaken by the Secretariat, and a discussion of issues encountered by counsel and timelines for file completion. As it was not possible to make individual visits to all counsel practicing in the IAP, visits were held with firms representing the largest caseloads, those where there were concerns about the firm completing first claimant hearings by the spring of 2016, or firms that requested a visit.

Meetings occurred with 36 law firms across the country. Following the visits, letters were sent to each firm identifying specific next steps relating to questions raised, and firms who appeared at risk of not completing their hearings by the spring of 2016 were sent business plan templates to return to demonstrate how they could meet the timeline.

Intensive Case Management

In 2013, the Secretariat began a project to intensively manage IAP cases. This involved reviewing cases that had not had any movement from claimant counsel for two years, and following up with claimant counsel to identify any blockages and find mechanisms to move the files to hearing-ready status. In the fall of 2014, the Case Management Unit was realigned so that individual case managers were assigned to specific law firms in order to follow the progression of files and address blockages.

Lost Claimant Protocol (LCP)

There are claims in the IAP that cannot proceed to resolution because the claimant has stopped communicating with the Secretariat or with their legal counsel, and cannot be located. The Supervising Courts approved a consent order granting specific authorities to the Secretariat to try and resolve these claims within the regular IAP file process. These authorities, as reflected in the LCP, enable the Secretariat to collect contact information from external sources to re-establish communication with these claimants.

The LCP initiative included an initial notice component, whereby posters were distributed through Health Support Officers, Indigenous organizations, band offices, friendship centres, health centres, correctional facilities, etc. In addition, Secretariat staff reviewed claimant documents to identify family members or friends who may be able to help contact the claimant. Following that, a three-level search was implemented:

- Level 1: a search of information from public sites such as online directories or websites
- Level 2: information available from other government sources, such as Health Canada, Indigenous and Northern Affairs Canada, Correctional Services Canada, etc.

- Level 3: information from people with local area knowledge, such as Health Support Officers, local RCMP detachments, etc.

The LCP has been a huge success. Through the efforts of Secretariat staff, of 743 lost claimants, additional contact information has been found so far through the LCP in 478 instances, which allowed these claimants to continue in the IAP.

Jurisdictional Pre-Hearing Teleconferences (JPHT)

A JPHT process was put in place to address claims with jurisdictional issues that may prevent them from being eligible for the IAP. Rather than putting a claimant through the whole hearing process, JPHTs were used to determine if there were jurisdictional issues that needed to be addressed. A targeted approach was developed whereby jurisdictional issues were identified prior to a claim being scheduled for a hearing and dealt with through the JPHT process. In this way, the parties could discuss the issue and a decision could be made whether to move the claim to a hearing.

Working with Claimants Who Struggle to Represent Themselves

There are a small number of claimants who struggle to represent themselves, but who cannot get a lawyer to represent them, or choose not to hire a lawyer. These claimants may have capacity issues for physical or mental health reasons. The Chief Adjudicator and Secretariat staff created a targeted approach to deal specifically with these claimants, whereby these claimants are assigned a special adjudicator who works with them to advance their claim and helps determine whether or not they have the capacity to provide testimony.

This initiative began in 2014, with 49 claimants identified, and has since been successfully concluded.

Working with Claimants Who Cannot Obtain Legal Counsel

In the spring of 2014, the Secretariat began a project whereby self-represented claimants were contacted to discuss the benefits of retaining legal counsel. Over 600 self-represented claimants were contacted, with 240 deciding to retain legal counsel.

Although the Secretariat actively promotes the retention of counsel to self-represented claimants, a small number have been unable to retain counsel (usually due to counsel's assessment that the claimant does not have a compensable claim). Therefore, in early 2015, the Secretariat began an initiative to assign an adjudicator to claimants who expressed an interest in seeking legal counsel but had one or more lawyers decline to represent them, or in cases where claimant counsel withdrew their representation and a new counsel could not be found. The adjudicator conducted an informal call with the claimant to provide an overview of what the self-represented claimant would encounter during the hearing process and answer any questions they had about their claim.

This project was successfully completed in May 2016.

Resolving Deceased Claimant Files

Deceased claimant files are a unique challenge, particularly when claimants have passed without the opportunity to give sufficient testimony. In 2014, the Chief Adjudicator rendered a trilogy of decisions which clarified which kinds of estate claims can continue in the IAP, and under what circumstances they may proceed to an estate hearing. When a deceased claimant had a hearing or there is previous sworn testimony that meets certain criteria, the file can proceed through the process. However, most claims by an estate do not have previous sworn testimony on file are dealt with in the Estate Pre-Hearing Teleconference (EPHT) process.

About 10% of EPHT files have progressed to an estate hearing, based on the testimony of an eyewitness. When an IAP claimant has passed away but no estate comes forward to pursue their claim, or when an identified estate is no longer participating, their file is referred to and dealt with in the IFR procedure.

The Secretariat has an estates team which is responsible for tracking and moving all deceased and estates claims to resolution. This includes trying to determine if an administrator would like to move the estate claim forward and, if so, holding the EPHT. In 2015, Canada informed the Secretariat of a potential conflict of interest because they are the defendant in the IAP, yet the Minister may have statutory jurisdiction in relation to the estate if the claimant was ordinarily resident on reserve at the time of death. On March 2, 2016, at the request of Canada, the Chief Adjudicator placed files with no identified administrator on hold until April 29, 2016. At the time of writing this report, Canada is still working to determine the claims for which they have jurisdiction, and appointing administrators for those where they do. Over the last year, Canada has made significant progress on determining jurisdiction - in July of 2016 there were over 600 claims where jurisdiction needed to be determined and as of May 2017 only 63 remain.

Student-on-Student (SOS) Claims Project

In December 2013, the OC approved a strategy to address claims involving allegations of SOS abuse. In these cases, compensation depends significantly on the existence of evidence or admissions required to be made by Canada. For certain allegations, the IAP requires that the claimant prove, among other things that school staff had knowledge of such abuse occurring. Under the terms of the Settlement Agreement, Canada agreed to develop admissions regarding staff knowledge of SOS abuse, and these admissions may assist the claimants in meeting their burden. The goal of the strategy has been to enable claims deemed most likely to yield such admissions to be resolved prior to claims which might benefit from them.

IRSAS has met with Canada to identify and schedule the resolution claims which have the potential to create an admission for other claims or fill "gap periods" in the admissions for each of the schools; and to advance those claims to hearing as quickly as possible.

The claims are broken into priorities according to the possibility of creating admissions for other IAP claims in progress. The priorities are as follows:

- Priority 1 - a claim alleging knowledge that could affect claims that do not have alleged knowledge.

- Priority 2 - a claim alleging knowledge that could affect claims that also allege knowledge.
- Priority 3 - a claim alleging knowledge that does not affect other claims.
- Priority 4 - a claim that does not allege knowledge that falls within periods with existing admissions for the same type of abuse but different gender pairing OR claims that do not allege knowledge and do not fall with periods with existing or potential admissions for the same type of abuse.

Since the current version of comprehensive reporting began in January 2016, this initiative has been successful in moving SOS claims to resolution, with the inventory of priority 1 and 2 claims reduced by 85%, and priority 3 and 4 claims by 46%.

Improved Scheduling Flexibility

With the agreement of the parties, the Secretariat implemented new measures designed to ensure maximum utilization of scheduled hearing dates:

- When a claim is accepted for negotiation by Canada, any hearing scheduled for that claim will be cancelled. Only 1% of cases accepted for negotiation are not resolved, but in the unlikely event that this occurs, the Secretariat will arrange a hearing on a priority basis.
- When a hearing is postponed – because the claim enters negotiation or for any other reason – the Secretariat will encourage the claimant's counsel to suggest an acceptable alternative, as late as four weeks before the hearing date.

These measures helped to increase the number of hearings held each month.

Over 65 Pilot Project

The OC agreed to support a pilot project, conducted in 2012, for claimants over the age of 65.. The pilot project provided an opportunity for the Secretariat and the parties to explore new ways of managing claims, including alternative scheduling approaches and more intensive case management by adjudicators. Lessons learned in the 142 hearings that proceeded in the pilot project led directly to other process innovations, including the Accelerated Hearing Process described below.

Accelerated Hearing Process

The Accelerated Hearing Process (AHP) is likely the most significant change to the IAP's case management process since implementation. In early 2013, after considering the results of the "Over 65" Pilot Project, the parties agreed to implement a new approach to scheduling hearings in order to reduce blockages caused by the gathering of mandatory documents, and in order to get claims to a hearing more quickly. The AHP also ensures that a claim gets to a hearing, thereby preserving the claimant's testimony.

Initially, participation in the AHP was voluntary and claimants could decide to expedite their hearing without having all of their mandatory documents submitted prior to the hearing. An adjudicator-led case management process was used to try to ready claims for the hearing, but if

this did not occur the hearing took place and final submissions were adjourned until the necessary mandatory documents were submitted. Because mandatory documents are still required by the Settlement Agreement, the AHP did not necessarily result in faster resolution of claims, but it did ensure that claimants' testimony was preserved, helped ensure a consistently high rate of hearings and, with active case management by adjudicators, helped move claims forward more quickly.

The OC agreed to make the AHP mandatory in the spring of 2015, and this has been a major contributor to getting claims to a hearing.

Ensuring Hearings take Place as Scheduled

Historically, about one in five hearings did not take place as scheduled. Cancellations and postponements, especially at the last minute, involve significant costs for the Secretariat, but more importantly represent a lost opportunity to hear from another claimant who may have been able to proceed.

In December 2011, the Chief Adjudicator issued a Guidance Paper outlining procedures to be followed for all cancellations and postponements. The party requesting a postponement must apply to the adjudicator and provide reasons. An adjudicator may apply conditions to a postponement, and the adjudicator has discretion to apply consequences for non-compliance. The overall goal was to promote good practice and deter unnecessary postponements, while retaining flexibility and a claimant-centred approach.

The new policy was very effective at controlling the rate of unnecessary postponements. The postponement rate, which was as high as 22% in 2011[26], went below 14%, meaning that over 400 more hearings proceeded in 2012-13 than if the 22% postponement rate had continued. Unfortunately, in mid-2015 the postponement rate began to climb again.

In September 2016, the Chief Adjudicator issued a new Guidance Paper which outlined procedures to be followed when claimants fail to attend a scheduled expert assessment.

Incomplete File Resolution (IFR) Procedure

The IFR procedure was developed to address claims where circumstances prevent the claim from reaching resolution through the normal hearing process. Step 1 establishes a Case Analysis and Resolution (CAR) unit to work with designated File Management Adjudicators to resolve inactive claims. Step 2 refers files to a Special Resolution Adjudicator for resolution. In June 2014, Justice Perell of the Ontario Superior Court of Justice signed the consent order authorizing the implementation of the IFR. In December 2015, the OC approved a reconsideration deadline for any claims dismissed through the IFR.

The IFR has been able to accomplish what it was developed for – to move claims to resolution. As dismissal in the absence of a hearing is always the method of last resort, all efforts must be made to ensure these claimants have every opportunity to resolve their claim in the usual

[26] *This does not include the extraordinary rate of postponements in November 2011 caused by the court order suspending hearings involving Blott & Company.*

manner. As of March 6, 2017, 428 claims have gone through some stage of the IFR procedure and have been moved back into the regular hearing process or to a targeted approach to address a blockage. An additional 194 claims have been dismissed through the IFR procedure, most of these being deceased claimant files.

Short Form Decisions (SFDs)

Following agreement of the parties, in 2010 adjudicators began offering SFDs to claimants as an alternative to a regular decision that sets out the evidence and the adjudicator's findings. SFDs are appropriate in cases where the parties agree on the points and dollar amounts to be awarded at the hearing. They provide claimants with closure the day of the hearing, and allow compensation to be paid more quickly. Claimants always have the right to request a full decision, for memorialization or other reasons.

SFDs comprise about 37% of all decisions, reflecting a high degree of satisfaction with the hearing process and agreement among the parties. This process change has likely had the biggest sustained impact over time. It has ensured claimants receive their decision faster, and has saved time and costs for the writing and processing of decisions, ensuring adjudicator availability. However, given the increased complexity of the remaining caseload, SFDs have now slowed to a trickle, representing only 4.4% of decisions rendered in 2016-17.

Post Hearing Resolution Unit

In an effort to assist adjudicators with the management of their caseload, the Secretariat created a unit which specializes in case management of files after the hearing occurs. The staff in this unit work closely with the adjudicators in order to ensure files are moving through each of the post-hearing activities required to ready the file for final submissions and a decision. The staff analyze cases and provide detailed reporting on the status of each case to the adjudicators, including recommendations for next steps where it appears the file may be stalled. Regular reporting to the Deputy Chief Adjudicators and the Chief Adjudicator on the status of individual caseloads assists the Chief Adjudicator with decisions required in relation to the performance of adjudicators. Since April 2016, more than 500 cases have been reassigned to new adjudicators in order to move the cases to completion. Only 34 of these files required a new hearing, demonstrating the success of this approach.

Expert Assessments

The Secretariat engaged the service of a medical assessment company responsible for scheduling medical assessments for claimants of the IAP. In 2015 two additional medical supply companies were contracted in order to meet the variety of requirements across the country. Contracting medical supply companies has increased the number of assessors available for assessments of IAP claimants. The Secretariat also implemented a standardized Letter of Instruction for Adjudicator's use to engage Psychological expert services. The Letter of Instruction enables the Adjudicators to provide instruction to the Psychological experts regarding the assessment requirements. The template has reduced the requirement for conference calls to question the expert after the assessment is complete. The Secretariat

maintains a roster of psychological experts approved by the OC. In 2015 the Secretariat implemented a process to administer the submission of the expert (medical and psychological) reports within contractual time frames.