THIS IS EXHIBIT "13" TO THE

AFFIDAVIT OF CINDY BLACKSTOCK

SWORN BEFORE ME ON

December 8, 2019

in Ottawa, Ontario

A Commissioner for Taking Oaths

Redacted

From: Joanna Birenbaum <joanna@birenbaumlaw.ca>
Date: Friday, October 25, 2019 at 8:48 AM
To: "anne@equalitylaw.com" <anne@equalitylaw.com>
Subject: Letter from Ry Moran

Dear Ms. Levesque,

Attached please find a letter from Mr. Moran.

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10/24/2019

Dear Ms. Levesque,

For approximately the past 2 years, the National Centre for Truth and Reconciliation (NCTR) has been collecting the reflections of Residential School Survivors on their experiences within the Indian Residential Schools Settlement Agreement (IRSSA). Included have been discussions on the Independent Assessment Process (IAP) and Common Experience Payments for compensation claims. The NCTR's work in this regard has included a number of community engagement sessions across the country with Residential School Survivors.

The Centre's *Lessons Learned* report arising from this process is forthcoming but not presently available for public release.

The report discusses the Centre's engagement and conversations with IRS Survivors and others and canvasses what worked well and what elements created challenges for Survivors, their families and communities within the Indian Residential Schools Settlement Agreement.

Pending the release of the full report, I can share that the following general themes (among others) emerged from the Centre's engagements with Survivors on their experiences in the Independent Assessment Process ("IAP") under the IRSSA:

1. Speediness of the Process: Delays in compensation processes to former students caused harm to survivors. The Alternative Dispute Resolution Process (ADR) which preceded the IRSSA was generally deemed to be too slow to meet the needs of Survivors – former students were dying before they received compensation while others lost the benefit of treatment and access to services as a result of delayed compensation. The IAP and CEP processes were specifically developed under the IRSSA in an effort to expedite the process of compensation to Survivors.

2. Transparency of the Process and Avoiding Mixed Messages: An important lesson of the IRSSA compensation process relates to the importance of transparency and consistency of messaging around the compensation and eligibility criteria and process. Mixed messages about eligibility for compensation can be harmful.

For example, the Centre heard from former students who were excluded from compensation due to technical legal arguments such as the "administrative split." This caused harm to Survivors.

We also heard from Survivors that were denied compensation under the Common Experience Payment as a result of being able to unable to have all years of attendance verified by church or government documents. This often resulted in a sense of injustice or lack of recognition.

The exclusion of the Isle-à-la-Crosse School from the IRSSA resulted in a significant feeling of collective harm and betrayal by Métis Survivors. The mechanism by which schools were reviewed and added to the IRSSA caused confusion, and the final list of schools included, did not always align with the early expectations of former students at the outset of the process.

In general, in developing the Lessons Learned report, a theme emerging from consultations was the importance of ensuring that in any compensation process, public messaging and positions taken in court must be consistent, accurate and transparent.

Where there are inconsistencies or perceived inconsistencies in public and litigation positions, trust is eroded. Building trust is at the very heart of our reconciliation efforts as a nation.

I have spoken publicly about the above themes on panels and in other fora.

The information supplied above is also generally well documented in public statements provided by Survivors during the Truth and Reconciliation Commission's statement gathering events.

I would be pleased to send you a copy of Lessons Learned immediately upon its release.

Sincerely,

Ry Moran
Director
National Centre for Truth and Reconciliation

THIS IS EXHIBIT "4" TO THE

AFFIDAVIT OF CINDY BLACKSTOCK

SWORN BEFORE ME ON

December 8, 2019

in Ottawa, Ontario

A Commissioner for Taking Oaths

Indian Residential Schools
Adjudication Secretariat

Secrétariat d'adjudication
des pensionnats indiens

A guide for claimants in the Independent Assessment Process

IAP Info-Line – 1-877-635-2648

Former students of residential schools who have questions about the IAP or about their IAP claim can call the IAP Info-Line at **1-877-635-2648**. There is **no charge** to call this number.

The IAP Info-Line can help former students better understand the IAP and how their claims will proceed in it. These services are available in English, French and Cree.

IAP Info-Line staff can:

- give information on the general status of a claimant's IAP file
- help answer general questions about the IAP
- refer claimants to relevant agencies and programs
- help claimants with their application forms where further explanation (but not legal advice) is required
- for unrepresented claimants looking for a lawyer, transfer their call to a Claimant Support Officer, who can provide a list of lawyers accepting referrals for IAP claimants
- make referrals to a law society if legal advice is sought by the claimant
- transfer a claimant's call to 24-hour crisis counseling
- transfer a self-represented claimant's call to a Claimant Support Officer
- help claimants understand letters they have received from the Secretariat
- help claimants provide additional information for their claims
- for represented claimants, transfer calls to their lawyer
- give information on the stage of the IAP the claimant's file is in, and respond to the claimant's questions on next steps
- arrange to mail general IAP information sheets to claimants
- give information to claimants about the services they can expect from their lawyer throughout the process, as well as information about changing their lawyers
- give information on the Group IAP
- transfer calls to the Group IAP unit

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Who is this guide for?

This guide is for claimants who have been admitted into the Independent Assessment Process (IAP) under the **Indian Residential Schools Settlement Agreement**. Under the process, former students of recognized residential schools who experienced sexual abuse, serious physical abuse or other wrongful acts may be eligible for money as compensation. However, being admitted to the IAP does not guarantee that you will be awarded compensation.

A note about terms

Throughout the guide, specialized terms appear in **bold brown type**. You can find expanded definitions of these terms in the Glossary on page 35.

This guide explains the process and the supports available to you.

You may have decided not to be represented by a lawyer. Claimants who do not hire a lawyer are known as self-represented claimants. This guide will be especially helpful if you are a self-represented claimant because of the numerous procedures involved.

It is important to know, however, that the parties that negotiated the **Settlement Agreement** recommend all claimants have legal representation. In fact, the Settlement Agreement contains provisions to pay the fees for claimants' lawyers, up to 15% of a claimant's award. If you have a lawyer, the adjudicator for your hearing will also review your lawyer's fees to ensure they are fair. See Should you hire a lawyer? on page 5 for more information.

Caution

This guide does not contain legal advice, and nothing in this document should be taken as legal advice. This guide is a general overview of the process.

About the Independent Assessment Process

The Independent Assessment Process (IAP) was created to resolve claims of abuse at residential schools. The process is non-adversarial. This means that everyone involved participates in a spirit of cooperation.

The IAP involves a private hearing – not in a courtroom – that will allow you to tell your experience to a neutral **adjudicator**. The adjudicator will ask you questions and manage the hearing. Besides you, the hearing will include your lawyer (if you have one), a representative of the Government of Canada, possibly a representative of the church and the claimant's **witnesses** (if there are any). Every person at an IAP hearing signs a confidentiality form to ensure that a claimant's privacy will be maintained.

For many claimants, a hearing is not just a place to make a claim. It's an opportunity to share experiences, often for the first time. Depending on what you need, others present may include

support people for you, both your personal support people and others, such as a Health Support Worker or a Cultural Support Worker, an Elder or religious person, and an interpreter.

After the hearing, if the claim is allowed, the adjudicator will use a formula to decide on compensation (see page 25). This formula was set out in the **Settlement Agreement**. The hearings and the compensation are ways to help bring closure to residential school experiences.

Does your claim have to go to a hearing?

If you have a lawyer, then you and your lawyer can work with the Government of Canada on settling your claim. This can happen at any time in the process. If such attempts are not successful, your claim will proceed to a decision by the adjudicator.

Who's involved?

There are three parties to each claim:

- you, the claimant, who is the person who has applied for compensation under the IAP
- the Government of Canada, represented by an employee of **Indigenous and Northern Affairs Canada** or a lawyer from the Department of Justice
- the church that was involved in the operation of the residential school attended by you – although the church is a party and is entitled to be present at all hearings, it generally allows the government to take the lead and does not involve itself in the process

Your hearing may include any of the following participants:

- **You, the claimant:** As a former student of a residential school, you will be expected to provide testimony about the abuse that happened as well as how the abuse affected your life. You can hire a lawyer to represent you in the IAP, or you can represent yourself. All parties to the IAP recommend that claimants hire a lawyer as the process involves complex legal issues and processes.
- **Your lawyer:** If you hire a lawyer, your lawyer will represent your interests during the hearing and throughout the IAP. Your lawyer's job is to listen closely to your testimony to make sure you have every opportunity to provide evidence and to ensure all the legal tests are met for a successful claim. Your lawyer is not allowed to question you directly during the hearing, but can recommend questions for the adjudicator to ask.
- **Adjudicator:** **Adjudicators** are independent decision-makers who manage the hearing. The hearing allows the adjudicator to question you on what you stated in your application to better understand what happened, to clear up any concerns, and to decide if there is enough evidence to award compensation. Adjudicators have been selected by the parties of the **Settlement Agreement** to adjudicate IAP hearings. The adjudicator is the only person allowed to question you at your hearing.
- **Government of Canada representative:** This individual represents the interests of the defendant, the Government of Canada. His or her role at the hearing is to listen closely to

your testimony and to raise any concerns that the government may have about a claim. The representative is not allowed to question you directly, but can recommend questions for the adjudicator to ask.

- **Church representative:** If you request that a church representative not attend your hearing, the church will usually honour your request. As a party to the **Settlement Agreement**, however, the church has the right to attend hearings and oppose the claim. The church representative may also be available to offer a personal apology.

Other people who can attend your hearing – although only with *your* permission – include:

- **Your support people:** You have the right to bring support people of your choice to the hearing. The Secretariat will pay for their travel and accommodation (transportation, meals, and hotel) expenses for up to two support people. You may ask if more support people can attend your hearing at their own expense. You are entitled to have a Health Support Worker, a Cultural Support Provider or a Service Provider provide emotional support to you prior to, during and following the IAP hearing.
- **Health Support Worker:** You have the right to request that a Health Support Worker attend the hearing. The support worker can help you deal with the emotions that may come up during the hearing and provide cultural support. In fact, you can begin working with a Health Support Worker well before your hearing to help you prepare. For more information on Health Support Workers, see Health Supports on page 300.
- **Elders:** You have the right to have an Elder at your hearing. You can bring one with you (in addition to the support people above) or the Secretariat can arrange to have an Elder attend the hearing. An Elder can help you prepare for the hearing, offer a prayer or ceremony before the hearing starts, and help you through an emotional day. The Secretariat will pay for an Elder's travel costs.
- **Interpreters:** You have the right to provide testimony in the language of your choice, including any Aboriginal dialect. The Secretariat will arrange for an interpreter and pay the interpreter's travel costs. An interpreter cannot be a family member.
- **Your witnesses:** You can bring a **witness** with you to your hearing if you have provided a written witness statement two weeks before your hearing. Witnesses can testify about what they saw and heard to support your claim.

For self-represented claimants: your Claimant Support Officer

The Secretariat ensures you have support throughout the claims process. You are assigned a Claimant Support Officer to assist you through the process. Your Claimant Support Officer is knowledgeable about the IAP and will ensure you are well-informed about the progress of your claims, the requirements for a successful claim and the health supports available while your claim is being resolved. He or she will also ensure you receive personalized support and are treated with respect and dignity.

Your Claimant Support Officer is also your single point of contact if you choose not to hire a lawyer. He or she will work with you from the time your claim is admitted right through to the decision.

Other duties your Claimant Support Officer may perform if you do not have a lawyer include:

- seeking more information to help your application get admitted
- ensuring your claim is processed in the same timeframe as claims for claimants with lawyers
- working with others in the Secretariat to prepare your claim for the hearing
- ensuring you understand the process, the roles of the parties and all the letters you receive
- collecting and paying for all mandatory documents (see page 12)
- preparing you for your hearing and assisting with any work that needs to be done after the hearing

You will not meet face-to-face with your Claimant Support Officer. The work to prepare the claim *and to prepare you* for the IAP hearing will be done over the phone and by mail. Further, your Claimant Support Officer will not attend your hearing. Consider hiring a lawyer if you feel you need this type of support in person.

Is having a Claimant Support Officer just like having a lawyer?

No. There are several important things a Claimant Support Officer cannot do for claimants. For example:

- A Claimant Support Officer cannot provide claimants with legal advice. Only a lawyer can do this. Claimant Support Officers can only provide information about the IAP.
- A Claimant Support Officer cannot advise on which of the three options – standard, complex or court track (see page 20) – is best for dealing with your claim. A lawyer would be able to make this decision.
- A Claimant Support Officer cannot enter into negotiations with Canada to settle your claim without a hearing. A lawyer can.
- A Claimant Support Officer cannot attend hearings to provide advice or moral support. A lawyer will attend to provide advice and argue on a claimant's behalf.
- A Claimant Support Officer cannot give legal advice to review a decision. A lawyer can.
- A Claimant Support Officer cannot provide counseling.

For all of these reasons, all the parties to the **Settlement Agreement** agree that IAP claimants should hire a lawyer.

Should you hire a lawyer?

It's your decision whether you want to hire a lawyer. Although the IAP does not require you to have a lawyer, the parties to the **Settlement Agreement** believe that claimants benefit from having legal representation. In fact, the agreement builds in repayment to you of lawyer's fees related to your claim, to a specified maximum.

You can decide to hire a lawyer at any stage in the process.

Even though the IAP does not take place inside a courtroom, it can be complicated and involves difficult legal concepts and processes. If you hire a lawyer, the lawyer will be responsible for all aspects of your claim. This would allow you to focus on healing and preparing emotionally for the hearing, where you will be sharing the details of your residential school experience and how it affected your life.

Other reasons you might want to hire a lawyer include:

- A lawyer understands the rules and processes of the IAP, including what legal tests and standards of proof need to be met for your claim to be successful.
- A lawyer will prepare your claim for the hearing, including collecting the mandatory documents (see page 12).
- A lawyer will ensure that you are awarded maximum compensation. Statistics show that claimants who have a lawyer receive higher compensation awards.
- A lawyer can give you peace of mind because the technical aspects of your claim are looked after.
- If your claim is awarded compensation, your costs for hiring a lawyer will be at least partly covered by the IAP, and in some cases, completely covered.
- Having a lawyer represent your interests at the hearing is usually less stressful than handling the hearing yourself.

Having a lawyer also gives you additional options that may help resolve your claim more quickly. These options include:

- **Negotiated Settlements:** It may be possible to resolve your IAP claim without a hearing. Depending on the facts of your claim, your lawyer can ask the Government of Canada if a settlement can be negotiated. If the government agrees, your lawyer would then negotiate with the Government of Canada to find a settlement amount that all parties are satisfied with. Settlements can be negotiated only by claimants represented by a lawyer. During negotiations, your claim is still active – the parties will continue to collect any outstanding mandatory documents. The Secretariat shares these documents among the parties, but also retains copies in case the negotiation is unsuccessful and an IAP hearing is needed after all.

- **Short-Form Decisions:** If you're in the standard track and you have a lawyer, you may have the option of a short-form decision at your hearing. With the short-form decision, the

adjudicator writes the decision at the hearing if the hearing includes final submissions. Because the parties agree to the amount at the hearing, short-form decisions mean that you receive your compensation award sooner (see page 29). You don't have to wait additional time after a hearing for the adjudicator's decision. In the accelerated hearing process, if your claim is in the standard track, your lawyer can still request a short-form decision. It will be provided to you about two weeks after final submissions.

The parties that participate at the hearing (the **adjudicator** and the Government of Canada representative) generally have legal training. In fact, they are often certified lawyers. It is best for you as a claimant to be equally prepared for the hearing by having your own lawyer attend the hearing to represent your interests.

Finding a lawyer

If you decide to hire a lawyer, it is important to find one that is trustworthy. You will be trusting your lawyer to not only deal with a sensitive issue, but to keep your interests first and foremost. You will have to speak openly and honestly because your lawyer will need to know all the facts about your claim. You may find it helpful to speak with other former students who have completed their claims to ask them who they would recommend.

Any certified lawyer can take on your claim. Already, more than 600 law firms across Canada have represented IAP claims. To find one that you feel comfortable with, you can call **1-877-635-2648** to be transferred to a Claimant Support Officer who can provide a list of lawyers accepting referrals for IAP claimants.

Communication with your lawyer
Your lawyer will be in the best position to act in your best interests if all communication about the Independent Assessment Process is first directed to him or her. That's why the Secretariat will communicate directly with your lawyer if you hire one.

This is standard practice in Canada for anyone who hires a lawyer.

When you're searching for legal representation, speaking with more than one lawyer is a good idea to help make sure you find one that has agreeable terms and is trustworthy. Here are some questions you should ask every lawyer you speak to:

- What percentage of the awarded claim do you charge for legal fees?
- How many IAP claimants have you represented? How many were successful?
- What, if anything, will I have to pay if my claim receives zero compensation?
- Will I have to pay tax? If so, what is the rate?
- Will we meet in person before the hearing? How soon will you return my phone calls?

Asking these questions will ensure that you know what to expect from, and the financial terms of, the relationship with your lawyer. You should be clear on these matters before signing any retainer agreement with a lawyer to ensure peace of mind and a positive working relationship.

Remember – your lawyer works for you. It's your lawyer's responsibility to help you understand the IAP rules and processes and to keep you informed on the progress of your claim. Don't be afraid to ask questions if you're unsure about something.

Legal fees

- If you have a lawyer for your claim, the Government of Canada will help pay your legal fees, up to 15% of the amount of your award (Canada's contribution). This payment for legal fees does not come out of your award; it is in addition to your award. You will need to pay anything above 15% and you may also have to pay taxes on the legal fees.
- The maximum your lawyer can charge you is 30% of your compensation award.
- You can negotiate the fee your lawyer will charge.
- In most cases, you will also be responsible to pay taxes –HST or the combination of PST and GST – on the legal fees, unless all the legal work is done on reserve for a Status Indian.
- If your claim is successful, the Government of Canada will also reimburse your lawyer for any reasonable and necessary **disbursements**, such as the cost of obtaining records required for your claim.

You can find some examples of how legal fees are charged in Examples of compensation and payment of legal fees (see page 26).

Legal fee reviews

If you have a lawyer, your decision will come with a form asking you if you want the adjudicator to examine your legal fees. Adjudicators review legal fees in all cases. In addition, where fees are claimed that are above 15% of the compensation award, if you return this form, the **adjudicator** will:

- make sure the fee the lawyer is charging is legal
- make sure the fee makes sense for how much work the lawyer had to do

This is done to ensure that lawyers cannot take advantage of claimants by charging fees that were not earned. Lawyers must provide their fee agreements to the adjudicator. When deciding whether legal fees are fair and reasonable, the adjudicator considers many factors, including how complex the claim was and the skill shown by the lawyer.

If the adjudicator decides the fee is not fair, the adjudicator has the power to order the lawyer to reduce the fee. Claimants will receive a copy of the adjudicator's legal fee ruling, which will state the compensation amount a claimant is to receive. If you're in this situation and receive less than the amount written in the legal fee ruling, ask your lawyer for an explanation. If you're not satisfied with the explanation, you can use the toll-free Info-Line at **1-877-635-2648** to contact the **Chief Adjudicator** to follow up. You can also contact your provincial/territorial law society.

If you have a complaint about your lawyer

All parties to the IAP want fairness and integrity as foundations to the process. To learn about your rights as a client, contact your provincial/territorial law society for the code of conduct that lawyers must follow. Further, the Secretariat has developed a document called *Expectations of Legal Practice in the IAP*. You can obtain this document by calling **1-877-635-2648** or visiting www.iap-pei.ca/former-ancien/expect-attentes-eng.php. This document outlines what is expected of lawyers who are representing IAP claimants. It can help you understand what to expect from your lawyer.

To support claimants who have a complaint about their lawyer or representative, the IAP has appointed an Independent Special Advisor to the Court Monitor dedicated to handling these complaints. You can bring your complaint to the Independent Special Advisor by calling 1-866-879-4913 or the Chief Adjudicator by calling the Info-Line at **1-877-635-2648**.You can also make a complaint to your provincial/territorial law society if you feel your lawyer is not conducting himself or herself properly.

If you're having problems when working with your lawyer, talk to your lawyer about it. If after following these steps you still have concerns, hiring a new lawyer might be an option to pursue.

Changing lawyers

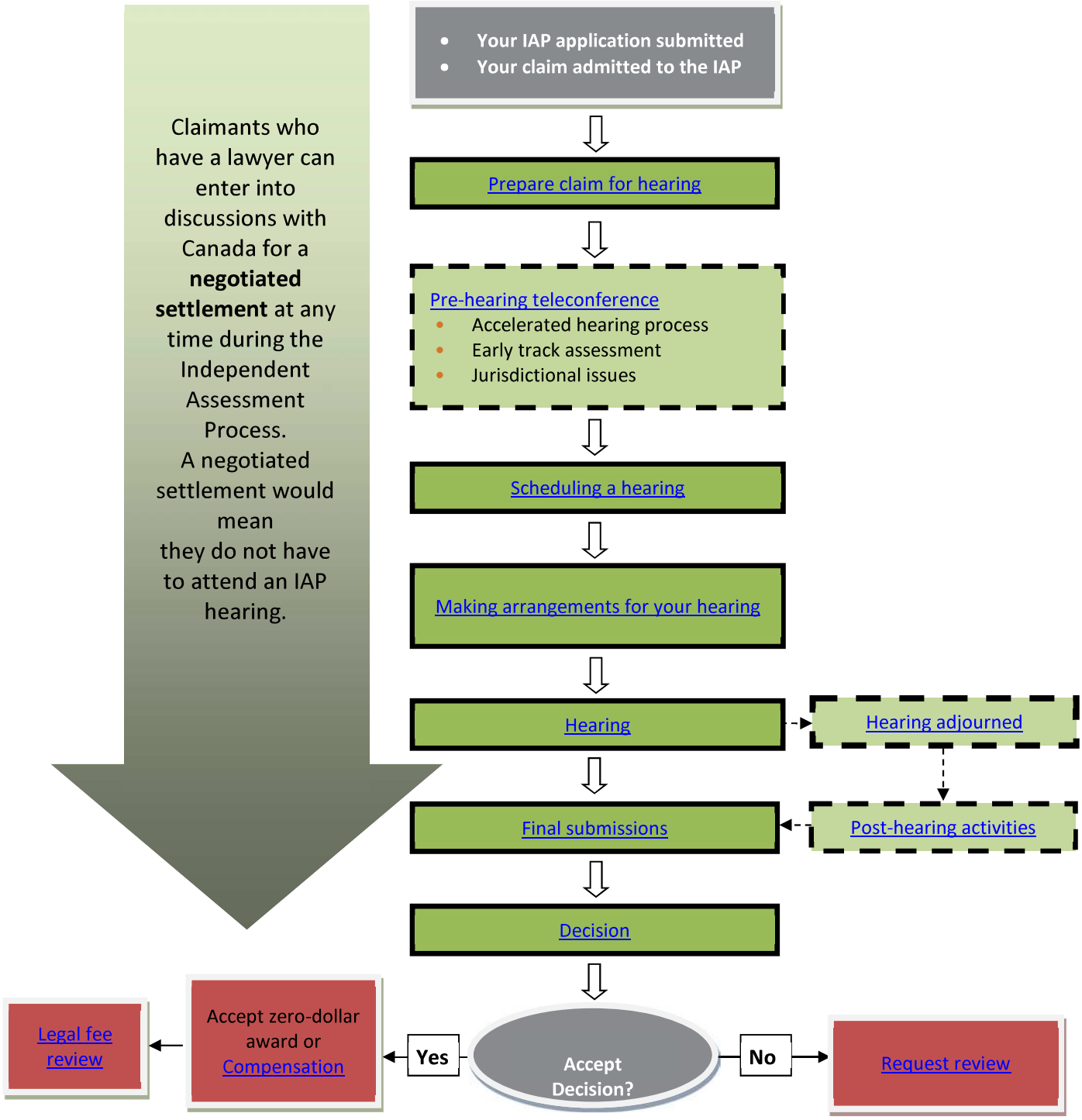
Your lawyer must respect your right to change legal counsel, and must assist in sending the file to the new lawyer. A lawyer that takes over a file from another lawyer must protect you from any claims for legal fees, **disbursements**, taxes, or otherwise by any previous lawyer.

If a lawyer withdraws from a claim, it does not necessarily mean the claim itself is withdrawn. Claimants have the right to continue with their claim by finding another lawyer or proceeding without a lawyer.

What can you expect from the claims process?

The process presented in the following chart shows the possible steps that your claim may go through, now that your claim has been admitted to the IAP.

Steps in Processing a Claim in the IAP



Not every claimant goes through these steps. Each claim is unique:

- there may or may not be a need for a pre-hearing teleconference
- not all hearings need to be adjourned before final submissions are made
- if you have a lawyer, at any stage in the process you may arrive at a negotiated settlement with the Government of Canada (see page 5). If you reach a negotiated settlement, then you do not need to wait for an adjudicator's decision. And if it happens before your hearing, then you do not have to provide testimony.

The 1-2-3 flow of the steps is based on the regular hearing process. Now that the **Settlement Agreement** is nearing its conclusion, the Secretariat is offering an accelerated hearing process to claimants who've been admitted to the IAP.

Accelerated hearing process

The accelerated hearing process involves the same steps as the regular hearing process, but the hearing itself – the time when you tell your story – can be done before the collection of mandatory documents is completed.

The accelerated hearing process can benefit you by giving you an earlier hearing date and preserving your testimony. But the accelerated hearing process does not necessarily speed up the time for an adjudicator to reach a decision on your claim. An accelerated hearing process IAP claim will be treated with the same level of diligence, thoroughness and fairness as claims that are dealt with under the regular process for IAP claims.

It starts with the Secretariat identifying your claim-in-progress as one that could be scheduled as an accelerated hearing. The Secretariat will contact you or your lawyer, if you have one, to explain the accelerated hearing process.

As part of the accelerated hearing process, you need to participate in a pre-hearing teleconference (see page 15). At this teleconference, the adjudicator will decide if enough information will be available for your hearing. Some documents are essential for you to deliver your testimony; others are supporting evidence that need to be collected before final submissions can be made and the adjudicator prepares a decision. If the adjudicator believes that everyone is comfortable with proceeding to hearing before all mandatory documents are collected, then the accelerated hearing will be scheduled.

If you have an accelerated hearing, it's likely that your final submissions stage will be by teleconference—after all your mandatory documents have been collected.

A detailed description of the accelerated hearing process and a list of frequently asked questions (FAQs) are available from your Claimant Support Officer or your lawyer, as well as on the IAP website at http://www.iap-pei.ca/legal/counsel-faq-eng.php.

Before your hearing

Preparing an IAP claim for a hearing

Now that you've been notified that you've been admitted to the Independent Assessment Process (IAP), you should know that the Secretariat has also notified the other parties that will participate in your hearing: the Government of Canada and the church.

You and the other parties need to prepare for the IAP hearing. These preparations are overseen by the Secretariat.

The steps in Table 1 must be completed before your claim can move forward in the regular hearing process.

Table 1. Steps to prepare for your hearing

What's required	Who does what?
Collecting your mandatory documents. Certain documents are necessary for supporting your claim (see page 12 for information on mandatory documents). Note: If you are in the accelerated hearing process, then your hearing may be held before all your mandatory documents are collected.	• **You** need to identify the documents that might be available and where they can be located. • **Your lawyer**, if you have one, will then do the digging to obtain the documents and pay for them if necessary. • **If you don't have a lawyer, you** will need to sign a preauthorization form for your Claimant Support Officer to authorize the collection of mandatory documents on your behalf. Your **Claimant Support Officer** will then obtain the documents and pay for them if necessary.
Submitting Government of Canada research and documentation for the claim. For each claim, the Government of Canada provides: • confirmation of the claimant's attendance/residence at the residential school • research on the persons named as abusers • a complete history of the residential school attended	• The **Government of Canada** does the research

Filling out the required forms. • Form 1A, Claimant's Hearing Preferences • Form 1B, Request for IAP Hearing Appendix A (on page 38) has Forms 1A and 1B.	• **If you don't have a lawyer, you** must complete these forms. Your **Claimant Support Officer** will mail these to you and, if needed, help you complete these forms. • If you have a lawyer, **your lawyer** will work with you to complete these forms.
Completing a future care plan, if applicable. Not all claimants require a future care plan (see page 25).	• If you have a lawyer, **your lawyer** will work with you to prepare this document. • **If you don't have a lawyer, you** must prepare this document. Your **Claimant Support Officer** will, if needed, help you.

Collecting your mandatory documents can be time consuming. Sometimes they can be collected within six months, but it is not uncommon for the process to take a year or more.

Your mandatory documents and the Government of Canada's completed research are given to the Secretariat to prepare your case's evidentiary package. The evidentiary package:

- helps everyone better understand the claim
- ensures that all the parties have access to the same documents about the claim
- is used as a basis for questioning by the **adjudicator** during the hearing

The Secretariat aims to send the evidentiary package to the parties at least five weeks before the hearing date.

Collecting mandatory documents

As with all claimants who apply to the IAP, you will need certain documents at the hearing to support your claim.

The documents you will need are based on the level you selected in your application for consequential harms and loss of opportunity (see pages 4 and 5 in **Schedule D** of the **Settlement Agreement**).

Before the hearing, your job is only to identify where to

A time-consuming task

Collecting mandatory documents can take months, sometimes more than a year. For this reason, the Secretariat has developed the accelerated hearing process (see page 10), where your hearing is held before all your mandatory documents are collected.

get these documents. You are not expected to gather and pay for these documents on your own. If you have a lawyer, your lawyer will take care of this. If you do not have a lawyer, your Claimant Support Officer will be responsible for this task.

If certain mandatory documents don't apply to your situation, you, or your lawyer if you have one, will have to complete a form explaining why.

Why are these documents necessary?

The documents listed below will help support your claim. They will not prove the abuse happened, but they will help prove that your life was made more difficult because of the abuse that happened at a residential school.

For example, if your application states that your time at a residential school caused you to become drug or alcohol dependent in later years, your treatment records will help prove that particular harm. As another example, if your application said that your residential school experience caused you to attempt suicide several times, the records from the hospitals or clinics where you were treated will help prove that particular harm.

Documents to prove "consequential harms"

If, on your application, you selected **levels 1 or 2** for consequential harms, no supporting documents are required.

If, on your application, you selected **levels 3, 4, or 5** for consequential harms, the following documents must be collected:
You can obtain Schedule D from your Claimant Support Officer, by calling **1-866-879-4913** or

- treatment records relevant to the harms claimed – This includes clinical, hospital, medical or other treatment records. This does **not** include records of counseling while pursuing a claim.
- workers' compensation records, if a claim involves a physical injury – for example, you may have stated that you suffer back problems as a result of abuse at the residential school. This injury may have stayed with you throughout your career and caused you to miss work on one or more occasions and you collected workers' compensation benefits.
- corrections records that relate to injuries or harms – if you were incarcerated in a federal or provincial/territorial prison, you may have had counseling and medical issues related to your residential school experience.

Schedule D

The descriptions of the levels and types of abuse in IAP claims are taken directly from pages 3–5 of Schedule D of the Settlement Agreement (available by visiting www.residentialschoolsettlement.ca/settlement.html). These descriptions are also listed in the guide to your IAP application. If you need a print copy, you can get one from your Claimant Support Officer or your lawyer.

Documents to prove "Loss of Opportunity"

If, on your application, you selected **level 1** for loss of opportunity, no supporting documents are required.

If, on your application, you selected **level 2**, the following supporting documents must be collected:

- workers' compensation records, if your claim involves a physical injury
- income tax records, or if they're not available, Employment Insurance and Canada Pension Plan records
- high school, college and/or university records that are not records from the residential school itself

If, on your application, you selected **levels 3, 4, or 5** for loss of opportunity, the following documents must be collected:

- workers' compensation records, if your claim involves a physical injury
- income tax records, or if they're not available, Employment/Unemployment Insurance and Canada Pension Plan records
- treatment records relevant to the injury/condition that caused the opportunity loss – this includes clinical, hospital, medical or other treatment records but does **not** include records of counseling while pursuing a claim
  For example, if you were diagnosed as bipolar as a result of your residential school experience, this may have affected your ability to remain in a certain job for long or may have prevented you from ever finding a job.
- high school, university and/or college records that are not records from the residential school itself

Other non-mandatory documents

You can submit other documents. These documents are **not** mandatory, but can support your claim if you have them. These documents may include:

- Any document that you have from when you were a student at the residential school. These can sometimes support attendance, for example, yearbooks, pictures, report cards, diplomas, letters or newspaper clippings, or provincial/territorial education records.
- Any written statement or testimony that you may have given about your experiences at residential school or harms suffered because of the abuse. For example:
  - information related to drug or alcohol treatment
  - statements you made to the police
  - previous written statements given to a priest, other religious person or employee of the school
  - previous statements given to medical or counseling professionals
  - personal diary recording information that supports the claim
  - video statements that were not made solely for pursuing an IAP claim

Developing a future care plan

Some claimants will require future care to deal with the effects of the abuse they suffered at a residential school. If you need future care, you will need to prepare a future care plan to present at your hearing. You would have indicated if you require future care when you first completed your IAP application.

To get started on preparing a future care plan, your Claimant Support Officer can provide you with some examples of future care plans. Your lawyer, if you have one, will also be very knowledgeable and will work with you in preparing one.

Examples of future care activities could be:

- counseling sessions
- treatment for substance abuse
- traditional healing, such as attending sweats or talking circles

Other costs that could be covered in a future care plan include: travel costs, session costs, treatment costs, honoraria or gifts (such as tobacco for Elders).To prepare one, list all of the activities you would like to pursue in the future care plan, and an estimate of the cost.

In preparing your future care plan, remember that in deciding whether to award you future care the adjudicator will consider:

- the effects the abuse had on you
- treatment you've already had
- whether travel is required to get the treatment
- whether other funding sources can pay all or some of the treatment
- whether you have shown a genuine need for the treatment and a genuine desire to complete the treatment

Pre-hearing teleconferences

Your claim may require a teleconference before your hearing for a number of reasons:

- if you are in the accelerated hearing process and the adjudicator needs to verify that your claim is developed enough without all of the mandatory documents to allow your hearing to be scheduled
- if you are a self-represented claimant and would like some direction on whether to have your claim heard in the standard track or the complex track
- if your claim is in the complex track
- if there are jurisdictional issues related to your claim

Pre-hearing teleconferences in the accelerated hearing process

A pre-hearing teleconference for a claim in the accelerated hearing process (see page 10) allows the adjudicator to assess if the claim is developed enough to proceed to hearing without

all of the mandatory documents. The adjudicator also wants to be sure all participants are comfortable with holding the hearing before all the documents are collected.

A pre-hearing teleconference for the accelerated hearing process would involve the following people:

- the adjudicator – usually the person who will be the adjudicator for your claim
- Canada's representative
- you
- if you are representing yourself, your Claimant Support Officer
- support people you have requested to participate
- your lawyer, if you have one
- possibly a Secretariat employee

During the teleconference, the adjudicator will confirm many aspects of the claim related to the hearing, including:

- whether new allegations will be made, or whether existing allegations will be withdrawn
- whether Canada has completed its research into the claim
- the status of the collection of mandatory documents
- the need for **medical / expert assessments**, or whether these could be waived
- logistical arrangements for the hearing

The adjudicator will lead the conversation with Canada's representative and your lawyer, if you have one, and you.

Early track assessment pre-hearing teleconference

If your claim has a combination of standard and complex track claims (see page 20) – for example, a physical abuse claim and a claim for other wrongful act or sexual abuse and an Actual Income Loss claim – you must choose which track you would like to follow. If you have a lawyer, your lawyer can help you make this decision.

If you don't have a lawyer and you're uncertain, an early track assessment teleconference can help you decide which track to follow. You should discuss setting up an early track assessment teleconference with your Claimant Support Officer. This teleconference will take place shortly after your claim is admitted to the process.

The teleconference will include an adjudicator, a Government of Canada representative, you and your Claimant Support Officer. They will each have a copy of your application. During the teleconference, the adjudicator and the Government of Canada representative will provide information to you on the standard and complex tracks and how your choice will affect your claim.

You can then make a well-informed decision on which track you would like your claim to follow. Although there is always the option of changing which track to use, the process will be completed more quickly if you're on the right track as soon as possible.

Jurisdictional pre-hearing teleconferences

A jurisdictional issue arises when one of the parties, usually the Government of Canada, argues that a claim falls outside the scope of what the IAP can deal with. These jurisdictional issues can be raised after a claim is admitted into the IAP. Examples of why a claim may be flagged for a jurisdictional issue are:

- **Did not attend a recognized residential school.** The **Settlement Agreement** lists which residential schools are included in the IAP. Some claimants may have attended a school with the same name as a recognized residential school, but ultimately the school is not part of the Settlement Agreement.

- **Attended outside the years of operation.** All the recognized residential school have a start and end date which identifies when the Government of Canada was involved in the administration and/or day-to-day operations. Some claimants may have attended a recognized residential school, but not during the time when the Government of Canada was involved.

If a claim falls outside the jurisdiction of the IAP, it is dismissed. The parties to the **Settlement Agreement** don't want claimants to invest emotional effort, time and financial resources only to find out at the end of the process that their claims are not eligible for compensation. For this reason, jurisdictional issues are examined as soon as possible with a jurisdictional pre-hearing teleconference.

All requests for a jurisdictional review are sent to the office of the **Chief Adjudicator**, which will assign an **adjudicator** to review the file. The adjudicator will then determine if a jurisdictional pre-hearing teleconference is necessary. If the adjudicator decides a teleconference is not necessary, the claim will continue on the path toward a hearing.

If a jurisdictional pre-hearing teleconference is necessary, the following steps are taken:

- **Preparing for the teleconference.** The parties (the Government of Canada and you, or your lawyer if you have one) will be notified in writing. Each party has the option to provide written statements or other evidence regarding the jurisdictional issue. These written statements or other evidence will be shared with the other party and the adjudicator before the teleconference is scheduled.

- **Conducting the teleconference.** During the teleconference, the adjudicator will hear the submissions from both parties. If you don't have a lawyer, your Claimant Support Officer will also listen in on the teleconference. The teleconference will be recorded.

- **Issuing the decision on jurisdiction.** After reviewing the submissions, the adjudicator will decide whether your claim can continue in the IAP or if it will be dismissed. If your claim can continue, the adjudicator will issue a letter to the parties. If your claim cannot continue, the adjudicator will issue a jurisdictional pre-hearing teleconference decision to the parties advising the claim is to be dismissed. Like compensation decisions, these decisions are subject to reviews (see page 27).

Scheduling your hearing

Once your claim is identified as ready for a hearing, the Secretariat will schedule a suitable hearing date and find a location and an available adjudicator, if one is not already assigned. Your preferences will be taken into account when scheduling the hearing. For example, if you ask for your hearing to be held in a certain city or for the adjudicator to be male, the Secretariat will do its best to accommodate your request.

You, or your lawyer if you have one, will be notified of your hearing date by letter about three to five months before the hearing. This gives you time to prepare for the hearing and make appropriate arrangements at work or at home. See Appendix B on page 44 for an example of the letter you'll receive, called a notice of hearing.

Priority for scheduling

When you completed your application, you indicated whether you belonged in one of the groups that receive priority in scheduling hearings. These hearings are called expedited hearings, and they're different from the accelerated hearings because they are for claimants who:

- submit a doctor's note confirming that they are in failing health where any further delays may prevent them from taking part in a hearing;
- are older than 70 years;
- are between 60 and 70 years old; and
- have completed an examination for discovery. This is a pre-trial process where the claimant's lawyer and the Government of Canada's lawyer question the claimant on the record about residential school abuse. An examination for discovery is only done for claimants who began a court claim, but never received a settlement.

If your health status has deteriorated since your application and there's a significant risk of passing away before you can attend a regularly scheduled hearing, you, or your lawyer if you have one, should notify the Secretariat at **1-877-635-2648**. Your testimony is the most important piece of evidence in your claim, so the Secretariat will arrange an expedited hearing as quickly as possible.

Making arrangements for your hearing

Besides scheduling your hearing, the Secretariat's Hearings Management Unit is responsible for making other arrangements for your hearing, including:

- booking the location—even if you are in the accelerated hearing process, you can state your preference for the location where your hearing will take place
- making travel arrangements (transportation and hotels) for you and your support people (If you don't have a lawyer, the Secretariat will contact you directly when making travel plans.)
- arranging an adjudicator – you can state whether you prefer a male or female adjudicator
- paying you, or your lawyer if you have one, for out-of-pocket expenses, such as parking, meal costs and mileage for your car, as well as a travel advance

Hearings are often booked in hotel conference rooms. Or you can ask for your hearing to be in one of the Secretariat's **hearing centres** in Winnipeg or Vancouver.

About four to six weeks before the hearing date when your hearing location is booked, the Secretariat will send a Notice of Hearing form to you or to your lawyer if you have one. This form includes details on the date, time and location of your hearing. The form also includes information on travel arrangements and accommodations. (Appendix B on page 44 presents an example of a Notice of Hearing form.)

Your hearing *your way*

You have a lot of input into how your hearing will be arranged. Before your hearing is scheduled, you will complete forms 1A and 1B (see Appendix A on page 38) to say what your preferences are, including:

- where you would like the hearing to be – the Secretariat will do its best to accommodate your request, whether you would like your hearing in your community or somewhere else in Canada
- how the hearing begins – in a way that respects your beliefs and traditions; for instance, with a song, a ceremony, or a prayer
- how you make an oath – an oath on a Bible, an oath on an Eagle Feather or simply affirming you will tell the truth
- whether you want a male or female adjudicator – in the accelerated hearing process, however, this preference cannot always be accommodated

Your hearing

If your claim proceeds to a hearing, you can expect a fair, impartial, safe, supportive, culturally appropriate and respectful hearing. The hearing is your opportunity to provide testimony to explain in detail what happened to you at the residential school and how it affected your life.

You are responsible for proving that the abuse happened as described in your IAP applications. You will prove this by providing testimony at your IAP hearing. Your hearing will be private – closed to the public – and will not be in a courtroom. You will tell your story to the **adjudicator**, who will ask you questions and manage the hearing.

Besides you, your hearing will include your lawyer (if you have one), a representative of the Government of Canada, possibly a representative of the church and any **witnesses** you may have for your claim. Others who may attend, but only with your permission, include your support people, a Resolution Health Support Worker, an Elder and an interpreter (see Who's involved on page 2 for information on how the Secretariat helps you with the costs to bring these individuals to your hearing).

You are encouraged to raise any concerns and to ask questions during the hearing to make it a positive experience. Every effort will be made to create a comfortable and non-threatening atmosphere so that you can safely be heard.

Standard, complex and court tracks

The IAP deals with residential school abuse claims in three tracks:

- standard track;
- complex track; and
- court track.

Each has its own standards of proof for a claim to be successful.

Standard track

The standard track is used for dealing with claims of abuse. Most IAP claims are dealt with in this track. Claims under the standard track are less complex because claimants must prove their claims solely on a **balance of probabilities**. That means the adjudicator makes a decision based on whether it is more likely than not that the abuse happened.

The adjudicator will work with you to establish the facts of your case, asking you questions. Your answers will need to prove to the adjudicator that:

- the abuse is more likely to have happened than not;
- you were harmed by the abuse; and
- the harm you experienced is likely linked to the proven abuse.

Under this standard of proof, the adjudicator does not need as much evidence to award compensation.

Complex track

Claims for other wrongful acts and Actual Income Loss proceed in the complex track. If your application includes these claims, you will have a early track assessment pre-hearing teleconference (see page 16) to confirm whether your claim should continue in the complex track or be changed to the standard track. This teleconference is held before your hearing to ensure you will be able to provide the evidence needed to prove other wrongful acts or actual income loss. The adjudicator may order additional documents to be collected.

Under this track, you must prove your claim using the court standard of proof – you must be able to show a direct link between the abuse you suffered and the actual income you lost or opportunities you missed. Using this standard of proof, the adjudicator requires more evidence to make a decision.

It is important to hire a lawyer if your claim is in the complex track. Your lawyer will be able to advise you on how to meet the court standard of proof. Your lawyer can also ask the adjudicator to consider specific parts of your testimony. This is important because the adjudicator's questions will be more in-depth for a complex track hearing.

Court track

In rare circumstances, a request can be made to the **Chief Adjudicator** to allow a claim to be brought to the courts. This approach would be for claims that are exceptionally serious or complicated, such as:

- There is enough evidence that the claimant lost more income or opportunity than the maximum compensation allowed ($250,000).
- There is enough evidence that the physical harms experienced were catastrophic and that the compensation available through the courts may be more than the maximum compensation allowed. For example, such a physical harm could be a permanent significantly disabling physical injury.
- In any other wrongful act claim, the evidence involved in the harms claimed is so complex and extensive that going to the courts is the most appropriate action.

Unlike IAP hearings, court hearings would be open to the public and you would be subject to cross-examination.

Providing your testimony at your hearing

For most residential school abuse claims, the only evidence of what happened is the testimony of the claimant. There are rarely any **witnesses** or other evidence available to help claimants prove their abuse claims. Claimant testimony is the most important piece of evidence that may

lead to compensation, which is why it is so important that you be as detailed as possible at your hearing.

The adjudicator will give you every opportunity to provide detailed testimony by asking open-ended questions. Adjudicators are trained to draw out the full story of what happened to ensure that the legal tests are met. While the adjudicator is asking questions and listening to your testimony, he or she will also be assessing your credibility and reliability. These two factors are essential for a successful claim. When adjudicators assess credibility, they are asking themselves – is this claimant trying to tell the truth? When adjudicators assess reliability, they are asking themselves – is this claimant able to give accurate testimony? Is what this claimant telling me consistent with what we know about the residential school?

***Telling Your Story*: Video on the IAP**

To help claimants prepare for their hearings, the Secretariat produced *Telling Your Story: The Indian Residential Schools Independent Assessment Process*, a video available from the Secretariat or at http://www.iap-pei.ca/information/multimedia/vid-eng.php?act=2013-03-26-eng.php. The video comes with a helpful guidebook, also available from the Secretariat or at http://www.iap-pei.ca/information/publication/pdf/pub/irsas_dvd_booklet-eng.pdf.

These hearings can be difficult. The adjudicator's questioning can lead to emotional **trauma**. Do what you can to prepare yourself emotionally and mentally to have a successful hearing. At the hearing, take breaks when you need to. If you have support people there, remember that they want to help. Your Claimant Support Officer will also give you information about the health supports available (see Health Supports on page 300) to help you prepare for your hearing and to provide emotional and wellness support after the hearing. Claimants are entitled to health support services prior to, during and following their hearing. This continues until the end of the Settlement Agreement.

How an abuse claim is proven

The **Settlement Agreement**, specifically pages 3–5 of **Schedule D**, states which abuse acts are eligible for compensation – also called compensable abuse – as well as the legal tests that need to be met for compensation to be awarded. Schedule D establishes the rules and processes for the IAP. Everything about the IAP, from the powers of adjudicators to the compensation rules, comes from Schedule D. You can obtain Schedule D from your Claimant Support Officer, by calling **1-866-879-4913** or by visiting www.residentialschoolsettlement.ca/settlement.html.

Activities after the in-person hearing – why the process can take longer

After your hearing, the **adjudicator** may need more information before writing a decision on your claim. This is called an adjourned hearing. If this happens, the conclusion of the hearing will be delayed until these activities have been completed. A new hearing date may be scheduled. This hearing may be conducted by teleconference. You may be asked to provide

additional testimony and answer more questions from the adjudicator to finish telling your story. This will also be the time to provide final submissions.

Your claim may need one or more of the items listed below before the adjudicator can write a decision:

- **Continuation hearing.** If you didn't finish telling your story on the first day, you may be asked to participate in a second hearing. Your second hearing is usually held about three months after the first hearing.
- **More documents.** If the adjudicator requires additional documents – particularly after an accelerated hearing – your lawyer or Claimant Support Officer may have to collect these documents after your hearing. Depending on how many documents and the type of documents required, it may take only a few weeks or several months to collect them.
- **Alleged perpetrator hearing.** The people you named as abusers in your IAP application are called 'alleged perpetrators' and will be contacted by the Government of Canada. If found and if they wish to participate, an alleged perpetrator hearing is then scheduled. This can take three to four months. You do not have to attend this hearing, but you can if you would like to hear the alleged abuser's testimony. The alleged perpetrator will not know anything about your claim except for the abuse allegations you made against them.
- **Witness hearing.** During your hearing, if you said that another person witnessed the abuse that you suffered and that witness is not already participating in your hearing, the adjudicator may ask to speak with that witness. If the witness is found and willing to participate, a witness hearing is scheduled as soon as possible. This can take three to four months. The **witness** will not know anything about your claim except for the abuse that you say the person witnessed.
- **Psychological assessment**. Depending on your claim, the adjudicator may order a psychological assessment. You will need to meet with a psychologist who will prepare a report on how your time at the residential school affected you. This process usually takes three to four months.
- **Medical assessment.** Depending on your claim, the adjudicator may order a medical assessment. If you are claiming a physical injury (for example, hearing loss) but there is no evidence of the injury in your medical records, the adjudicator may require that you meet with a doctor who will examine you and prepare a report with their findings. This process usually takes three to four months.
- **Transcript request.** You may have noticed that the adjudicator recorded your testimony at your hearing. On occasion, the adjudicator may require that the recording be typed up. This is called a **transcript**. It helps remind the adjudicator what you said and will help the adjudicator write the decision on your claim. The transcript takes two to three weeks to prepare and may delay the adjudicator's decision. You can also have a copy of your transcript if you want one. Ask your lawyer or your Claimant Support Officer to request this for you.

  You can do what you wish with this transcript including keeping it, destroying it or publishing it. You can also share your transcript with the National Research Centre for Truth

and Reconciliation (http://umanitoba.ca/centres/nctr), an archive that has been developed specifically for keeping claimants' hearing transcripts in order to preserve forever the stories of Canada's former residential school students.

Keep in touch with your lawyer or Claimant Support Officer for updates on these items.

Final submissions

After all activities are completed, you or your lawyer and the Government of Canada representative will make final submissions. Final submissions can take place in person, right after your hearing. More often, final submissions are teleconferences that are usually held one or two weeks after the adjudicator has everything needed to start writing your decision. The call itself usually takes less than an hour.

Final submissions are an opportunity to summarize your testimony. The parties also give recommendations to the adjudicator on where the claim should fall in each of the levels listed on pages 4 and 5 in **Schedule D** of the **Settlement Agreement**, including what portion of the future care plan (see page 15) should be funded. These recommendations will be based on the evidence of your testimony and mandatory documents. The adjudicator will consider these final submissions when writing the decision.

Having a lawyer is particularly helpful at the final submissions stage. During final submissions, your lawyer can make arguments to strengthen your claim. Your lawyer can also make a case for the level of compensation you should receive, based on the evidence presented at the hearing.

If you do not have a lawyer, you will be expected to make your own final submission. The adjudicator and Government of Canada representative will provide support and guidance to assist you through final submissions. In addition, your Claimant Support Officer will educate you about final submissions well in advance of the hearing so that you can prepare for this step.

At final submissions, the Government of Canada representative speaks first. If you agree with the representative's statements, you can choose to say that you agree and not offer further statement.

You may contact a health support worker for you and your family, either in person or by telephone at anytime throughout the IAP. You can request health support services at any point during the IAP, not just during the hearing itself.

You can find out more information about the Resolution Health Support Program at http://www.hc-sc.gc.ca/fniah-spnia/services/indiresident/irs-pi-eng.php or from the 24-hour National Crisis Line at 1-866-925-4419.

The adjudicator's decision

The adjudicator at your hearing is responsible for writing the decision for your claim. The adjudicator's decision will indicate if you will receive compensation, and include reasons for the decision. Although the accelerated hearing process has increased the volume of decisions for adjudicators, every effort is being made to meet the following deadlines:

- **Standard track claims:** 30 days after final submissions
- **Complex track claims:** 45 days after final submissions
- **Short-form decisions (if your lawyer opted for this):** two weeks after final submissions

The decision will be sent to the Government of Canada and to you. Both of you will have 30 days from the date written on the decision to decide whether to accept the decision or request a review. The decision will have information on how to accept the award and how to request a review. Both parties have to accept the decision before the process can begin for you to receive your compensation award. If you accept the decision, but the Government of Canada requests a review, then a review will occur.

Decisions should be examined carefully so you understand why the adjudicator came to that decision. If you have questions, talk to your lawyer or your Claimant Support Officer. To view a template of an adjudicator's decision, see Appendix C on page 47.

How adjudicators calculate compensation

The **Settlement Agreement** contains a compensation grid in **Schedule D** that contains the rules for calculating compensation awards. If you have proven your case, these rules tell the adjudicator how to award compensation, including dollar amounts. These rules ensure fairness and transparency.

IAP compensation is based on points. The more points a claim receives, the more compensation will be awarded (see page 6 in Schedule D). Adjudicators have the authority to determine how many points a claim receives for the following categories:

- **Acts proven.** The adjudicator will assign points for the most serious abuse suffered by the claimant (see table on page 3 in Schedule D)
- **Consequential harms.** The adjudicator will assign points for the psychological harms suffered by the claimant as a result of the abuse (see table on page 4 in Schedule D).
- **Aggravating factors.** The adjudicator will assign points for any factors that made the abuse worse (see table on page 5 in Schedule D).
- **Future care.** The adjudicator will not assign points for this category, but a monetary value (see table on page 5 in Schedule D). For more information, see Developing a future care plan on page 15.
- **Loss of opportunity.** The adjudicator will assign points for the claimant's loss of opportunity (see table on page 5 in Schedule D).

The table on page 6 of Schedule D lists the amount of money that can be awarded based on the total number of points assigned to your claim.

Examples of compensation and payment of legal fees

To help you understand how the Schedule D compensation grid works, here are some examples. They show how a compensation award could be calculated and how the lawyer's fees would be paid.

Example #1

An adjudicator gives an award at the SL3 level with harms at H2, aggravating factors of 12%, future care of $10,000, and loss of opportunity at L1.

- Acts proven at SL3 – range is 26 to 35 points; adjudicator awards 30 points
- Consequential harms at H2 – range is 6 to 10 points; adjudicator awards 10 points
- Aggravating factors at 12% – total points so far is 40; 12% of 40 is 4.8, which is rounded up to 5 points
- Loss of opportunity at L1 – range is 1 to 5 points; adjudicator awards 4 points
- Future care – adjudicator grants $10,000 based on the future care plan

The total is 49 points. Based on these points, the adjudicator can award anywhere from $51,000 to $65,000 and has the authority to decide how much exactly to award. In this instance, the adjudicator awards $62,000. The total compensation in this example would be **$72,000** ($62,000 for the points, plus $10,000 for future care).

This claimant's lawyer charges 15% of the award. The claimant lives in Saskatchewan, where the tax rate is 10% (5% GST, 5% PST). The claimant is responsible for paying:

- **Legal fees of $0.** The total legal fee bill is $10,800 ($72,000 x 15% = $10,800). In this case, the Government of Canada pays the total bill because the lawyer only charges 15% and there is no charge to the claimant.
- **Tax ($2,475 in GST and PST).** In this case, the claimant has to pay $1,080 in taxes ($10,800 x 10% = $1,080).

After paying the taxes on the legal fees, the total amount the claimant receives is **$70,920** ($72,000 - $1,080 = $70,920).

Example #2

An adjudicator gives an award at the SL5 level with harms at H4, aggravating factors of 8%, future care of $5,000, and loss of opportunity at L3.

- Acts proven at SL5 – range is 45 to 60 points; adjudicator awards 54 points
- Consequential harms at H4 – range is 16 to 19 points; adjudicator awards 19 points
- Aggravating factors at 8% - total points so far is 73; 8% of 73 is 5.84, rounded up to 6 points
- Loss of opportunity at L3 – range is 11 to 15 points; adjudicator awards 13 points
- Future care – adjudicator grants $5,000 based on the future care plan

The total is 92 points. Based on these points, the adjudicator can award anywhere from $151,000 to $180,000 and has the authority to decide how much exactly to award. In this instance, the adjudicator awards $160,000. The total compensation in this example would be **$165,000** ($160,000 for the points, plus $5,000 for future care).

This claimant's lawyer charges 25% of the award. The claimant lives in British Columbia, where the tax rate is 12% (5% GST, 7% PST). The claimant is responsible for paying:

- **Legal fees of $16,500.** The total legal fee bill is $41,250 ($165,000 x 25% = $41,250). However, the Government of Canada pays the legal fees up to 15% of the award and the claimant is responsible for paying anything above. In this case, the claimant is responsible for 10% of the legal fees which equals $16,500 ($165,000 x 10% = $16,500).
- **Tax ($4,950 in GST and PST).** In this case, the claimant has to pay $4,950 in taxes ($41,250 x 12% = $4,950).

After paying the additional lawyer fees and the taxes on all the lawyer fees, the total amount the claimant receives is **$162,525** ($165,000 – $16,500 - $4,950 = $143,550).

Remember, if you have a lawyer you will receive a form that you can send in to ask the adjudicator to review your legal fees (see Legal fee reviews on page 7).

Settlement inquiry line

Claimants can contact the settlement inquiry line for updates on their compensation toll-free:

- For claimants in British Columbia, Alberta and the North: **1-877-236-2219**
- For claimants everywhere else: **1-877-307-9089**

Formal review of an adjudicator's decision

You and the Government of Canada both have the right to request a review of an adjudicator's decision. A review can be requested for only the following reasons:

- **Palpable and overriding error.** A review can be requested if the decision contains a clear and telling error.
- **Improper application of the IAP model to the facts as found by the adjudicator.** A review can be requested if the adjudicator correctly understood the evidence, but the decision does not follow the IAP rules.

The reasons for requesting a review deal with the technical and legal aspects of the IAP. As such, it is important to consider hiring a lawyer to assist with the review. You can hire a lawyer at any point in the process, including the review stage.

Instructions on how to request a review will be written in the cover letter for the decision. The parties must provide a written statement and send it to the office of the **Chief Adjudicator**

within 30 days of receiving the decision. This statement describes the reasons why the decision is wrong. It must not exceed 1,500 words. If you need more than 30 days to prepare the statement, you can request an extension through the Chief Adjudicator's Office.

When one party submits a written statement to the Chief Adjudicator's Office, the other party will be notified. The other party will have 30 days to submit a response. Once the response is received, the Chief Adjudicator will assign another adjudicator to the claim. This person is known as the **reviewing adjudicator**. This reviewing adjudicator will begin the review. No new evidence is allowed during the review, so there will not be a new hearing or teleconference. Instead, the reviewing adjudicator will conduct a paper review of the claim, which includes reading all of the claimant's documents and a **transcript** of the hearing. Afterward, the reviewing adjudicator will write a new decision, known as a **review decision**.

The review decision will be sent to the parties and it will either: uphold the original decision, change the original decision, or order a new hearing. If the review decision is to uphold the original decision or order a new hearing, the Review Decision is final. However, if the reviewing adjudicator changes the original decision, the parties can request a **re-review**. If a re-review is available, the review decision's cover letter will have information on how to request it.

Why some claims are not successful

There are reasons why some claims can result in no compensation. Legal tests need to be met, a claimant's testimony needs to have enough detail to allow the adjudicator to award compensation, plus there are standards of proof that need to be satisfied. When a claim is not successful, one or more of these criteria have not been met. It is important that claimants consider hiring a lawyer to ensure they have the best possible chance for their claims to be successful.

Receiving your award

If both parties accept the decision and the decision involves an award of compensation, then the “compensation process” begins, that is, the final steps for you to receive your compensation award.

The Government of Canada is the party responsible for compensation and will be notified once a decision has been accepted by both parties. The Government of Canada will then send an award package to you, or your lawyer if you have one. The package includes:

- a number of legal documents that need to be signed with the assistance of a lawyer
- information on how to find a lawyer

A lawyer is absolutely required at this stage. The Government of Canada will pay the lawyer for these services. When the government receives the completed legal documents, it will begin processing the compensation cheque, which will be sent to your lawyer. The process takes four to six weeks.

Health and other supports

Health Canada and Indigenous and Northern Affairs Canada (INAC) provide free health support services to former residential school students and their families through all phases of the **Settlement Agreement**.

Health Canada delivers the Indian Residential Schools Resolution Health Support Program, which ensures that eligible former residential school students and their families have access to an appropriate level of health support services, through all phases of the Settlement Agreement, so that they may safely address a broad spectrum of mental wellness issues related to the disclosure of childhood abuses.

INAC's Resolution and Individual Affairs Sector funds the National Indian Residential School Crisis Line, a national, 24-hour toll-free support service operated by trained Aboriginal crisis counselors.

The Indian Residential School's Adjudication Secretariat (IRSAS) ensures that Health Canada is aware of dates for IAP hearings so that health supports are available to claimants as soon as possible in the process, with the claimant's preference considered.

Indian Residential Schools Resolution Health Support Program

The Indian Residential Schools Resolution Health Support Program provides mental health and emotional support services to eligible former residential school students and their families throughout all phases of the **Settlement Agreement**, except in British Columbia, where the services are provided by the First Nations Health Authority. The support program is delivered through local Aboriginal organizations.

The Resolution Health Support Program components include: cultural support services provided by Elders; emotional support services provided by Resolution Health Support Workers (RHSWs); professional counseling provided by psychologists and social workers registered with Health Canada; and assistance with the cost of transportation to access counseling and/or Traditional Healer services when not locally available.

Resolution Health Support Program services are safe, confidential, respectful and non-judgmental. Cultural Support Providers are available to provide emotional support during all aspects of the IAP.

Health support services available

The following health supports are available through the Resolution Health Support Program:

- **Cultural Support:** Cultural supports are provided by local Aboriginal organizations that coordinate the services of Elders and/or traditional healers. Cultural supports assist former students and their families to safely address issues related to residential schools and the

disclosure of abuse. Specific services are chosen by the individual and can include traditional healing, ceremonies, teachings and dialogue.

- **Emotional Support:** Emotional support services are provided by local Aboriginal organizations and are designed to help former students and their families address issues related to the negative impacts of the residential school. Aboriginal health workers, known as Resolution Health Support Workers, will listen, talk and support individuals, and will attend IAP hearings.

- **Professional Counseling:** Professional counselors are psychologists and social workers who are registered with the province/territory and provide individual or family counseling. They will listen, talk, and assist individuals to find ways of healing from residential school experiences.

- **Transportation:** Assistance with transportation may be offered when health support services are not locally available.

You can find out more information about the Resolution Support Health Program at http://www.hc-sc.gc.ca/fniah-spnia/services/indiresident/irs-pi-eng.php, http://www.iap-pei.ca/information/fact-fiche-eng.php or from the 24-hour national crisis line at **1-866-925-4419**.

Accessing health support services

To access health support services and for more information, please call the provincial/territorial toll-free line:

Table 2. Health support telephone numbers

Newfoundland and Labrador, Nova Scotia, New Brunswick, Prince Edward Island	**1-866-414-8111**
Quebec	**1-877-583-2965**
Ontario	**1-888-301-6426**
Manitoba	**1-866-818-3505**
Saskatchewan	**1-866-250-1529**
Alberta	**1-888-495-6588**
British Columbia	**1-877-477-0775**
Northwest Territories, Yukon, Nunavut	**1-800-464-8106**

National Crisis Line

A National Crisis Line has been set up to provide immediate support for former students and their families who are experiencing distress. It is operated by trained Aboriginal crisis counselors and provides access to emotional and crisis referral services. The Crisis Line is available 24 hours a day, 7 days a week and can be reached at **1-866-925-4419**.

Aboriginal Healing Foundation website

The Aboriginal Healing Foundation was created to develop and study community-based Aboriginal-directed healing initiatives that address the legacy of abuse suffered at residential schools, including intergenerational impacts. Although the Foundation no longer funds initiatives, its website – www.ahf.ca – offers many free resources, including research materials, practical guides and a list of projects they have funded.

Group IAP Program

The Group IAP Program is a program that funds, through contribution agreements, established groups for activities that support healing and reconciliation for members, their families, and communities. This program provides an opportunity for individuals to come together as they go through their individual IAP hearings. Group IAP funding is completely separate from any compensation received under individual IAP claims, or future care money.

The overall objectives are:

- to provide funding for healing activities for IAP claimants who share similar experiences such as the same IRS, community, similar goals, and who want to support each other in their journey towards healing and 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, or other Canadians in support of healing and reconciliation throughout the IAP claim process and after.

For more information on the Group IAP Program, please consult the IAP website at http://www.iap-pei.ca or call the IAP toll-free line: **1-877-635-2648**.

For inquiries about the Call for Proposals process, please email: groupiap-peicollectif@iap-pei.ca.

Are you making a claim as a day student?

Students who attended a recognized residential school – that is, a school that is listed in the **Settlement Agreement** – but went home every day were called day students[1] or, as named in the Settlement Agreement, non-resident claimants.

Day students are identified in two ways: either the claimant self-identifies as a day student in the IAP application or the Government of Canada's research is unable to confirm that the claimant lived at the residential school.

Day students' additional requirement: Schedule P release form

Under the terms of the Settlement Agreement, day students have not given up their right to sue the Government of Canada and the churches. If you are a day student who has decided to pursue your claim through the IAP, you must take an extra step to have your claim continue: you must sign the Schedule P release in the Settlement Agreement. When you sign this release, you are saying that you are choosing the IAP to resolve your claim and will not sue the Government of Canada and the churches for the effects of abuse as a result of your time as a day student at a recognized residential school.

The Schedule P release is a legal document and affects your rights. For this reason, it is necessary to meet with a lawyer to get legal advice about signing the Schedule P release. The lawyer will also explain any other options available. **The Government of Canada will pay the lawyer for any fees related to signing the Schedule P release.** If you are a day student and do not complete the Schedule P release, your claim cannot continue in the IAP.

Once you are identified as a day student and your claim is admitted, the Secretariat will send you a Schedule P release package. The Schedule P release package contains:

- a letter explaining why a Schedule P is necessary for your claim
- information on how to find a lawyer, including a list of lawyers to choose from
- a Questions & Answers document regarding Schedule P
- the Schedule P release forms that you must take to a lawyer to sign

[1] For information about day students vs. day schools please visit http://www.iap-pei.ca/information/fact-fiche-eng.php?act=day-students-eng.php

Glossary

For ease of reference, the following terms are beneficial for claimants to know. Even though some of the terms below have been discussed within the Handbook, some are more fully-defined to provide clarity on certain aspects of the IAP.

Indigenous and Northern Affairs Canada (INAC) – a federal department responsible for meeting the Government of Canada's obligations and commitments to Aboriginal peoples and for fulfilling constitutional responsibilities in the North. Within INAC, the **Settlement Agreement** Operations Branch is responsible for representing Canada at IAP hearings, negotiating settlements without a hearing, conducting research, and paying the settlements.

Adjudicator – a neutral decision-maker who is the authority at all IAP hearings. All adjudicators have formal training to prepare them to deal with IAP claims, including learning about residential schools and their impacts on former students. Their job is to review the claims assigned to them and preside over the hearings in a fair and equal manner. Adjudicators decide if claimants receive compensation using the **Settlement Agreement** as their guide. They can also assist the parties through the negotiated settlement process and they review legal fees to ensure they are fair.

Chief Adjudicator – assists in the selection of adjudicators, advises the **Oversight Committee** on adjudicators, assigns adjudicators to particular cases, trains adjudicators, conducts reviews of adjudicator Decisions, and provides direction to the Secretariat. The Chief Adjudicator is supported by Deputy Chief Adjudicators.

Disbursements – expenses incurred by a law firm that are necessary to move forward with the claim. In the IAP, examples of disbursements could include: the cost of collecting mandatory documents, the cost of mailing/faxing documents and letters, or the cost of long-distance telephone calls. Reasonable and necessary disbursements will be paid by the Government of Canada.

Hearing centres –There are two designated hearing centres: one in Winnipeg and the other in Vancouver. These designated hearing centres provide a comfortable, secure location with on-site support from Secretariat staff. These are options *in addition to* hearings booked in hotel conference rooms or, when a claimant has a lawyer, in law office boardrooms.

Indian Residential Schools Settlement Agreement (Settlement Agreement) – The implementation of the Settlement Agreement began on September 19, 2007, and with it the creation of the Secretariat (the Secretariat) mandated to implement and administer the IAP under the direction of a Chief Adjudicator in an independent, objective and impartial manner.

The Settlement Agreement establishes measurable objectives for the Secretariat to achieve including:

- to provide for a fair and impartial mechanism to adjudicate IAP claims;
- to resolve claims in an efficient and time manner given the advanced age and failing health of many claimants; and
- to meet the hearings held requirements of 2,500 per year and the time limitations. The high volume of claims has meant that the Secretariat has held far more than 2,500 hearings each year since 2011.

Medical/Expert assessments – these assessments provide the adjudicator expert evidence to support your testimony. A medical assessment from a doctor can help the adjudicator decide when the physical injury occurred, if the physical injury is related to residential school abuse, and the long-term effects of the physical injury. An expert assessment from a psychologist can help the adjudicator decide what caused the consequential harms or the loss of opportunity or the actual income loss.

Oversight Committee – composed of an independent chair plus eight members who represent the parties that negotiated the Settlement Agreement. The main duties of the committee include: setting policies; making key process decisions; appointing/terminating the Chief Adjudicator; appointing/renewing/terminating adjudicators; and monitoring the IAP.

Schedule D – the Settlement Agreement is composed of 22 schedules (Schedule A-V) that lay out the rules and processes for each component of the agreement. Schedule D establishes the rules and processes for the IAP. The powers of adjudicators and the compensation rules come from Schedule D. You can get a copy of Schedule D by calling **1-866-879-4913** or by visiting www.residentialschoolsettlement.ca/settlement.html.

Settlement Agreement – *see* **Indian Residential Schools Settlement Agreement**.

Transcript – all IAP hearings are recorded as the adjudicator may need to re-visit parts of the hearing to assist with writing a decision. These recordings are sometimes written out. This is known as a transcript. These transcripts are issued to the parties when a decision is under review or when claimants request a copy. Claimants can request a transcript at the hearing.

Trauma – in the IAP, trauma is considered to be a type of psychological damage to the psyche that occurs as a result of a deeply distressing or disturbing experience. It can completely overwhelm a person's ability to cope. Trauma is a concern for claimants who revisit their residential school experience by filling out an IAP application and attending an IAP hearing. Free health support services (see Health and other supports on page 3030) are available to claimants who are resolving their residential school abuse claims.

Witness – the claimant, the Government of Canada or the church may put forward witnesses. Witnesses put forward by the claimant before the claimant's hearing may testify at the claimant's hearing about what they saw and heard. Other witnesses will have separate hearings. Parties who wish to have a witness speak must provide a 'witness statement' at least two weeks before the hearing. This statement will summarize what the witness will speak

about at the hearing. This statement will then be shared with the other parties before the hearing.

Appendix A: Form 1A: Claimant's Hearing Preferences & Form 1B: Request for Hearing

Note: These forms are only used for self-represented claimants. When a claim is ready for a hearing, these forms will be mailed to a self-represented claimant by the Claimant Support Officer.

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

Form 1A

Claimant's Hearing Preferences
Independent Assessment Process (IAP)

IAP File Number: E5442-10-
Protected B

(when completed)

Claimant's Name:

☐ **STANDARD TRACK** ☐ **COMPLEX TRACK**

Adjudicator: What is your gender preference for the Adjudicator?	**Male** ☐	**Female** ☐	**No Preference** ☐
Location: What is your preference for the location of the hearing?			
Interpreter: Is an interpreter required? If yes, in what language?	**Yes** ☐	**No** ☐	**Language:**
Resolution Health Support Worker: Do you wish to have a Resolution Health Support Worker (RHSW) attend the hearing?	**Yes** ☐	**No** ☐	If **yes**, please indicate male or female

All RHSWs are Aboriginal and are available to attend the hearing with you to provide support. They will also give you guidance on available support programs.			preference: Male ☐ Female ☐ No Preference ☐
May we provide the RHSW with your contact information so they can call you before the hearing? This will allow them to introduce themselves. (If ***Yes***, please give the telephone number where they can reach you.)	**Yes** ☐	**No** ☐	**Phone number:**

Travel Arrangements: Will you need to travel to attend the hearing? If yes, please tell us: - how you will travel, - where you are coming from, and, - if you will travel alone **or** with your support persons. *****Please tell us your preferences for accommodations: smoking or non-smoking rooms, one or two beds, separate rooms, etc**.** PLEASE NOTE THAT A LOT OF HOTELS DO NOT ALLOW SMOKING IN THEIR ROOMS. Prepaid accommodation and transportation will be arranged when needed. Meal and travel expenses are reimbursed a few weeks after the hearing. In extreme circumstances we may be able to advance you travel funds for meals and/or travel. This is <u>not</u> the regular practice and can delay the scheduling of your hearing**. Please provide details if a travel advance is required.**	**Yes** ☐	**No** ☐	**Details:**

A REQUEST FOR A TRAVEL ADVANCE MUST BE RECEIVED <u>AT LEAST FOUR WEEKS PRIOR</u> TO THE HEARING. **(We can only provide advances to you as the Claimant and not to your support person.)**			
Support People: **If you have support people attending your hearing:** Please provide the names and addresses for any support person(s) attending the hearing. Please tell us what their travel and accommodation needs are. Please state if your support person(s) will be travelling with you or separately, and if they require shared or separate hotel rooms. This information is needed to make travel arrangements and issue travel claims	**Yes** ☐	**No** ☐	**Name(s):** **Address(es):** **Travel/Accommodations:**

Witnesses: **If you have any witnesses attending your hearing:** 1. Please provide the names and addresses for any witness(s) attending the hearing. 2. Please tell us what their travel and accommodation needs are. 3. Please state if your witness(es) will be travelling with you or separately, and if they require shared or separate hotel rooms. This information is needed to make travel arrangements and issue travel claims.	**Yes** ☐	**No** ☐	**Name(s):** **Address(es):** **Travel/Accommodations:**

Prayer/Ceremony: Do you wish to have a prayer or ceremony performed before or after the hearing? Please check Prayer or Ceremony. If it is a Ceremony, we need to know who will be performing the Ceremony.	**Yes** ☐	**No** ☐	Prayer☐ Ceremony☐ Who? Type of Ceremony?
Elder Participation: Do you wish to have an Elder attend your hearing? If **Yes**, please state if this office is to make arrangements, or if you will bring an Elder with you. If the Secretariat is to arrange for an Elder, we need to know your cultural background and/or your tribal affiliation.	**Yes** ☐	**No** ☐	

Oath Process: What type of oath process do you prefer? Bible – Swearing in – Eagle Feather If an **Eagle Feather** is to be used in the prayer, ceremony, or in the **Oath Process**, please tell us if you have your own Feather, or if an Elder or RHSW should provide it. Who will provide the Eagle Feather?	**Bible** ☐ **Swearing In** ☐ **Eagle Feather** ☐

Health Concerns: Do you have any special health concerns that we need to be aware of when setting up the hearing? If yes, please tell us about the concerns below. *Please indicate if you are diabetic*. _____ _____ _____ _____ _____ _____ _____	**Yes** ☐	**No** ☐

Church Participation Preferences :

The Church involved in your claim is a party to the Independent Assessment Process. **That means they have the right to participate in your hearing.**

However, not all Churches send representatives to each hearing. Where the church chooses not to participate, they may still wish to attend your hearing to witness your evidence and/or provide pastoral support.

Please check off the appropriate box below:

☐ I prefer that a church representative **not** be present to bear witness and/or provide pastoral support.

☐ I would like a church representative to be present to bear witness and/or provide pastoral support.

Every effort will be made to accommodate your stated preferences.

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

PROTECTED B (when completed)

Form 1B

IAP File Number: E5442-10- **Level:**	**Priority:**	**Harm**
Claimant's Name: **Level:**	**Track:**	**Loss**

Request for Hearing in the Independent Assessment Process

I am writing to request a hearing. I confirm that I have submitted all mandatory documents that I intend to/am able to submit in support of the harm and loss levels I am claiming, as required by Schedule D of the Indian Residential Schools Settlement Agreement.

Where to send Form 1A and Form 1B:

Once all documents are collected, please submit these forms to:

Indian Residential School Adjudication Secretariat, Client Services
25 Eddy Street
7th Floor
Gatineau, Quebec K1A 0H4

Or by fax to: Attn: Indian Residential School Adjudication Secretariat, Client Services
819-934-0848

_____ _____
Date Claimant Signature

Appendix B: Notice of Hearing

The Secretariat sends this letter to self-represented claimants or to the lawyer for represented claimants. It will be sent about 4–6 weeks before the hearing date. If you have travel and hotel needs, the details will be included with this letter.

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

NOTICE OF HEARING

Adjudicator:	ADJUDICATOR NAME
Canada:	GOVERNMENT OF CANADA REPRESENTATIVE NAME
Church:	CHURCH REPRESENTATIVE NAME
RHSW:	RHSW NAME

RE: Independent Assessment Process Hearing – STANDARD/COMPLEX Track

This letter will confirm that the hearing of CLAIMANT'S NAME application for compensation under the Independent Assessment Process will be held at the following place on the following date:

File Number:	E5442-10-
Claimant Gender:	MALE/FEMALE
Location:	HOTEL NAME HOTEL ADDRESS CITY, PROVINCE POSTAL CODE Meeting Room: CONFERENCE ROOM NUMBER Break-Out Room: CONFERENCE ROOM NUMBER
Phone number:	HOTEL PHONE NUMBER
Date:	HEARING DATE
Time:	HEARING START TIME
RHSW Contact Info:	RHSW PHONE NUMBER
Church:	The Claimant has indicated a preference that a church representative **not be present** at their hearing.

If for any reason, you cannot attend or if you have any questions or concerns, please feel free to contact HEARING COORDINATOR NAME at HEARING COORDINATOR PHONE NUMBER.

In the event the claimant has a travel emergency outside of regular business hours, please call 306-530-9425. We will accept collect calls.

Yours truly,

HEARING COORDINATOR NAME
Adjudication Coordinator

Appendix C: Adjudicator's Decision Template

INDIAN RESIDENTIAL SCHOOLS RESOLUTION CANADA
INDEPENDENT ASSESSMENT PROCESS

CLAIMANT:	[Claimant Name]
FILE NUMBER:	E5442-10-
TRACK:	Standard/Complex
SCHOOL NAMED:	[Indian Residential School Name]
DECISION MAKER:	[Name of Adjudicator]
HEARING DATE:	[Date of Hearing]
HEARING LOCATION:	[Location of Hearing]
DECISION DATE:	[Date of Decision]
ATTENDING:	
Lawyer for the Claimant:	[Name of lawyer, if applicable]
Claimant Supporters:	[Name of claimant supporters]
Canada's Representative:	[Name of Canada's Representative]

REPORT OF DECISION-MAKER

A. Summary
1. Allegations
2. Conclusions

- Here the **adjudicator** will provide a summary on the abuses that were discussed at the hearing.
- The adjudicator will also provide a summary of what their conclusions are – has the claimant proven the abuse and does the claimant receive compensation?

B. Decision

- Here the adjudicator will either state how much compensation the claimant is to receive or that the claim was not proven and no compensation is awarded.

C. Analysis
1. Background

- Here the adjudicator will provide background information on the claimant.
- The claimant's family life before they attended residential school will be discussed as well as the circumstances on how they came to attend residential school.

2. Findings

a. Credibility

- It is an adjudicator's duty to consider all of the evidence and decide whether the claimant has proven that the alleged abuse happened.
- Here the adjudicator will discuss the claimant's testimony and whether it was credible and reliable.

b. Acts Proven

- Here the **adjudicator** will list the abuse acts that the claimant discussed at the hearing. The adjudicator will provide their findings regarding if the claimant has proven them or not.
- If compensation is awarded, the adjudicator will be very detailed about the abuse and will sometimes use quotes that were said by the claimant during the hearing. The adjudicator will also quote from the **Settlement Agreement**, which is the document that tells adjudicators how claims are proven. The adjudicator will then award points for the most serious abuse act proven.
- If no compensation is awarded, then there is no need to discuss sections c to f below.

c. Harms

- If compensation is awarded, the adjudicator will list the harms that the claimant discussed at the hearing.
- The adjudicator will write if the harms have been proven or not and if the harms are linked to the proven abuse acts. The adjudicator will be detailed about the harms and will sometimes use quotes that were said by the claimant during the hearing. The adjudicator will also quote from **Schedule D**, which is the document that tells adjudicators how claims are proven.
- The adjudicator will then award points based on the harms proven.

d. Aggravating Factors

- Aggravating factors are circumstances that made the proven abuse worse – in other words, it aggravated the abuse.
- If compensation is awarded, here the adjudicator will list which factors made the abuse worse for the claimant. The adjudicator will then award a percentage, depending on the number and seriousness of the aggravating factors.

e. Loss of Opportunity

- If compensation is awarded, here the adjudicator will state if the claimant has suffered from loss of opportunity.
- The adjudicator will be detailed about the reasons why there is a loss of opportunity and will discuss the claimant's work and education history. They may use quotes that were said by the claimant during the hearing to support their decision. They may also quote from the Settlement Agreement, which is the document that tells adjudicators how claims are proven.
- If successful, the adjudicator will award points.

f. Future Care

- Here the **adjudicator** will discuss the claimant's **future care plan** and will state how much of it to award – either all of it, some of it, or none of it. The adjudicator will list the reasons why they came to that decision.

D. Calculation of Points

Compensation Category	Level of Compensation	Points	Dollar Award
1. Acts Proven	[SL 5 – SL 1, PL, or OWA]		----
2. Harms	[H5 – H1]		----
3. Aggravating Factors	[Acts + Harms x __% = points]		----
4. Loss of Opportunity	[L5 – L1]		----
Sub-total	----------		$
5. Future Care	----------	----	$
Total, including Future Care:	----------	----	$

- Here the adjudicator will summarize the number of points awarded for the claim. The total points will then equal a dollar amount, at the adjudicator's discretion.
- The chart that shows the compensation amounts based on the total amount of points can be viewed in Schedule D of the Settlement Agreement.

E. Conclusion

- The adjudicator will write a brief concluding paragraph regarding the claim.
- Claimants can also request a letter of apology from the Government of Canada. Here the adjudicator will state if the claimant has requested one.

SIGNED AT [Town and Province], on [date adjudicator submitted decision]

_____

[Adjudicator Name]
Independent Assessment Process

For more **information**,
please contact the IAP Info-Line

1-877-635-2648

or visit the Secretariat's website at

www.iap-pei.ca

For **24-hour crisis counseling**, please contact the National Crisis Hotline at

1-866-925-4419

THIS IS EXHIBIT "15" TO THE

AFFIDAVIT OF CINDY BLACKSTOCK

SWORN BEFORE ME ON

December 8, 2019

in Ottawa, Ontario

A Commissioner for Taking Oaths

Court File No. T-1621-19

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

- and -

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA, ASSEMBLY OF FIRST NATIONS, CANADIAN HUMAN RIGHTS COMMISSION, CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL and NISHNAWBE ASKI NATION

Respondents

CROSS-EXAMINATION OF SONY PERRON
on his affidavit sworn October 3, 2019,
held at the offices of ASAP Reporting Services Inc.,
100 Queen Street, Suite 940, Ottawa, Ontario,
on Thursday, November 14, 2019, at 10:00 a.m.

APPEARANCES:

Mr. Robert Frater, Q.C. Mr. Max Binnie	on behalf of the Applicant
Mr. David P. Taylor Ms. Barbara McIsaac	on behalf of the Respondent/ First Nations Child and Family Caring Society of Canada
Mr. Stuart Wuttke Mr. Thomas Milne	on behalf of the Respondent/ Assembly of First Nations
Ms. Jessica Walsh	on behalf of the Respondent/ Canadian Human Rights Commission
Ms. Sinéad Dearman	on behalf of the Respondent/ Chiefs of Ontario
Ms. Molly Churchill	on behalf of the Respondent/ Nishnawbe Aski Nation

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Ottawa, Ontario

--- Upon commencing on Thursday, November 14, 2019, at 10:00 a.m.

SWORN: SONY PERRON

EXAMINATION BY MS. McISAAC

1 Q. Just to confirm, Mr. Perron, this is a cross-examination on two affidavits you have sworn in Court File T-1621 of '19?

A. Yes, this is accurate.

2 Q. The first being an affidavit dated October 3, 2019, which was filed in support of the Attorney General of Canada's motion to stay the Human Rights Tribunal order of September 6th, 2019?

A. Yes, exactly.

3 Q. Thank you. And I'm going to refer to that as the compensation ruling. And the second affidavit was sworn November 8, 2019 in response to the motion by the First Nations Child and Family Caring Society, which I will refer to as the Caring Society, its motion to hold the judicial review in abeyance?

A. Yes, it is.

4 Q. Thank you. And counsel,

can you just confirm that Mr. Perron's affidavits, both of them will be relied on with respect to both motions?

MR. FRATER: Yes, that's correct.

MS. McISAAC: Thank you.

--- (Off-record Discussion)

MS. McISAAC:

Q. Thank you. Mr. Perron, I would like to start with some background questions with respect to your affidavits. But before I do so, I note that your affidavit contains a number of representations about the nature of Canada's compliance with the Tribunal's existing orders, and I just want to place on the record the fact the Caring Society will not be exploring these in any detail today. But it is our position that pursuant to the Tribunal's record and decisions, Canada has opposed each of the noncompliance motions before the Tribunal.

We also note that those representations regarding Canada's approach to the orders is in our view irrelevant to the stay motion, and that's why we are not cross-examining on them. That speaks to what is happening in the

future as opposed to compensation for those who have been discriminated against in the past.

Having said that, could I get you to look at paragraph 2 of your first affidavit, please?

A. Yes.

6 Q. Now I understand that you have worked with Indigenous Services Canada, which I will refer to as ISC, and that you are currently the Associate Deputy Minister and have been such since December of 2017, is that correct?

A. Yes, I've been the associate deputy minister since mid-December 2017.

7 Q. All right. Prior to that, you were the Senior Assistant Deputy Minister at the same department?

A. Mostly at the Health Canada department. This branch or this sector was transferred to the new department, called Indigenous Services Canada, in fall of 2017.

8 Q. Okay. And then prior to that, from 2011 to 2012, you were the Assistant Deputy Minister for Health Canada's corporate services branch?

A. Exactly.

9 Q. And prior to that, Director General for the non-insured health benefits program?

A. Yes.

10 Q. Have you read all of the orders issued by the Tribunal respecting Jordan's Principle?

A. I have read -- yes, I have read all the orders since the merit decision of 2016.

11 Q. So I'm right in saying that you've been involved in one way or another in the Federal government's implementation of Jordan's Principle since the House of Commons unanimously passed its motion 296 in December of 2007?

A. No, this is not accurate. I have been involved in the file that is referred to as Jordan's Principle starting in 2016.

12 Q. '16?

A. Before that, as the Tribunal has assessed as part of this work, the focus of Jordan's Principle was very narrow, so I was not involved in dealing with the application of Jordan's Principle. However, I was involved in

my previous function in dealing with a lot of situation where children needed services that were not necessarily available in their communities or on their federal program, and trying to find solution. But not necessarily under Jordan's Principle as a matter of work, finding a solution within existing programs and authorities, or sometimes partnerships.

13 Q. Okay. So I would be correct, though, in saying that you are fully familiar with the Human Rights process in this particular case, the various decisions and the hearings that have been held?

A. Fully familiar might be, like, very specific as a description. There is a lot in all of these decision over time.

14 Q. Fair enough.

A. So there is some aspect of these decision that I'm much more familiar with.

15 Q. Now I would like to focus on the period from January of 2016 to May of 2017. I understand that during that period you were responsible for Health Canada's implementation of the Tribunal's orders with respect to Jordan's

Principle?

A. Yes, this is accurate. I was involved into assessing the merit decision and determining what will be the course of action in terms of dealing with the application of Jordan's Principle.

16 Q. And was it your belief during that period, January of 2016 to May of 2017, that Canada had complied with the Tribunal's orders regarding Jordan's Principle?

A. Yes, it was. And our understand -- my understanding at the time of what was required by the Tribunal order has proven to not be accurate following future -- later decision from the Tribunal, where the Tribunal told us that the definition we were still using was not broad enough.

17 Q. Right. So the Tribunal found that in fact you weren't in compliance with their order?

A. The Tribunal got much more precise on what was the definition that they wanted the government to follow in terms of the application of Jordan's Principle, and determined that the approach we had taken between the merit

decision and the next order was not appropriate.

18 Q. And that was the Tribunal's decision of May 2017.

A. Exactly.

19 Q. Right. Okay. And Canada brought an application for judicial review of that May 2017 decision, correct?

A. Some aspect of it, it's accurate. There was an attempt to work with the parties to address some of the technical dimension, namely the consultation with healthcare providers, and we were not successful, so the decision was to file an application for judicial review to try to get this dimension resolved.

20 Q. But subsequently, you represented Canada in negotiations with the Caring Society to achieve amendments to that decision to satisfy your operational concerns and requirements, correct?

A. Contrary to what happened before the filing of the review, the parties were interested to discuss these detail after. And we found, I would say, an acceptable resolution that provides safety to the decisionmaking around Jordan's Principle for the children.

Q. By working together.

A. Yes. This is accurate.

Q. And then as a result, the judicial review was withdrawn?

A. This was, I think, a decision of the parties that we had found appropriate compromise, and then we would drop judicial review, yes.

Q. Thank you. Could I get you to look now at paragraph 4 of your affidavit? This is the first affidavit. In that paragraph you say:

"I have reviewed the Canadian Human Rights Tribunal's Ruling and Order on compensation..."

The order that's subject to the judicial review in this case.

"... and have determined that ISC requires authority from Cabinet in order to determine what steps Canada will take in response."

Now, you will agree with me,

of course, that we had an election and a new government has been elected, albeit a minority?

A. Yeah, we were at the edge of an election being launched at the time where the September 6th decision came.

24 Q. And Cabinet will be formed, at least the Prime Minister's announced that he will be forming or announcing his Cabinet on November 20th?

A. Yes, with the same understanding that next week on November 20th, we should have a new Cabinet.

25 Q. And would I be correct in assuming that you and the department would be ready to brief the new Cabinet and any new responsible Ministers about the ruling immediately after that?

A. Immediately the announcement of the new Minister for our department, our role as senior official will be to brief the Minister on all important and active files. This will of course include this file.

26 Q. Right. And in that case, I assume again, and would I be correct in assuming, that you have started preparing ideas at

least? I'm not asking precisely what, as to how implementation might take place or what needs to be done next to put to the Minister and Cabinet?

A. We have started to work -- we have worked on preparing briefing, which is about the assessment of the order itself, the background of all the situation, because we cannot presume who will be the Minister at the time and what might be the way forward.

27 Q. Options for moving forward.

A. Yeah. We will discuss with the Minister the views in terms of what could be the next step.

28 Q. Now, have you taken any steps to identify the person who would enter into discussions with AFN and the Caring Society to talk about compensation processes if that becomes necessary?

A. No. We haven't identified a specific person as indicated in my affidavit. At this time we do not have the mandate and the authority, so when we have addressed these questions, then we can determine what will be the course of action and who will be

the person.

29 Q. Okay. And how long after November 20th would it take, do you think, to organize that and get some instructions from your Minister and/or Cabinet?

A. I cannot presume what will be the timing for us to access Cabinet and get decision and direction on this question.

30 Q. Now, I understand that the Prime Minister, Minister Bennett, who was the Minister or may again be the Minister, and Minister O'Regan, have all said that the victims of discrimination should be compensated.

I also understand that the leaders of the New Democratic Party, the Bloc, and the Green Party, as well as Mr. Scheer eventually, on behalf of the Conservative Party, have also agreed that these children who were the victims of discrimination as found by the Tribunal should be compensated. Is that correct?

A. I have knowledge that a number of member of the government have pronounced with the fact that children that have been victim of discriminatory policy from the government in the past should be compensated, and that we were

to work toward providing the right services to children and family.

31 Q. In the future?

A. In the future.

32 Q. What steps have been taken to deal with the issues of the past discrimination, should Cabinet and the ministers instruct you to move forward on the basis of compensation?

A. Sorry. Can you repeat the question?

33 Q. All right. If the ministers and/or Cabinet instruct you to proceed with some kind of compensation, what steps have you taken to date in anticipation of those instructions?

A. As I said before, we have reviewed the September 6th decision, what are the specific orders in terms of who need to be compensated according to the order. We have done an assessment of what might be the financial application of that, and there is some detail about that in my affidavit.

And we have identified the information that we have in the department about

how it will proceed. We have to look also, and this is described in my affidavit, about the other example of broad compensation that happened in recent past, and how they have operated. There are various models. So this is the kind of work we have done so far.

34 Q. All right, in anticipation of instructions you might receive?

A. In anticipation that we have a Tribunal order that gives us specific action to take, and our job is to assess how this could be made possible.

35 Q. Now, in paragraph 5 of your affidavit, you say that the Tribunal ordered Canada to pay this maximum, you are referring to the $40,000, to a number of categories of individual. But you will agree with me that Canada is not required to pay anything until the Tribunal issues an order with regard to a compensation process, correct?

A. The Tribunal order from September 6th indicated that the Tribunal will rule after a future submission from the parties on the process, and this is probably at the time where we would get some specific instruction about

how this should go about. In the past, however, there has been orders where the Tribunal was very precise in terms of date and these timeline were really, really short. So I cannot presume where the Tribunal would go, but this is where we would know more about how this would proceed.

36 Q. Right. But you will agree with me that no money actually has to be paid out to anybody until the compensation process has been either agreed on by the parties or ordered by the Tribunal.

A. There is no payments that are required at this time until we have a future ruling from the CHRT based on the September 6th decision.

37 Q. Now, in paragraph 5(a), you refer to one of the categories of individuals who are entitled to compensation as being:

> "First Nations children living on reserve and in the Yukon who were removed from their families or communities, necessarily or unnecessarily."

Could I get you to take a look at paragraph 249 of the actual Tribunal decision? Do you have that? I notice, actually, it's not in your motion record, Mr. Frater.

A. I do not have a copy of the order. Thank you. 249?

38 Q. 249, please. Take a look at that, and then I will ask my question.

A. Okay.

39 Q. Now if you want to go back to the beginning of that paragraph, in my version it's the bottom of page 83 of the decision. And I would suggest to you that your statement in paragraph 5(a) of your affidavit is overly broad because the Tribunal specified that this group of victims was:

> "First Nations children living on reserve and in the Yukon territory who was as a result of abuse were necessarily apprehended from their homes but placed in care outside of their extended families and

communities." (As read) Correct?

A. So you are trying to paraphrase paragraph 239 -- 249?

40 Q. Yes. Well, I was reading from 249, I believe.

A. Yes.

41 Q. So that is the category of --

A. This is the order that was issued on September 6th, 2000.

42 Q. And I'm suggesting to you that your statement in paragraph (a) is overly broad in terms of the children involved, because it doesn't define it by children placed in care outside their extended families and communities.

A. The -- my affidavit is a summary of the order, but it doesn't replace the content of the order in terms of how we need to act. So, and it doesn't pretend to be a translation of the order here.

43 Q. All right. So we have to go back to the order to be absolutely certain about which categories of children are to be compensated under the order?

A. Of course. The order is the frame for compensations that have been given by the Tribunal.

44 Q. Right. Now at paragraph 6 of your affidavit, you say:

> "Canada is required to report back to the Tribunal by December 10, 2019, on a compensation process agreed by the complainants."

Are you -- I put it to you that the Tribunal wants you to report back if we reach an agreement, but if agreement hasn't been reached, the parties would make submissions on a compensation process?

A. So could you repeat your question?

45 Q. Well, I'm having a little trouble with paragraph 6, because I put it to you that what the order says that if the parties agree on a compensation process, they will come back to the Tribunal with that compensation process and present it to the Tribunal by December 10th. Correct?

A. Yeah. My understanding, however, is that any party can go back to the Tribunal at any time with their own proposal to the Tribunal.

46 Q. Exactly. So if the parties don't reach an agreement, the various parties would each make their own submissions to the Tribunal as to what the process should be.

A. I would say beside Canada, the other parties have the discretion to make a submission or not.

47 Q. Right. Okay. Now in paragraph 8 of your affidavit you say,

> "Given the scope and impact of the Tribunal's decision, I believe that commencing the compensation process before the Tribunal's decision can be judicially reviewed is unfair to the claimants, to ISC and the government more generally, and so is not in the public

interest."

First of all, I think we have agreed that the current order doesn't require the government to actually pay any money at the moment.

A. There is nothing in the order that require paying of money between now and December 10th -- 9th.

48 Q. Actually --

A. Could you just confirm what is the date of December? Just to make sure.

49 Q. It is December 10th.

A. December 10th.

50 Q. Correct. Or until such time as either the parties who agree to a compensation process or the Tribunal orders a compensation process.

A. Yeah, and we, based on previous experience, the Tribunal sometimes have ordered executive decisions pretty quickly.

51 Q. Well, but at the moment, you don't have to pay any money to anybody?

A. There is no request to do any payment at this point.

52 Q. Now, in paragraphs 17 to

20 of your affidavit, you talk about Jordan's Principle and steps that the department ISC has taken to deal with the various discriminatory conduct that the Tribunal has found?

A. Yeah, it summarizes a number of specific action that have been taken over time to address the service issues that were identified by the Tribunal over time.

53 Q. And you will agree with me that none of those steps address the past discrimination. They are all looking forward to address issues that come up.

A. Well, some orders did address the past of the systematic discrimination issues. For example, the Tribunal have ordered to reimburse agencies for past expenditures that where they would have incurred a likely deficit in their operation. The Tribunal has ordered, and even Canada went beyond a review of cases of Jordan's Principle that might have been denied, and we did. So there was a number of actions that look at the past.

54 Q. All right. But by and large, these are steps that you have implemented for the future to deal with discriminatory

practices?

A. Yeah, most of the action taken by Canada since 2016 has been about reforming the Child and Family Services Program and funding models for the Child and Family Services agencies, as well as implementing Jordan's Principle.

55 Q. Thank you. Now going back to paragraph 2 of your affidavit. Sorry to jump around a bit. You say in the last sentence of that paragraph,

> "As a result, I understand the two groups within ISC that are most immediately affected by the Tribunal's order."

Which two groups are those?

A. The two sectors in Indigenous Services Canada that are involved in this, there is the Child and Family Services reform sector, and there is the First Nation and Inuit Health Branch sectors. So those are two sectors that are actively involved in implementation of the order, and addressing deficiencies that were identified over time by the

Tribunal.

And also I would say a number of issues that may not have got Tribunal attention, but were identified between the parties as reforms that needed to be undertaken.

56 Q. And would these two groups also be involved in the development of an implementation process if that were to be done?

A. The expertise around Child and Family Services or Jordan's Principle is a sector.

57 Q. And how many people are employed approximately in these two sectors?

A. The sectors are, for the First Nation Brach we probably have around 2,500 employees, but most of them are not involved in Jordan's Principle. The group that support Jordan's Principle is smaller than that.

And for the Child and Family Services reform group, I don't have the exact numbers. We are talking about a couple of hundreds, but I don't have the number exactly.

58 Q. That's fine. And of those, how many people would be involved in the sort of -- I would think it was the policy side of

things and actually working on a compensation process, if you were to do that.

A. I don't have that information. I haven't performed any assessment to determine this at this point. We have people that are doing policy work on various subject, various aspects in these sectors, but we haven't done an assessment of how many people we would need to put on such a team.

59 Q. All right. And have you ever visited the offices of the Caring Society?

A. Yes. I did visit the office of the Caring Society.

60 Q. And are you aware that the Caring Society has two full-time and four part-time employees?

A. No, I was not aware of this.

61 Q. But you would agree with me that the Caring Society operates with a relatively small staff?

A. It's definitely a small organization.

62 Q. And you are familiar with the various activities of the Caring Society, are

you?

A. I wouldn't say that I'm familiar with all the activities, but I'm familiar with some. I'm familiar with some of the work of the Dr. Blackstock in terms of reaching out, working with children, promoting, conferencing. Of course she's a highly visible person.

63 Q. And you would agree with me that the Caring Society is engaged in many more activities than just this Human Rights Tribunal case?

A. My understanding is that it's a very active organization, and Dr. Blackstock, the leader of the organization, is very active.

64 Q. Now, in paragraph 7 of your affidavit you say:

> "I'm advised, based on the department's interpretation of the Orders, that immediate implementation would require a significant investment of human and financial resources."

What information do you rely on for that assessment?

A. As it's indicated in my affidavit, we have done general costing of what it might mean in a number of individual that could end up being compensated under the order of the Tribunal of September 6th, looking at the various class that are identified in the detailed order.

So we have a size of -- we have a sense of the size of the class, of the group, and we were able to assess in comparison to other large settlement or resolution like that, and compensation process that happen in recent past, what it would take to address such process.

65 Q. So?

A. So significant here is the general number. I can get more specific, for example, under the residential school settlement process, at the peak it was -- there was an expenditure of 60 million dollar a year to manage a secretary, to do the education and the payment of the claim.

There is different process, but this gives us an indication that it's a significant undertaking when you look at broad

compensation like that.

66 Q. But you are referring to the actual payment of the compensation and the administration of the structure developed to pay the compensation?

A. Yeah. And this is not -- it's not an indication that it would be as such a structure that we'd require in that case, but it gives an element of comparison. And we look at different models that use alternative model outside agencies to do the payment, and we get to a significant amount, whatever model would be used in the future for our compensation like that.

67 Q. So it's fair to say that you in the department have had some considerable experience in developing an administration -- administrating, pardon me, compensation schemes?

A. There is some people that are currently in the department that have been involved in compensation process in the past. Surely, yes.

68 Q. And I assume that their expertise and knowledge would be useful in developing a compensation scheme in this case as well.

A. We would rely on people that have expertise in doing this, as well as engagement with the involved parties to determine the best course of action.

69 Q. Now in paragraph 7, you also say:

"The public service is not in a position to seek -- "

A. Sorry. Can you repeat the number? Seven? Thank you.

70 Q. Seven, sorry. Second half of that paragraph:

"The public service is not in a position to seek the required authority to pursue meaningful discussions with the Assembly of First Nations and the First Nations Child and Family Caring Society prior to December 10th as ordered by the Tribunal."

And that's because typically

you say these decisions are made by the Cabinet.

A. Yes.

71 Q. All right. But by --

A. Well, our assessment was that we did not have the authority to proceed with the discussion because we did not have a mandate to do such thing at this time. It's something that we do systematically each time there is a new undertaking, not only coming from the Tribunal, but part of our work, generally speaking. We look at what are the authority of the department to proceed with some work.

In the past we have, I think, a good track record working with the parties under this merit ruling, and in terms of engaging and consulting, finding a resolution, compromise, understanding issues of each other. So we have this, but we always do that when we have the authority. In few instances in the past where we did not have the authority, we did inform the parties that until we have such authority, we would be more on the listening mode and getting their views, their perspective.

But to be engaged into a fair and transparent way with the parties, we need to

have a mandate. Otherwise we are asking our official in the department to do work without proper authorities. And this is not necessarily consistent with the way we are usually working with.

72 Q. But once you have a Cabinet appointed, which will be November 20th, and you have had an opportunity to brief up, you should be able to obtain instructions to either proceed or not proceed, correct?

A. We will for sure work with the new Minister following the appointment to determine the best course of action.

73 Q. Now, in paragraph 8 you say,

> "Given the scope and impact of the Tribunal's decision, I believe that commencing the compensation process before the Tribunal's decision can be judicially reviewed is unfair to the claimants, to ISC and to the

government more generally, and not in the public interest." (As read)

I'm having some trouble. Why is it unfair to everybody to at least start talking about a compensation process that might be implemented? After all, you might be unsuccessful in your judicial review. You might be unsuccessful in your stay. How it can be unfair?

A. So the paragraph 8 doesn't say that having a discussion is unfair. It's undertaking the compensation process that is unfair. And if you want, I can explain to you why. First, if there is a judicial review, and in the future --

74 Q. But you are not -- you are not being asked to pay any money yet, correct?

A. We are not asked to pay any money yet. And my point here on paragraph 7 is starting the payment. And like I said before, it did happen that the Tribunal order payment in a really short term of some measures. And in the order of September 6th, if you look at the detail, the various class, some of the class, some of the

subgroup would be really easy to identify and payment could take really short because the Tribunal already determined what is the amount of payment. So there is not a process of assessment here. You need someone that is identified as a claimant that legitimately went through Child and Family Services care, and the payment could be issued.

So for some of it, not all, the complexity of issuing payment is really, really simple. For some others it's much more complicated. So we can see a situation where some payment could be done really quickly and some others would take more time.

75 Q. Right. But none of that comes up until you have an order with a compensation process that requires you to make payments.

A. Can you repeat the question?

76 Q. I said: None of that arises until you have a compensation process in place and the Tribunal issues a second order with respect to actual payment?

A. My understanding is as

soon as December 10th, the Tribunal can issue order and ruling in terms of how the compensation could proceed, should proceed.

77 Q. Unless the parties ask for an extension of that December 10th date.

A. If there is an extension, if the Tribunal decision can come later, you are right.

78 Q. Thank you. I think if we could just take a break for a moment, please. I would like to revisit some of my questions, if that's okay with everyone.

--- Recess taken at 10:40 a.m.

--- On resuming at 10:54 a.m.

MS. McISAAC: Back on the record. Thank you, Mr. Perron. Those are all of my questions, but I believe some of the other parties will have questions for you as well. Thank you.

THE WITNESS: Thank you.

--- Upon recessing at 10:55 a.m.

--- On resuming at 11:10 a.m.

MR. WUTTKE: It's Stuart Wuttke, Thomas Milne for the Assembly of First Nations, but before we ask our questions I

understand that, just to confirm, that the Chiefs of Ontario and NAN and the Commission will not be asking any questions.

MS. DEARMAN: I can confirm that on the behalf of Chiefs of Ontario. No questions.

MS. WALSH: Jessica Walsh for the Canadian Human Rights Commission. I confirm the Commission will not be asking any questions today.

MS. CHURCHILL: And on behalf on NAN, Molly Churchill. No questions for NAN.

EXAMINATION BY MR. WUTTKE

MR. WUTTKE: Thank you, Mr. Perron. My name is Stuart Wuttke. I'm with the Assembly of First Nations, and I have a few questions to ask you. First of all, I would like to thank you for taking time to be with us today.

THE WITNESS: Pleasure. Thank you very much.

MR. WUTTKE:

79 Q. So at the outset, you mentioned that there are a number of individuals in the department that have experience in compensation schemes. Do you in particular have

any experience in those compensation schemes you mentioned?

A. You are talking about myself?

80 Q. Yes.

A. Large scale in compensation, no. I was involved in settlement of small issues. Smaller issues, not small. They were important, but did not include large groups of people.

81 Q. Thank you. Now at paragraph four of your affidavit, you state that essentially that ISC or your department requires Cabinet approval before they do anything, is that correct?

A. Well, I think it would be more specific than that. In that particular case we have reviewed the orders. And the order orders us to develop a model of compensation and undertake a compensation based on some specific direction provided by the Tribunal.

We have assessed if we have in the department, whether legislative or policy authority, to undertake such activities. And under both the Child and Family Services Program

and Jordan's Principle Child First Initiative program, we do not have an element of authority that will allow us to undertake activity called compensation.

So it means that, and it's the case for any undertaking from the department, we need to look at what we have authority. And if we don't and there is a need to do it, we have to go back to Cabinet to seek proper policy authority. And if there is financial implication that are beyond the capacity of the financial, the department, what has been already appropriated, seeking a source of fund to undertake this work.

So on both side under the program activity, authority, and the financial side, the order as defined, we did not have the authority to undertake it like that. So we have to seek authority from Cabinet.

82 Q. Thank you. And you mentioned Jordan's Principle. Would you agree that the department did not go back to Cabinet when it expanded the definition of Jordan's Principle?

A. We sought expansion of authority, yes.

83 Q. You did seek?

A. When it was beyond the authority that were granted before, we seek an adjustment of authority, yes. So there was instances where some of the order of the Tribunal brought us into places where we already had the authority, and there is a place where I do remember we did not have the authority and we had to seek adjustment to the decision from Cabinet in terms of what we were allowed to do.

84 Q. Okay, let's parcel that out for a second.

So when -- at first the department was operating on a definition of Jordan's Principle that was not in line with what Parliament had expressed. Would you agree with that?

A. You are referring to the pre-2016?

85 Q. Yes.

A. My understanding, and I said that before in term of answer, I was not involved in Jordan's Principle. My understanding, however, there was actually a Cabinet authority provided to define how Jordan's Principle at the

time was to be implemented.

86 Q. Yes. So Jordan's Principle was being provided. However, the Tribunal had stated that that definition that was used by the department was overly restrictive.

A. Exactly. In 2016 in the merit decision, the Tribunal indicated that the definition used -- and the government needed to implement the full breadth of Jordan's Principle.

87 Q. So in 2016, shortly after the order, did the department seek Cabinet approval to do expand Jordan's Principle to address the decision in 2016?

A. Authority was sought, I think, for an expansion of the definition following the first order, which I don't remember the date exactly, of noncompliance around Jordan's Principle. The indication of the Tribunal at that time was to expand further, and we sought authority from Cabinet to implement the initiative that was called at the time Child First Initiative, Jordan's Principle implementation, yes.

88 Q. At paragraph 7 you state that in normal circumstances, how did you put

it -- essentially, under normal circumstances, decisions such as compensation are to be made by Cabinet. Now would you agree that Cabinet did provide direction to the department with respect to the Indian Residential School Settlement Agreement, the Sixties Scoop, and the Day Scholar Settlement?

A. Likely, but I was not involved in these initiatives.

89 Q. Would you agree that settlement discussions are quite different from what happened in this case, where you actually have an order by a panel?

A. Could you repeat the question?

90 Q. Would you agree that settlement discussions that are provided by Cabinet such as the Indian Residential School Settlement Agreement, the Sixties Scoop, Days Scholars, it's quite different from what we have in this case, where a Tribunal has made an order?

A. My understand is that whether it's a settlement or it's implementing the order, officials that will be carrying the work to work with the parties to find a way forward in

this needs a mandate that is given by Cabinet that say, here is the parameter under which you can negotiate or develop a plan. And this is, in both case, there is a need for a mandate.

91 Q. Yes. And you would agree that the order right now is not the final settlement order?

A. My understanding is that the order is very specific about some of the dimension of the compensation, but there is an indication from the Tribunal that they want -- or they expect submissions from the parties. And then they will -- the panel will plan an issue, likely a new order to define what will be the compensation approach.

There is even a component of the order from September 6th that invite the parties to submit additional request for other -- I don't have the language, exactly. Other class of recipients or claimants that should be considered.

92 Q. Would you agree though that the order speaks to the parties essentially working together to develop a compensation scheme, if possible?

A. The order talks about both, working together to develop a process to implement, but the parameter of the order in terms of what the compensation is to be about, in term of who should be compensated, the amount, some of the high-level criteria, are already defined by Tribunal.

93 Q. Would you agree that meetings with respect to compensation have occurred in several occasions in the past between the department and the parties?

A. There is in the past, before the Tribunal order there was an attempt to try to advance work on several outstanding issues, trying to do it collaboratively. And in some places we were successful, but I understand we haven't reached a common ground on compensation.

94 Q. But it was brought up at previously meetings?

A. It was discussed between the parties, yes.

95 Q. And would you also agree that since the Tribunal made its decision in 2016, and to basically January 2016, compensation has been an outstanding item?

A. Yeah, it was identified by the Tribunal as an element that will be subject of a future decision.

96 Q. I'm sorry to jump back. At paragraph 6, you mention the December 10th date. You state that:

> "Canada is required to report back to the Tribunal by December the 10th on a compensation process agreed by the complainants. Failure to reach an agreement will result in a panel ordering one of its own creation."

Now, with respect to that, has Canada contemplated asking for an extension of that December 10th deadline?

A. Yes, this was part of the initial assessment to determine how we can proceed. The understanding, however, was that going to an extension will not be sufficient. We needed -- if there was concern about the decision

itself, we needed to go through a judicial review within 30 days after the order in order to protect the right of Canada and the government going forward to bring this forward in court. So this was considered, yes, and I understand that our legal counsel recently informed the parties that we would be asking the Tribunal for an extension of that date.

97 Q. So within that 30-day period, were you aware that should Canada receive consent of the parties, that a simple extension could have been made to the Federal Court by way of letter?

A. I think this was mentioned that this was a possibility, yes.

98 Q. And the department chose not to explore that possibility, is that correct? With the parties.

A. I'm not sure about the verb you use, like "chose," but the fact is that we haven't, so I assume that the conclusion is the same.

99 Q. Thank you. At paragraph 13 of your affidavit, you speak about the department working with the parties. Never mind.

You already answered that question, so I will move on to the next one.

With respect to the section at paragraph 17 to essentially -- to 31. On the reforms to the Child and Family Services, compliance with respect to Jordan's Principle, and steps taken to address systemic discrimination.

AFN won't be speaking questions about this, other than we do agree that none of these paragraphs actually address compensation?

A. These paragraphs address the systemic discrimination that have been identified by the Tribunal, and all these measures were to address systemic discrimination. Now, the compensation is an individual compensation that is directed by the Tribunal, so we have a view that Canada's work towards addressing the systemic issue related to the Child and Family Services programming, as well as implementing the broad definition of Jordan's Principle, which were two of the systematic deficiencies that were clearly made in the merit decision of 2016.

100 Q. That's correct. But you would agree that they don't speak to compensation

as ordered in the last order by the Tribunal?

A. They don't talk about compensation as defined in the order of September 6, 2019.

101 Q. Thank you.

A. Sorry. I think I've used the word in English, "systematic." I would like to say systemically. Sorry. For the record.

102 Q. Moving on to paragraph 42 of your affidavit. In this section you talk about potential harm to Canada's relationship with the claimants. You mention that the parties will have to initiate discussions. Would you agree that the order is only to discuss compensation process at this time?

A. The order has an element of discussion about the compensation process, but there is a specific in the order about who should be compensated and how they should be compensated under which criteria. So it's more than ordering only discussion.

103 Q. You also mention in this paragraph, you know, further orders. You would -- would you agree that Canada already expects that further orders with respect to regarding the

definition of -- such as the definition of First Nation Child is still ahead?

A. The Tribunal told us before that this decision will be coming, yes.

104 Q. So you are not surprised that further orders will be forthcoming from the Tribunal?

A. The Tribunal has been very diligent to keep the parties informed about long term relief measures and additional orders that become where they will have to then make decisions. I know that some of our staff have participated into hearings around these subject. I know that the Department of Justice has made representation on these question. So it's expected that the Tribunal will come and have ordered a decision on the definition of who is a First Nation Child, and small -- I think there is an element on capital and small agencies, and also continued the oversight over the orders.

105 Q. At paragraph 43, you basically provide a scenario here, and I would suggest it's a speculative scenario. But you mention that ISC would have to initiate communications about its compensation process.

In your opinion, who would ISC have to communicate this process with?

A. I think the claimants needs to be informed. Maybe it's not going to be ISC directly. It might be done in different fashion, but they will have to be informed about the way they can submit a claim, how the payment will be issued, what will be the process. In order to execute an order around compensation, you would have to reach those who are the most interested by this in a short fashion to let them know how this is going to go in terms of timelines as well.

Our concern, however, is that if through the judicial review process the order was to change, this will cause a lot of challenge for these individual that might be told that the compensation will proceed in a certain way, and then having to change this communication rightly after if there is a decision of the court to change the order.

So this is one of our main concern. And if you read my affidavit in full, you will see that one of my main concern was if we don't have stable order and if we haven't got the

final decision on that, it's probably preferable to wait for a final decision before we initiate outreach to the potential claimants, so we don't create false expectation or disappointment in the long run.

106 Q. You would agree, though, that the communications in those plans is a process that would normally be developed in your communications discussions with the Caring Society and Assembly of First Nations?

A. Obviously this is -- the best way to proceed is to do it in partnership with the parties interested and probably other groups, because in such a process we would probably need the participation of Child and Family Services agencies themselves, because they have some of the recourse and some of the information. So it will involve a large group of people.

My comments earlier was on the claimants, their families, but there is also all the other parties that will have to contribute to such of a process.

107 Q. Yes, but you would agree that an actual notice plan will have to be

developed, provided by the Tribunal, before any communications are made to the claimants?

A. The Tribunal already by the order communicates some information about what will be the process. But we need, according to the order of September 6th, to get back to the Tribunal to get the panel to vet and issue a following order about the compensation process. You are right.

108 Q. Paragraph 44 of your affidavit, you state -- you basically mention that if the process was stopped due to a judicial review, if the process of compensation was stopped, this would be very damaging to ISC's relationship with First Nations people. Can you please explain what you mean by this statement?

A. We are working with First Nation people with communities with various group all the time on various subject. And one thing that we are asking our staff and our teams is to be very transparent and truthful and try to stay course when they make commitments. Here we are in a situation where there is a potential through a judicial review in future court decision that some of the parameter or the engagement process might

be modified over time by a court decision.

So as an administer, I'm concerned that we engage into a process whereby we say something one day that is really important and sensitive, because Canada has made clear in the past that compensation for those who were victim of discrimination based on past policy, these children, needed to be compensated.

But through the course of a court decision, having to go back to them and say well, this is the parameter of change. So this is my concern, and this is what I try to express in the affidavit. And suggesting that a stay was probably better until we know the conclusion of the judicial review process.

109 Q. Would you also agree that it's very damaging to ISC's relationship with First Nations people, that it has taken several years to get to this point?

A. Could you repeat the question?

110 Q. Would you agree that it's very damaging to ISC's relationship with First Nations people that it has taken seven years to get to this point in compensation, and also

reforms to the First Nation Child program?

A. Several important steps have been taken to reform and address a systemic issue in the management of the Child and Family Services Program. For example, as you can see in my affidavit, funding has more than doubled. We are going to reach 1.3 billion dollars this year, while we were around 600 million dollars 4 years ago. So money is not everything, but it's important. So some of the problem that came with the way the program was structured has been in part addressed.

We are moving toward formal reform of the funding methodology. We are at this time funding actual level of cost for the agencies, even in addition providing money to the communities for prevention activities. So a number of systemic issues that were billed in the old program have been addressed seriously, in part. There is more work to do.

So there is a work that have been done in the last -- since the merit decision of 2016. So hopefully, while the relationship cannot be perfect at all time, there is progress that have been achieved around that poor

relationship. And that movement is being made to get to a formal reform of the way Child and Family Services operates in various part of the country.

With the bill C92 as well, which is an important step to create a condition for reform, I'm confident that we have made some progress there to give back control to First Nation, particularly of their Child and Family Services, rather than a program being directed by government policy funding arrangement and agencies. Over time we will get First Nation taking over the system and these services much more under their control.

111 Q. All right, thank you. And has the department received any inquiries about the compensation at this time?

A. I'm aware of some inquiries coming to the phone line for Jordan's Principle, but the number has not been very high. Initially we were concerned that staff that are supposed to answer calls from individual that needs services will be impacted by people calling to know how they can be compensated. But the number of them fairly low, according to the report I received a couple of weeks ago.

112 Q. All right, thank you. And just in relation to this paragraph, with respect to filing judicial review, would you agree that -- sorry. I just lost my place. We can move on to paragraph 44. Sorry. I was on that paragraph.

Now, in paragraph 44 you mention -- if you want to look at paragraph 44, you make a statement that:

> "Given the sensitive nature of this task, and for the reasons stated above, it would be very challenging to start implementing the Tribunal's orders without certainty."

What do you mean by the sensitive nature of this task?

A. So the sensitive nature of this task. The Tribunal order asked us to indicate that we need to compensate children, or now some of them are adults, that went through the Child and Family Services, that were taken care of, removed from their home and families under

certain parameters. I understand from past interaction with some, with documentation I read, that this could be a very traumatic event.

So asking them at one point to submit a claim, or participating to a process to receive compensation. If the orders are at risk to be changed through a future court decision, it's very sensitive. So you don't want -- I don't want to think that we would put people into a situation that can bring back past trauma. And in the course of that process, tell them that they did that, and now the rule of the games are changing because there was a deferred court decision.

So my assessment was that if we go through this process, we will have to bring safety around that, we will have to bring support as we did for other processes like that. But at the same time, we need to have some certainty that the process is going to unfold as planned initially. If there is a risk that parameter changed through course, we have to try to minimize the impact on the individual. And this is a concern I had, and this is what I express in my affidavit, that if we start the process it should

be on solid ground and limited risk that parameters change over time.

113 Q. Would you agree that the claims process, the applications form, all parameters with respect to having sensitivities to ensure that victims are not re-victimized by the process is an element that would have been addressed in your consultations with the AFN and Caring Society?

A. It's the kind of element that are being addressed through developing a compensation process, you are right. However, in that case some of the parameter are already defined, so we have to work from there. It's not like we are doing consultation and there is no way of starting from a clean page. There is some parameters and rules that have been set by the Tribunal, and these are the ones that if a future decision of the Federal Court was to change that, would that have an impact on the individual parts getting to the process.

And this is, the only purpose of the affidavit here was to say if these are to change in the future, we might be better to take a pause and wait for certainty before we start this.

114 Q. But again, you would agree that the discussions regarding the claims process, developing the claims form, hasn't occurred yet?

A. It did not.

115 Q. Thank you. I believe those are all the questions of the Assembly of First Nations. I do have one potential undertaking. In your discussion about getting Cabinet approval to change Jordan's Principle shortly after 2016,could we get an undertaking to see those instructions? If they are not Cabinet secrecies?

MR. FRATER: Sorry. It's cross-examination. They probably are Cabinet secrecy, but there's no undertakings on cross-examination. It's not discovery.

MR. WUTTKE: All right.

MR. FRATER: No re-examination.

--- Whereupon the cross-examination concluded at 11:40 a.m.

THIS IS EXHIBIT "16" TO THE

AFFIDAVIT OF CINDY BLACKSTOCK

SWORN BEFORE ME ON

December 8, 2019

in Ottawa, Ontario

A Commissioner for Taking Oaths

Date of Quote: Nov 5th, 2019

Valid Until: Nov 30th, 2019

Assembly of First Nations

55 Metcalfe Street

Ottawa,ON K1P 6L5

Tel:613-241-6789 x 137

Email:Kkennedy@afn.ca

Notice for CHRT ruling on compensation

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December 8, 2019

in Ottawa, Ontario

A Commissioner for Taking Oaths

Death as Expected: Inside a child welfare system where 102 Indigenous kids died over 5 years

National News (https://aptnnews.ca/category/national-news/) | September 25, 2019 by Kenneth Jackson (https://aptnnews.ca/author/kjackson/) Attributed to: | 0 Comments (https://aptnnews.ca/2019/09/25/inside-a-child-welfare-system-where-102-indigenous-kids-died-over-5-years/#disqus_thread)

"Every three days. Monday, Tuesday, Wednesday,

a child connected to care dies..."

Seventy-two Indigenous children connected to child welfare died in northern Ontario, where three Indigenous agencies

covering most of the territory were underfunded approximately $400 million over a five-year period.

The number of deaths jumps to 102 Indigenous children when looking at the entire province between 2013 to 2017.

And almost half of the deaths, 48 involving Indigenous agencies, happened in the two years it took Prime Minister Justin Trudeau to respond to multiple orders made by the Canadian Human Rights Tribunal that first found Canada guilty of purposely underfunding on-reserve child welfare in its historic decision on Jan. 26, 2016.

“Nothing the government can do can make up for the wrongs it consciously perpetrated against kids. And I want to emphasize that it was conscious. It wasn’t an accident,” said Cindy Blackstock who led the fight against Canada, along with the Assembly of First Nations, to bring Canada to task over discriminating against First Nations children through the tribunal.

But while the federal government may be the bagman, funding at least 93 per cent of on-reserve child welfare, the Ontario government created the system where these children died and provides the law within which the child welfare agencies operate. It’s a system that has been found to be a complete failure over and over up until just last year when the chief coroner of Ontario released a special report into the deaths of 12 children who died in care, eight of whom were Indigenous.

As well, the 102 deaths marks the lowest number on record as *APTN’s* investigation reveals data was never collected properly over this five-year period.

Many believe it to be much higher.

In fact, while it’s improving, Ontario’s data collection still faces some serious questions, such as how many Indigenous kids are in care today in Ontario?

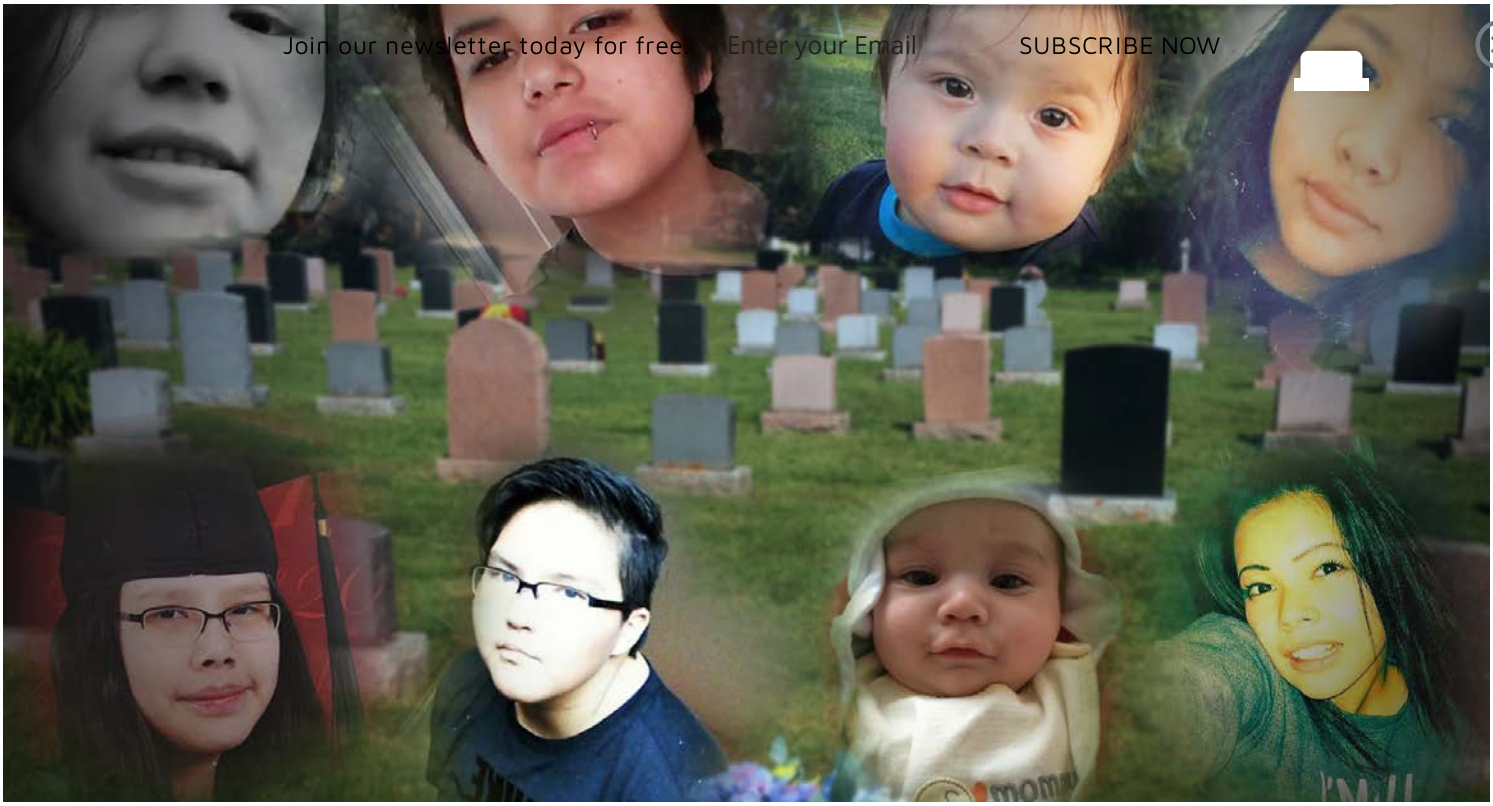
No one knows the total number.

APTN reporter **Kenneth Jackson** has spent over two years unraveling Ontario’s child welfare system beginning with the death of Amy Owen, a 13 year old girl who died by suicide in an Ottawa group home over 2,000 kilometres from her First Nation in northwestern Ontario.

The work was made more difficult because the system – from the agencies to the Ontario government to even the courts – keep information from the public and, as *APTN* encountered, can mislead it at times.

Caught in the middle of all this are the parents left without their children.

This is: Death as Expected.



(These are just a few of the Indigenous children that died connected to Ontario's child welfare system between 2013-2017. Photo illustration: Alicia Don.)

Every year the office of the chief coroner in Ontario publishes a document based on the number of paediatric deaths, from newborns to 19 years old, called the Paediatric Death Review Committee report and posts it online. There's never a press release alerting the public, or media, to the report based on approximately 1,100 paediatric deaths on average each year. It is shared with policy makers.

Its purpose is predominately to look for trends in the data to hopefully prevent deaths in the future and a portion of the report focuses on deaths involving the child welfare system.

It's in these reports that *APTN* first learned of the 102 deaths, but it wasn't that simple.

Earlier this year, *APTN* asked the coroner's office if it had the number of Indigenous children that died in care over the last five years. The coroner's office later emailed a chart showing that 19 Indigenous kids died over that period.

APTN knew the number was low having written about so many of these deaths and having knowledge of several more that went unreported.

But the devil is in the details and in this case that meant the footnote on the chart where it said the number was based on how the province defines "in care". That's foster care, group homes, jails and hospitals. But there are many other ways child welfare agencies in Ontario can be directly involved in a child's life.

APTN was then alerted to the most recent paediatric death report for 2017. There was a much larger number: 32 deaths "involving" child welfare.

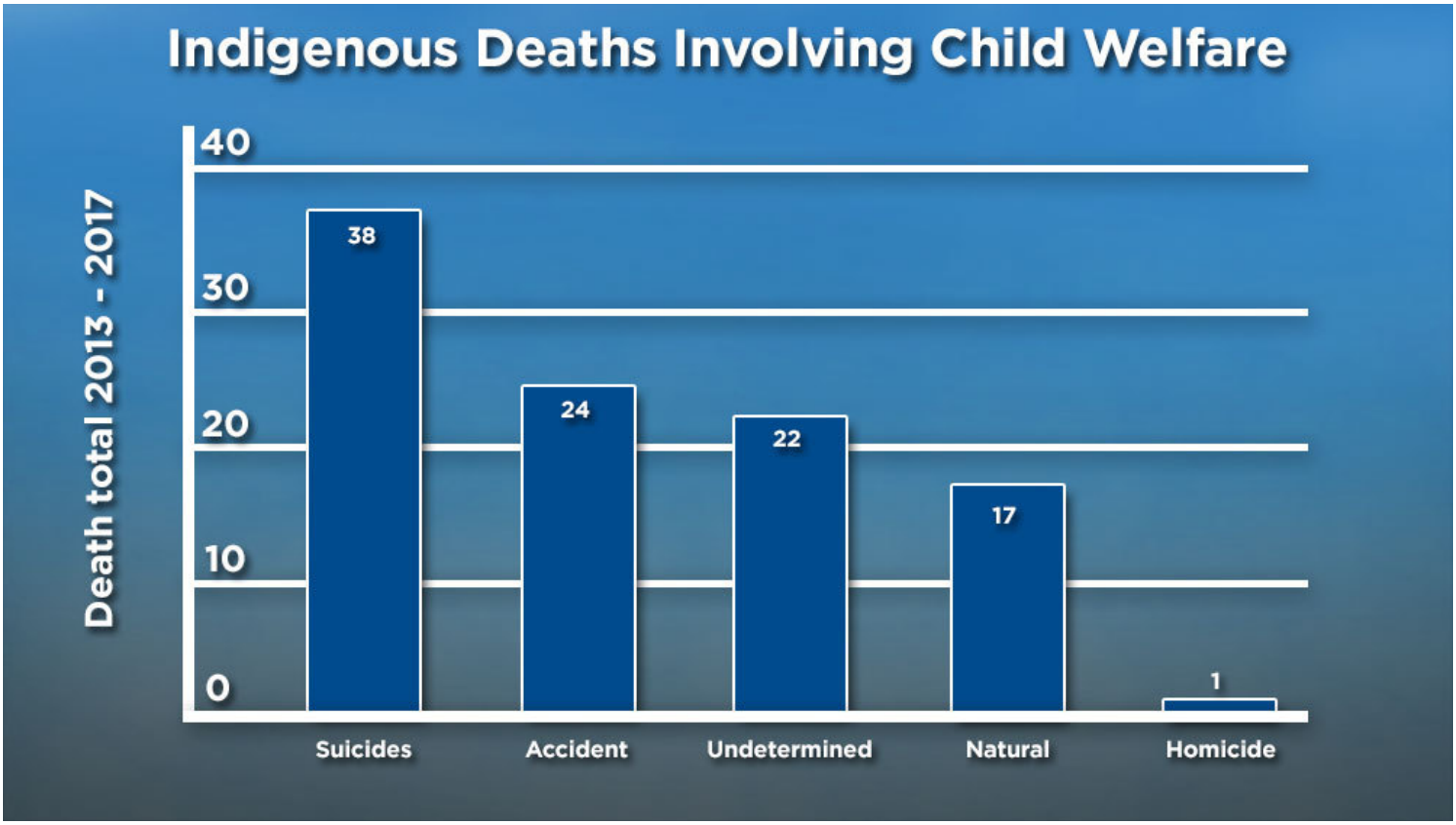
"Involving" is the key word.

The coroner tracks deaths of children who, or whose family, personally had contact with an agency within 12 months of their death. On average, about 70 per cent of the children had an open agency file at the time of their death.

APTN then examined reports going back to 2013 adding up the deaths. The coroner mentions in the reports that the data is limited based on the

Still, it was the starting point.

But why were these children dying?



(This is the official number of Indigenous children connected to Ontario's child welfare system that died between 2013-2017. Chart: Alicia Don.)

There are 50 child welfare agencies in Ontario, including 11 that are called Indigenous well-being societies (a new Indigenous agency opened last February but is not part of this story). Each submits quarterly reports to the ministry of children, community and social services (formally ministry of children and youth services). The reports are supposed to track every type of care agencies use for children and the funding agencies were allocated.

APTN requested these reports through the Freedom of Information Act covering the span of the 102 deaths and ended up settling on what's known as a roll-up, where this data is put in spreadsheets and added up annually. It was a massive amount of data and not easily readable as some portions were just scanned print-outs of the spreadsheets which meant each had to be individually put in a spreadsheet.

Other parts had the names of agencies cut off for an entire year and we had to compare previous years to match numbers to agencies based on the order they were in.

"All this data was presented to you in a way that was so difficult to assess," said Dr. Kim Snow, a professor at Ryerson University and leading expert in child welfare who is typically called upon to investigate systemic issues across the province.

That includes reports for the former Ontario child advocate who had Snow examine what's known as serious occurrence reports that are submitted to the province every time a child in care is hurt, goes missing or dies. Snow was also enlisted by the chief coroner to be part of what's known as a special panel that released a report in September 2018 into the 12 deaths of children in care between 2014 and 2017.

The panel examined each child's file, some over 1,000 pages, and got a look into how agencies operate. Snow, and the other experts, found the

system was lacking in almost every area from trained staff, services and foster care. The term “lack of” is mentioned 37 times in the 86-page report.

Snow agreed to help *APTN* analyze the data along with the help of her grad student, Marina Apostolopoulos, and spent the summer going over every number.

Having previously examined the files of northern agencies during the panel review, Snow already knew they were struggling and noticed quickly that funding was drastically lower for Indigenous agencies in northern Ontario. She developed a formula to compare funding to non-Indigenous agencies in southern Ontario with similar caseload, like average children in care annually.

Snow knew these three Indigenous agencies were underfunded by approximately $400 million between 2013 to 2017: Tikinagan Child and Family Services that serves over 30 First Nations in northwestern Ontario, Dilico Anishinabek Family Care serving 13 nations around Thunder Bay and Payukotayno: James and Hudson Bay Family Services, which includes Attawapiskat.

The three agencies cover most of northern Ontario and *APTN* can also confirm deaths with each. The number rises to $500 million if you go back just one more year to 2012.

“You have less funding, you have less qualified staff, you have a more crisis-like response and you often have to fly people from one place to another to find a place of safety,” said Snow, explaining how much more difficult it is for these agencies compared to, say, Windsor-Essex Children’s Aid Society.

Windsor had an average of 613 children in care in 2013 and was allocated $56 million, while Dilico had an average of 583 kids in care and was allocated $26 million. It only gets worse.

Even as Windsor’s children in care went down its funding increased. Dilico’s kids in care would stay the same and saw barely an increase over the next fours years. In total, Dilico was underfunded approximately $137 million in comparison in five years.

“The end result is kids die. Kids are always at the epicentre of structural inequality,” said Snow.

But families don't see the funding issues when agency workers show up to remove their children, mostly due to poverty-related issues. Snow said the number of children being abused physically or sexually is low.

The families *APTN* interviewed see the agencies as the enemy.

That includes the family of Kanina Sue Turtle who died Oct. 29, 2016. She was 15.

There are suing (https://aptnnews.ca/2018/09/27/kanina-sue-turtles-family-sues-tikinagan-for-5-9m-over-her-wrongful-death-in-foster-home/) the agency for $5.9 million, alleging Tikinagan is at fault for Turtle dying by suicide in one of their short-term stay homes – known as an agency-operated home – in Sioux Lookout.

(Kanina Sue Turtle's brother Winter Suggashie, left, and her mother Barbara Suggashie walk for suicide awareness in the summer of 2018. They were also walking to the foster home where Turtle died by suicide. Barbara would go in the room for the first time. Photo: Kenneth Jackson/APTN)

Turtle filmed her death which was first reviewed, and reported, by *APTN* in late February 2018. It shows she was left alone for more than 46 minutes despite being chronically suicidal. *APTN* went on to report she missed every scheduled appointment with a crisis counsellor in the five days before her death and that Tikinagan suspected she was part of a suicide pact. Tikinagan also kept her three suicide letters from her family for over two years.

Tikinagan denies in court documents that the agency is to blame for the death, but has filed a cross-action in the claim suing the Sioux Lookout hospital and doctors saying if anyone is at fault it's them.

Shortly after Turtle died her girlfriend, Jolynn Winter, 12, also died by suicide while at home in Wapekeka First Nation. After Turtle's death she tried to kill herself and was sent to Wapekeka for what is believed to be the first time in her life. *APTN* previously reported her grandmother didn't know Winter was her granddaughter until Tikinagan returned her home a couple months before her death Jan. 8, 2017.

Then Amy Owen died by suicide in Ottawa. Both she and Kanina were from Poplar Hill First Nation.

Owen's family is also suing Tikinagan and the private group home operator, Mary Homes. Both deny all allegations and have also blamed each other in court filings. Owen, like Turtle, was left alone while chronically suicidal. The coroner said she was alone for an hour, while Mary Homes alleges 10 minutes, according to allegations based on the contents of documents filed in court that have not yet been proven in court.

Soon after Owen's death another child in Tikinagan's care died. Tammy Keeash, 17, was found in a Thunder Bay waterway on May 6, 2017, which was later ruled to be an accidental drowning. It enraged her mother, Pearl Slipperjack, who was angry at Tikinagan, as well as her family who gave her copious amounts of alcohol the night of her death and then left her passed out on a hill in Chapples park. Tammy was supposed to be under 24-hour watch by the foster home where she was placed.

Slipperjack passed away the following summer from natural causes, but before her death she told *APTN* she had a lawyer and was going to sue Tikinagan.

Shortly after Slipperjack's death, and before the special panel report was released in September 2018 that included Tammy's death, *APTN* got an anonymous tip in Ottawa about a civil action between Tikinagan and Dilico involving Tammy's death and "others" filed at the Thunder Bay courthouse.

APTN pulled hundreds of pages from the case that outlined a turf war between the agencies dating back to the summer of 2016.

Dilico filed an emergency injunction to stop Tikinagan from placing children in Thunder Bay foster homes, arguing it was Dilico's jurisdiction and any Indigenous kid in care in the city was under its oversight. Tikinagan disagreed and battle lines were drawn eventually turning into mediation with Sen. Murray Sinclair overseeing it.

It remained at a standstill for about a year until Tammy died. Days after her death Dilico filed another emergency injunction.

This time Dilico named Tammy as a reason why Tikinagan shouldn't be able to place kids in Thunder Bay and keep authority over them.

This resulted in a fury of filings and more documentary evidence submitted, which *APTN* obtained.

APTN later published this story: Foster homes investigated 7 times within a year but Ontario didn't close them until Tammy Keeash died: court documents (https://aptnnews.ca/2018/11/15/foster-homes-investigated-7-times-within-a-year-but-ontario-didnt-close-them-until-tammy-keeash-died-court-documents/)

(A cross still marks the spot where the body of Tammy Keeash, 17, was found in Thunder Bay. Photo: Kenneth Jackson/APTN)

APTN traveled to Thunder Bay to check for anything new in the civil filing in late February 2019.

APTN gave the civil counter clerk the court file number. A few minutes later she wheeled over a large cart about a metre and a half tall stacked with large folders.

Within five minutes another court worker appeared and asked for the documents back.

“It’s a child welfare case,” she snapped with just a glance at the files. “I don’t think you can see these.”

She said she wasn’t “comfortable” with *APTN* having the documents.

(Tikinagan had failed to have the documents sealed a year prior. Portions of the documents were supposed to be redacted so no child could be identified.)

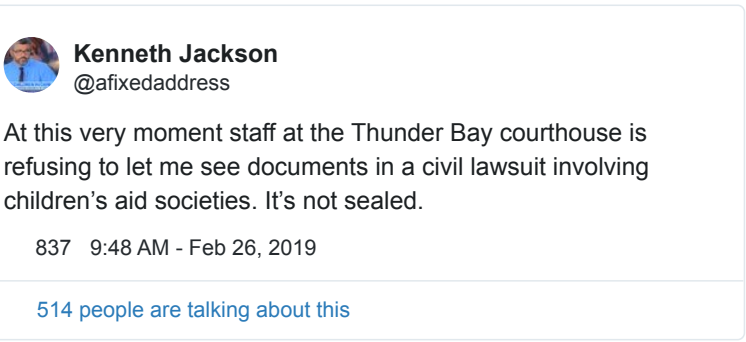
This happened in a matter of a few minutes.

APTN pushed to speak to a manager and soon Laurie Kopanski appeared, a middle-aged Caucasian woman with dark, dirty blond hair.

She repeated she wasn’t sure she could allow *APTN* to view the files through thick security glass at the counter because she had a “concern.”

When *APTN* asked what it was she wouldn't say.

It was around this time that *APTN* went to Twitter to report what was happening.



"I need to speak to the judge," said Kopanski, adding it may take a couple days.

That wasn't good enough. It needed to happen immediately.

The judge on the case, Justice Bonnie Warkentin, told Kopanski there was no sealing order but she needed to ensure the files had been redacted by calling Tikinagan, the defendant in the case. Later that day *APTN* returned to the courthouse to speak with Kopanski again.

APTN informed her it had previously viewed the file and paid money for copies.

"I had a concern over what was publicly accessible," she said.

APTN hired a lawyer to push for access. A letter from the attorney general's office to *APTN* claimed staff had noticed redactions hadn't been made.

"Despite the files having been previously viewed in 2018, court staff noticed that the redactions that had been made did not appear to effectively redact information … Ms. Kopanski sought Justice Warkentin's direction…" said Vaia Pappas, a director of court services in a March 13, 2019 letter.

While it was later confirmed some redactions were done poorly, it took lawyers from Tikinagan and Dilico several trips to the courthouse to confirm, it simply couldn't have been done in the handful of minutes court staff were claiming in the letter.

Letters continued to go back and forth between lawyers until finally *APTN* was given access in late April earlier this year.

APTN flew back up to Thunder Bay to view the files but this time asked to see all lawsuits involving Tikinagan and Dilico going back five years. Tikinagan had a couple unremarkable dismissed cases, but not Dilico.

Up until this point *APTN* had only heard stories about Dilico.

Documents in the courthouse confirmed deaths of infants, another case where a child was placed in the home of a registered sex offender (https://aptnnews.ca/2019/05/23/foster-child-placed-in-home-of-registered-sex-offender-in-thunder-bay-court-documents/) and allegations of an agency in apparent disarray around the same time in 2014.

Soon the death total rose to four cases involving dead infants (https://aptnnews.ca/2019/06/13/four-dead-babies-in-care-with-one-common-theme-dilico-anishinabek-family-care/) within seven months involving Dilico.

Once *APTN* published stories about Dilico and the deaths of infants more and more people started contacting *APTN* with their own stories. It wasn't necessarily always about deaths but about the fear running through the communities.

One mother told *APTN* it took months for Dilico to respond to her lawyer because she was revoking her consent to have her children in care.

She had a child in care under a customary care agreement that was supposed to be more culturally appropriate and involve the child's First

Nation as support.

Dilico made a shift to this type of care just before 2014, according to former employees and confirmed by the data Dr. Kim Snc yzed.

In fact, Dilico went from 19,771 days of customary care in the 2012/13 fiscal year to 78,142 days the following year.

It's only gone up from there.

(Dilico Anishinabek Family Care's headquarters is located on Fort William First Nation next to Thunder Bay, Ont. Photo: Jason Leroux/APTN)

However, Marco Frangione, a lawyer who represents families in child welfare cases in northwestern Ontario, said these agreements are often signed under duress and without a lawyer across all agencies.

"In the overwhelming majority of cases these agreements are drafted without the benefit of legal council," said Frangione. "They are told if they do retain a lawyer there could be consequences and I have seen this time and time again."

And once the agreements are signed, in his experience, they are almost never renewed with the parents' participation. That's what happened with Jolynn Winter according to her grandmother who told *APTN* last year that while she was councillor at Wapekeka she remembered signing customary care agreements every six months for someone named Jolynn, extending her care, only she didn't know it was her granddaughter at the time.

"I can state seeing children not having access to their parents or seeing their parents infrequently is certainly the norm," said Frangione. "The parents, often times, think they are doing something in their child's best interest but they don't really know how the child or children are being cared for, to what extent visitation will look like and how the agencies will help better the primary families so that reintegration can ultimately happen. Customary care becomes the focus as opposed to customary care with a focus on reintegration."

He said agencies and nations call it "culturally appropriate" when that's "not often" the case, according to his experience, such as when Kanina

Sue Turtle died in a Sioux Lookout foster home owned by Tikinagan with a “live-in parent” who was hired to be there on a contract-basis. The same goes for Amy Owen, who died in a non-descript two-story home on the outskirts of Ottawa that included some trips to a local Indigenous centre.

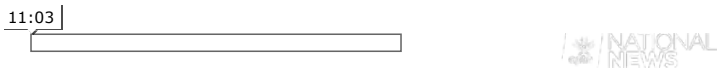
Dilico, in Frangione’s experience, is the most difficult to deal with on files.

For one, Frangione said Dilico forces him to review case files at their office while being watched, when all other agencies send the files by email. This is also known as disclosure, a basic evidentiary procedure in the Canadian court system where the Crown provides the evidence against the accused in a timely manner. The same applies to child welfare.

He also had a case recently where a parent challenged a customary care agreement and Dilico didn’t respond within five days as it is supposed to as first reported (https://aptnnews.ca/2019/06/17/thunder-bay-mother-accuses-dilico-of-kidnapping-children-after-lawyers-letters-ignored/) by *APTN*. Dilico ended up returning the children without a fight, said Frangione.

APTN tried to get Dilico to go on the record for this story but after several conversations with Darcia Borg, its executive director, it never happened. The content of those conversations were off the record.

Watch Kenneth’s story Death as Expected:



The first conversation with Borg was in person because this story pulled *APTN* back to Thunder Bay in early August to find Alicia Jacob.

Jacob attempted to sue Dilico over the death of her son, Talon Nelson, on October 29, 2013.

Talon was three months old when he died in a crowded crib of a Thunder Bay foster home. The coroner would call it an unsafe sleeping arrangement, however no one was ever charged. The foster parent was a registered nurse.

“Undetermined cause of death, too many stuffed animals in a f***ing sleeping environment,” she screamed when speaking to *APTN* when we

found her in early August.

This is child welfare in northern Ontario at its worst. A baby is dead and the mother lost on the streets.

“I never used to be like this … I have so much anger,” Jacob sobbed.

After the infant’s death his father Nazareth Nelson hit drugs hard. People say he was on some heavy street drugs brought in from Toronto gangsters the night he killed a man in 2017. He was later convicted for the murder of Burt Issac Wood.

Their lawyer was Christopher Watkins, and just a few months after the lawsuit was filed it was dismissed without costs. During this time Watkins was struggling himself and the Ontario law society suspended his license back in 2018 due to “a history of failing to attend court appearances in criminal proceedings dating to at least 2012.”

Watkins issued a public apology saying personal and health problems were to blame.

APTN emailed several of Watkins’ email addresses seeking clarification on why the lawsuit was dismissed.

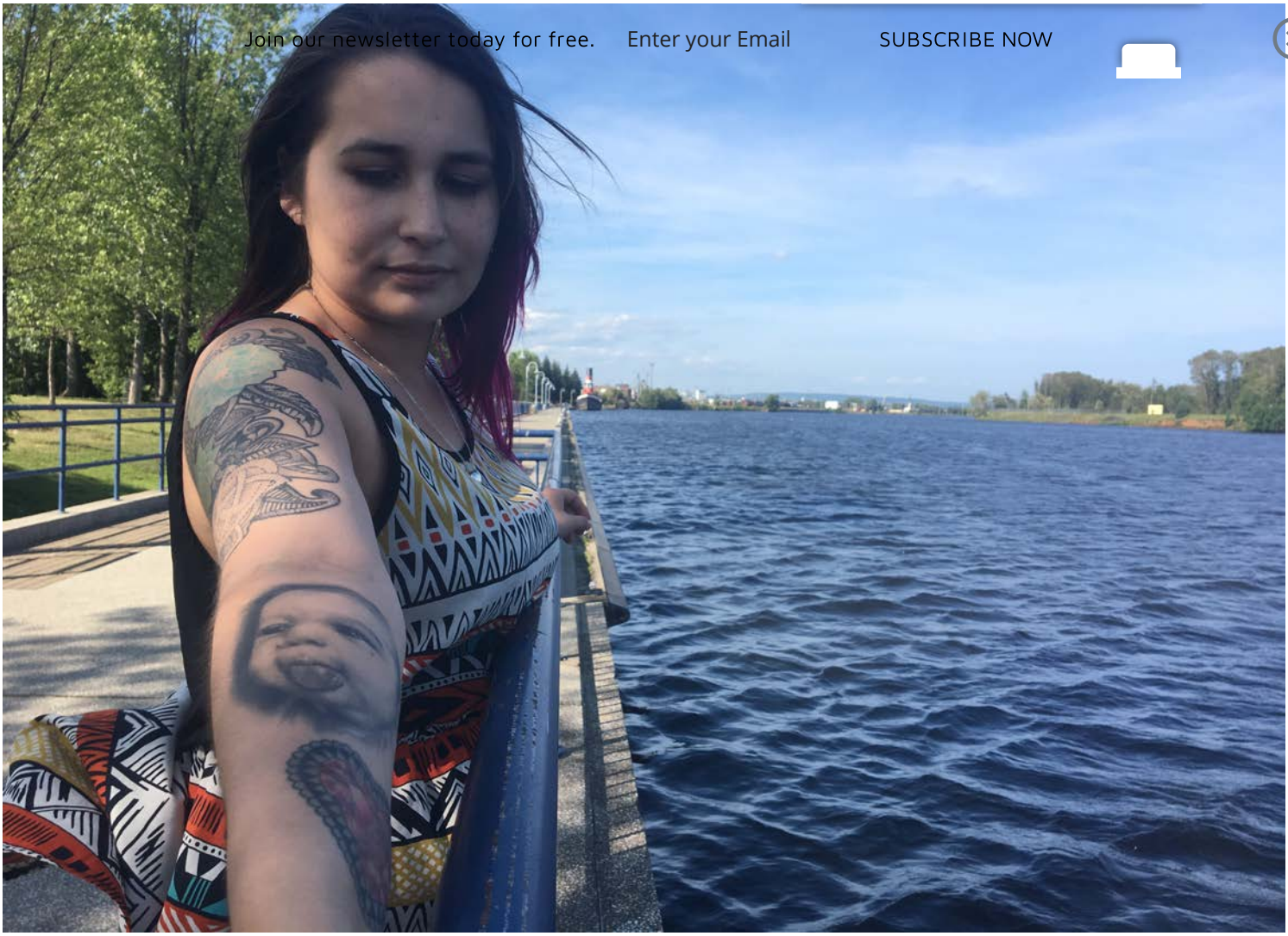
This was the only response verbatim: “Hi this up and working and interesting journey to convey. Christopher.”

APTN never heard from him again.

Undetermined cause of death is when there is no clear evidence to confirm it. Babies that suffocate often don’t leave any evidence even if the sleeping arrangement is unsafe and, in Ontario, 22 Indigenous children died in this manner between 2013 to 2017.

“The deaths of infants is very challenging ones in death investigations generally because in sudden and unexpected deaths of infants, so infants under one, we often unfortunately upwards of a significant percentage of time do not find a cause a death,” said Dirk Huyer, the chief coroner of Ontario, who is largely seen as someone trying to make incremental change within the system.

“The truth is we don’t know and use a term undetermined which is kind of a harsh term but it means we don’t know. So we say we don’t know. We say the environment may have been a factor but we don’t know if it was a factor.”



(https://aptnnews.ca/wp-content/uploads/2019/09/Breanne-LeClair1.jpeg)

(Breanne LeClair said getting her late son's autopsy report and seeing 'undetermined' added insult to injury. Photo: Kenneth Jackson/APTN)

Breanne LeClair's late son Kyler was one of the 102 and also undetermined.

Kyler was in what's known as a kinship out of care agreement.

That means an agency was involved but he was living with relatives.

In his case, the agency ordered Kyler to live with his Caucasian father.

That was in January 2014 just days after he was born.

To this day it's difficult for LeClair to talk about.

"My ex and his mom agreed to sign for the kinship so if you sign this document they've agreed to let you go with them and the baby or we're going to give him the baby," she said, breaking down in tears.

That living arrangement broke down quickly and she had to move out, forced to leave her Kyler behind.

Then one morning her phone rang.

"It was somewhere around nine in the morning my phone rang. I had my ex's number saved as don't answer but I figured I should answer and all

he said is the baby turned blue. We are on our way to the hospital. I was like what do you mean the baby turned blue?" she recounted.

As LeClair rushed to hospital she called her case worker.

"I just screamed into the phone and I told her if anything happened to him this is on you. This is your fault. You made this decision," she said.

Then she entered the room and saw her baby on a hospital bed.

"I could hear machines that are just beeping, there's people running, moving over each other, there's like three or four detectives in the room, there's like five or six nurses and the doctor. I wasn't really aware of what was going on until I saw him," said LeClair.

Kyler was gone.

His father left him on an adult-sized bed to take a shower.

He was found lifeless 30 minutes later.

Breanne and her family tried to hold someone accountable.

The case worker wasn't a licensed social worker so they couldn't try to hold her to account at the Ontario College of Social Workers.

Then finally the coroner's report came nearly a year later.

The coroner found the sleeping arrangement unsafe but ruled the death undetermined.

"Where no one has to face anything," said LeClair.

No one appears to have ever faced anything in any of these deaths.

(Dirk Huyer, right, is the chief coroner of Ontario and says despite exhaustive investigations some deaths involving babies have no cause of

death. Photo: Jason Leroux/APTN)

Even the 102 is the lowest number available.

If the child was from on-reserve then it stands to reason their race would be easily identifiable.

“You correctly point out that if children were receiving services from an Indigenous agency, then it is pretty easy to identify them as Indigenous however; we do not systemically obtain race or identity so we do not effectively obtain this information,” said Cheryl Maher, spokesperson for the chief coroner. “For children and youth living off-reserve and being served by mainstream societies they would be identified by the service or family of the deceased child. If the child or youth is (First Nation, Inuit, Metis) but not identified, then we have not included them in statistics.”

However, the “mainstream” agencies weren’t required to start collecting race-based data until February 2018, through a policy directive, and to this day the Ontario government doesn’t have a clear picture of how many Indigenous children are in care or involved with an agency in the last 12 months.

That’s partly because the system designed to capture the data hasn’t worked properly. It’s called the Child Protection Information Network (CPIN) and it’s a database aimed at tracking the children in the system. However, several non-Indigenous agency directors told *APTN* issues of duplication have been a problem where the same child is listed in two regions and counted as two individuals.

The province has also been slow to provide a standardized process for data entry. Several of the 38 agencies required to use CPIN only began in recent months despite the system being several years old.

It gets worse.

The former Ontario Liberal government didn’t just make it policy to collect identity-based data; it also passed a law in 2017 making it mandatory for the provinces 38 non-Indigenous agencies. But not until July, 1, 2021.

Indigenous child welfare agencies have refused to be on CPIN, and the ministry is still “engaging with Indigenous partners,” according a spokesperson.

If you ask the Ontario government how many kids are in care they will say this: “There were 12,651 children and youth in the care of children’s aid societies and in customary care (in 2018/19 fiscal year), including: 1,569 First Nations children and youth determined to be in need of protection were in customary care arrangements.”

These numbers are not correct but most people wouldn’t know the difference.

When these numbers were sent to *APTN* we challenged the province on it. The next day it responded with a similar statement but with a small change: “In the 2018-19 fiscal year, there were *on average* 12,651 children and youth in the care of children’s aid societies and in customary care.”

“On average” was italicized by the government.

“Due to admissions to, and discharges from, care the number of children in the care of Ontario’s 50 children’s aid societies fluctuates. Societies therefore provide the ministry with the average number of children in care over the course of a year. The average number of children in care is an average of the total number of children in care at the end of each month, from March 31 of the previous fiscal year to March 31 of the current fiscal year,” said a ministry spokesperson in an email.

Simply put: the system isn’t able to give a single-point-in-time number because that number can change day to day. It’s just not tracked that way and yet, unless challenged, the government misleads the public and reporters.

Things have only gotten worse under Premier Doug Ford according to Irwin Elman, the former Ontario child advocate.

The Ford government closed Elman’s office as the Progressive Conservatives’ first move on child welfare after the special panel report came out saying the system was a mess.

Its doors closed earlier this year; the ombudsman’s office now handles some of Elman’s former responsibilities.

The closure also came while the advocate's office was working on 27 investigations, mainly into foster homes, including the home Tammy Keeash was last in before she died.

Almost everything *APTN* has written in this story does not come as a surprise to the former advocate.

“To be aware in many ways is to be in a constant state of outrage,” said Elman, Ontario’s first and last child advocate.

But when Elman’s office first opened about a decade ago he noticed something.

“Every three days – Monday, Tuesday, Wednesday – a child connected to care dies. Thursday, Friday, Saturday, a child’s died connected to a system that is meant on all our behalf to protect them,” he said.

He’s right.

During the five-year period between 2013 and 2017 the coroner lists 541 deaths involving child welfare and 102 were Indigenous.

Indigenous people represent less than three per cent of Ontario’s population.

So when that child dies they are more likely to be Indigenous.

And, again, that’s no surprise to people who have been fighting for these kids, like Cindy Blackstock.

It’s largely because of Blackstock that the human rights tribunal found Canada guilty of systematically under-funding on-reserve child welfare.

“The tribunal found that Canada’s First Nation child welfare funding across the country and Ontario was discriminatory in January 2016 and ordered Canada to stop but it did nothing until the tribunal issued a subsequent order in February 2018,” she said.

Based on that order Canada retroactively provided funds to 2016. To date, just in Ontario, the feds have “reimbursed” approximately $135 million.

But you can’t go back in time to save any of these children, no matter how much money you throw at it.

“Children died waiting for Canada. That’s the problem with them saying, oh well, we are making good first steps … be patient with us. The reality is that children’s lives are really on the line while we’re waiting and many more children lost their lives during the time we litigated this case and for the many years before when they had a chance to fix it,” said Blackstock.

The Trudeau government also narrowly squeezed in new legislation for Indigenous child welfare last spring.

But the day Indigenous Services Minister Seamus O’Regan tabled the bill he didn’t have a lot of details – particularly when it came to money.

This worries Blackstock who says it’s another example of the feds not taking funding child welfare seriously.

“My worry is that we really need to make sure Canada isn’t using C-92 as an escape clause for its fiscal responsibilities to First Nation children,” she said. “Sure, it recognizes jurisdiction. But no money to implement your programs. And you’re dealing with families who are dealing with the weight of multi-cultural trauma from residential schools, from colonialism, starvation polices, taking of land, taking of resources, ’60s Scoop, child welfare, all things Canada was directly involved with.

“And they are going to hand it over to First nations and say good luck. I think that is wrong.”

Tikinagan didn’t respond to *APTN* and Payukotayno asked for questions to be sent by email but didn’t give any answers.

Meanwhile, in August the Ford government put out a call for submissions on how to improve the child welfare system in Ontario.

Earlier this month the human rights tribunal ordered Canada to pay each First Nations child who was in care, or guardian, $40,000.

As for the title of this story, “Death as Expected” comes from standardized forms, reviewed by Professor Kim Snow, that an agency worker

completed when a child in care died of natural causes during her investigation for the former child advocate.

"It was the only words written for the reports on the kids that died as a result of medical fragility," said Snow.

But many of these deaths, from the suicides to the undetermined, were expected said Blackstock.

"It wasn't an accident," she said.

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– Additional reporting by former *APTN* reporter Martha Troian, who helped track the number of deaths and *APTN* reporter Willow Fiddler, who pulled documents from the Thunder Bay courthouse.

Tags: Child Welfare (https://aptnnews.ca/tag/child-welfare/), Cindy Blackstock (https://aptnnews.ca/tag/cindy-blackstock/), data (https://aptnnews.ca/tag/data/), deaths (https://aptnnews.ca/tag/deaths/), Featured (https://aptnnews.ca/tag/featured/), Federal Government (https://aptnnews.ca/tag/federal-government/), Ontario (https://aptnnews.ca/tag/ontario/), ontario government (https://aptnnews.ca/tag/ontario-government/)

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