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

Bringing closure, enabling reconciliation: *a plan for resolving the remaining IAP caseload*

Chief Adjudicator's Report to the Supervising Courts

December 2013

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1. Introduction

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. As the largest class action settlement in Canadian history, the Settlement Agreement provides financial and non-financial benefits to over 80,000 living survivors of the federally-administered institutions covered by the agreement. Administration of the Settlement Agreement is funded by the Government of Canada and overseen by nine provincial and territorial superior courts.

The *Independent Assessment Process* (IAP) is one of two individual compensation programs 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 residents of residential schools to resolve these claims, unless they opted out of the Settlement Agreement.[2]

The Settlement Agreement prescribes the claims resolution process in considerable detail. Applicants submit a detailed application form outlining the alleged abuse and the impact on their life. If found eligible ("admitted"), the claimant and Canada submit required documents. Every claim, unless resolved through negotiation, receives an oral hearing before an independent adjudicator.[3] The hearing may be adjourned for medical or expert assessments, or other matters. Following final submissions, the adjudicator makes all findings of fact and may award compensation based on a scale contained in the Agreement. The adjudicator may also review the claimant's legal fees. A party may request that the adjudicator's decision be reviewed. Upon expiration of the review period, any compensation awarded is paid to the claimant by Canada.

The Indian Residential Schools Adjudication Secretariat (the Adjudication Secretariat) is the independent, quasi-judicial tribunal providing impartial application processing and decision-making in the IAP. The Adjudication Secretariat has become one of Canada's largest tribunals, holding over 4,000 face-to-face hearings every year with the support of over 100 adjudicators and over 200 staff. It reports to the Chief Adjudicator, who was appointed by the IAP Oversight Committee and confirmed by the supervising courts.

IAP applications were accepted from September 19, 2007 to September 19, 2012.[4] Almost 38,000 IAP applications were received by the deadline, over three times the original estimates. By June 30, 2013, over 22,000 claims (58% of the total) had been resolved.

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[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 IAP 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] Section 5.5 describes situations in which a claim may not require a hearing.

[4] As discussed in Section 3.3, the supervising courts extended the application deadline to September 2, 2013 for one additional school.

This report outlines the Chief Adjudicator's proposed plan for resolving the remaining IAP caseload in a fair, impartial, and claimant-centered manner. It is provided to the Supervising Courts and the parties for information as part of an application by the Chief Adjudicator for approval of specific measures to help ensure the timely completion of the IAP.

Note

The Adjudication Secretariat's fiscal year and planning cycle runs from April 1 to March 31. When possible, actual performance data has been updated to June 30, 2013.

2. Application volume

The Independent Assessment Process (IAP) is, at its core, driven by survivors. The Settlement Agreement set a five-year window for applications, from September 19, 2007 through September 19, 2012.

Significant efforts were made to inform class members about the process and the application deadline, including a court-approved notice program, an active outreach program managed by the Adjudication Secretariat, which provided 365 information sessions to claimants their families, aboriginal health and cultural organizations. Special efforts were made to reach claimants who were homeless or incarcerated. An application assistance program funded by the Adjudication Secretariat and run by the Assembly of First Nations (AFN) and Inuit Tapiriit Kanatami (ITK) to assist former students who chose not to retain a lawyer. The application assistance program resulted in 535 applications from individuals who might not have otherwise applied.

The number of applications has greatly exceeded anyone's predictions. This section describes the impact of this higher volume of applications.

2.1. Projections

Initial planning for the IAP anticipated a total of 12,500 applications, including new claims originating in the IAP, as well as all claims transferred from the ADR process,[5] continuing ADR claims,[6] and applications to re-open settled ADR claims.[7] This figure was based primarily on two sources:

- the Settlement Agreement's benchmark of 2,500 hearings per year, to be held over five years; and
- a 2002 estimate by Indian Residential Schools Resolution Canada of 18,000 total abuse claims, which was apparently based on abuse claims filed by 20% of the then 90,000 living IRS survivors, less claims already settled in litigation and ADR processes.

By April 1, 2009 – only 18 months after implementation – over 10,000 applications had already been received and it was clear that the originally forecast total would be exceeded. It was difficult, however, to estimate how many further applications would be received. In theory, the number of applications was limited by the number of residential school survivors who suffered eligible abuse, but the number of such persons is impossible to know with any certainty.

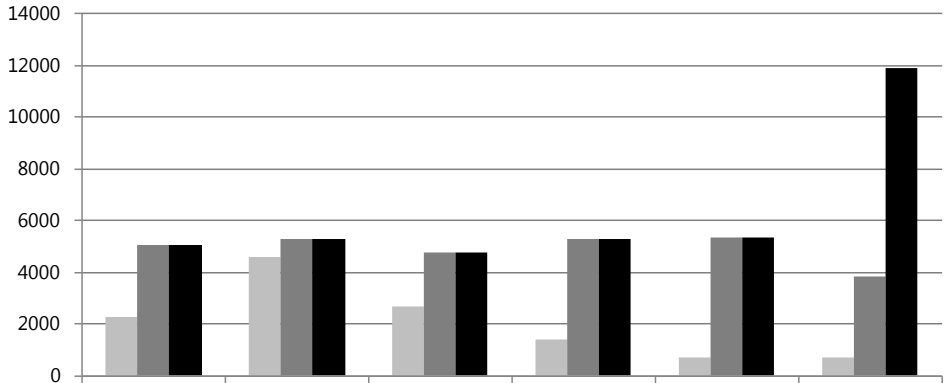
[5] Article 15.02 of the Settlement Agreement provides that certain pre-hearing claims could be transferred from the ADR process to the IAP.

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

[7] 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.

In early 2011, the Adjudication Secretariat and Canada jointly developed a revised forecast of IAP applications, which was based on the actual experience to that date rather than any predetermined number of eligible claimants. This forecast assumed continuation of the existing trend of 1,300 applications per quarter, with a 50% increase in the final six months to account for heightened activity around the application deadline. This new forecast projected that 29,700 applications would be received by the deadline.

Figure 1: IAP application forecasts

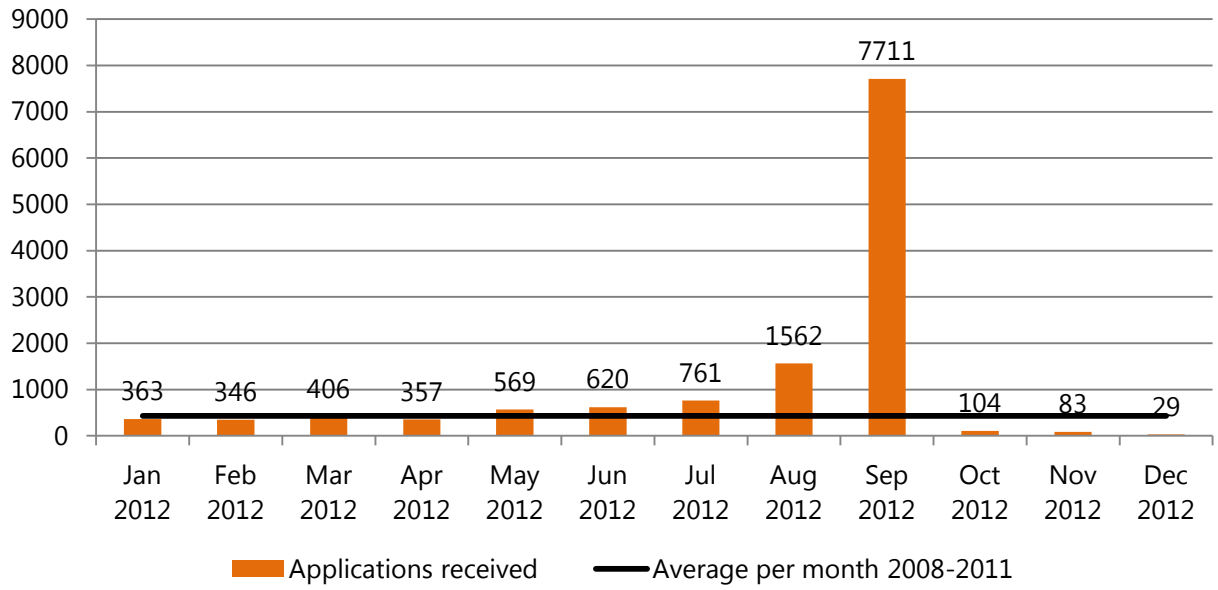


	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Initial (2007) forecast - 12,500	2314	4627	2696	1445	727	702
Revised (2011) forecast - 29,700	5086	5292	4792	5278	5361	3879
Actual applications received - 37,716	5086	5292	4792	5278	5361	11907

2.2. Applications received

The number of applications actually received was far higher than anyone had anticipated. By June 30, 2013, a total of 37,816 applications had been received. However, as Figure 2 illustrates, the last-minute surge of applications only began to materialize in the last three months leading up to the deadline.

Figure 2: Applications received per month in 2012



The Adjudication Secretariat aims to ensure fair and consistent administration of the application deadline. In March 2012, the Secretariat notified claimants' counsel of the procedures it would follow to determine whether an application was submitted on time. These procedures ensure fairness to applicants by, for example, accepting applications that are postmarked by the application deadline, while recognizing that the Settlement Agreement does not provide the Secretariat with any discretion to accept applications submitted after the deadline.

A small number of eligible applications were received in the months following the September 19, 2012 application deadline. These were applications that were postmarked or electronically dated by 11:59 p.m. Pacific Time on September 19 but which, for various reasons, were not forwarded to the Adjudication Secretariat for some time.

As well, by mid-2013, 150 applications have received 'non-accepted' letters as they were postmarked after the application deadline.

2.3. Future applications

There is no process to apply to the IAP after the deadline, except by order of the supervising courts. To date, one such order has been issued, extending the deadline for students of Mistassini Hostels until September 2, 2013. This was done because the institution was added to the schools list by Canada in August 2012, only a few weeks before the deadline. Also, the June 19, 2012 court order regarding Blott and Company deems that any claim from a former Blott client has met the deadline.[8]

[8] 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

Based on information presently available, the Adjudication Secretariat expects the number of future applications to be low, and will not have a material effect on the completion of the IAP.

Five applications to add institutions to the Settlement Agreement using the criteria in Article 12 remain before the courts. The Adjudication Secretariat is not a party to these cases. At this time it is not possible to predict the outcome of these cases or the impact, if any, of additions to the schools list on the completion of the IAP. The risks associated with this issue are discussed in more detail in section 6.11 below.[9]

2.4. 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 school – will receive a hearing or negotiated settlement. Thus, knowing the number of admitted claims is crucial to determining the number of claims that must be resolved in the IAP.

We expect the admissions process will be substantially concluded by early 2014. However, the work involved in obtaining further information from claimants who filed incomplete or blank applications very close to the deadline has been extraordinarily labour-intensive. A 60-day deadline for responses is being rigorously enforced, after which an incomplete application will be refused admission to the IAP. A non-admitted claimant then has a final 6-month period within which to provide further information or appeal the Adjudication Secretariat's non-admit decision to the Chief Adjudicator.

Historically, the IAP claim admission rate has been quite high – over 90%. This results from several factors, including:

- most applications are completed by lawyers, who will advise clients if they have an eligible claim;
- the Adjudication Secretariat provides full and transparent information about what is required, and diligently follows up with claimants and their counsel to obtain missing information; and
- generally speaking, the Adjudication Secretariat's approach to the admissions process has been to admit 'borderline' cases, in order to allow them to be heard on their merits by an independent adjudicator.

Accordingly, we project that approximately 34,000 claims will be admitted to the IAP, representing about 90% of all claims received. The actual number of admitted claims may be lower. Anecdotal evidence indicates that many of the applications received in the final weeks

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transfer of all Blott and Company clients' claims to other qualified lawyers. Amongst the Blott and Company files were 630 unsubmitted application forms. At the time of writing, 257 have not yet been filed with the Secretariat.

[9] In addition to the five applications to add specific institutions, there are also court applications pending from students who were billeted in private homes or were living in temporary hostel arrangements or guardianship placements, who are seeking coverage under the IRSSA.

before the deadline were of low quality, containing little or no information upon which to make a determination of eligibility. Because the admissions process is still underway on these claims, it would not be appropriate to speculate on their disposition.[10]

[10] The estimate of 34,000 applications is based on the number of claims admitted by June 30, 2013, plus an allowance for the remaining applications received that have not yet received an admissions disposition. Applications that were received after the deadline and cannot be accepted in the IAP are not included, but there is an allowance for potential future claims from the Blott&Co unfiled claims and from Mistassini Hostel.

3. Progress to date

Despite the very high rate of applications, the IAP has made substantial progress in resolving claims.

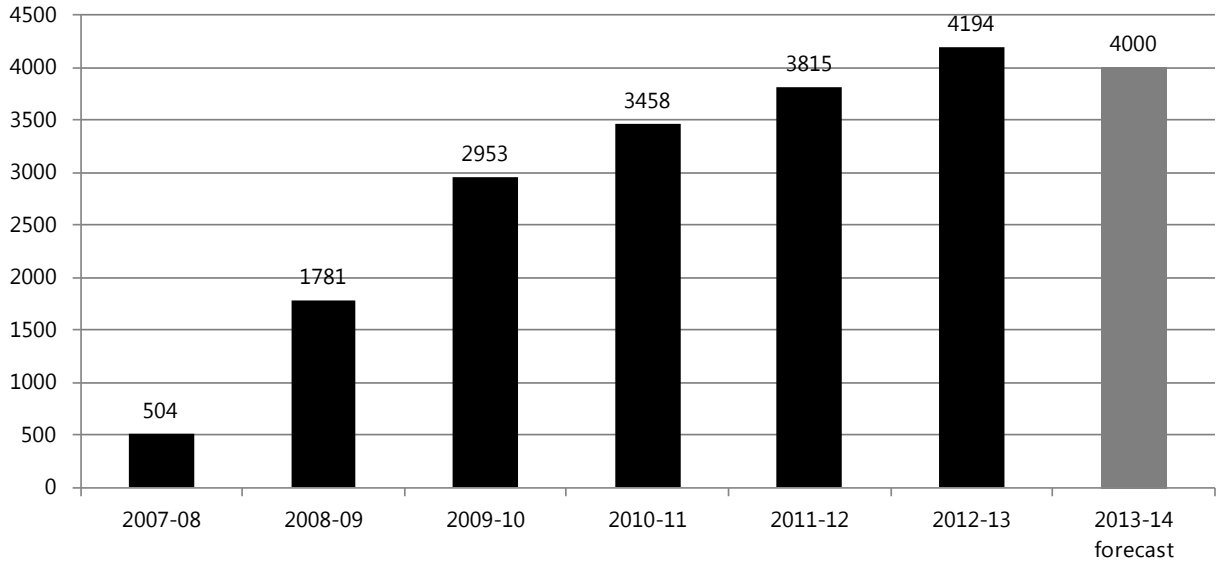
- The rate of hearings has increased significantly since implementation.
- The rate of adjudicator decisions and negotiated settlements has increased by an average of 18% each year.
- As of June 30, 2013, 58% of all claims have been resolved.

This section outlines the results achieved to date.

3.1. Hearings held

As discussed above, the IAP was initially designed to meet the rather ambitious target, set in the Settlement Agreement, of holding 2,500 hearings[11] 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 3 illustrates, the rate of hearings increased rapidly in the first three years, and continued to increase by at least 10% per year until 2012-13.

Figure 3: Number of first claimant hearings held, per year



In 2011 the Oversight Committee, with the support of Court Counsel, agreed upon a target of 4,500 hearings per year beginning in 2012-13. Increasing the rate of hearings has not been

[11] 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 (section 3.2).

without its challenges, however. Holding more hearings requires a coordinated increase in capacity across the system, including claimants' counsel, Canada's representatives, health support workers, adjudicators, and Adjudication Secretariat staff. Each of these factors has, at some point, limited our ability to hold more hearings. This issue, and the risk it poses to completing the IAP, is discussed in more detail in section 6 below.

More recently, a shortage of hearing-ready files, driven primarily by delays experienced by claimants' counsel in obtaining and submitting mandatory documents, has limited our ability to schedule cases for hearings. Several initiatives to address this issue are described in section 4 below.

In order to meet the target of 4,500 hearings a year, an average of 375 hearings must be held each month. From July 2012 to March 2013, between 350 and 400 hearings were held each month, close to the 4,500 hearings target (except in December, when hearings are scheduled for half of the month to accommodate the holiday season). However, the decline in hearing-ready files beginning in November 2012 caused a decline in hearings held from March to June 2013.

While the number of hearing-ready files has increased since January 2013, past experience indicates that it is difficult to 'catch up' for low hearing volume months without exceeding the capacity of the system. For that reason, the Adjudication Secretariat has set a target of 4,000 first claimant hearings for 2013-14. Hearing targets are discussed in more detail in section 5.2 below.

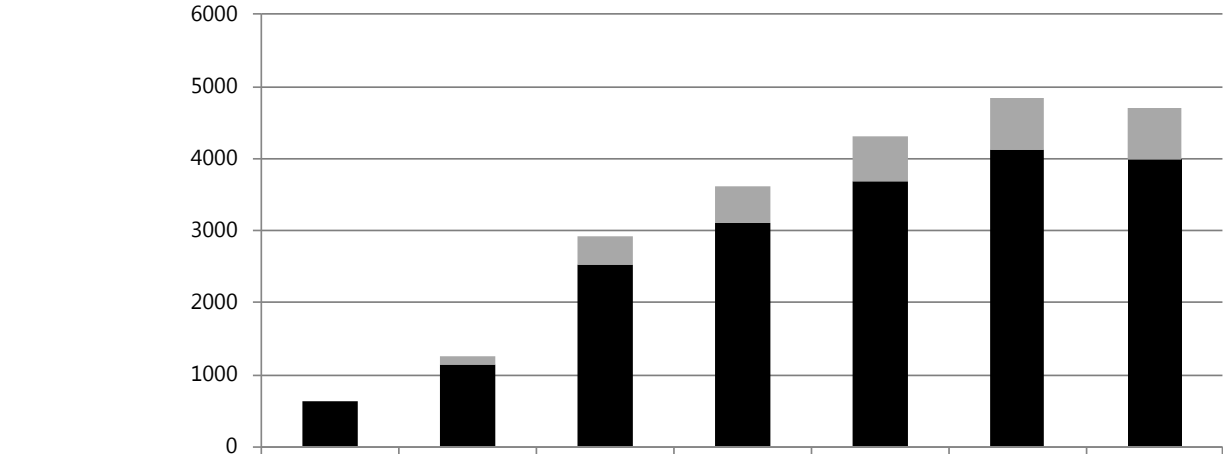
3.2. Claims resolved

While hearings are an important measure of activity in the IAP, the hearing alone does not end the claim. The Adjudication Secretariat has encouraged the parties to adopt a *whole system* approach to the IAP, recognizing that the goal is not merely to hold hearings but to resolve claims.

As Figure 4 illustrates, the rate of adjudicator decisions has increased every year since implementation of the IAP and has generally followed the rate of increase in hearings.[12] As well, negotiated settlements represent an important way of resolving claims, and are expected to continue to account for almost 12% of resolved claims.

[12] 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.

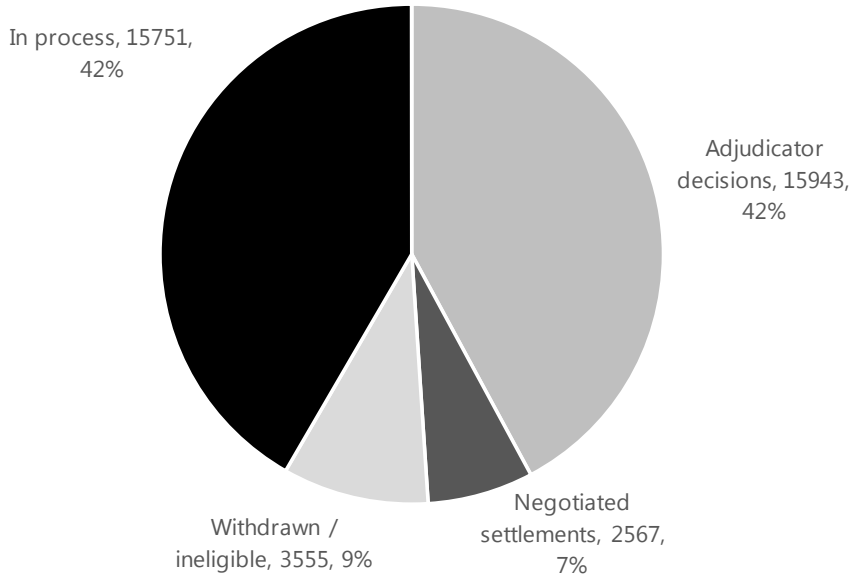
Figure 4: Adjudicator decisions and negotiated settlements, per year



	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14 forecast
Negotiated settlement	0	106	404	496	622	730	708
Adjudicator decision	636	1139	2525	3110	3676	4115	3990

As of June 30, 2013, 58% of all IAP claims had been resolved. The vast majority of resolutions (85%) were the result of an adjudicator's decision or negotiated settlement, and most resulted in compensation for the claimant.[13] Fifteen percent of resolved claims were not admitted or were withdrawn by the claimant.

Figure 5: Resolved and unresolved claims, as of June 16, 2013



[13] Dismissals and decisions that resulted in no compensation for the claimant make up 10.8% of all IAP claims that were resolved with an adjudicator's decision.

3.3. Timeliness of resolution

The Settlement Agreement not only requires the IAP to resolve all eligible claims, it provides specific benchmarks for the timeliness of claim resolution. Article Six requires that Canada provide sufficient resources to the IAP to ensure that three principal benchmarks are met:

- a minimum of 2,500 claims must be processed[14] per year;
- every claimant will be offered a hearing within nine months of being admitted, "unless the claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective"; and
- all applications filed by the application deadline (i.e. September 19, 2012) are to be processed prior to the sixth anniversary of the Implementation Date (i.e. September 19, 2013), "unless a claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective."

The first of these requirements, to process 2,500 claims per year, has been consistently met since 2009.

The second requirement, to offer a hearing within nine months of the claim being admitted to the process, is met in 96.7% of cases.[15] In measuring the time since admission, the Adjudication Secretariat excludes the time taken by the claimant to submit mandatory documents.[16]

The Adjudication Secretariat works actively to ensure that the nine-month commitment is met. Since implementation, only 3.3% of claims were offered a hearing more than nine months after admission. The most significant reasons for these delayed claims include:

- Canada did not complete document production within nine months of admission;
- a hearing date was not set because the parties entered negotiations to resolve the claim; and
- mandatory documents were produced by the claimant or their counsel, but the claimant requested that file be placed on hold for additional document production or another reason.

[14] The term "processed" is not defined in the Settlement Agreement. In 2008, the Oversight Committee agreed that a claim is considered "processed" if a first claimant hearing is held, a negotiated settlement reached, or a paper review of a re-opener application is completed.

[15] In the vast majority of cases, the hearing date offered by the Secretariat is within three months of the file becoming hearing-ready. Where claimants' counsel are not available, the Secretariat will agree to a later hearing date, which is almost always within nine months of the file becoming hearing-ready.

[16] Article 6.03(1)(c) says that "the hearing date will be within the nine month period following the claim being screened-in, or within a reasonable period of time thereafter, unless the claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective." Schedule D, Appendices IV and VII, make clear that the submission of mandatory documents is a bar to the claim proceeding to a hearing. The Adjudication Secretariat requests mandatory documents at the time the claim is admitted. Accordingly, only the time after submission of mandatory documents is counted for the purposes of Article 6.03.

Finally, Article Six provides that Canada will provide sufficient resources to ensure that all claims filed by the application deadline will be "processed" prior to September 19, 2013, the sixth anniversary of the Implementation Date. Given the huge surge in applications, described in section 2.2 above, it is clear that this objective will not be met in its entirety. While the Adjudication Secretariat and Canada could obtain the necessary funding for a higher rate of hearings, it is not operationally feasible or cost-effective to dramatically scale up staff and adjudicator resources for only one or two years, especially without the certainty that other actors in the process are able to do the same. Moreover, a dramatic one-year increase in the rate of hearings would unduly jeopardize the quality of the hearing experience and adjudicative decision-making.

Nonetheless, the Adjudication Secretariat recognizes the need to process claims quickly and has taken several steps to mitigate the situation:

- The Adjudication Secretariat is working with document-holding agencies to overcome barriers to timely disclosure of claimants' documents. This initiative is described in section 4.2 below.
- The Adjudication Secretariat schedules "expedited" hearings for any claimant who submits medical evidence indicating a significant risk that they may die or lose the capacity to provide testimony. In these cases, a hearing is convened on short notice to preserve the claimant's evidence, and the hearing is then adjourned to allow the preparation of the case.[17]
- The Accelerated Hearing Process described in section 4.4 below could make the hearing process more efficient, making best use of hearing participants' time.
- The Incomplete File Resolution Procedure outlined in section 5.6 below, and detailed in the Chief Adjudicator's court application, will provide tools to advance and resolve claims that have languished in the process.

As well, in anticipation of the possibility that all claims will not be "processed" by 2013, the Adjudication Secretariat in 2011 led a comprehensive review of the IAP and made recommendations to the parties. This review, and the measures implemented to improve the rate of claim resolution, is described in section 4 below.

[17] Schedule D, Appendix IV, point iv, on p. 23.

4. Improving the rate of claims resolution

Since implementation, the Adjudication Secretariat, the IAP Oversight Committee, and the parties have worked tirelessly to find and implement ways to increase the rate of claims processing and resolution. The progress described in the previous section is a direct result of these efforts.

The Oversight Committee, with the support of the Adjudication Secretariat, undertook a comprehensive review in 2011 to identify ways of processing more claims per year, and reducing 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.

The many ideas generated by this review were condensed into a number of proposals presented to the Oversight Committee in August 2011. Following considerable discussion by the Oversight Committee, several changes were implemented to support continued improvement.

4.1. Commitment to increase the number of hearings each year

The parties, with the support of Court Counsel, committed in 2011 to hold up to 4,500 first claimant hearings each year beginning in 2012-13, an increase of 80% above the Article Six requirement of 2,500 hearings and 17% over the number actually achieved in 2011-12. Canada has consistently provided the necessary financial resources to sustain this rate of hearings.

Since then, the Adjudication Secretariat has implemented measures within its authority, some of which are outlined below, to achieve this target. As a result, almost 4,200 hearings were held in 2012-13.

4.2. Reducing mandatory document delays

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 Adjudication Secretariat. In practice, virtually all claims require mandatory documents of some sort. Often, claimants' counsel are unable to determine what level of harm or opportunity loss to claim until they have examined the applicable documents.

The Adjudication Secretariat has implemented a web-based tool, the Interactive File Management System (IFMS), to support claimants' counsel in managing their caseloads. The system, which was specially designed for the IAP, enables detailed tracking of the different kinds of documents required for IAP claims. It also provides the Adjudication Secretariat with more

timely information on the status of claims. A court order obtained in 2011 enabled this system to be built by Crawford Class Action Services on behalf of the Adjudication Secretariat.

The information provided through IFMS, as well as feedback from the parties, has enabled the Adjudication Secretariat to identify document-holding agencies that are struggling to meet the demand created by IAP claims. The Adjudication Secretariat has worked with document-holding agencies to overcome barriers to the timely disclosure of documents to claimants' counsel. In some cases, the Adjudication Secretariat has been able to provide claimants' counsel with detailed information and forms to help them obtain mandatory documents more quickly. The Adjudication Secretariat is now developing Memoranda of Understanding with agencies to address backlogs of IAP-related document requests.

4.3. Over 65 pilot project

The Oversight Committee agreed to undertake a pilot project for claimants over age 65, which was conducted in 2012. The pilot project provided an opportunity for the Adjudication 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.

4.4. Accelerated hearing process

In early 2013, after considering the results of the Over 65 Pilot Project, the parties agreed to implement a new approach to scheduling hearings that promises to substantially reduce the blockages caused by mandatory documents.

The fundamental premise of the Accelerated Hearing Process is that the Adjudication Secretariat will aim to schedule five-day 'blocks' of hearings wherever possible. When there are insufficient hearing-ready claims to fill a block, claims that are not yet hearing-ready, but from the same law firm and/or same geographic area, will be scheduled alongside those that are ready. Claims from individuals who are older, in failing health, or who have had a claim in the process for a lengthy period of time will be given priority for an accelerated hearing. An adjudicator-led case management process will help sure that the claims become ready in time for the hearing, but if this should not be successful, the hearing will still take place and final submissions will be adjourned until the necessary mandatory documents are submitted.

Figure 6: Sample Accelerated Hearing Process schedule for one week of hearings

M	*T*	*W*	*Th*	*F*
Location X				
Law firm 1			Law firm 2	Self-represented
Claimant A Hearing-ready	**Claimant B** Hearing-ready	**Claimant C** Not hearing ready	**Claimant D** Hearing-ready	**Claimant E** Not hearing ready
Canada's representative Y				
Adjudicator Z				

Participation in the Accelerated Hearing Process is voluntary. Claimants will always have the right to wait until all mandatory documents are submitted before scheduling their hearing. As well, the Adjudication Secretariat will continue to schedule 'expedited' hearings on an urgent basis to preserve the claimant's testimony, upon presentation of medical evidence indicating a significant risk that the claimant may die or lose the capacity to provide testimony.[18]

The Accelerated Hearing Process is the most significant change to the IAP's case management process since implementation. It has the potential to eliminate mandatory documents as a barrier to scheduling hearings, and also improves efficiency by ensuring that hearings are scheduled in five-day blocks in most cases.

Because mandatory documents are still required by the Settlement Agreement, the Accelerated Hearing Process cannot guarantee faster resolution of claims. It will, however, ensure that claimants' testimony is preserved, help ensure a consistently high rate of hearings and, with active case management by adjudicators, help move claims forward more quickly.

4.5. Earlier distribution of evidentiary packages

At the request of the parties, the Adjudication Secretariat has begun distributing evidentiary packages shortly after the hearing is scheduled, rather than five weeks before the hearing date, in order to maximize the opportunity for claims to be settled without a hearing, and to reduce the number of last-minute adjournments.

4.6. Improved scheduling flexibility

With the agreement of the parties, the Adjudication Secretariat has 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 Adjudication Secretariat will arrange a hearing on a priority basis.

[18] Schedule D, Appendix IV, point iv, on p. 23.

- When a hearing is postponed – because the claim enters negotiation or for any other reason – the Adjudication Secretariat will encourage the claimant's counsel to suggest an acceptable alternative, as late as two weeks before the hearing date.

Taken together, these measures are expected to increase the number of hearings actually held each month by up to 20.

4.7. 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 Adjudication 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 is to promote good practice and deter unnecessary postponements, while retaining flexibility and a claimant-centred approach.

The new policy has proven very effective at controlling the rate of unnecessary postponements. The postponement rate, which was as high as 22% in 2011,[19] now sits below 14%. The reduction in the postponement rate meant that over 400 more hearings proceeded in 2012/13 than if the 22% postponement rate had continued. The Adjudication Secretariat also 'overschedules' hearings in anticipation of a certain postponement rate, in order to achieve the targeted rate of hearings after adjudicator-approved postponements.

4.8. Short form decisions

Following agreement of the parties, adjudicators in 2010 began offering Short Form Decisions to claimants as an alternative to a regular decision that sets out the evidence and the adjudicator's findings. Short form decisions are appropriate in cases where the parties agree, at the hearing, on the points and dollar amounts to be awarded. 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 memorialisation or other reasons.

Short Form Decisions comprise about 45% of all decisions, reflecting a high degree of satisfaction with the hearing process and agreement among the parties.

From a whole-system perspective, Short Form Decisions have helped claims resolve more quickly and ensure that adjudicator availability is not a barrier to holding hearings or resolving claims. The Chief Adjudicator will continue to encourage the use of short form decisions in

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

appropriate cases, to provide faster resolution for claimants and make the best use of adjudicator time.

4.9. Expert assessments

In 2010, the Adjudication Secretariat implemented a new process for conducting expert assessments, in which the adjudicator directly retains the expert from a roster approved by the Oversight Committee. This process has reduced the time and administrative burden involved in arranging assessments for applicants claiming high levels of harm or opportunity loss. However, the time required for psychiatric, psychological and medical expert assessments remains lengthy.

5. Completion plan

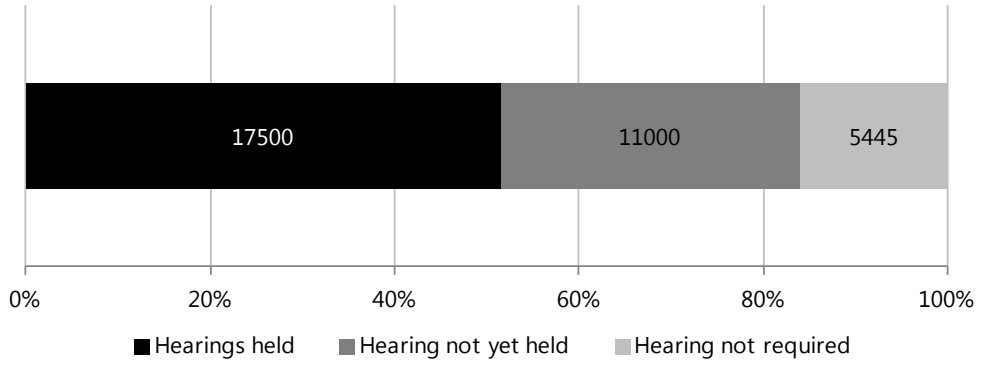
At the time of writing, the Independent Assessment Process has been operating for nearly six years. It has achieved a steady state that delivers results beyond most expectations: resolving over 5,000 cases each year[20] while continuing to provide a high-quality, personal, and claimant-centered hearing process that aims to support claimants in their healing journey.

In planning to complete the remaining caseload, the Adjudication Secretariat seeks to build on the strengths of the process and the lessons learned over the past six years. Accordingly, this plan does not propose a radical departure from current practice, but rather a concerted effort to sustain production targets while ensuring that every claim is dealt with in a fair, impartial, and expeditious manner in accordance with the Settlement Agreement.

5.1. Claims to be resolved

As indicated in section 2.4, we project that approximately 34,000 claims will be admitted to the IAP. Of these, 17,500 had already had hearings by June 30, 2013, with approximately 11,000 remaining to be heard. As well, 5,445 claims will not require a hearing, the majority of which are settled through negotiation as well as those that have withdrawn from the IAP by March 31, 2013. These cases are discussed in section 5.5 below.

Figure 7: Hearings held and required, at June 30, 2013



5.2. Rate of first claimant hearings

The first claimant hearing is generally a one-day, in-person hearing where the claimant gives oral evidence to an adjudicator within an inquisitorial model. The first claimant hearing is a major driver of activity for the Adjudication Secretariat and for the parties.

The number of first claimant hearings that can be held each year is the product of several factors operating in concert:

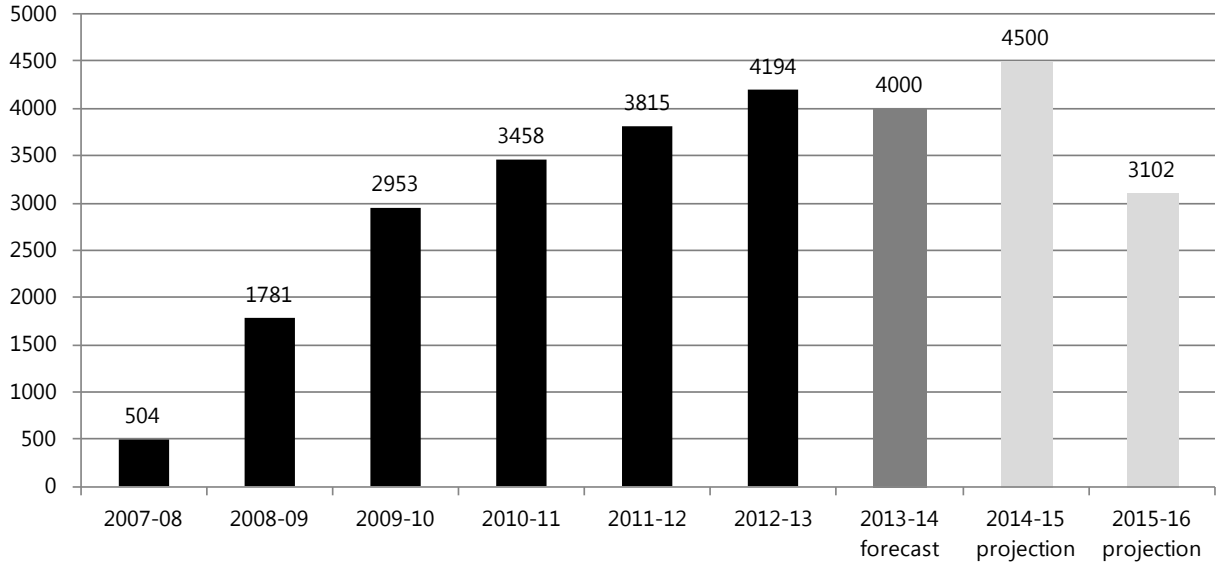
[20] For 2012-13, this includes 4,115 adjudicator decisions, 730 negotiated settlements, and 730 claims withdrawn or not admitted.

- the number of 'hearing-ready' cases (see section 4.2) or 'accelerated hearings' (section 4.4) that are available for scheduling;
- the availability and preparedness of claimants to give evidence at hearings;
- the availability of claimant counsel to attend scheduled hearings;
- the availability of Canada's representatives to attend scheduled hearings;
- the availability of Elders, interpreters, and health support workers to support claimants at hearings where required;
- the availability of suitable hearing venues; and
- the capacity of Adjudication Secretariat staff to arrange, and adjudicators to conduct, scheduled hearings.

All of these factors must coincide to sustain a given rate of hearings. One of the most significant challenges in implementing the IAP has been 'scaling up' all of these factors at the same rate. Any initiative to address a single factor is worthwhile only if it is aligned with the other factors, to increase the overall rate of hearings.

In order to complete the remaining hearings, the Adjudication Secretariat plans to hold 4,000 hearings in 2013-14, with a goal to hold 4,500 hearings in 2014-15. The remaining claims would be heard in 2015-16.

Figure 8: Hearings held and projected, 2007-2016



The proposed plan involves holding 4,000 hearings in 2013-14, a 5% decrease from the 4,194 hearings held in 2012-13. This decrease is directly attributable to the shortage of hearing-ready files that we have experienced in late 2012 through the first quarter of 2013. In addition to the increase in hearing-ready files, we anticipate that this problem will be alleviated in the second

half of the fiscal year with implementation of the Accelerated Hearing Process (see section 4.4), which will enable claims that are not yet hearing-ready to be scheduled alongside hearing-ready files to make up five-day 'blocks' of hearings. This will help stabilize hearing numbers, ensure that claimants' testimony is preserved, and maximize scheduling and travel efficiency for all those attending hearings. However, this will not make up the ground lost in the first two quarters of the fiscal year.

In arriving at the plan for 4,500 hearings in 2014-15, the Adjudication Secretariat modelled three scenarios, with hearing numbers in 2014-15 ranging from 4,000 to 4,500. Each scenario resulted in the final first claimant hearing being held by spring 2016 with post-hearing and decision related work continuing beyond that timeframe. Required post-hearing, decision, review and legal fee related activities are described in sections 5.3 and 5.4 below.

The Adjudication Secretariat will work with the parties to assist them in ensuring that all first claimant hearings are completed by 2015-16. This report outlines some of the measures that have been implemented and planned to meet this goal. The Secretariat will maintain a skeleton capacity for hearings required after 2016, such as alleged perpetrator hearings or hearings ordered following a review.

The Adjudication Secretariat considered alternative scenarios with higher numbers of hearings, beyond those proposed here. In particular, some members of the National Administration Committee suggested that 6,000 hearings should be held per year, beginning in September 2013. However, these scenarios were not considered feasible for several reasons:

- our scheduling experience to date indicates that most claimant counsel are not available to attend hearings at such high rates;
- while the Adjudication Secretariat and Canada could obtain the necessary funding for a higher rate of hearings, it is not operationally feasible or cost-effective to dramatically scale up staff and adjudicator resources for only one or two years, especially without the certainty that other actors in the process are able to do the same; and
- a dramatic one-year increase in the rate of hearings would unduly jeopardize the quality of the hearing experience and adjudicative decision-making.

Accordingly, we do not propose a drastic ramp-up of hearing numbers followed by an equally fast wind-down. Rather, we propose to set and meet achievable targets to sustain the current rate of growth.

Two primary strategies will be employed to ensure the success of this approach:

- The Accelerated Hearing Process, described in section 4.4, was implemented in June 2013 to ensure that hearing targets are met even if there are insufficient hearing-ready files.
- The Adjudication Secretariat will continue to schedule 'expedited' hearings on an urgent basis for claimants who present medical evidence that they may die or lose the capacity to provide testimony. In a typical year, 360 claims are heard on an expedited basis. In

such cases, a hearing is held immediately to preserve the claimant's testimony, and the case is then adjourned to allow the normal pre-hearing steps to take place.

We are confident that this is an achievable and sustainable rate of first claimant hearings. As with any plan, there are some risks to the forecast, which are discussed in section 6.

5.3. Post-hearing activities and rate of resolution

While the first claimant hearing is an important milestone for planning purposes, 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 any 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; and
- receiving final submissions from the parties.

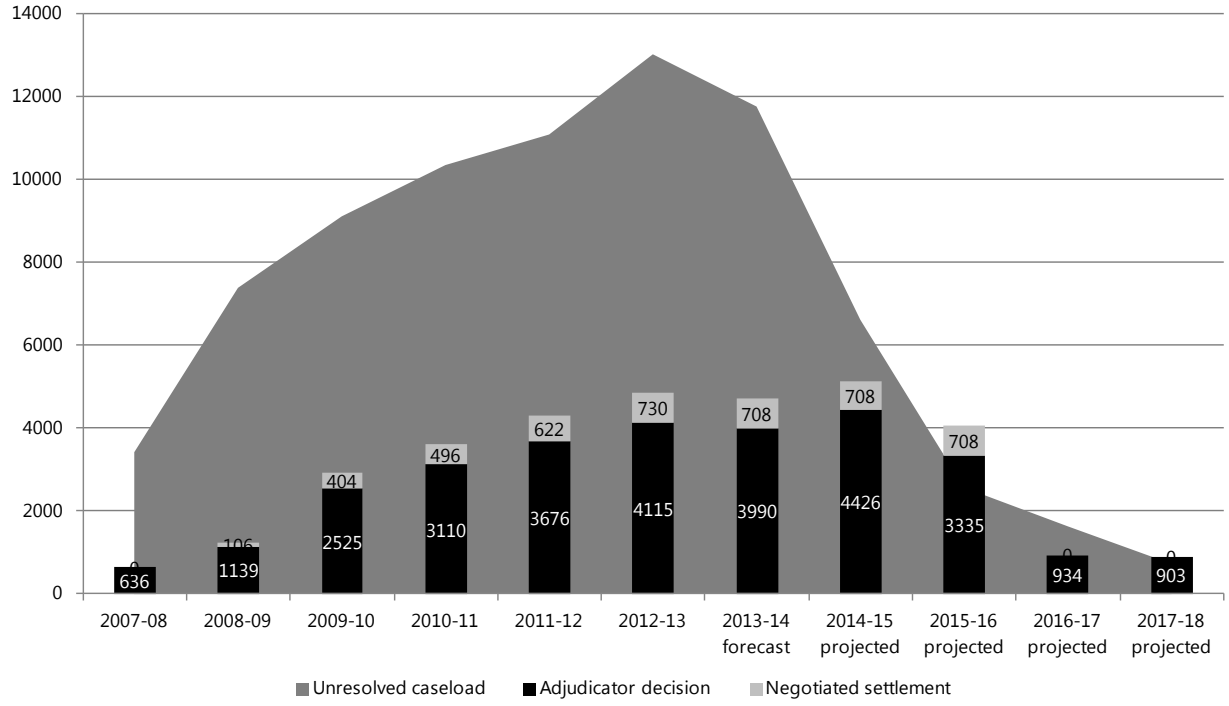
Each claim requires a unique combination of these activities dependent on its particular features. The result is substantial variation in the length of time required to prepare each claim for decision.

The Adjudication Secretariat projects the timing of adjudicator decisions based on a quintile analysis of historical decision time frames. This approach recognizes that many decisions are issued soon after the hearing (including the 45% issued in short form), while a minority require a significantly longer time because of the post-hearing activities described above.

Figure 9 shows the expected rate of claim resolution (adjudicator decisions plus negotiated settlements) each year.[21] This plan, which is based on holding the final first claimant hearing by spring 2016, will resolve 95% of claims by spring 2016 and all claims by spring of 2018.

[21] Methodology: the claims that required a regular form decision were divided into five quintiles from fastest to slowest, and the median time from hearing to regular form decision was established for each quintile group. The analysis showed that, following the hearing, the slowest 20% of cases took 1 ½ years to resolve, the fastest 20% took 41 days, and the rest fall between these extremes. This pattern was overlaid on the planned hearings to create the forecast.

Figure 9: Projected rate of claim resolution, per year



However, because some activities continue beyond the resolution of the claim – specifically, reviews and legal fee reviews – claim activity will continue beyond spring 2018. This is discussed in the following section.

5.4. Decision reviews, legal fee rulings, and legal fee appeal rulings

Decision reviews

A small portion of claims (approximately 5%) are not resolved by an adjudicator's initial decision because one or more parties has requested a review. The Adjudication Secretariat projects the timing of future review decisions based on analysis of experience in the IAP to date. A single median timeframe is used due to the low volume of these cases.

Legal fee rulings

As well, under the implementation orders, the adjudicator must ensure that the claimant's legal fees are within the 30% cap set by the court, and may assess the fees to determine if they are fair and reasonable. The adjudicator's ruling on legal fees takes place following claim resolution either by adjudicator decision or negotiated settlement. [22]

[22] 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.

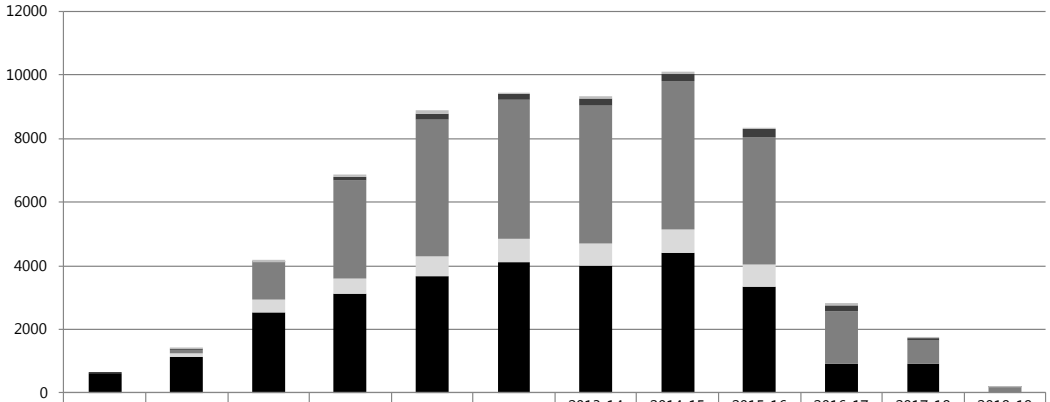
The Adjudication Secretariat projects the timing of legal fee rulings based on a similar quintile analysis of historical ruling time frames as described above in section 5.3.[23]

Legal fee appeal rulings

The adjudicator's ruling on legal fees may be appealed to the Chief Adjudicator or his designate. The Adjudication Secretariat projects the volume and timing of future appeal rulings based on analysis of experience in the IAP to date. A single median timeframe is used due to the low volume of these cases.

Figure 10 shows the projected rate of decisions, including initial decisions, review decisions, legal fee rulings, and legal fee appeal rulings. Based on the historical time required for these activities, we project that the final decisions will be issued in 2018-19.

Figure 10: Projected decision activity, per year



	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14 forecast	2014-15 projection	2015-16 projection	2016-17 projection	2017-18 projection	2018-19 projection
Legal fee appeal rulings	0	7	54	82	122	49	60	59	62	47	12	10
Review / re-review decisions	15	22	24	87	180	204	241	243	250	184	59	7
Legal fee rulings	0	121	1169	3099	4300	4365	4339	4675	4005	1654	746	178
Negotiated settlement	0	106	404	496	622	730	708	708	708	0	0	0
Adjudicator decision	636	1139	2525	3110	3676	4115	3990	4426	3335	934	903	0

5.5. Claims that do not require hearings

In addition to the hearings and decisions outlined above, we anticipate that at least 5,800 claims will not require hearings. The majority of these, approximately 4,500, are expected to be resolved through negotiation.

There are several other reasons why a claim does not proceed to hearing. To date, 1,320 cases have ended without a hearing, for one of the following reasons:

[23] Methodology: the cases were divided into five quintiles from fastest to slowest, and the median time from decision to legal fee ruling was established for each quintile group. The analysis showed that, following the decision, the slowest 20% of rulings took 6 months, the fastest 20% took 2 weeks, and the rest fall between these extremes.

- the claimant withdraws the claim, in accordance with the procedures in Guidance Paper 8 (GP-8, Withdrawal of IAP Claims);
- an adjudicator writes a decision dismissing the claim for jurisdictional reasons, following a pre-hearing teleconference, in accordance with the procedures in Chief Adjudicator's Directive 9 (CAD-9, Procedures for Jurisdictional Review in the IAP);
- an adjudicator writes a decision without a hearing based on the available evidence, following the claimant's failure to attend a scheduled hearing, in accordance with the procedures in Guidance Paper 7 (GP-7, Failure of hearings to proceed).

The Adjudication Secretariat does not have a basis upon which to project the number of additional cases that will be withdrawn or dismissed under these directives. Accordingly, for planning purposes we have modelled these cases as if they were proceeding to hearings.

5.6. Claims that cannot resolve in the regular process

Presently, cases can languish indefinitely for a number of other reasons:

- the claimant has lost contact with his or her lawyer and/or the Adjudication Secretariat;
- the claimant's counsel fails to return phone calls or respond to correspondence from the Adjudication Secretariat;
- the claimant and/or their counsel refuse to accept hearing dates offered by the Adjudication Secretariat;
- the claimant has died and no one has come forward to represent the estate;
- the claimant has become mentally incapacitated so cannot provide testimony; or
- other reasons, which may or may not be known to the Adjudication Secretariat.

At present, there is no way to deal effectively with these cases, which cannot proceed to hearings in the usual ways. To address this gap in the Settlement Agreement, the IAP Oversight Committee has agreed upon an Incomplete File Resolution Procedure (IFRP).

Claims that are referred to the IFRP will be intensively case managed by the Adjudication Secretariat to determine why the claim has stalled. If necessary, an adjudicator will be assigned to guide the parties in preparing the claim. If this first step does not result in the claim becoming ready for a hearing, Step 2 of the IFRP would allow an adjudicator to receive submissions from the parties and make a "Resolution Direction" which may, in some circumstances, involve dismissing the claim. This second step of the IFRP is being brought to the Court for approval as part of the current application.

It is impossible to determine in advance how many claims may be subject to the IFRP, or what portion of those might be dismissed without a hearing. A key objective of the IFRP is to resolve outstanding issues and return the claim to the regular hearing process. Accordingly, for planning purposes we have modelled these cases as if they were proceeding to hearings. The

Adjudication Secretariat will monitor the IFRP process as it unfolds and update projections accordingly.

The role of IFRP in dealing with claims that cannot resolve in the usual process is also discussed in section 6.8 below.

5.7. 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 Adjudication Secretariat strives to engage claimants and key partners and stakeholders to foster a culturally sensitive approach to identify and address claimants' needs and build awareness of claimants' rights in the Independent Assessment Process (IAP).

While the Adjudication Secretariat recommends that all claimants have legal representation in the IAP, some claimants either want to represent themselves, or cannot find appropriate legal representation. The Adjudication Secretariat provides support to these self-represented claimants. Each is assigned a Claimant Support Officer who acts as a guide throughout the IAP process, providing necessary information, connections with emotional supports, and assistance in gathering mandatory documents.

In addition to individual claimant support, the Adjudication Secretariat remains committed to ensuring that claimants, their families and communities receive timely, consistent and reliable information about the IAP. Through the National Outreach Strategy, the Adjudication Secretariat will develop and disseminate IAP information products to increase understanding and awareness of the IAP. The information will be provided in a variety of dialects and modes including pamphlets, fact sheets, web-based information, radio spots as well as a video that describes the hearing process. The Adjudication Secretariat will work with stakeholders and partners such as national Aboriginal organizations, friendship centres and federal government departments to promote access to timely and accurate information about the IAP.

The Adjudication Secretariat also provides funding to groups of claimants who are proceeding through the IAP together. Group IAP funding is provided to pay for group activities that assist members through the IAP process. The main objectives of the Group IAP are:

- to affect healing by supporting former residential school students who share similar experiences to support each other in their journey towards reconciliation; and
- to empower individuals by giving them access to tools and resources to develop, enhance and strengthen relationships between former students, their families, their communities, and with other Canadians in support of healing and reconciliation.

To date, 12 groups have received funding. The Adjudication Secretariat has committed to fund this contribution program internally until 2017. Over the next four years, we expect to fund more than 25 groups.

5.8. Administrative closure of the Adjudication Secretariat

In addition to the activities outlined above, the Adjudication Secretariat will plan and carry out 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 Adjudication Secretariat by the Settlement Agreement.[24]

[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."

6. Challenges and Risks

The Adjudication Secretariat believes that the plan outlined in section 5 will ensure completion of the IAP in a timely, sustainable manner that maintains a quality hearing experience and sound, principled decision-making. Like any plan, there are a number of factors that could put completion timelines at risk. Some of the more significant factors are outlined in this section.

6.1. Number of admitted cases

The Adjudication Secretariat projects that approximately 34,000 claims will be admitted to the IAP, based on the historical rate of admission since implementation. However, anecdotal information suggests that many of the applications received in the weeks leading up to the deadline are of significantly lower quality, and may not be admissible if additional information is not provided. Assessing whether these claims are admissible is a time-consuming process that will continue into early 2014.

Impact: Every 375 claims not admitted to the IAP will reduce the time required to hold hearings by one month.

Mitigation: The Adjudication Secretariat will continue to monitor the rate of claim admission and adjust projections accordingly.

6.2. Supply of cases for scheduling

The commitment to hold 4,000-4,500 hearings per year is predicated on a sufficient quantity of hearing-ready claims. While hearing-readiness involves a number of factors (such as Canada's document production and locating/contacting alleged perpetrators), the most significant barrier is mandatory document production.

Impact: If claims cannot be scheduled for hearings, this will prolong the period of time in which hearings must be held and will also require Canada to provide funding for those hearings to be held in later years.

Mitigation: As described in section 4.2 above, the Adjudication Secretariat is working with document-holding agencies to speed disclosure of mandatory documents to claimants and their counsel.

As well, the Accelerated Hearing Process, described in section 4.4 above, is designed to reduce the impact of mandatory document delays by allowing claims to be scheduled even if the mandatory documents have not been submitted. Adjudicators will actively manage the cases to help them become ready, but the hearing will still proceed even if documents are not complete.

The Accelerated Hearing Process is voluntary, and its success at mitigating this risk is limited by several factors:

- sufficient claimants must choose to participate;

- the process depends on scheduling cases in five-day blocks in the same location, so claimants must be located in the same geographic area or be willing to travel to a hearing;
- the parties and the Adjudication Secretariat must have sufficient availability and capacity to arrange and attend hearings (see following sections).

6.3. Availability of the parties to attend hearings

A recurring difficulty throughout implementation of the IAP is the availability of the parties to attend hearings. This tends to manifest itself in different ways:

- *Claimants' counsel* often practice in small law firms, with limited backup coverage in the event of illness or vacation. Some of these small firms have very large numbers of claimants. Time spent attending hearings must be balanced with work preparing other claims for hearing, or with court dates and other commitments in non-IRS areas of practice.
- *Canada* has a large pool of Resolution Managers and Legal Counsel to attend hearings, but has encountered continuing difficulties in recruiting and retaining the necessary staff.

Impact: If files cannot be scheduled for hearings because of the unavailability of parties, this will prolong the period of time in which hearings must be held and will also require Canada to provide funding for those hearings to be held in later years.

Mitigation:

- Implementation of the Accelerated Hearing Process will ensure that hearings are scheduled in five-day blocks wherever possible. This should reduce the amount of time lost to travel and maximize the availability of all parties for hearings.
- We expect that claimants' counsel will have increased availability to attend hearings now that the application deadline has passed, and the admissions process is drawing to a close. However, some counsel have already begun to downsize their practice in anticipation of the end of the IAP and this may undermine some of the planned capacity gains.
- Canada will need to address the persistent barriers to staffing its positions, or explore alternative means of representation at hearings.

6.4. Capacity of the Adjudication Secretariat to arrange hearings

While the Adjudication Secretariat has always had sufficient adjudicators to hold all required hearings, staff capacity to make the necessary arrangements has been problematic since implementation. Several aspects of the hearing process are quite labour-intensive:

- canvassing the availability of parties in order to set hearing dates;

- arranging and paying travel and accommodation for certain hearing attendees (claimant, claimant's support people, Elders, interpreters);
- reimbursing travel expenses for other hearing attendees (claimants' counsel, adjudicator);
- booking and paying for hearing venues; and
- arranging hearing-related activities such as expert assessments and further hearings for alleged perpetrator testimony or assessor cross-examination.

While Canada has provided sufficient funding to cover a full staff complement, the Adjudication Secretariat has encountered serious difficulties arising from requirements imposed by the federal government and Aboriginal Affairs and Northern Development Canada:

- the staffing process under the *Public Service Employment Act* is slow and cumbersome, taking an average of nine months to fill positions;
- the human resources advisory capacity provided by AANDC has been insufficient for the amount of staffing required;
- since 2008, because AANDC does not want to accommodate additional 'indeterminate' (permanent) staff once the IAP is completed, AANDC has directed the Adjudication Secretariat not to appoint staff on an indeterminate (permanent) basis in most cases, making it difficult to attract and retain qualified staff; and
- staff reductions in other parts of the federal government, arising from measures in the 2012 Deficit Reduction Action Plan, have significantly lengthened the hiring process because of requirements to place 'surplus' employees.

AANDC faces similar requirements for its own staffing, including the Resolution Managers who attend hearings as representatives of the government.

Impact: If the Adjudication Secretariat cannot hold hearings because of limited staff capacity, this will prolong the period of time in which hearings must be held and will also require Canada to provide funding for those hearings to be held in later years.

Mitigation:

- The Chief Adjudicator has asked the Deputy Minister of AANDC to remove or reduce the barriers to hiring staff in the Adjudication Secretariat. Some relief has been granted, however this has not produced significant results to date. Additional measures are currently being discussed with AANDC.
- While adjudicator availability for hearings has not been a limiting factor to date, the Adjudication Secretariat continues to monitor availability to ensure there is sufficient adjudicator capacity.

6.5. Hearing postponements

Every hearing that does not take place as scheduled poses a financial cost to the Adjudication Secretariat and other parties, and consumes staff capacity to make arrangements that go unused. As discussed in section 4.7 above, the postponement rate is now below 14%.

Impact: Every hearing that does not take place as scheduled must be rebooked, and arrangements made again, thus consuming dates that could be offered to other claimants. There is also a financial cost that varies according to the circumstances.

Mitigation: Adjudicators will continue to implement the Chief Adjudicator's Guidance Paper on postponements, which requires parties to apply to the adjudicator for permission to postpone a hearing, and allows adjudicators to impose penalties for non-compliance. The Adjudication Secretariat closely tracks the number of, and reasons for, hearing postponements to ensure the objectives of the policy are achieved.

6.6. Post-hearing delays

As discussed in section 5.3 above, many claims require post-hearing activities such as expert assessments, alleged perpetrator hearings, or mandatory document collection. The reasons for these delays are often very case-specific.

Impact: Post-hearing delays may cause claimants to wait longer for their claim to be resolved, and also require the Adjudication Secretariat to operate for a longer period before the IAP is completed.

Mitigation:

- The Incomplete File Resolution procedure, which is submitted for approval as part of the current application, will provide adjudicators with new tools for managing cases that are not moving forward as expected.
- The Adjudication Secretariat will continue to develop its tracking and reporting tools to assist adjudicators, and the Deputy Chief Adjudicators who supervise them, to track the status of active cases. The Interactive File Management System, discussed in section 4.2 above, will be expanded to help adjudicators manage their caseloads.

6.7. Parties' ability to negotiate settlements

The proposed plan anticipates that approximately 4,500 claims will be resolved through negotiation, representing approximately 12% of all resolved claims. Canada has provided a projection of 708 negotiated settlements per year from 2013/14 through 2015/16, for a total of 2,124 future settlements.

To date, over 99% of claims that enter negotiation are successfully resolved without recourse to an adjudicator. This results primarily from careful selection of cases for negotiation and positive working relationships between the parties. Additionally, the parties have successfully negotiated more claims that expected in the past two years.

Impact: Claims that do not settle through negotiation will need to be scheduled for hearing. Delays in scheduling hearings will prolong the period of time in which hearings must be held and will also require Canada to provide funding for those hearings to be held in later years.

Mitigation: The Adjudication Secretariat will monitor the rate of negotiated settlements and employ case management approaches, including use of the proposed Incomplete File Resolution procedure if necessary, to ensure that claims move expeditiously to resolution, whether through negotiation or hearings.

6.8. Claims that cannot resolve in the usual process

As described in section 5.6 above, a small minority of claims become 'stuck' at certain stages of the process and cannot move forward without assistance.

Impact: The IAP will need to continue to operate until every claim filed with the process is resolved.[25] Delays caused by claims becoming 'stuck' in the process will prolong the time required for the final hearings and decisions. If the proposed authorities are not granted, there will be cases that cannot be brought to conclusion by any process under the Settlement Agreement.

Mitigation: The Incomplete File Resolution procedure (see section 5.6 above), which is submitted for approval with the current court application, will provide adjudicators and the Adjudication Secretariat with tools to resolve problems and help move claims forward. The Incomplete File Resolution procedure was adopted by a unanimous vote of the IAP Oversight Committee after eleven months of facilitated discussions.

6.9. Funding to complete the IAP

Article Six of the Settlement Agreement states that Canada will provide sufficient resources to the IAP to ensure that the Adjudication Secretariat meets the established targets. In Budget 2012, Canada provided funding for the IAP to the end of 2015-16 which, at that time, was thought to be sufficient.

Instead of the forecasted 29,700 applications, almost 38,000 applications were received. Therefore, additional funding will be required for 2014-15 and later fiscal years to process all the required claims. The Adjudication Secretariat is working to obtain the necessary funding through the government's budget process.

Impact: If the Adjudication Secretariat does not receive sufficient funding, it will not be possible to reach the hearing targets as projected.

Mitigation: The Adjudication Secretariat will continue to work with AANDC to obtain the necessary funding for 2014-15 and later, and will keep the Oversight Committee apprised of progress.

[25] See Settlement Agreement, article 16.02, on p. 80.

6.10. Complex and complicated claims

While difficult to determine with certainty, it can be expected that the cases remaining in the IAP may be more complicated than those that have gone before.

The IAP provides a "complex issues track" for two specific categories of claims: those claiming other wrongful acts causing serious psychological harm, and actual income loss. Relatively few decisions have made awards in the complex issues track.

As well, standard track cases can involve complicated issues. For example, issues related to student-on-student claims, particularly the carry-forward of information related to staff knowledge of abuse, have led many claimants' counsel to postpone these difficult cases.

Complex track cases, and complicated standard track cases, require more adjournments, medical and expert assessments, and other post-hearing activities. While these primarily affect the amount of time required to render a decision, these cases can also take longer to become hearing-ready, and can divert adjudicator or staff resources away from other cases.

Impact: Delays in hearing and deciding cases may prolong the life of the IAP, and require Canada to provide funding for a longer-than-expected period.

Mitigation:

- The Adjudication Secretariat is planning specialized training for those adjudicators hearing claims in the complex issues track.
- The Incomplete File Resolution procedure, discussed in section 5.6 above, will provide adjudicators with additional tools to help manage complicated cases.
- The Adjudication Secretariat has implemented an "early track assessment" process to provide assistance to self-represented claimants who have applied in the complex issues track. This adjudicator-led initiative has helped self-represented claimants to make informed decisions, and underscored the importance of retaining qualified legal counsel for complex issues track claims.
- The Adjudication Secretariat is working with the parties to develop a strategy to manage a number of outstanding student-on-student abuse claims that have stalled and are awaiting information about staff knowledge of abuse.

6.11. Article 12 schools list applications

Article 12 of the Settlement Agreement allows individuals to propose additions to the schools list contained in Schedules E and F of the agreement. Canada may agree to add the proposed institution, or the applicant may bring a Request for Direction to the Supervising Courts. Several institutions have been added pursuant to Article 12. The Chief Adjudicator is not a party to these proceedings.

In the case of Mistassini Hostels in Quebec, the most recent addition, a court order extended the IAP application deadline for former students of that institution to September 2, 2013. The

Adjudication Secretariat anticipates a small number of applications from this institution, and has incorporated these into its completion plan outlined in section 5.

Impact: Future additions to the schools list under Article 12 will require application deadline extensions, increase the number of IAP claims to be resolved, and lead to hearings held and decisions issued later than the plan proposed in section 5.

Mitigation: The Adjudication Secretariat will continue to monitor Article 12 cases and report to the Supervising Courts on the operational impact, if any, on the IAP.

6.12. Impact of wind-down operations

Planning and executing the wind-down of the Adjudication Secretariat's operations carries a number of 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.

Impact: Increased vacancies and/or reduced productivity could limit the number of hearings that the Adjudication Secretariat is able to arrange. This would prolong the period of time in which hearings must be held and will also require Canada to provide funding for those hearings to be held in later years.

Mitigation: The Adjudication Secretariat is working on a comprehensive wind-down plan, including finding flexibilities in staffing, cross-training staff, and retaining key staff.

6.13. Rise in the number of self-represented claimants

Due to the legal complexities of the IAP, the Adjudication Secretariat has always strongly encouraged claimants to retain counsel. However, claimants can also choose to represent themselves, with the support of a Claimant Support Officer employed by the Adjudication Secretariat.

The rate of self-representation has increased significantly since 2011, especially with the last-minute surge of applications before the IAP application deadline. As of June 2013, self-represented claimants make up 16.7% of all active cases.

Impact: Due to increased workloads for Claimant Support Officers, who provide one-on-one guidance to SRC to proceed in the IAP, there is a risk to the service delivery standards and quality of claimant-centred experience for self-represented claimants. This could lead to difficulty in bringing these cases to conclusion.

Mitigation: If the ratio of self-represented claimants remains high, the Adjudication Secretariat will realign existing resources to ensure service delivery standards and quality of claimant-

centred experience is sustained for claimants who want to represent themselves in the IAP. As well, the Adjudication Secretariat will continue to provide self-represented claimants with information about finding and hiring a lawyer and works with the claimant to retain counsel.

6.14. Maintaining the confidence of claimants, partners and stakeholders

The IAP is a complex and, consequently, time-consuming process. This can create a negative impact because the time taken in order for a claim to move through the process does not meet the expectations of former students or the Aboriginal 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 Adjudication Secretariat to address the issue.

Mitigation: The National Outreach Strategy, outlined in section 5.7 above, will help communicate realistic expectations by providing stakeholders and partners with timely and transparent information about processing timelines.

6.15. Disposition of records

The Chief Adjudicator will be seeking directions from the Supervising Courts on the disposition of IAP records.

Impact: 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, and might extend the lifespan of the Adjudication Secretariat.

Mitigation: The operational impacts of the resulting direction will be built into the Secretariat's wind-down plan.

6.16. Other external events

Events outside the Adjudication Secretariat's control, such as issues regarding ethical conduct of legal counsel, or other legal challenges to the Settlement Agreement, 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 Adjudication Secretariat staff time.

As well, a 2012 Ontario Court of Appeal decision confirms that a party may apply to the Administrative Judges for directions "in very limited circumstances where the final decision of the Chief Adjudicator reflects a failure to comply with the terms of the S.A. or the implementation orders."[26] It is difficult to determine at this time how many such challenges will be brought, how long they will take to determine, and what impact, if any, they will have on other cases.

[26] Fontaine v. Duboff Edwards Haight & Schachter, 2012 ONCA 471, at para. 57.

Impact: It is impossible to assess the impact of these fact-specific scenarios.

Mitigation: The Adjudication Secretariat has refined its contingency planning and crisis response capabilities based on recent experience, in order to prepare for unanticipated events. We are developing a field response capability to provide information to claimants and communities during unexpected situations. The Adjudication Secretariat will continue to monitor court cases that could impact on IAP claimants or operations.

7. Conclusion

> "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."
>
> *- Former Chief Adjudicator Dan Ish, in his 2010 Annual Report*

The plan outlined in this report is designed to ensure 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.

The proposed plan will provide a sustainable level of high-quality hearings and ensure that cases are resolved in a timely manner. We will continue to seek efficiencies where these do not undermine the fundamental goals of fairness, healing, and claimant-centeredness. We will maintain and strengthen our relationships with partners and stakeholders so that claimants have the accurate and timely information they need to pursue their claims and protect their rights. We remain dedicated to ensuring that claimants find a measure of healing and reconciliation when resolving their IAP claim, including the enhanced healing supports that can be provided through Group IAP.

The Independent Assessment Process was born out of a shared desire to respond to the tragic legacy of Indian Residential Schools. Bringing it to conclusion, while upholding its goals and values, will require the sustained commitment of all the parties and stakeholders.