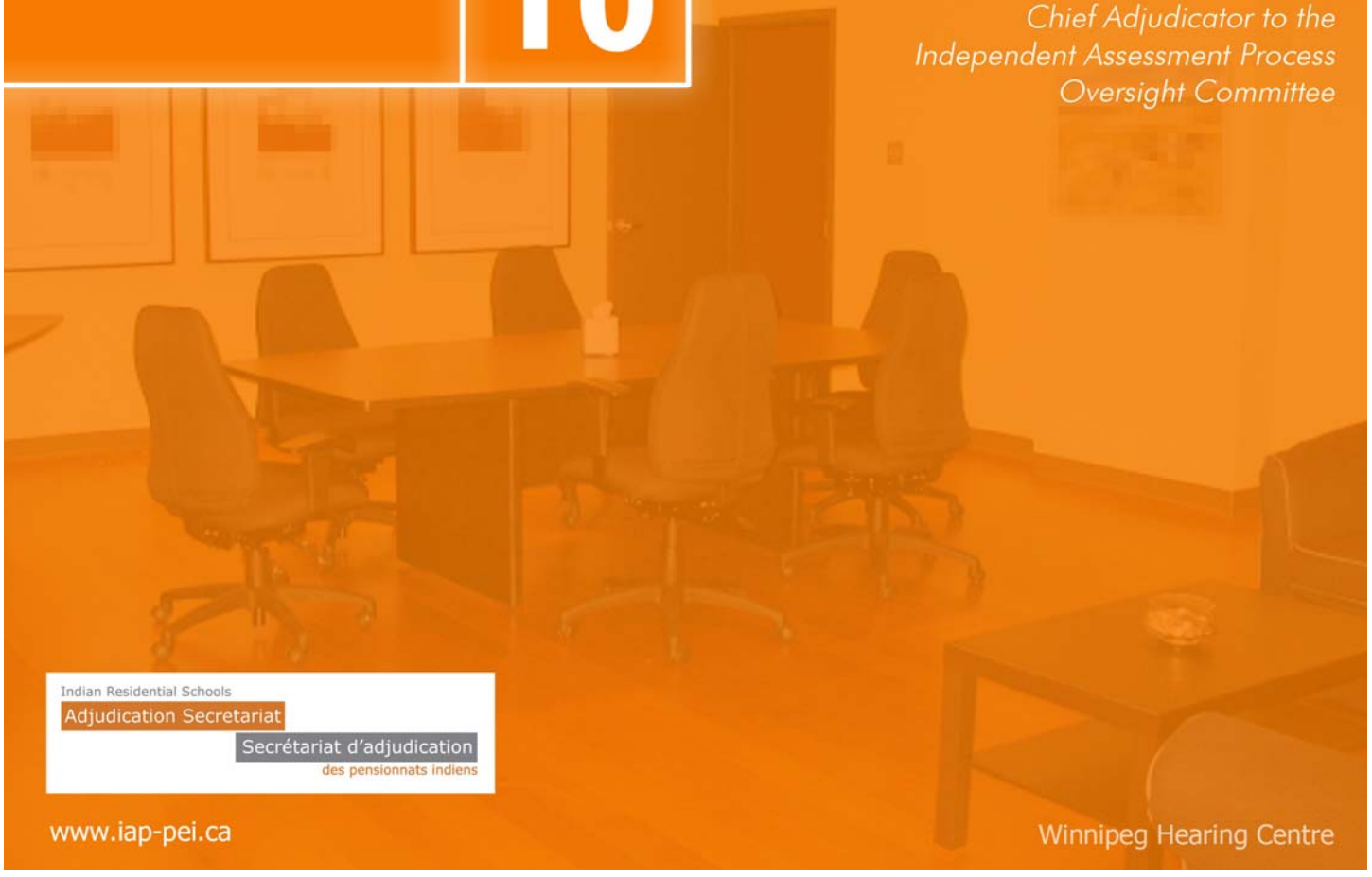
INDIAN RESIDENTIAL SCHOOLS ADJUDICATION SECRETARIAT

2010 ANNUAL REPORT

Annual Report of the Chief Adjudicator to the Independent Assessment Process Oversight Committee



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

www.iap-pei.ca

Winnipeg Hearing Centre

About the Indian Residential Schools Adjudication Secretariat

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

The Adjudication Secretariat manages the Independent Assessment Process (IAP), 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. As one of the compensation programs established under the Indian Residential Schools Settlement Agreement, the IAP is the only option for former residential school students to resolve these claims, unless they opted out of the Settlement Agreement. IAP applications will be accepted until September 19, 2012.

The Adjudication Secretariat has become one of Canada's largest quasi-judicial tribunals, holding over 3,000 face-to-face hearings every year with the support of about 90 adjudicators and 190 staff. It 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.
Michel Landry
Rodger W. Linka
Delia Opekokew
Daniel Shapiro, Q.C.
Deputy Chief Adjudicators

Akivah L. Starkman, Ph.D.
Executive Director

Message from the Chief Adjudicator

I am pleased to present my third annual report as Chief Adjudicator of the Indian Residential Schools Independent Assessment Process. This report, which covers the calendar year 2010, is formally addressed to the IAP Oversight Committee, but I see it as a way of keeping all stakeholders informed of the progress we are making.

While previous reports have chronicled the many growing pains of getting the IAP up and running, I see 2010 as the year that finally brought a level of stability to the IAP. The caseload moved at a steady pace, with over 3,124 hearings held, 3,192 decisions issued, and 463 negotiated settlements. This work was supported by a strong complement of adjudicators and staff in the Adjudication Secretariat. Work processes that were implemented to be ready for launch in September 2007 have been refined and documented, and new processes—such as short form decisions—were successfully implemented.

2010 was also the year that we faced up to the enormity of the challenge ahead of us.

But 2010 was also the year that we faced up to the enormity of the challenge ahead of us. The IAP was designed for a total of 12,500 claims, a number that had already been surpassed by the end of 2009. A year later, on December 31, 2010, we had received a total of 19,575 claims. Applications have been arriving at a steady rate of about 430 per month. If this rate continues, we will see over 28,500 applications to the IAP—more than double the original estimate—by the September 19, 2012 deadline, resulting in as many as 26,000 hearings in total. While this is far more than any of us anticipated, I am confident that we will be able to deal with this workload.

The IAP is doing what it was designed to do: provide a safe, confidential, and fair means for residential school survivors to tell their story and receive both spiritual and tangible acknowledgement of the wrongs committed against them. Despite the very high volume of claims, every case receives the personal attention of a skilled adjudicator and many dedicated Adjudication Secretariat staff. I am proud of the workforce that has been assembled—89 adjudicators and almost 190 staff—to address this most difficult challenge.

I know that, for many, the IAP is still not moving fast enough. In my last two annual reports, I set a goal of holding 4,000 first claimant hearings each year, a rate far in excess of the 2,500 specified in the Settlement Agreement. This goal has proven elusive. The greatest single barrier to achieving higher numbers of hearings is the availability of claimants' counsel and Canada's representatives to attend a greater number of hearings. The Adjudication Secretariat has made significant progress in scheduling hearings more efficiently to help the parties attend more hearings, but

despite these efforts, only 3,124 hearings were held in 2010, an increase of 108 over the previous year.

A related problem is the high rate of hearing cancellations and postponements, primarily by claimants and their legal counsel. One out of every six hearings needs to be rescheduled, with a cost in dollars as well as lost productivity. Understanding and controlling this rate will be crucial for moving the process forward.

A secondary barrier to achieving greater hearing numbers is the availability of hearing-ready claims. Over 5,400 admitted IAP claims are waiting for the claimant to submit the mandatory documents prescribed by the IAP. Of these, over 2,500 have been waiting for documents beyond the nine months specified in the Settlement Agreement. Some of the factors, such as the speed with which medical clinics and provincial government offices can produce records to claimants, are outside the control of us or any of the parties. The Adjudication Secretariat has begun a project to better understand and address the reasons for these delays. Only the parties, with the approval of the supervising courts, can alter the document requirements laid out in the Settlement Agreement.

Three issues for 2011

In closing, there are three issues that we, the stakeholders in the IAP, must deal with in 2011.

It will require the combined efforts of all stakeholders to ensure that survivors can meet the deadline.

The first is the deadline for IAP applications, September 19, 2012, which is contained in the Settlement Agreement. All eligible survivors must file their claim by the deadline or forever lose their right to make a claim in this process. The Adjudication Secretariat, the stakeholders, the Courts and I are committed to ensuring that every eligible survivor is aware of the deadline, and has the information necessary to make an informed decision whether to apply to the IAP. This report outlines some of the steps we are taking to achieve this goal. However, it will require the combined efforts of all stakeholders to ensure that survivors can meet the deadline.

In 2010, the Assembly of First Nations passed a resolution calling for an extension of the IAP application deadline. This is not a decision that the Chief Adjudicator or the Adjudication Secretariat can make: it would be a material change to the Settlement Agreement, requiring agreement of the parties and approval of the courts. Absent this agreement, we remain focussed on the deadline as it stands now.

The second issue for 2011 is about completing the IAP's mandate. It goes without saying that we are committed to processing every claim filed by the September 19, 2012 deadline with the same attention, professionalism, and compassion we have always striven for. However, it is unrealistic to assume that this can be done within one year of the deadline, as suggested by the Settlement Agreement. Even if adjudicators and the Adjudication Secretariat could carry out the kind of crash program required to complete the caseload by 2013, claimants' counsel and

Canada's representatives would not be able to attend the hearings required unless drastic changes were made to the process. Moreover, claimants would be ill-served by such a rushed approach.

Therefore, in 2011, the Adjudication Secretariat and I will be proposing options to the Oversight Committee and the Courts that will enable completion of the IAP in an expeditious manner that treats every claimant with the dignity that he or she deserves.

The third issue relates to keeping claimants in the forefront of our thoughts. While the formal structure of the Settlement Agreement lists the claimant as one of three parties in an IAP claim, along with Canada and the churches, we have always striven to run a 'claimant-centered' process. Claimants are directly represented on the Oversight Committee by two members, and their lawyers are represented by another two. Over one-third of the Adjudication Secretariat's staff are Aboriginal, and several residential school survivors are counted among that number.

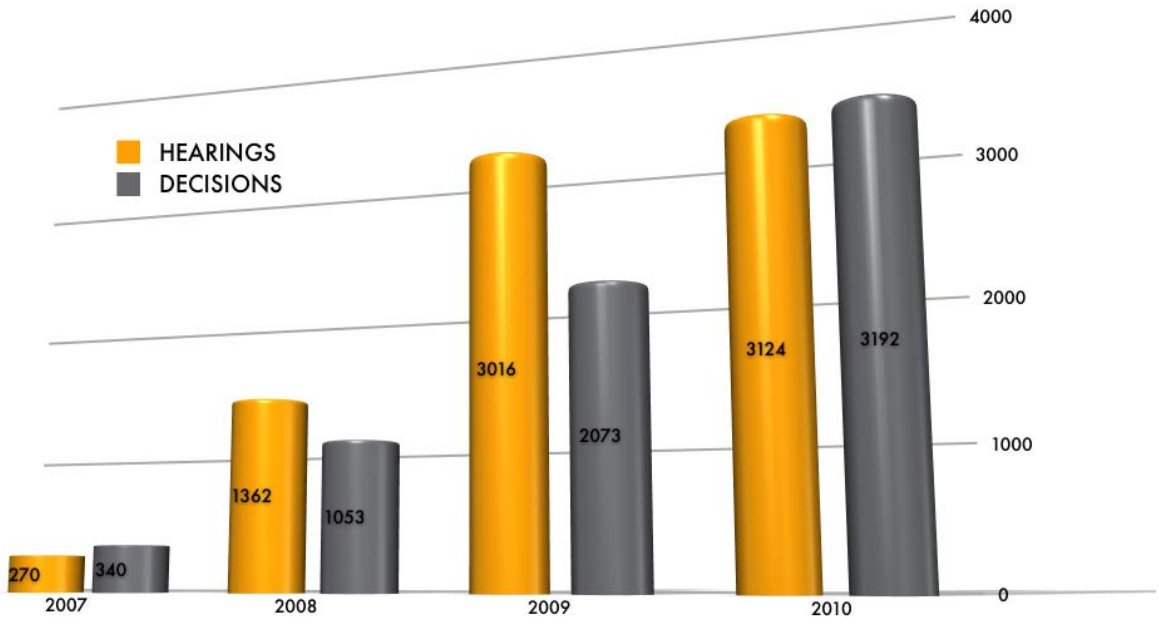
However, in other venues there has been nobody speaking up for survivors. In a recent court action on the right of claimants to have their legal fees reviewed for fairness and reasonableness, nobody came forward to represent claimants. My own role in these applications, as Chief Adjudicator, is quite limited. In my address to the Assembly of First Nations in December 2010 I asked the chiefs to take a more active role, as a party to the Settlement Agreement, in speaking up for claimants' interests. I hope to see more progress on this front in 2011.

With almost 7,500 claims resolved, the IAP has already achieved a level of progress that many thought impossible just a few short years ago.

While there are undoubtedly some difficult conversations ahead, we can look back at the progress made over the last three years with pride. With almost 7,500 claims resolved, the IAP has already achieved a level of progress that many thought impossible just a few short years ago. By sustaining and building upon this momentum, we will move closer towards the comprehensive and lasting resolution the Settlement Agreement seeks to achieve.

Daniel Ish, Q.C.
Chief Adjudicator

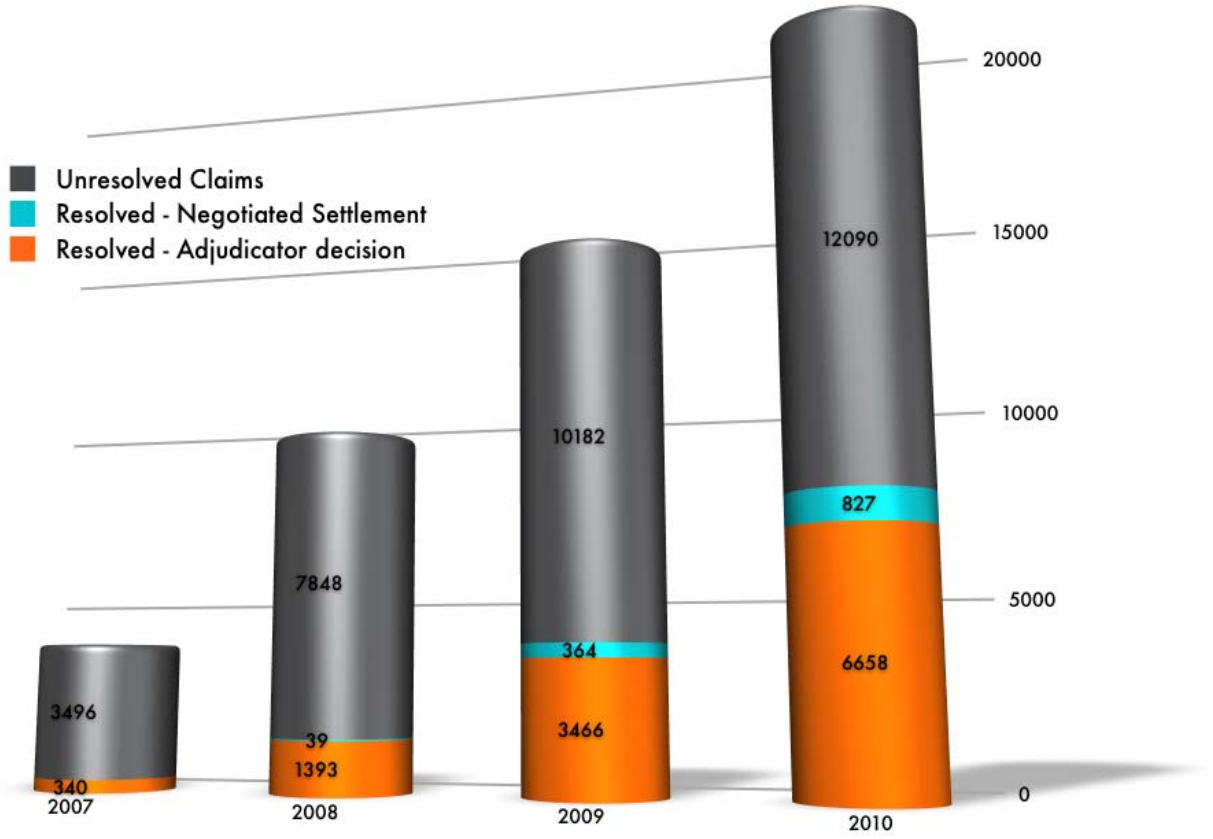
Hearings held and decisions issued each year



Key results

	Sep 19 – Dec 31 2007	2008	2009	2010	Total
Applications received	3,836	5,444	4,732	5,563	**19,575**
Hearings held	270	1,362	3,016	3,124	**7,772**
Decisions issued	340	1,053	2,073	3,192	**6,658**
Negotiated settlements	0	39	325	463	**827**
Compensation awarded	$21,482,094	$78,400,330	$185,754,824	$298,389,313	**$584,026,561**

Overall IAP caseload status



Improving the claimant experience

Although the Adjudication Secretariat is challenged by a large and growing caseload, one of our top priorities is ensuring that each claimant's experience is as positive as possible in the circumstances.

The IAP is not a paper process presided over by anonymous officials. Every single claim receives a face-to-face hearing with an adjudicator or, in some cases, a settlement negotiated directly with Canada. The Settlement Agreement contains many features designed to minimize harm and maximize the opportunities for healing presented by the claims process. These include:

- private hearings, held at a location of the claimant's choosing;
- funding for claimant-chosen support persons, as well as an elder or religious official if desired by the claimant;
- prayers and cultural ceremonies of the claimant's choice;
- trained health support workers and professional counselling available throughout the resolution process;
- the opportunity for survivors to proceed through the resolution process with support as part of a group;
- a hearing process led by an independent adjudicator with no cross-examination by legal counsel; and
- in the standard track, a relaxed standard of causation that focuses on the claimant's experience at residential school, and not other life circumstances.

The Adjudication Secretariat goes to great lengths to promote a positive hearing experience for claimants

In addition to carrying out the process mandated by the Settlement Agreement, the Adjudication Secretariat goes to great lengths to promote a positive hearing experience for claimants and other participants. Many of these activities flourished in 2010 as the process and the organization matured.

Support to self-represented claimants

Although all parties recommend that claimants retain qualified legal counsel in the IAP, about 8% of claimants have chosen to enter the process self-represented. Each of these claimants is assigned an IAP Support Officer, who acts as a single point of contact for the claimant and helps guide them through the process. Support officers

encourage claimants to retain legal counsel, and about half of those advised ultimately do so—but the claimant's decision is respected in either event.

Since implementation, over 1,100 self-represented claimants have been assisted by support officers.

Presently, the Adjudication Secretariat has nine support officers based in Ottawa and six in Winnipeg. Each officer works with about 70 claimants. Since implementation, over 1,100 self-represented claimants have been assisted by support officers.

Recognizing that the collection of mandatory documents represents an insurmountable barrier to many self-represented claimants, a small mandatory document team works with support officers to provide assistance. Officers will help claimants determine what documents are needed and available, prepare authorizations for release of those documents for the claimant's signature, then send the authorization to the appropriate agencies. The support officer can also authorize payment for a self-represented claimant's documents, a cost that would be prohibitive for most claimants to shoulder alone. For claimants with legal counsel, these costs are paid by Canada as a disbursement when the claim is resolved.

Winnipeg Hearing Centre

The Winnipeg Hearing Centre held its first hearing in September 2009, with an official opening on March 2, 2010. The centre offers a new venue option for claimants from Manitoba and northwest Ontario. The 1,090 square foot facility offers claimants a safe and convenient location as well as culturally-appropriate surroundings specially designed to nurture all aspects of the healing and reconciliation process.

The hearing centre includes two hearing rooms each with two adjoining caucus rooms, two claimant quiet rooms, work space for Adjudicators and a reception area. It is a model hearing facility in a supportive environment. There will be the ability to make further improvements over time in response to claimant feedback, and to use this information to guide future similar facilities.

Aboriginal themes are incorporated into the wall coverings, hardwood flooring, and numerous pieces of art placed throughout the hearing centre. Low glycemic refreshments, including fresh baked bannock and fresh cheese and fruit, are provided from an Aboriginal supplier. Friendly and compassionate Adjudication Secretariat staff are on hand to meet hearing participants and provide assistance.

During 2010, 332 hearings were held in the two hearing rooms at the centre, representing 82% of all hearings held in Winnipeg during the year.

Vancouver Hearing Room

The Adjudication Secretariat also operates a hearing room at its Vancouver office. Although not as elaborate as the Winnipeg Hearing Centre, the hearing room provides claimants from the Lower Mainland a consistently comfortable, private location with on-site support from Adjudication Secretariat staff. 68 hearings were held in the Vancouver hearing room in 2010.

Outreach and communications

As the IAP passed the halfway mark for the application window—September 19, 2007 through September 19, 2012—the Adjudication Secretariat dramatically stepped up its outreach efforts.

In 2010, the Adjudication Secretariat held 38 community outreach sessions across the country. This number will almost triple by the end of 2011.

The principal goal of our outreach work is to ensure that all eligible claimants are aware of their right to make a claim in the IAP before the application deadline. In this respect, the Adjudication Secretariat's work augments the official court-approved notice program, the additional notice that will be issued in late 2011, and the work done by community organizations funded under Canada's Advocacy and Public Information Program.

Other goals of the outreach program are to:

- address confusion and misinformation in communities;
- encourage former students to obtain qualified legal representation;
- gather survivors' perspectives on the IAP; and
- respond to community and stakeholder requests for information about the IAP.

The outreach program takes a special focus to Saskatchewan, Quebec, and the North, to respond to comparatively low participation in those regions compared to the number of survivors located there. In addition to this regional focus, we will increase our attention to residential school survivors who are homeless or incarcerated. The goal remains, however, to ensure that survivors across the country are aware of the IAP and can make an informed decision whether to apply.

In 2010, the Adjudication Secretariat held 38 community outreach sessions across the country. This number will almost triple by the end of 2011, with over 100 sessions planned for 2011. In addition to these sessions, which are conducted with Adjudication Secretariat staff, we will continue working with community organizations across the country to help ensure the IAP information they distribute is clear, accurate, and timely.

Expedited hearings

Ordinarily, the IAP requires claimants to submit various mandatory documents before a hearing will be scheduled. This helps ensure that an adjudicator's decision and compensation payment can follow very quickly after the claimant gives evidence. However, the Settlement Agreement recognizes that some claimants have serious health conditions that present a risk they may die or lose the capacity to provide testimony. Upon presentation of medical evidence, the Adjudication Secretariat will arrange an 'expedited' hearing with an adjudicator for the sole purpose of hearing and preserving the claimant's evidence. The case is then adjourned to allow documents to be collected so the case can be concluded.

In 2010, 430 expedited hearings were held, representing 14% of all hearings held in the year.

The Adjudication Secretariat has noted that the expedited hearing provisions have not been working entirely as intended. Some legal counsel request expedited hearings for all of their clients, using form letters that do not speak to the criteria in the Settlement Agreement. This practice is ultimately self-defeating: although the evidentiary part of the hearing begins more quickly, the need for mandatory documents and, in some cases, expert and medical assessments, remains. Expedited cases do not lead to payment any faster and, in many situations, these claims resolve more slowly. Moreover, the rush to hold expedited hearings unnecessarily diverts resources from cases where a claimant really is at risk of dying before their hearing.

In 2011, the Adjudication Secretariat will make recommendations to the Chief Adjudicator on how these issues might be addressed, so that expedited hearings are reserved for those who genuinely require them.

Linkages with the Truth and Reconciliation Commission

The Truth and Reconciliation Commission, which is an integral part of the Indian Residential Schools Settlement Agreement, began its work in earnest in 2010 with its first national event held in Winnipeg in June. Adjudication Secretariat staff attended the event and provided information to survivors about the IAP.

The Oversight Committee and Chief Adjudicator have held a series of meetings with the TRC to explore ways of working together. It is understood that the IAP and the previous ADR process have collected a great wealth of statements from survivors in the course of holding hearings. Discussions will continue in 2011 on ways of giving claimants the option of making their transcripts available to the TRC, while respecting the private nature of the IAP. The Adjudication Secretariat has also agreed to provide statistical and other information to assist the TRC with its mandate of creating as complete a record as possible of the IRS system and legacy.

Short form decisions

Following approval by the Oversight Committee in November 2009, the Short Form Decision process was successfully launched in January 2010 as a pilot project. This process allows claimants to forego a formal written decision from an adjudicator in cases where the parties agree, at the hearing, on the points and dollar amounts to be awarded. In such cases, the adjudicator will prepare the decision on the spot, where it will be signed by the adjudicator and the parties at the hearing. All parties retain their rights to request a review by a second adjudicator, according to the Settlement Agreement.

Claimants always have the right to request a full decision, with a detailed narrative of the evidence and the adjudicator's findings of fact. Claimants may wish to have this for memorialisation or other reasons. As well, full decisions are mandatory in

cases where the claimant is self-represented, where an alleged perpetrator testifies and disputes responsibility, in the complex issues track, or if the parties do not agree to a short form decision.

In 2010, 40% of decisions were issued in short form. The median time for sending a short form decision to the parties after final submissions is only 12 days, compared with a median of 63 days for long form decisions. Payment by Canada of the adjudicator's award was commensurately faster.

The Oversight Committee reviewed the pilot project in the fall of 2010 and approved its continuation, with minor modifications, on a permanent basis. Separately, the Chief Adjudicator will continue working with his adjudicator colleagues to improve the timeliness of all decisions.

Hitting the numbers

Adjudicators

The IAP is currently functioning with five Deputy Chief Adjudicators and 89 adjudicators. Although this complement has worked well, we will be conducting a new selection process in the spring of 2011 for up to 25 more adjudicators. This will help us sustain our hearing capacity in coming years. As with previous recruitments, a special 'set-aside' process will be run to encourage applications from qualified Aboriginal candidates.

Chief Adjudicator's Directives

In order to help the process operate more smoothly and promote consistency, the Chief Adjudicator and his deputies work with the IAP Oversight Committee and its Technical Subcommittee to develop Chief Adjudicator's Directives on specific technical aspects of the process. In 2010, the following new and revised directives and guidance papers were issued:

- CAD 6, revision 1, ensures that a consistent and fair approach is taken to hearings for alleged perpetrators named in IAP applications.
- CAD 8 sets out a procedure for Canada to discharge its Settlement Agreement obligation to disclose certain information required to prove claims involving abuse by other students.
- GP 1, revision 1, updated the guidance provided to adjudicators when conducting reviews of a claimant's legal fees pursuant to the court orders implementing the Settlement Agreement.

All directives and related documents can be found on the IAP's web site at www.iap-pei.ca.

Adjudication Secretariat capacity

Staffing the Adjudication Secretariat to full capacity has been a constant challenge since implementation, primarily due to the onerous provisions of the *Public Service Employment Act*. Since the merger of Indian Residential Schools Resolution Canada with Indian and Northern Affairs Canada (INAC) in June 2008, the Secretariat has also been subject to INAC's human resources policies and priorities. Many of these rules were written for the continuing operations of government departments and do not address the challenges of rapidly staffing a temporary organization.

Significant progress was made to staff key positions in 2010.

Significant progress was made to staff key positions in 2010. Three key director-level positions—Operations, Strategic Operational Planning, and Client Services—were all filled on a permanent basis, two of them for the first time since implementation. Overall, the Adjudication Secretariat's staff grew to 190. While this headcount number represents a net increase of only 11 from a year earlier, our dependence on temporary and casual staffing to meet continuing requirements has been greatly reduced. With this increase in our long-term workforce, greater emphasis will be placed in 2011 on workplace wellness and the retention of employees.

September 2010 saw the departure of Jeffery Hutchinson, the Adjudication Secretariat's Executive Director since February 2008. Over his two and a half years, Jeff brought the Secretariat to life and grew it from 54 to 198 staff, and grew its capacity from 1,300 hearings a year to over 3,000. In his place, we welcomed Akivah Starkman, who came to us most recently from Acadia University. Dr. Starkman has over a decade of experience with quasi-judicial tribunals and conflict resolution, as former Executive Director of the Canada Industrial Relations Board and Director General of the Federal Mediation and Conciliation Service.

In June 2010, the Adjudication Secretariat said goodbye to Monique Bond, who retired after 30 years in the Public Service of Canada, the last four of which were spent on the IAP, as its Interim Executive Director through the implementation period and as Director of Strategic Operational Planning for the Adjudication Secretariat. Many of the initiatives discussed in this report have come to fruition through Monique's vision and determination.

Admission rate

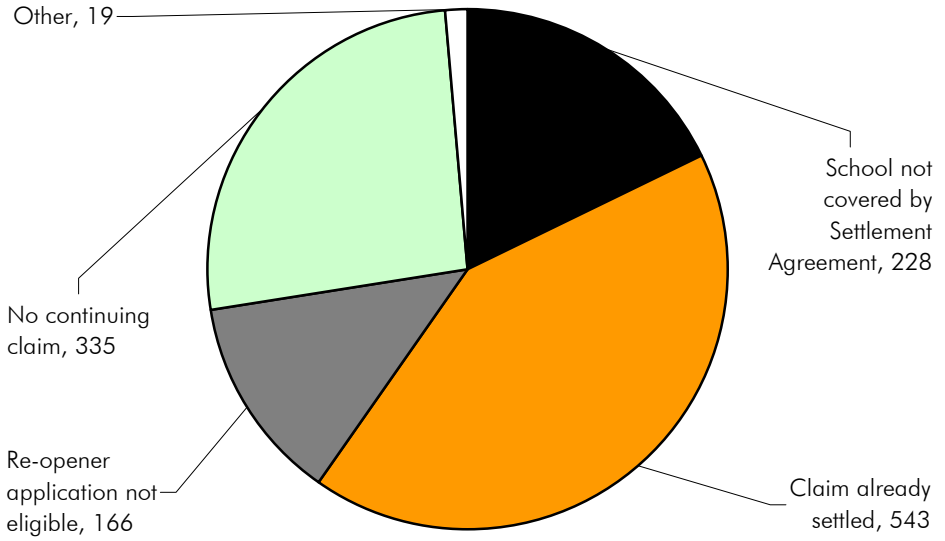
One of the Adjudication Secretariat's responsibilities as the neutral manager of the process is to review applications upon receipt and determine whether they contain matters that can be resolved within the IAP. The Settlement Agreement specifies that claims must be 'admitted' to the process, if the claimant is eligible and has alleged one or more incidents of abuse covered by the IAP.

In 2010, the admission rate remained stable at about 92% of new IAP claims. In total, 1,291 claims have been refused admission since 2007, primarily for four reasons:

- the claimant attended a school not listed in the Settlement Agreement, or added as provided in Article 12 of the Agreement (18%);
- the claimant has already settled their Indian Residential School abuse claim, either in litigation, the previous ADR process, or in an IAP claim already heard (42%);
- the claimant's application to re-open a settled ADR claim does not meet the Settlement Agreement's eligibility requirements (13%); or

- the claimant has not described an eligible continuing claim on their application (26%).

Reasons for claims not admitted to the IAP



Unfortunately, we receive a number of IAP applications from survivors who have already settled their claim in the former ADR process or in litigation, and are ineligible to re-open it. Previously-settled claims remain the number one reason for claimant ineligibility. We continue to stress this aspect of eligibility in our communications to survivors.

A claimant who is refused admission to the IAP can provide more information. 134 claimants have done so, and 74 (55%) were subsequently admitted based on new information. As well, a non-admit decision can be appealed to the Chief Adjudicator. 30 appeals have been filed to date, of which 25 were decided by the end of 2010: the Chief Adjudicator has allowed 1 appeal, and upheld the Secretariat's decision in 24.

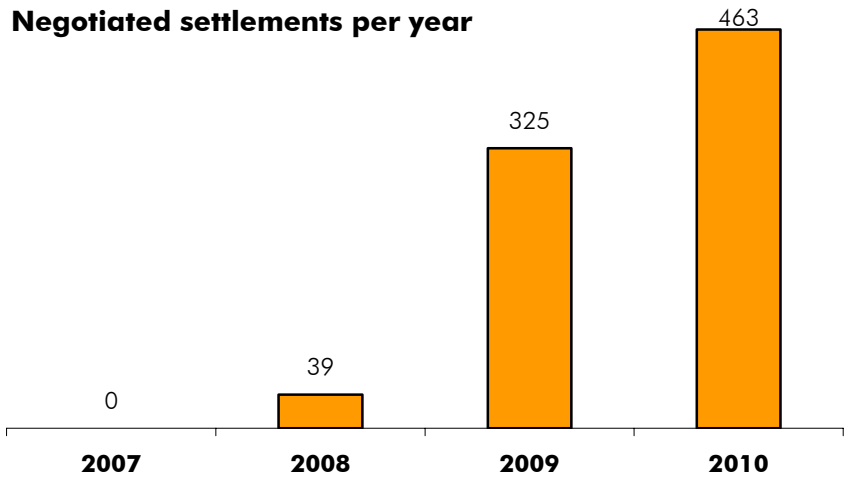
Negotiated settlements

The possibility of negotiating claims without a full hearing could greatly expand the IAP's capacity to resolve more claims per year.

In addition to claims decided by adjudicators at hearings, the IAP allows the parties to resolve an eligible claim without a hearing, through what has become known as the Negotiated Settlement Process (NSP). The number of negotiated settlements reached 463 in 2010, a 42% increase over the previous year.

The possibility of negotiating claims without holding a full hearing could greatly expand the IAP's capacity to resolve more claims per year. As well, a negotiated outcome can promote reconciliation and save process costs. At present, however, Canada's policy is to negotiate a settlement only where the claimant has given previous sworn evidence, such as in an examination for discovery or an unresolved ADR claim. Over time, the number of available claims with existing sworn evidence will decline, and the potential for negotiated resolutions will diminish accordingly.

Because negotiated settlements are voluntary, the Adjudication Secretariat does not have the power to require Canada to resolve more claims. However, the Chief Adjudicator will continue to encourage the parties to consider new opportunities for resolving claims without the need for a full hearing.



Resolving the remaining ADR caseload

In addition to our responsibilities under the IAP, the Adjudication Secretariat is also responsible for holding hearings in the Alternative Dispute Resolution process established by the Government of Canada in 2003. Pursuant to the Settlement Agreement, the ADR process ceased accepting claims in March 2007, and only one ADR claim was still awaiting a hearing by the end of 2010.

Supporting legal counsel

The Adjudication Secretariat and all parties to the Settlement Agreement recommend that claimants retain qualified legal counsel to represent them in this complicated legal process. Recognizing that the IAP represents a unique adjudication process and body of law, the Secretariat has undertaken a number of initiatives to support the legal counsel participating in the IAP:

- The Chief Adjudicator, several Deputy Chief Adjudicators, and Secretariat staff presented at a Continuing Legal Education course in May 2010, which was co-chaired by an experienced claimant's counsel and a Justice Canada lawyer. Almost 100 practitioners attended in person in Vancouver, or by online webcast. The event was considered successful and timely by most participants, and we hope to support similar events in other jurisdictions.
- The Adjudication Secretariat is producing a Desk Guide for legal counsel to help explain the claims process and share recommended practices. It is targeted for release in 2011.

- New information materials to help claimants understand the benefits of hiring a lawyer, as well as their rights in dealing with one, have been developed for use in outreach and communications activities. As well, the Adjudication Secretariat is examining other ways of encouraging good practice and service to clients.

Unfortunately, the good work of most legal counsel in the IAP risks being tarnished by the deeds of a small number of lawyers whose conduct does not accord with accepted professional standards. As in previous years, the Chief Adjudicator has felt compelled to report certain situations to provincial law societies for investigation and possible disciplinary action. While lamentable, this has proven necessary to protect the integrity of the entire Independent Assessment Process.

Legal fee reviews

When the supervising courts approved the Indian Residential Schools Settlement Agreement in 2007, the approval was conditional on a means to oversee legal fees charged to claimants in the IAP. Most legal work for claimants is done on a contingency fee basis, meaning that the claimant pays only if they receive an award, and generally pay a percentage of the award to their lawyer.

The courts made orders restricting the maximum legal fees payable and creating a review process.

The courts sought to ensure that claimants had a way to challenge the reasonableness of these fees, and made orders restricting the maximum fee payable and creating a fee review process. These orders establish a three step regime:

- Legal fees must never exceed 30% of the claimant's award. Adjudicators are required to review contingency fee agreements to ensure that fees remain within this cap.
- In all cases where the claimant is represented by counsel, Canada will pay a 15% premium, in addition to the adjudicator's award, as a contribution towards legal fees.
- Legal counsel may charge up to an additional 15% (in other words, up to the 30% cap), but adjudicators can review these fees to determine if they are fair and reasonable.

As discussed in previous annual reports, these requirements have proven controversial. In March 2010, a claimant's counsel filed a Request for Direction with the courts that challenged various aspects of the legal fee review process. As a result of a stay issued by the court in October, legal fee decisions continued to be written by adjudicators but not released to the parties. By the end of 2010, there were 660 rulings being held by the Secretariat, pending a decision from the courts.

After the end of the year, in March 2011, the Ontario Superior Court of Justice issued its direction on the matter. Chief Justice Winkler held that because Adjudicators act under court order when conducting legal fee reviews, the only appeal available is to the Chief Adjudicator. There is no further appeal to the courts on individual cases. The court also provided directions which clarified the original

implementation orders issued in 2007. As a result of this decision, all outstanding legal fee rulings were released.

Decisions database

With the assistance of Crawford Class Action Services, the Adjudication Secretariat has developed a secure, searchable online database of important IAP decisions. When fully implemented, the database will allow adjudicators, claimants' counsel, church entities, and government representatives equal access to selected decisions. Since IAP decisions do not have precedential value, the database is intended for research purposes only.

All personally identifying information is removed from decisions before they are placed in the database, to protect the privacy and confidentiality of all participants.

Electronic document interchange

The Adjudication Secretariat implemented a secure electronic document interchange system in 2010. In addition to transferring documents more quickly to and from adjudicators, the system also saved hundreds of thousands of dollars in courier costs.

By the end of the year, access to the system had been expanded to all adjudicators, 34 claimants' counsel representing large caseloads, and representatives of the defendant churches and Canada.

Moving claims forward: four challenges

As much as the Adjudication Secretariat is proud of the extraordinary progress made over the past three years, we recognize that for most claimants, the process simply takes too long.

On average, 80% of claims take 17 months from receipt of the application form to the compensation payment. However, the remaining 20% take an average of almost 29 months to work through the system. Although there are many factors that affect how quickly claims move through the IAP, four issues represent the vast majority of process delays:

- the submission of mandatory documents by claimants and their lawyers;
- availability of parties to attend hearings;
- the high rate of cancellations and postponements of hearings; and
- assessments and other activities required after a hearing.

Mandatory documents

The IAP compensation framework contained in the Settlement Agreement recognizes both the acts of abuse and the effects of that abuse on the claimant. While no documents are required to prove the abuse itself, the IAP prescribes certain mandatory documents that must be submitted in support of higher levels of harm and loss of opportunity. These documents include medical, educational, income, corrections, and worker's compensation records.

By the end of 2010, there were 5,418 claims waiting on mandatory documents from the claimant.

Except in the case of 'expedited' hearings (see above), a complete set of mandatory documents must be submitted before a hearing will be scheduled. By the end of 2010, there were 5,418 claims waiting on mandatory documents from the claimant. Of these, 2,575 have been waiting longer than the nine months prescribed by the Settlement Agreement.

This is an acute and growing concern for all the parties to the IAP. In addition to the delay experienced by claimants, the backlog of claims waiting for documents represents over 16 months' worth of hearings that will need to be scheduled once the cases are ready.

Several factors affect the submission of documents:

- Many of the medical clinics and government offices that hold these records lack the capacity to provide them to the thousands of residential school survivors who require them. This problem is especially severe is smaller communities with large numbers of claimants.
- The work practices of law firms vary considerably, and some law firms produce documents much faster than others in the same geographic area.
- Some law firms do not begin the collection of mandatory documents until after the claim has been admitted to the IAP. The Adjudication Secretariat recommends that all law firms begin collection of documents immediately after completing the IAP Application Form.

As well, the lack of communication from some legal counsel makes it difficult to ascertain whether some claims are waiting for documents or are held up for other reasons.

Although the Adjudication Secretariat does not directly control the rate of mandatory document submission, we are continuing our efforts to address this problem by investigating the sources of the delay and implementing initiatives to remove obstacles.

Availability of parties for hearings

Once a claim becomes hearing-ready with the submission of a claimant's mandatory documents, the Adjudication Secretariat will schedule it for a hearing, unless the parties have agreed to seek a negotiated settlement.

In addition to the claimant, each hearing requires the attendance of an adjudicator, the claimant's lawyer if represented, and a representative of Canada. The relevant church organization also has the right to attend if they wish. The Adjudication Secretariat makes every effort to accommodate the claimant's choice of location, while maximizing scheduling efficiency for the parties—for example, by scheduling several hearings in the same location on sequential days.

Some legal counsel have submitted so many IAP claims that it would take years to hear all of them. Canada's capacity to attend hearings has also been problematic.

The availability of parties to attend hearings remains a concern. Some legal counsel have submitted so many IAP claims that it would take years to hear all of them. Canada's capacity to attend hearings has also been problematic. Without relieving Canada of its Settlement Agreement obligation to provide sufficient resources, the Adjudication Secretariat has agreed to work more collaboratively with Canada to align their available resources with hearing requirements. For example, by sharing internal forecasts on the numbers of hearings required in each region, we can help Canada be better prepared to meet the demand. As well, the Adjudication Secretariat also continues to encourage the parties to resolve claims through negotiation without the need for a full hearing.

For 2011, the Adjudication Secretariat has obtained a clear commitment from Canada to attend 4,000 first claimant hearings during the year—a goal we have striven for since 2009. Success will depend on continued staffing by Canada, as

well as a continued supply of hearing-ready files and claimants' counsel available to attend them.

Cancellation and postponement of hearings

About 17% of all claimant hearings do not take place as scheduled, mostly due to requests from claimants or their legal counsel.

A very significant drain on the number of hearings actually held each year is the very high rate of cancellations and postponements. About 17% of all claimant hearings do not take place as scheduled, mostly due to requests from claimants or their legal counsel. Changes to hearing dates negatively affect the process, since the Secretariat may have already incurred costs for the cancelled hearing, and must make new arrangements to reschedule and finalize the travel and logistical arrangements. In most cases, we receive too little notice to schedule another hearing in place of the postponed one.

The Adjudication Secretariat will continue studying this issue in 2011, to better understand the underlying causes of cancellations and postponements, and to inform the Chief Adjudicator's decision-making on any remedial measures that may be appropriate. Work on this and other issues will help maximize the use of available resources of all the parties.

Post-hearing assessments

The fourth major source of delay occurs after the hearing—a time when the claimant is most anxious for resolution. Although short form decisions and other initiatives have dramatically improved the speed of compensation payment after hearings, a significant minority of claimants must endure very long delays after giving their evidence at a hearing.

A significant minority of claimants must endure very long delays after giving their evidence at a hearing.

As negotiated in the Settlement Agreement, the IAP requires claimants to attend an expert assessment if claiming harms at levels 4 and 5, and a medical assessment if claiming a physical injury. Assessments are also required in actual income loss cases. In 2010, about 15% of claimants required at least one form of assessment after the hearing. An assessment can add 120 days or more to the time required to resolve a claim.

Assessments are conducted by independent professionals chosen for their expertise in the field and willingness to testify at a hearing, if required. Expert assessors, for psychological injuries, are chosen by the adjudicator from a roster approved by the Oversight Committee. Medical assessors, for physical injuries, are agreed upon by the parties or appointed by the adjudicator.

Several factors combine to make assessments a time-consuming part of the process:

- The Adjudication Secretariat has encountered a shortage of qualified professionals willing to do this work. Considerable time is spent searching for assessors in the specialties required.

- Like most Canadians who need to see a specialist, the IAP encounters waiting lists. Since assessments for the IAP are not medically urgent, they are often given lower priority by the professionals who do them.
- Because of patterns of abuse at various residential schools, the IAP often generates high demand for a specific type of expert in a localized area, which often exceeds the specialist's available capacity.
- Most assessors work in large cities, far from many claimants. There is a shortage of professionals in areas of high demand by the IAP, including Manitoba, Saskatchewan, and the Territories. Additional time is required to make arrangements for the claimant to travel.
- In some cases, claimants will disclose new or substantially different abuse to the assessor than they did at the hearing. This can require the hearing to be reconvened so this new evidence can be heard and tested by the adjudicator before a decision can be issued.

In 2010, the Adjudication Secretariat implemented measures to improve the assessment process. A new contracting model for psychological experts was implemented to reduce administrative delays and safeguard the independence of adjudicators and the expert roster. As well, a request for proposals was issued to retain one or more firms to manage contracts for medical assessments, which should improve access to the wide range of medical specialties required in the IAP.

These steps have reduced the Adjudication Secretariat's administrative burden, and enabled it to manage the 36% increase in the number of assessments completed in 2010 compared with the previous year. However, continuing challenges posed by the availability and location of specialists will likely remain for the foreseeable future.

The requirement for medical and expert assessments is contained in the Settlement Agreement, but can be waived in individual cases by agreement of the parties. As the parties gain more experience in the IAP, they may be better able to distinguish those cases where an assessment would assist the adjudicator from those where it would not.

Towards Completion

By the end of 2010, the Adjudication Secretariat had admitted about 9,000 claims that have not yet had a first claimant hearing or negotiated settlement. In the 21 months remaining before the September 19, 2012 application deadline, a further 8,000 admitted claims can be expected. There is, clearly, much work ahead.

The objective is… to ensure that every claimant receives the respect he or she deserves, and the full benefit of the process that has been negotiated to bring closure to the legacy of Indian Residential Schools.

When drafted in 2006, the Settlement Agreement anticipated that all claims would be "processed" within one year after the deadline – in other words, by September 19, 2013. While the Adjudication Secretariat fully anticipates to have admitted all eligible claims well before that time, from claim volumes and performance to date it is clear that claimants will not have submitted mandatory documents on all these claims by 2013. Moreover, the parties would not be able to attend all the hearings required, even if the Adjudication Secretariat could schedule and arrange them.

The Chief Adjudicator will be proposing to the Oversight Committee and the Courts an approach for the timely completion of the remaining IAP caseload. In support, the Adjudication Secretariat will work to obtain the resources required to complete its mission.

The objective is not to needlessly prolong the IAP, but to ensure that every claimant receives the respect he or she deserves, and the full benefit of the process that has been negotiated to bring closure to the legacy of Indian Residential Schools.

Indian Residential Schools	Pensionnats indiens
Independent Assessment Process **Processus d'évaluation indépendant**	
Crisis Line 24h *1 866 925 4419*	Info Line *1 866 879 4913*
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