

CHIEF ADJUDICATOR DIRECTIVE HEARINGS FOR ALLEGED PERPETRATORS

In applying the sections of the IAP Model with respect to the involvement of alleged perpetrators in both ADR and IAP cases (page 12, part g and Appendix III, at pages 21-22), the following principles will apply:

A. Withdrawal of Allegations – Unproven Allegations

1. Where an allegation of abuse against any person is withdrawn, a hearing with the alleged perpetrator will not be held where the parties agree that a hearing is not necessary. The presiding adjudicator will send a written notice to the parties of the withdrawal of the allegation.
2. Where an allegation of abuse against any person is withdrawn and the parties do not agree that a hearing is not necessary, a hearing with the alleged perpetrator will not be held unless, in the interest of justice, the adjudicator determines that a hearing shall be held. The presiding adjudicator will send a written notice to the parties of the withdrawal of the allegation.
3. In cases where the adjudicator has determined, prior to a hearing with an alleged perpetrator, that the allegation has not been proved, a hearing will not be held with the alleged perpetrator unless:
 - a. The adjudicator is of the opinion that the holding of a hearing may assist in determining credibility;
or
 - b. The adjudicator determines that in the interest of justice a hearing shall be held;
or
 - c. Where an alleged perpetrator requests the opportunity to confess and the claimant consents, a hearing will be held for this purpose.
4. Notwithstanding the above, where testimony has been given which implicates an alleged perpetrator, the alleged perpetrator will be entitled to a hearing unless the parties agree that a hearing should not be held.
5. Where an alleged perpetrator hearing has not been held because an allegation has been withdrawn or an allegation has not been proved, the decision shall make no reference, by name or otherwise, to the alleged perpetrator. And, for greater certainty, a withdrawn allegation will have no impact on the number of points awarded for consequential harm, aggravating factors or consequential loss of opportunity.

B. Timelines for Contact and Participation of Alleged Perpetrators

6. In all cases, whether an allegation is made against an alleged perpetrator in the application, an addendum or a new alleged perpetrator is named at the claimant's hearing:

- a. The *contact* timelines in Appendix III (ii) shall be applied. In cases where either a new alleged perpetrator is named at the hearing (unless such alleged perpetrator is known to be deceased or not participating) or the testimony at the hearing differs materially from the account in the application shared with the alleged perpetrator, the adjudicator shall prepare a summary of the new allegations and provide it to the alleged perpetrator and the parties. The *contact* timelines in Appendix III (ii) are: 60 days to locate and contact except where contacted by a church entity identified in Appendix III (ii), then 90 days. The timelines will run from the date the application, addendum, or summary of new allegations, as the case may be, is received by Canada or the involved church entity. These timelines may be extended upon request, in the discretion of the adjudicator, or if no adjudicator has been assigned, by the Chief Adjudicator or his designate.
- b. The *participation* timelines in Appendix III (ii) shall be applied. The alleged perpetrator has a maximum of 75 days from the date of contact to decide to participate and provide a statement or an interview. The 75 days will not begin to run until the alleged perpetrator is advised in writing of the allegations made. These timelines may be extended upon request, in the discretion of the adjudicator, or if no adjudicator has been assigned, by the Chief Adjudicator or his designate. At the end of the 75 days, or such later period of time as the adjudicator deems just, the adjudicator may proceed with the hearing without further involvement of the alleged perpetrator.

C. Statement of Alleged Perpetrator

7. The IAP Model, at page 10, says “alleged perpetrators may be heard as of right, provided the parties are advised in advance of what their evidence will be.”
8. The alleged perpetrator’s statement must be received by the adjudicator two weeks before the hearing date and be provided to the parties. The statement is not evidence (except to the extent that it may contain an admission) but may be used as a basis for questioning at an oral hearing.
9. The IAP strives to balance the rights of claimants to have their claims concluded without undue delay with the rights of alleged perpetrators to be heard. In order to promote fairness to all participants, the alleged perpetrator’s statement should contain detail that is similar to the level of detail provided by the claimant in the IAP application. As the claimant’s hearing will normally take place before the alleged perpetrator’s, the statement should provide sufficient information about what the alleged perpetrator will say in their own hearing to allow the claimant to respond to the statement by the alleged perpetrator. For greater clarity, the alleged perpetrator’s statement ideally should:
 - a. Be dated and signed by the alleged perpetrator;
 - b. Provide details as to the alleged perpetrator’s background at the residential school;
 - c. In the alleged perpetrator’s own words, respond to the allegations by setting out the facts on which the alleged perpetrator expects to rely at the hearing, and set out any specific defences raised. (For example: “I was not at the school; the claimant hates me and has threatened to “get me”, I hit him in self-defence when he came at me with a bat; it was an accident – what happened was...; etc.).
 - d. Give notice as to whether the alleged perpetrator requests a hearing.

10. If the adjudicator determines that the statement does not provide sufficient information regarding the evidence the alleged perpetrator will give at his/her hearing, this may, in the adjudicator's discretion, result in the limitation of the alleged perpetrator's testimony to those matters set out in the statement, the loss of the right to participate, or such other ruling as the adjudicator deems appropriate, balancing always considerations of fairness, general prejudice, undue delay and whether the statement was provided before the implementation of this Directive. The adjudicator's decision on this issue will be included in the final written decision, with reasons.

D. Scheduling of Alleged Perpetrator Hearings

11. Once a hearing date has been set by IRSAS Schedulers, an adjournment will only be granted by the adjudicator on application by the alleged perpetrator or any party with notice of the reason for the request. The adjudicator will determine whether the request is fair and reasonable, balancing the right of the alleged perpetrator to be heard with the right of the claimant to efficient resolution of the claim. The adjudicator's decision on this issue will be included in the final written decision, with reasons.

E. Failure to Attend a Scheduled Hearing

12. If the alleged perpetrator fails to attend a hearing without reasonable excuse, the claimant hearing should proceed without further involvement of the alleged perpetrator.

This is a revision of Chief Adjudicator Directive 6 (CAD-6) dated 1/10/08.

(Approved by IAPOC 1/26/10)