

“Lost claimants” Protocol

The Incomplete File Resolution procedure allows a Special Resolution Adjudicator to dismiss a claim where, among other reasons, a claimant cannot be located by the Secretariat or their counsel (“lost Claimants”).

In the regular litigation process, dismissing a claim for want of prosecution does not require, as a precondition, that proactive measures be undertaken to locate a complainant/litigant who has failed to respond to communications. However, different considerations arise here.

These considerations include the special characteristics of the claimant population, the fact that claimants, by not opting out the Settlement Agreement, have given up the right to sue, as well as the possibility that some claimants, for various reasons, may not wish to be found. As well, many methods of locating claimants involve sharing of confidential/private information. For instance, disclosing the purpose of the search is in itself sensitive information.

IRSAS will, in the normal course, use the least invasive methods to begin with, working through to more invasive methods, where deemed appropriate, if the claimant cannot be located. Claimants’ counsel will be encouraged to follow a similar elevation procedure in locating lost claimants in a manner which best protects claimant privacy.

It should be understood that the contact mechanisms set out in this Protocol are for guidance purposes only and that the IRSAS and claimants’ counsel will employ such contact methods as it deems appropriate, on a case by case basis. The IRSAS and claimants’ counsel shall not be compelled to use any particular contact measure(s) in any specific order or in any specific circumstance or case.

The contact methods that the IRSAS and claimants’ counsel may choose to employ are described in general terms below, from least to greatest impact on claimants’ confidentiality/privacy:

General and preventative methods

- a. Suggested best practices for legal counsel on steps they can take to avoid losing contact with claimants.
 - This would be developed by Secretariat with input from claimants’ counsel and would include effective and practical ways to find lost claimants and assist counsel in taking appropriate steps to find their clients.
- b. General publicity and outreach about the close of IAP.

- Would be distributed widely to locations such as band offices, friendship centres, and health centres. Targeted outreach activities would focus on areas of identified need. Key messages would encourage claimants to contact their lawyer or the IAP Info Line for information about their claims.

1. Information provided by the claimant

Claimants' counsel will be expected to use this information to locate their clients. IRSAS will be expected to use this information to locate self-represented claimants.

The application, mandatory documents, and hearing request forms contain contact information for the claimant, as well as individuals who the claimant has identified as people they trust and who know that they have made a claim in the IAP. Examples include:

- a. Support people named on the hearing attendance list or request forms.
- b. Family members and support persons who are known to the Secretariat to have assisted the claimant with their application, or on calls with Secretariat staff or the IAP Infoline.

2. Information available from public sources

Claimants' counsel will be expected to use this information to locate their clients. IRSAS will be expected to use this information to locate self-represented claimants.

Online directories or web sites might reveal up-to-date information about a claimant. A search of the claimant's name in a search engine might result in finding current contact information about a claimant. In addition to a general name search (which might result in finding a number of similar named individuals, but not the claimant), searching specific online telephone directories and/or online obituary or memorial sites can be effective ways to locate a claimant.

3. Information available from government databases

Government databases may include current contact information for lost claimants.

The Secretariat will seek a court order requiring these institutions to disclose relevant personal information requested by the Secretariat. Claimants' counsel would request assistance from IRSAS to access this information. For self-represented claimants, IRSAS staff would seek the information directly.

- a. Alternate contact information from other processes within the IRSSA, including CEP and the Personal Credits system, once it is operational.
- b. AANDC databases: Indian Registry, the Secure Certificate of Indian Status, the AANDC Estates Reporting and Treaty Annuity Systems. For registered Indians under the Indian Act, one or more of these databases may contain up-to-date contact information. The Indian Registry and Secure Card of Indian Status systems contain information about registered Indians under the Indian Act. The AANDC Estates Reporting system contains

information about registered Indians who died on reserve, and the Treaty Annuity System contains information about individuals who receive annuities from treaties.

- c. Health Canada database: Status Verification System. The Status Verification System is used by Health Canada in administering the Non-Insured Health Benefits Program in the First Nations and Inuit Health Branch.
- d. Provincial/territorial vital statistics offices.
- e. Provincial/territorial driver licensing offices.
- f. Provincial/territorial health insurance plans.
- g. Provincial/territorial Public Trustee Offices.
- h. Provincial/territorial social assistance offices.
- i. Federal, provincial and territorial correctional agencies.

4. Information from people with local area knowledge

A number of organizations and service agencies work closely with survivors of Indian Residential Schools, providing day-to-day services and supports. While they may not have up-to-date contact information (especially for claimants who may be street-involved) they might be able to deliver messages to claimants. Care must be taken to ensure that the following agencies do not receive the impression that the claimant is in trouble, or is being sought as an alleged perpetrator in the IAP. Both claimants' counsel and IRSAS staff should use discretion when contacting any agency listed below to best protect claimant privacy.

The Secretariat will seek a court order authorizing it to request personal information from these organizations where appropriate.

- a. Current or former employers identified in claim materials.
- b. Band Offices
 - i. If provided on the application form, the first few digits of the status number is the band number
 - ii. The claimant's last name may provide information as to their Band affiliation
- c. Health Centres, Friendship Centres, hostels, shelters and community organizations
 - i. Many have established protocols for taking messages for their clients
- d. Northern land claim organizations (beneficiary lists).
- e. Hunters and Trappers Associations/Committees, where appropriate.
- f. Local RCMP detachments

- i. Appropriate in smaller communities. In larger centres, the community knowledge may not be as strong.
- g. Church organizations, where appropriate.
- h. Assembly of First Nations (mailing list of IRS survivors).