

# 2019

## Annual report of the Chief Adjudicator to the Independent Assessment Process Oversight Committee

Daniel Shapiro, Q.C.  
**Chief Adjudicator**

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**Deputy Chief Adjudicators**

Roger Tetreault  
**Executive Director**



## About the Indian Residential Schools Adjudication Secretariat

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

The Secretariat manages the Independent Assessment Process (IAP), a non-adversarial, out-of-court process for claims of sexual abuse, serious physical abuse, and other wrongful acts causing serious psychological injury to the claimant. As one of the compensation programs established under the Indian Residential Schools Settlement Agreement (IRSSA), the IAP is the only option for former residential school students to resolve these claims<sup>1</sup>, unless they opted out of the Settlement Agreement. The deadline to submit an application under the IAP was September 19, 2012. The IAP aims to bring a fair and lasting resolution to harms caused by residential schools through a claimant-centered and neutral process.

The Secretariat reports to Chief Adjudicator Daniel Shapiro, Q.C., whose appointment by the IAP Oversight Committee was confirmed by the Courts.

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<sup>1</sup> Apart from: (a) the ability to seek leave of the Chief Adjudicator to access the courts, in specified circumstances defined by the IAP; (b) the potential right for those who have not previously brought claims under the pilot projects, litigation, ADR or the IAP, to bring legal action in the courts, under Article 4.06(i) of the Indian Residential School Settlement Agreement.

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## Message from the Chief Adjudicator

I am pleased to provide my Annual Report for 2019, which sets out the activities undertaken by myself and by the Indian Residential Schools Adjudication Secretariat (the Secretariat) in fulfilling our mandate to deliver the Independent Assessment Process (IAP). While the number of claims resolved this year was a small fraction of those resolved in previous years, many of these cases raised complex legal or procedural questions. We have seen a great deal of progress. I, my fellow adjudicators, and the Secretariat have worked hard with the parties and stakeholders to the Agreement and the Courts to bring resolution to these questions in a manner that is claimant-centered, yet fair to all concerned. As Chief Adjudicator, I am very pleased by the results we have achieved this year.

### ***Performance***

In December 2013, I prepared my [Completion Strategy to the Courts](#), outlining how the Secretariat would work to complete the IAP caseload in the following years. The IAP Completion Strategy projected that all first claimant hearings would be concluded by the spring of 2016.<sup>2</sup>

With my full support and that of the Deputy Chief Adjudicators and IAP Oversight Committee, exceptional efforts were undertaken by adjudicators and Secretariat staff in order to achieve this ambitious goal. Among these initiatives were fully implementing the Accelerated Hearing Process and targeted approaches for claims that were blocked. These initiatives resulted in us effectively having reached the IAP Completion Strategy target regarding the conclusion of first hearings. By the end of March 2016, of the 38,087 applications which had then been received, fewer than 300 active claims remained which were expected to proceed to hearing. As of December 31, 2016, 1,693 claims remained in progress. By December 31, 2017, the claims in progress had been reduced to 635. By December 31, 2018, of the total applications then received of 38,257, only 128 had not yet been resolved. By December 31, 2019, I am delighted to report that of 38,263 applications received, only 19 claims remained at all stages, of which 12 were still considered to be in progress, and seven had been resolved and were completing post-decision work (such as reviews and fee reviews).

Total compensation paid to December 31, 2019, including awards, negotiated settlements, legal fees and disbursements was \$3.245B. Compensation was awarded in

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<sup>2</sup> An Update to the Completion Strategy, reflecting the additional risks to completion that had arisen over the intervening years, was provided on August 2, 2017, which was further updated on July 16, 2018, as discussed further below.

89% of claims that went to hearing before IAP Adjudicators, with adjudicator decisions resulting in average compensation of approximately \$91,460.<sup>3</sup>

Over 2019, the focus of our team was on:

- Concluding the Student on Student (SOS) project
- Finalizing decisions
- Resolving remaining claims
- Concluding the bulk of the major undertaking of delivering the Notice Program regarding IAP records
- Responding to requests from Claimants for copies of their retained IAP records
- Responding to requests from Claimants to archive their retained IAP records with the National Centre for Truth and Reconciliation (NCTR)
- Digitizing the four categories of IAP retained records designated by the Courts, in preparation for the hand-off of such records to the Court-approved Records Agent upon the conclusion of my mandate and that of the Secretariat
- Gearing up for the processing of an unknown number of claims from former residents of Kivalliq Hall
- Supporting the IAP Oversight Committee in the development of the IAP Final Report
- Bringing a Request for Direction (RFD) to the Supervising Courts regarding the disposition of non-claim records
- Identifying and organizing non-claim records in preparation for direction from the courts on their disposition

While at certain times in recent years a small number of reviews and re-reviews were at any given time placed on hold pending certain court decisions, with the release of the majority of court decisions, all holds on reviews and re-reviews have been lifted.

Apart from Kivalliq Hall, the admissions process within the Secretariat was concluded.

I will briefly summarize below the key achievements and milestones that occurred during 2019.

### ***Notice Program and Records Disposition***

Following the release of the Supreme Court of Canada decision regarding IAP records disposition in October 2017 and lengthy multi-party discussions, I brought a RFD to the Court to establish the terms of the Notice Program and approve Consent Forms for archiving of records with the National Centre for Truth and Reconciliation (NCTR) and records management and disposition.

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<sup>3</sup> These figures exclude settlement of claims by Canada regarding administrative split and student on student cases that took place outside of the IAP in respect of claims processed through the IAP, many with hearings before adjudicators.

In July 2018, Justice Perell, the Eastern Administrative Judge, issued a Direction and Order approving the consent forms to be used in requesting records to be provided to the NCTR and establishing the terms of the program to notify former students of their right to archive their records, redacted of information identifying alleged perpetrators or others.<sup>4</sup> The Direction also established a uniform date for the destruction of any records that former students have not consented to be transferred to the NCTR: September 19, 2027. The Order established Crawford Class Action Services (now “Epiq”) to be the Records Agent for IAP retained records upon the conclusion of the mandate of the Secretariat.

The Notice Program has been formally launched. Below are links to the website launched in early January 2019:

[www.myrecordsmychoice.ca](http://www.myrecordsmychoice.ca)

[www.mesdocumentsmonchoix.ca](http://www.mesdocumentsmonchoix.ca)

The website contains video productions explaining former students’ options in Inuktitut, French and English.<sup>5</sup> Radio and television ads, posters, pamphlets and postcards utilized in the notice program have also been provided in English, French and Inuktitut (posters and printed materials). Information packages, which include posters, pamphlets and other information products, have been sent out across Canada to First Nation, Metis & Inuit communities. In addition, packages have been sent to Indigenous & Inuit Organizations, Friendship Centres, Correctional Centres, Tribal Councils, and other partners/stakeholders. Product images are available to print on the website, and printed products for information packages are available upon request. Approximately 1,400 packages have been sent out. Samples of the products are available under the “More Information” tab on the myrecordsmychoice.ca website. The website was designed to stand alone, rather than be part of the IAP website, in order to facilitate the seamless transfer of the website from the Secretariat to the Records Agent upon the sunset of the IAP.

The Court further directed that Resolution Health Support Workers (RHSWs) be trained in providing support to claimants with questions regarding their options. The Secretariat led a series of training sessions that began in September 2018 and were concluded in early 2019, as summarized in my 2018 Annual Report. Ongoing distribution of information products continued over 2019.

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<sup>4</sup> *Fontaine v. Canada (Attorney General)*, 2018 ONSC 4149

<https://www.canlii.org/en/on/on/onsc/doc/2018/2018onsc4179/2018onsc4179.pdf>

<sup>5</sup> Subtitles and transcripts are also available for these videos in three additional First Nations languages.

In addition to the work required to develop and implement the Notice Program, Secretariat staff have been busy fulfilling the Secretariat obligations under the Records disposition side of the order, including the digitizing and preparing for transfer of four categories of records to be retained (Applications, Hearing Transcripts, Audio recordings of hearings and adjudicator decisions) to the Records Agent upon the conclusion of our mandate, and the destruction of other claim records.

I am proud of the extensive amount of work that went into the development of the Notice Products and Notice Program as well as the considerable amount of work undertaken by Secretariat staff on records disposition.

### ***Non-Claim Records***

While the Supreme Court of Canada decisions and subsequent Direction of the Eastern Administrative Judge definitively dealt with IAP Claim records, they did not deal with the matter of disposition of non-claim records, including policy and oversight decisions, statistical/database data, and many other forms of other documents. Near the end of 2018, the Secretariat retained the services of a respected archivist to advise on documents that should be donated to the NCTR or otherwise handled. At the request of the Supervising Courts, I brought an RFD seeking the court's direction as to the disposition of non-claim records. The RFD was heard by the Eastern Administrative Judge on December 19, 2019. Decision was reserved.<sup>6</sup>

### ***Blott DNQ Files***

On June 29, 2018, Justice Brown, the Western Administrative Judge, approved an order allowing a truncated process for processing Blott DNQ claims that met the Submission Deadline of September 14, 2018 set by Justice Brown and the admissions criteria set out in the IAP and that had not been ruled on previously by Justice Brown. Of the 147 DNQ files and 12 files that were omitted from previous orders, the Admissions Unit of the Secretariat received a total of 56 applications. Of these, 44 were admitted by September 30, 2018 and two others were added following non-admit appeals to the Chief Adjudicator. The remaining files are deemed barred from the IAP.

Apart from eight of these files, with the support of Canada's Representatives and appointed Claimant Counsel, all of the admitted claims went to hearing by December 2018; a remarkable accomplishment. Eighteen of these claims were concluded by December 31, 2018, resulting in 15 awards and two Negotiated Settlements. I wish to acknowledge the extraordinary efforts of our senior staff, staff in the Admissions, Scheduling and Hearings Management Units, and our adjudicators, for their dedicated

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<sup>6</sup> This decision was released outside of this reporting period, in January 2020.

efforts, despite greatly diminished staff numbers, that resulted in these claims being admitted and scheduled for hearing in record time.

As of December 31, 2019, of the 46 admitted Blott DNQ claims, four were withdrawn, one did not proceed to hearing, four were estate files resolved at Estate Pre-Hearing Teleconferences, two proceeded to successful negotiated settlements and 29 were resolved by an adjudicator's decision following a hearing, 25 of which resulted in awards. Only 6 Blott BNQ files remained to be decided.

### ***Article 12 Application – Kivalliq Hall***

At the time of my last annual report, there was no clarity on the status of the single remaining facility that was the subject of an Article 12 applications/appeal, to be added as a listed school: Kivalliq Hall, Rankin Inlet, Nunavut.

The decision of the Nunavut Court of Appeal, which upheld the Article 12 decision of the Nunavut Supervising Judge adding Kivalliq Hall as a listed school, was released on July 20, 2018. The Implementation Order, issued upon the consent of the parties to those proceedings, was issued on April 25, 2019. This Order established January 25, 2020 as the application deadline, a 9-month application period versus the 6-month period approved in 3 other Article 12 schools previously added to the Settlement Agreement by the Courts. Assuming the number of Kivalliq Hall claims remains low by the time of the application deadline, with co-operation and flexibility on the part of all parties, barring unforeseen circumstances, there is reason for optimism that these may all be concluded by the proposed adjudication deadline of December 1, 2020.

### ***Cases with no Estate Administrators Appointed***

A challenge for the resolution of claims for deceased claimants has been situations in which the Government of Canada held jurisdiction over the estates of some such claimants, requiring the appointment of estate administrators. As of December 31, 2017, there were 132 cases in which Canada had jurisdiction, in which estate administrators had not yet been appointed. After years of challenges for Canada in resolving such matters, including appointment of third party legal counsel where appropriate, as of December 31, 2018, only 37 such claims remained. By December 31, 2019, there were no claims remaining in this category.

However, as of December 31, 2018 there were 21 claims in which awards had been made or likely would be made to estates, but no estate administrators had been appointed, where Canada did not have jurisdiction. A deadline of January 17, 2019 was established for such estates to appoint administrators, but many estates did not meet the deadline. Extensions were sought and granted in 16 cases, providing that the estate

supplied confirmation of applications for letters of administration/probate within prescribed time-frames.

As of December 31, 2019, there were three cases with unclaimed awards awaiting the appointment of estate representatives to claim the award, and one additional claim requiring the resolution of other legal matters pertaining to the estate before the decision may be released.

### **Administrative Split Cases**

This issue was discussed in detail in my 2017 annual report. As of December 31, 2017, Canada advised that it had resolved 107 such claims, with settlements totaling approximately \$8.23 million in compensation. Also as of December 31, 2017, 123 affected claimants had received an offer from Canada to resolve their claims. Canada advised that by December 31, 2018, it had resolved a cumulative total of 165 such claims. Canada advises that as of December 31, 2019, it has identified 200 claims, of which 171 have accepted offers resulting in cumulative compensation paid of \$12.2 million. There are 29 cases still ongoing.

### **Student on Student Claims Dismissed Due to Absence of Admissions of Staff Knowledge**

On March 12, 2018, Canada announced that it would review student-on-student claims dismissed for lack of proof of staff knowledge, where post-decision admissions by Canada of staff knowledge might have assisted the claimant had they been available at the time of the decision. Canada announced that where it determined that cases were appropriate for settlement on this basis, such claims would be settled outside of the IAP, in a manner similar to what Canada adopted in the “Administrative Split” cases. By December 31, 2018, based on data shared by Canada, 19 cases had been settled for a total of \$904K. By December 2019, based on information provided by Canada, 147 cases had been screened in, resulting in \$6,725,562 of compensation paid.

### **Student-on-Student Cases on Hold**

In 2019, we saw the conclusion of the highly successful Student on Student Project. This project was introduced in 2013, with over 3,000 claims, with the full support of the IAP Oversight Committee, Canada, my office, Deputy Chief Adjudicators and Secretariat staff.

By the end of 2017, 260 claims remained in the SOS project, 63 of these on hold pending potential future admissions of staff knowledge by Canada. By December 31,

2018, 74 cases remained in the SOS project, only 11 of which were on hold pending potential admissions. As of the end of 2019, no further SOS cases remained on hold.

### **Closure of Vancouver Hearing Centre**

On August 7, 2019, I had the pleasure of hosting a ceremony to mark the closure of the Vancouver Hearing Room used exclusively for IAP hearings. This was yet another important milestone in the conclusion of the IAP. Designed to be a safe and culturally appropriate place for claimants to share their IRS experiences, approximately 500 hearings were held at the Vancouver Hearing Room since it opened in 2009.

The closing ceremony was attended by Elders, Resolution Health Support Workers, former adjudicators from Vancouver, staff members, stakeholders, OC members, the Chair of the NAC, Court Counsel and the Deputy Minister of CIRNAC.

### **Requests for Direction (RFDs) Seeking Judicial Recourse**

#### *J.W. v Canada (Attorney General)*

During 2019, the Supreme Court of Canada released its multi-opinion, split decision in the case of *J.W. v. Canada (Attorney General)*.<sup>7</sup> The case dealt with the appropriate standard of judicial recourse in a case involving what is required to prove compensable sexual touching, Sexual Assault Level 4.1. In the end, a compensation award to the claimant in this case was restored.

#### *Other Judicial Recourse RFDs and Appeals*

As of December 31, 2018, there were six judicial recourse RFDs pending or awaiting decisions from Supervising Courts, three appeals<sup>8</sup> awaiting decisions from provincial Courts of Appeal and one awaiting decision from the Supreme Court of Canada. By December 31, 2019, there remained three pending appeals of judicial recourse cases and one RFD pending before the Supervising Courts.

During 2019, one judicial case was referred by the British Columbia Court of Appeal to the Chief Adjudicator for reconsideration.<sup>9</sup>

As of December 31, 2019, I am not participating in any judicial recourse cases before either Supervising or Appellate courts. I am not in a position to predict any possible risks to the completion of the IAP that these cases may ultimately present. The most obvious

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<sup>7</sup> <https://www.canlii.org/en/ca/scc/doc/2019/2019scc20/2019scc20.pdf>

<sup>8</sup> Includes cases with a motion for extension of time before the Chief Adjudicator

<sup>9</sup> *Brown et al v. Canada (Attorney General)*, 2019 BCCA 245

<https://www.canlii.org/en/bc/bcca/doc/2019/2019bcc245/2019bcc245.pdf>

risk relates to any cases that may be referred back to the Chief Adjudicator, for reconsideration, depending on whether there is sufficient time left in the Chief Adjudicator's mandate to conclude those cases.

### **Other RFDs**

#### *Scout*<sup>10</sup>

During 2019, the decision of the British Columbia Court of Appeal on the *Scout* appeal was released on May 22, 2019. The court held that the IAP application deadline of September 19, 2012 was correct, versus September 20, 2012, as asserted by the appellants. The Appellant applied for leave to appeal this decision to the Supreme Court of Canada.<sup>11</sup>

#### *Independent Counsel v. Fontaine*<sup>12</sup>

In the context mainly of re-review decisions remitting SOS cases with post-decision admissions of staff knowledge back to adjudicators for further consideration, the British Columbia Court of Appeal dismissed appeals brought by Independent Counsel and the AFN from the decision of the Western Administrative Judge. The BC Court of Appeal concluded that the authority to re-open a concluded claim "rests with the court, to be exercised only in rare and exceptional cases". Review and re-review adjudicators have no jurisdiction to re-open a decided IAP claim in the face of new evidence or in the hope of its emergence in the future.

Procedural fairness: It is not a denial of procedural fairness to decide an IAP claim in the absence of new evidence that arises only after the hearing of the claim and the initial decision on it. (The court explicitly did not deal with a case where there has been non-disclosure of relevant evidence before or during the initial hearing in breach of a duty to disclose that evidence). The whole bundle of rights normally associated with "procedural fairness" may not find application in the IAP Model as a matter of contractual interpretation. What does find application is what Justice Brown called "IAP Model Fairness", shorthand for the principles of traditional procedural fairness that may be found to apply.

IAP Model Fairness: Some issues protected in conventional settings by procedural fairness are protected in the IAP by IAP Model Fairness, such as an IAP Adjudicator must be unbiased.

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<sup>10</sup> *Fontaine v. Canada (Attorney General)*, 2019 BCCA 178

<https://www.canlii.org/en/bc/bcca/doc/2019/2019bccca178/2019bccca178.pdf>

<sup>11</sup> Although released subsequent to this reporting period, in February 2020, the Supreme Court of Canada dismissed this application for leave to appeal.

<sup>12</sup> 2019 BCCA 269, <https://www.canlii.org/en/bc/bcca/doc/2019/2019bccca269/2019bccca269.pdf>

### **Secretariat Capacity**

By the end of 2019, the Secretariat had reduced in size to approximately 64 staff, down by half from approximately 123 employees at the beginning of the year. By comparison, at its peak, the Secretariat employed approximately 275 individuals. The Secretariat continues to support staff in planning for their future careers and empowering them in finding new opportunities when their positions wind down.

The Secretariat's staff have continued to provide dedicated and high-quality service over the past year and throughout the IAP, adapting to changes in the operational environment and managing a controlled wind-down under challenging circumstances. I value their contribution and continued dedication to this claimant-centred process.

### **Adjudicator Capacity**

As the IAP proceeds towards its conclusion and the number of hearings and unresolved cases remaining declines, adjudicators and Deputy Chief Adjudicators are working hard to resolve their ongoing caseloads. Most adjudicators have begun the transition to new work opportunities.

Over the past year, 21 more adjudicators have completed their work in the IAP, and additional adjudicators are in the process of winding down their IAP responsibilities. Many of these colleagues have taken on new tribunal or other work, and it is gratifying to see so many IAP adjudicators taking on exciting new responsibilities. I wish to acknowledge the many contributions of departing colleagues to the success of the IAP and to wish them all the best in their new endeavors.

As of December 31, 2019, the IAP's adjudicative capacity stood at the Chief Adjudicator, four Deputy Chief Adjudicators (DCAs) and 25 adjudicators, including some who have advised of their intention to depart, and are concluding their existing dockets; this is down from approximately 100 adjudicators and nine DCAs when the IAP was at its peak and 52 adjudicators as of December 31, 2017 and 44 adjudicators as of December 31, 2018. There should remain sufficient adjudicative capacity to address foreseeable eventualities.

### **Deputy Chief Adjudicators (DCAs)**

The resourceful and dedicated work and support of the DCAs has been indispensable to the success of the IAP. I wish to acknowledge their exceptional contributions.

## **IAP Final Report**

The Oversight Committee has reviewed the first draft of the IAP Final Report and requested edits and additional content to be added. Dr. Akivah Starkman, past Executive Director and Special Advisor of the Secretariat, has been working with Committee members to complete those revisions. A final draft of the report is anticipated to be completed in the summer of 2020.

## **Completion of the IAP**

In August 2017 I provided an Updated Completion Strategy to that provided in 2013, examining the various risks to completion and their potential impacts in greater detail than discussed here. This update followed significant consultation with the stakeholders and governance bodies involved, including the Oversight Committee and the National Administration Committee, prior to its submission to the Courts.

A further update was provided in July 2018. This most recent update to the IAP Completion Strategy called for the conclusion of first hearings by December 1, 2018, which was met, apart from some of the Blott DNQ and Kivalliq Hall hearings. It also called for the conclusion of all adjudication work by December 1, 2020 and the administrative wind-up of the Secretariat by March 31, 2021.

Following consultation with the IAP Oversight Committee, a Request for Direction will be made in 2020 to the Supervising Courts, with a proposal for the hand-off of records administration to a contracted records management firm following the sunset of the Secretariat on a date or dates to be determined by the Court. The Court is expected to rule on the date(s) of the conclusion of the mandate of the Secretariat and the Chief Adjudicator, among other issues, following the hearing of this RFD.

We are fortunate to have benefited from the leadership of the IAP Oversight Committee, including Mayo Moran, who has chaired the Oversight Committee since 2008 .

## **Leadership within the Secretariat**

I and our adjudicative team and Secretariat staff have benefited greatly from the continued excellent leadership of Roger Tetreault in his capacity as Executive Director of the Secretariat. I look forward to continuing to work with Mr. Tetreault and have every confidence in his ability to capably lead the Secretariat to the finish line.

## **Acknowledgement of Secretariat staff and adjudicator contributions**

I would be remiss if I did not acknowledge the exceptional dedication and commitment of Secretariat staff, who, despite the uncertainties of their own work situations, remain determined to ensure that the work of the Secretariat is concluded in a good way.

Our adjudication team, while greatly reduced in numbers, remains committed to concluding the IAP in a good way, with the objective of ensuring that the process remains claimant friendly throughout the wind-down process.

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I am grateful for the contributions of so many people to the success of the IAP.

At the time of drafting my message, I along with all the Secretariat staff and adjudicators are self-isolating as an important measure to slow the spread of the coronavirus. Roger Tetreault and I are aware of the challenges that this crisis has created for everyone involved in the IAP. We are carefully monitoring the health and well-being of staff and adjudicators who continue to work from their homes, and of claimants and all IAP participants. At this point the impact of the pandemic on our normal processes and wind down efforts is unknown. The remaining caseload continues to slowly decrease; however, mitigation strategies may need to be proposed should it become evident that some claims will not meet the completion timelines.

All of which is respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dan Shapiro', written in a cursive style.

Daniel Shapiro, Q.C.  
Chief Adjudicator

## Key Numbers

### ***Applications Resolved and Processed***

Since the implementation of the IAP to December 31, 2019, 38,263 applications have been received by the Secretariat, of which 33,856 have been admitted. The application deadline was September 19, 2012. In 2018 the Nunavut Court of Appeal permitted the addition of Kivalliq Hall to the Settlement Agreement, and the application period opened in April 2019. Two applications were admitted in 2019 from that cohort; former attendees of that school were given until January 25, 2020 to apply.

As illustrated in Table 1 and Figure 1, 127 applications were resolved in 2019, through an adjudicator's decision, a negotiated settlement, a claimant's withdrawal or ineligibility. In total, 38,250 claims had been resolved by December 31, 2019, approximately 99.97% of all applications received.

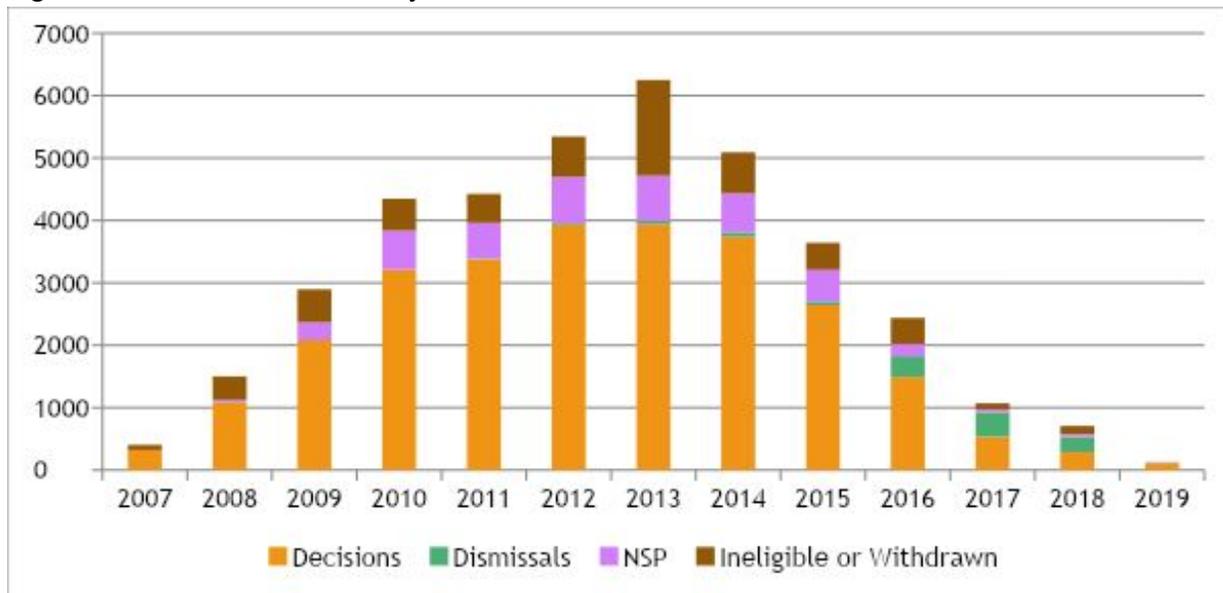
Table 1: Applications Received and Resolved by Calendar Year (see also Fig. 1)<sup>13</sup>

Calendar Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total
<b>Applications received</b>	3,849	5,418	4,750	5,148	5,494	12,787	372	132	48	98	2	159	6	<b>38,263</b>
<b>Applications resolved</b>	404	1,502	2,897	4,348	4,426	5,345	6,251	5,092	3,642	2,439	1,070	707	127	<b>38,250</b>
Adjudicator decisions	322	1081	2086	3210	3377	3935	3938	3736	2645	1494	534	285	112	26755
Dismissals <sup>14</sup>	0	0	0	1	12	20	53	75	54	329	392	243	4	1183
Negotiated settlements	0	39	280	625	572	742	727	622	510	196	48	47	6	4414
Ineligible/withdrawn	82	382	531	512	465	648	1533	659	433	420	96	132	5	5898

<sup>13</sup> Note re: past year data: Past years' numbers reflect minor updates from previous reports. The Secretariat has devoted significant efforts to in-depth file review, correction of data entry errors and improvements to data integrity and reporting methods. Also, events within a file's life-cycle may impact how and in what year its resolution is counted (e.g. previously non-admitted claims where further information results in admission; review decisions or appeals may impact the date at which a claim is considered resolved). Finally, NSP information is reported directly by CIRNAC and in the past has not always aligned with the Secretariat's own numbers due to differences in methodology and available information; in 2018 the Secretariat and CIRNAC were able to successfully exchange, compare, and update data to address this issue.

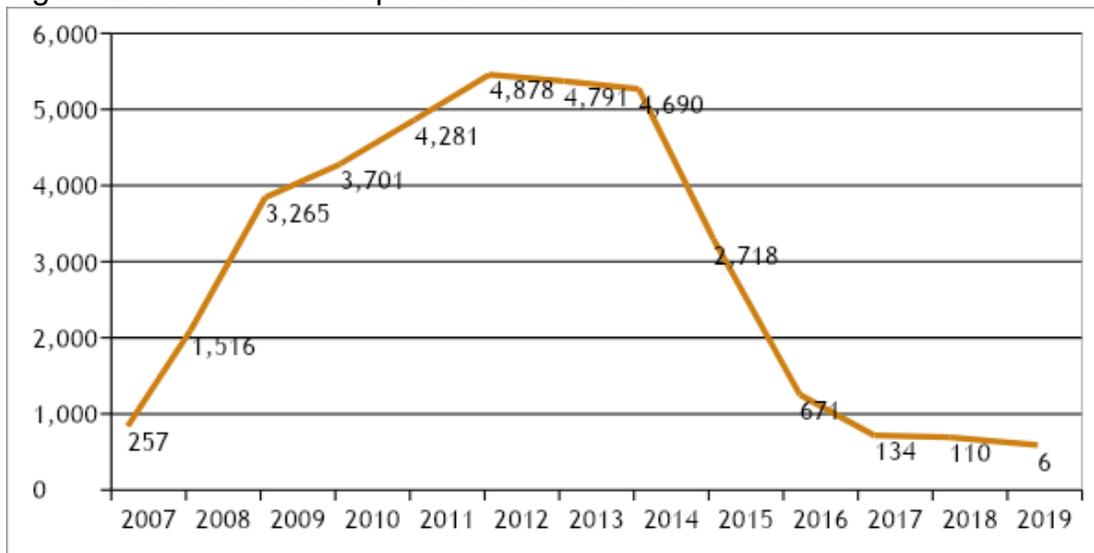
<sup>14</sup> This includes various types of dismissals including those proceeding from Jurisdictional Decisions, Failure to Appear, Estate Decisions and Resolution Directions provided under the Incomplete File Resolution process.

Figure 1: Claim resolutions by Calendar Year<sup>15</sup>



A total of six IAP claims were processed<sup>16</sup> in 2019 (see Figure 2, below), for a total of 31,018 since the beginning of the IAP. It should be noted the definition of 'processed' does not include claims withdrawn, ineligible, or dismissed without a hearing.

Figure 2: Files Processed per Calendar Year



<sup>15</sup> Due to compression, data points are not labelled in this chart; this figure is a visual representation of the data in Table 1.

<sup>16</sup> A claim is considered processed if a hearing or paper review has been held or the parties have entered into a Negotiated Settlement. Note: as mentioned above, corrections have been made to previous years' numbers of Negotiated Settlements (and thus to processed claims) due to a reconciliation of data between the Secretariat and CIRNAC.

## ***Negotiated Settlement Process (NSP)***

The Negotiated Settlement Process is handled primarily by Canada rather than the Secretariat. This process allows the parties to negotiate resolutions to claims directly rather than receiving an adjudicator's decision. In most cases, this eliminates the need for a formal hearing, though in some cases negotiations may begin after a hearing has already occurred. The Secretariat is responsible for assembling and distributing packages of evidentiary documents received to date when parties indicate they will enter into negotiation, and adjudicators are responsible for conducting legal fee reviews.

<sup>17</sup> Although, as with all forms of claim resolution, numbers of negotiated settlements have declined in recent years (See Figure 3, below), this remains an important path to file resolution and will continue to be of critical importance in the last stage of the IAP to support the resolution of the final claims before the close of the process. Since the beginning of the IAP, Negotiated Settlements have accounted for approximately 12% of all IAP file resolutions.

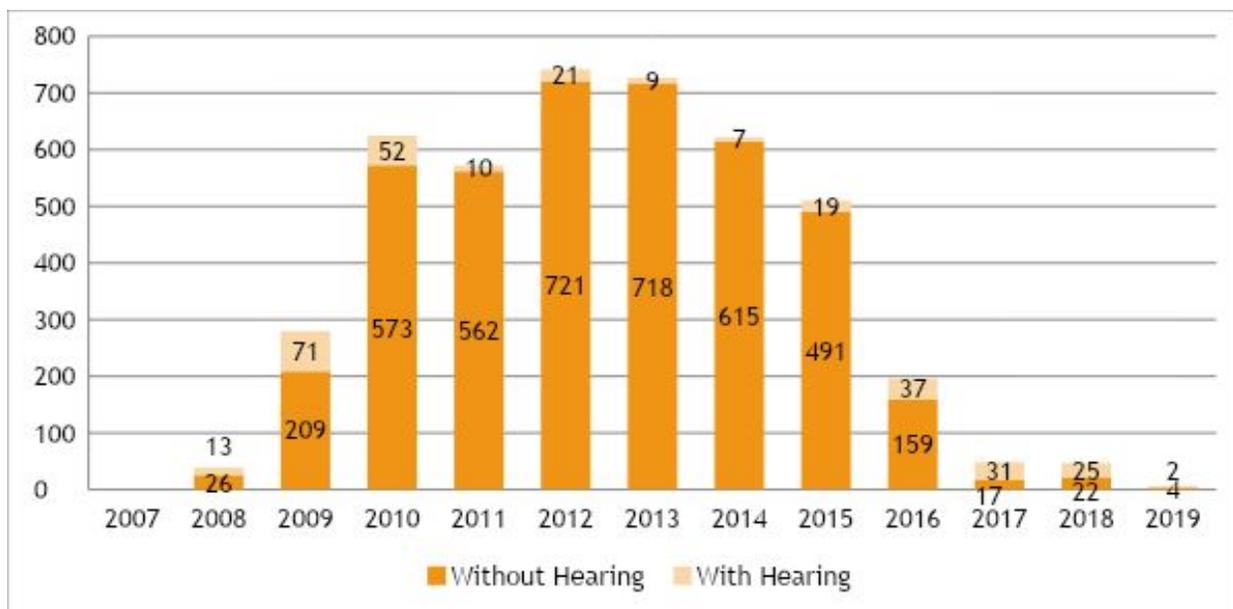
It should also be noted that, in recent years, Canada's representatives have expressed willingness to negotiate external settlements with individual claimants impacted by particular legal or procedural questions not fully addressed in the settlement agreement (such as the Administrative Splits issue, and in certain cases involving abuse by fellow students where relevant information has come to light after the release of a decision). Such negotiations are considered external to the IAP, are not reviewed by adjudicators, and are not counted in these statistics.

Statistical data regarding Negotiated Settlements is provided by Canada.

Figure 3: Negotiated Settlements by Calendar Year

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<sup>17</sup> Adjudicators are required to approve legal fees in all IAP Negotiated Settlements. The parties may also request an adjudicator's review of their Negotiated Settlement.

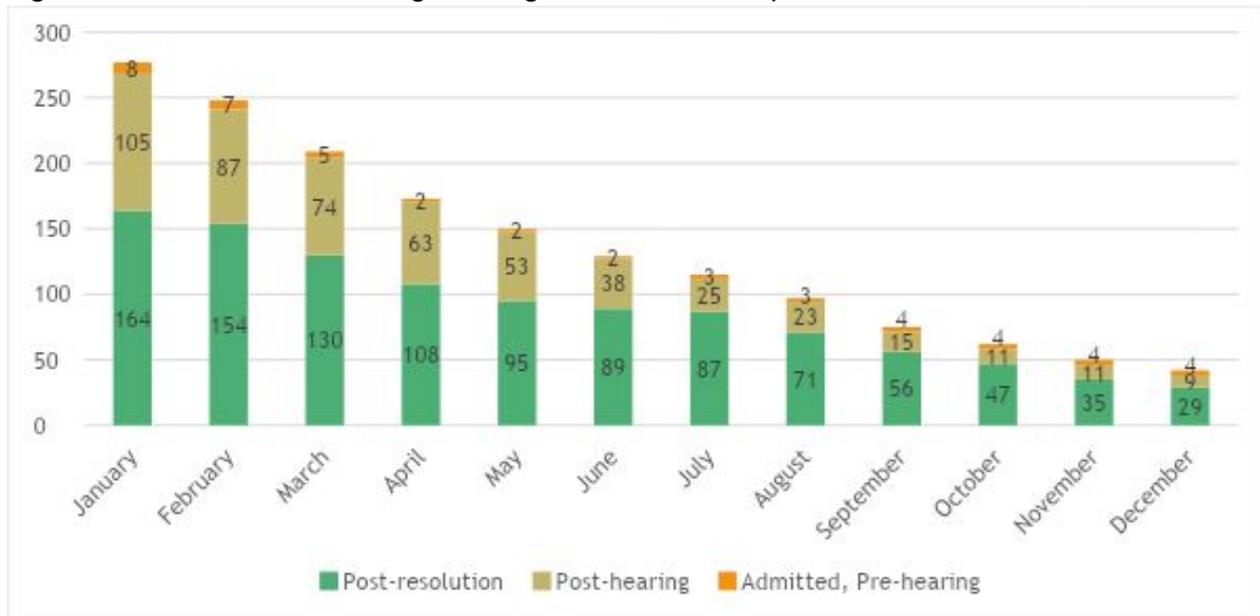


### ***The Changing Caseload***

During the past year, although actual numbers of remaining unresolved claims are predictably lower than at any point since the very beginning of the process, the specific issues and individual complexities attending these remaining claims have required the parties, adjudicators, the Secretariat and all stakeholders to demonstrate adaptability and to work together to ensure all of these final claims receive fair and timely resolution while upholding the principle of a claimant-centred process.

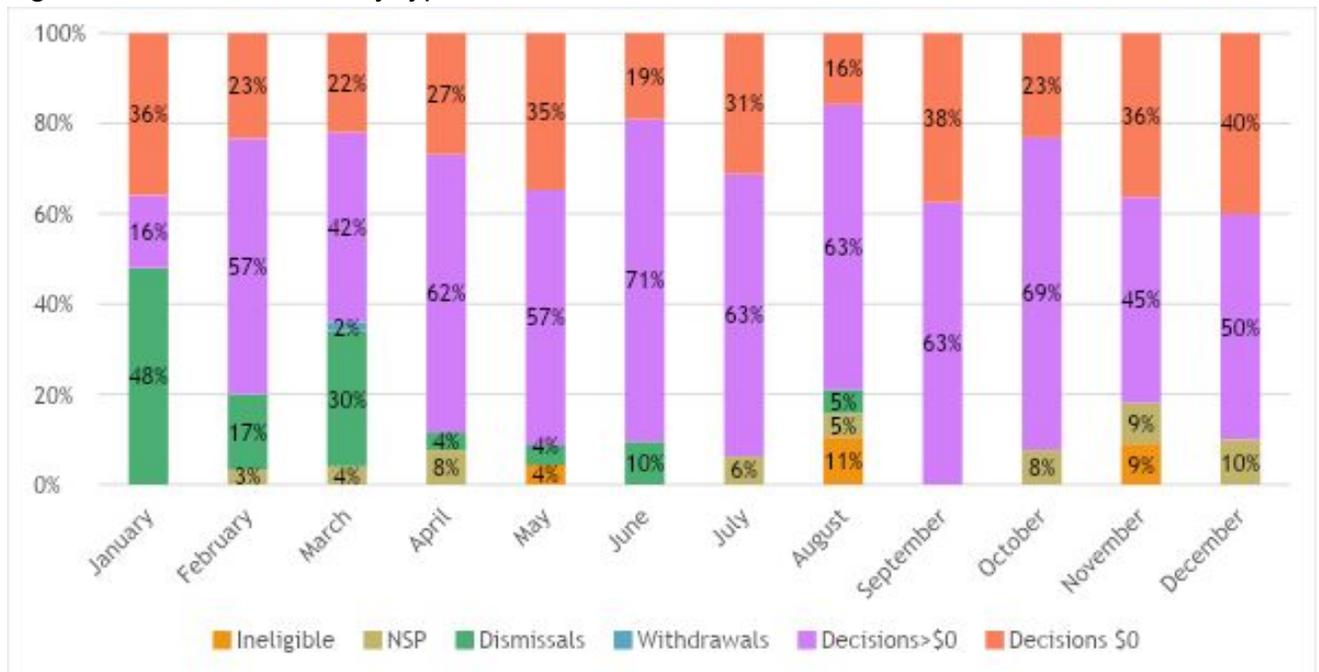
Continuing the trend identified in 2018's report, most of the remaining caseload now consists of claims which have been processed (see above) and are undergoing post-hearing work and the numbers are low enough to allow for intensive case management of individual files. Although not previously discussed in detail in previous years' reports, it is becoming relevant also to include post-decision claims, undergoing the review, re-review, or fee-review processes or addressing other specific issues after the decision; although these are no longer considered "in progress", they do represent an unfinished workload which must be completed. It should be noted that, in most cases, claims counted as "pre-hearing" now consist of admitted claims expected to resolve without a hearing.

Figure 4: Pre- vs Post-hearing In-Progress claims and post-resolution claims, 2019



When examining the various types of resolutions over the course of the year, we can see the changing nature of the remaining caseload and major events of the year. In the beginning of the year, claim resolution through ineligibility (not admitted or not accepted due to arrival after the deadline) was virtually a non-contributor, but toward the end of the year, with the opening of applications to Kivalliq Hall claimants, we see a few such claims beginning to arrive. Dismissals, now almost exclusively related to estate claims (as other types have been resolved), are high in the early part of the year with the passage of the January deadline for submission of estate documents, and gradually decline as that caseload is now close to complete. Regular and short-form decisions are highest in February and March with the resolution of former Blott & Company claims submitted the previous fall, and gradually decline throughout the year. Negotiated Settlements now compose a small minority, as cases most suitable to negotiated settlement have been addressed and remaining claims are less suited to that process.

Figure 5: File Resolution by type - 2019



Over the course of calendar year 2019, the majority of ‘general caseload’ claims have now been resolved, and the remaining caseload has been comprised primarily of particular late-arriving categories of claims, such as those from Kivalliq Hall or from the “Blott DNQ” caseload (see below); and those facing specific challenges or requiring additional steps in order to resolve, including claims involving student-on-student abuse, claims for individuals who have passed away prior to receiving a decision, complex track claims, and those awaiting relevant court decisions or having case-specific individual matters to address.

### ***Kivalliq Hall***

In July, 2018, the Nunavut Court of Appeal upheld the Nunavut Court of Justice’s decision admitting Kivalliq Hall to the list of approved Residential Schools under the Settlement Agreement. There followed a period of negotiation to determine the parameters of the associated consent order giving effect to this decision, which was approved by the Western Administrative Judge on April 25, 2019.

The terms of the Consent order provided class members who had attended Kivalliq Hall until January 25, 2020 to submit their applications. Due to the nature of this school, which was located in Nunavut and – in addition to its service as a Residential School – had also served as a hostel for other travelers, estimates of the potential number of claims we might receive into the process from this school varied significantly and initially as many as 100 claims were seen as a real possibility; if these initial estimates had been realized, it is likely that this would have posed a high risk to the timely closure of

the process. However, over the course of the year, projections were revised steadily downward, and as of December 31, only four claims had yet been received, of which only two met the criteria for admission.<sup>18</sup>

### ***Cases involving abuse by other students***

In the IAP, claims involving allegations of abuse by fellow students can depend on the existence of admissions by Canada that staff at the school had known, or ought reasonably to have known, of abuse of that type occurring at the school at the time, or that they failed to provide adequate supervision, and such admissions may come to light through the process of resolving other claims. Since 2013, such cases have been addressed through a major project intended to provide such claimants the best possible opportunity to benefit from admissions by Canada arising from the resolution of other claims that occurred after their hearings.

In July 2019, we marked the milestone achievement of the completion of this Student on Student project, which tracked 3,051 individual claims over the course of 6 years. As a joint effort with Canada, this project was a significant success in identifying gaps in currently available admissions of staff knowledge of abuse, and making linkages to prioritize claims which could potentially yield new admissions which might benefit other claims. By the end of the project, the amassed project table included over 4,800 specific admissions that staff had, or should reasonably have had, knowledge of abuse, or failed to provide reasonable supervision, at various schools and timeframes.

### ***Former clients of Blott & Co. “DNQ” claims***

Between July and September 2018, a total of 159 claims for former clients of Blott and Company were added to the process by the order of the British Columbia Superior Court. Claimants affected by this order were invited to submit their applications by October 1; as described in the previous year’s report, 56 of these were actually submitted, of which 46 were admitted to the process; the rest were considered non-admitted.

These applications were processed swiftly, and by the end of March 2019, all claims which would require a hearing had been scheduled and 26 of the 46 claims which had been admitted had been resolved. As of the end of the year, only six of these claims remained unresolved, pending the conclusion of file-specific issues, and most were near completion.

### ***Deceased claimants***

As discussed in past reports, a particular challenge in the IAP has been the resolution of claims in situations where a claimant passes away before they have received a decision on their claim, or even before their claim could be heard. This adds legal complexities to the process, and can be especially difficult for the survivors of the deceased. The Secretariat works closely with the estates of such claimants to ensure each claim is treated respectfully and resolved. In 2018, the vast majority of remaining estate claims were completed for the general caseload, and the Chief Adjudicator designated January 17, 2020 as the deadline

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<sup>18</sup> Although the scope of this report is to the end of December, 2019, it is worth reporting here that, as of the time of writing, the deadline for applications has now passed, with a total of 15 applications received, of which 7 were admitted.

for estate documents to be produced in order to allow the remaining claims to move forward. As a result, this caseload has now been substantially completed. Fewer than a handful of claims remain where awards have been approved by adjudicators but no estate representative has been appointed to claim the award.

### ***Cases impacted by Court decisions***

At the beginning of the year, a small number of decided claims were on hold at the review stage, pending the resolution of a court challenge which might have influenced their outcome. In early 2019, the Supreme Court of Canada released its decision in *J.W. v. Canada*, concerning judicial recourse and the application of the criteria for “SL 1.4” forms of abuse in the IAP, and claims on hold pending this decision were released.

## “My Records, My Choice”: Disposition of IAP Records

Throughout 2019, the Secretariat, supported by Regional Health Support Workers and partnerships with community organizations, has been working to inform current and former IAP and ADR Claimants regarding their right to choose what happens to their records created over the course of their claim.

On August 6, 2014 Justice Perell of the Ontario Superior Court ordered that four classes of IAP records, referred to as ‘IAP Retained Documents’, should be retained for a 15 year retention period, during which time claimants may choose to obtain copies of their own documents (as has always been their right), transfer documents to the National Centre for Truth and Reconciliation (NCTR) for historical purposes, or allow the records to be destroyed following the retention period. Following appeals to the Ontario Superior Court of Justice and the Supreme Court of Canada, the decision was upheld.

In January 2018, following extensive consultations with stakeholder organizations, the Chief Adjudicator submitted two Requests for Direction to the Ontario Superior Court, resulting in a July 2018 decision from Justice Perell establishing a Notice Program to inform claimants as to their rights with respect to their documents, designating Crawford Class Action Services (now known as Epiq) as Records Agent to hold the retained document collection until the end of the 15 year retention period, and outlining responsibilities and associated costs for the various entities involved. Justice Perell’s direction also established September 19, 2027, as the uniform date on which records will be destroyed if claimants have not sooner chosen to preserve them.

Following a six-month preparation and planning period, the Notice Program, titled “My Records, My Choice” was launched in January 2019. The Program seeks to reach claimants through a multi-pronged approach, including:

- an explanatory video, filmed separately in English, French and Inuktitut, with subtitles and translation available in three additional indigenous languages;
- pamphlets, posters, and other printed materials in English, French and Inuktitut and distributed to approximately 1,400 organizations, including RHSW

organizations, First Nations and Tribal Councils, Friendship Centres, Correctional Facilities, and other indigenous community organizations;

- Television advertisements, notices to national newspapers and indigenous publications, and radio spots distributed to various local media outlets,
- Dedicated training sessions provided to partners and to Residential Schools Health Support Workers, to ensure that claimants with questions had multiple avenues of access to reliable information;
- Individual outreach calls to media outlets, band offices, Friendship Centres, and other organizations to follow up on information packages and to build partnerships in getting the message out;
- Information lines maintained by the AFN, NCTR, Makivik, Inuvialuit, and Epiq;
- social media accounts on Facebook, Twitter, YouTube, and Instagram; and
- the Notice Program's comprehensive official websites in English and French: [My Records, My Choice](#) and [Mes documents, mon choix](#).

The Notice Program to inform Claimants of their right to control the disposition of their claim records has been given the title, "My Records, My Choice", emphasizing the Supreme Court's direction that the choice whether or not to make their stories available to researchers or to the public belongs to the claimant, and the claimant alone. Apart from information lines noted above, the MRMC website, and the follow-up calls described above, the Notice Program is now substantially completed.

Since the launch of the Program, the Secretariat has received 137 requests for copies of claimants' documents; however, 38 of these were for claimants who did not have IAP or ADR claims on file. Additionally, we have received 27 consent forms for document sharing with the NCTR, though nine of these were from non-claimants.

The process of records disposition is a complex and work-intensive undertaking, and demands due care and attention. The Supreme Court's decision included claimants in both the IAP and the former Alternative Dispute Resolution process, meaning that all paper and electronic records for approximately 42,000 individual claims must be gathered and sorted from multiple repositories, including records held by the Government of Canada and those held by the Secretariat. The four designated Retained documents<sup>19</sup> must then be sorted out, and, once relevant disposition authority has been obtained, any remaining documents securely destroyed. These retained documents are being centralized into a single digital archive, with physical records digitized as required. This archive will be transferred to the court-appointed IAP Records Agent at the end of the Secretariat's mandate to be retained until their final destruction in September 2027.

By the end of December, records disposition work had been completed for 64% of physical records, and 81% of electronic records.

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<sup>19</sup> Under the Court's direction, the four categories of retained documents include the initial application, audio recordings and written transcripts of hearings, and the claim's decision.

In addition to claimants' records, following a comprehensive archival assessment and consultation with the Oversight Committee, the Chief Adjudicator and the Secretariat are seeking direction from the courts regarding the disposition of other types of non-claim records, not covered by the current Court direction or by Government of Canada policies, at the end of the IAP. These include reports, records of decisions made, and other substantive documents created over the life of the Secretariat. A Request for Direction concerning the disposition of these records was submitted to the Courts and was heard on December 12. As of the time of writing, a decision has been received; the associated court order is still pending, as is a further Request for Direction from Canada on the issue of disposition of non-claim records.

## Focus on the Claimant: Engaging, Supporting and Reaching Out

### ***The importance of the IRS Resolution Health Support Program in the IAP***

A crucial component of the IAP is the support provided by the Indian Residential Schools Resolution Health Support Program, which is administered by Indigenous Services Canada (formerly Health Canada). This program provides mental health and emotional support services to eligible former residential school students and their families throughout all phases of the Settlement Agreement. The support program is delivered through contracts and agreements with local Indigenous organizations except in British Columbia, where the services are provided by the First Nations Health Authority.

In addition to the invaluable personal support they provide to claimants and their families throughout the claim resolution process, these individuals play a crucial role in the success of the Records Disposition Notice Program (see above) to ensure that claimants are aware of their right to choose the final disposition of their records. RHSWs and their parent organizations will also be important partners in supporting individuals entering the IAP with the implementation of the Kivalliq Hall decision (see above).

### ***Supporting Unrepresented and Self-represented Claimants***

Although all parties to the agreement recognize the value of legal counsel to the process, all claimants have the right to choose to represent their own claim rather than to retaining a lawyer. There are also claimants who have become unrepresented when their lawyer has withdrawn from their claim. Unrepresented and self-represented claimants face additional challenges in resolving their claims in the IAP, and as a result the Secretariat devotes specific resources to assist such claimants with non-legal assistance in navigating the process.

In recent years, we have worked hard to ensure that self-represented and unrepresented claims have support to obtain legal representation (if wanted) and have taken additional steps to ensure that their claims are resolved in a fair and timely manner. These measures have been successful, and by the end of December 2019 we no longer had any claims in the process currently lacking representation.

The Secretariat continues to maintain capacity to ensure that appropriate supports will be available to claimants if required again before the end of the process.

### ***Group IAP***

Group IAP is a contribution program designed to facilitate healing and reconciliation activities for groups of IAP claimants.

Following the completion of the final general Call for Proposals in autumn 2018, 11 groups were selected to receive funding for the 2019-20 year, totaling \$501,169. These groups are located across Canada in Ontario, Nunavut, Manitoba, Saskatchewan, Alberta, and British Columbia.

Funded activities for 2019-20 include, among others: revitalizing language, culture, values, and traditions to help heal group members; traditional feasts, drumming & pipe ceremonies; healing workshops (language and cultural healing, elders providing oral history and healing through trauma and through fine arts); a traditional medicine tour; a summer healing retreat; support group meetings; learning holistic healing practices; reclaiming Indigenous knowledge workshops; self-care; land-based training: ribbon skirt/shirt making, medicine picking, full moon ceremony, drum/rattle making; and various healing and wellness workshops. The programs are unique, and each group determines what is required for their healing process based on their own needs.

A dedicated Call for Proposals was run for claimants from Kivalliq Hall, to ensure that the timing of their entry into the agreement did not prevent their access to this aspect of the Settlement agreement. This Call for Proposals was opened on November 1, 2019 with a deadline of March 1, 2020, for funded activities to take place between April 1st, 2020 to September 30th, 2020 and reporting complete by October 31; as of December 31, 2019, no proposals had yet been received.

This will be the final year for Group IAP and there will be no further Calls for Proposals. Since its first funded year in 2009-10, the Group IAP program has allocated a total of \$5,783,069 to fund activities across the country, impacting an estimated 1,650 claimants. Excluding the potential for funding of Kivalliq Hall groups, funding for this program will conclude as of March 31, 2020.

## Winding Down: Preparing for the Completion of the IAP

### ***The Chief Adjudicator's Completion Strategy and related planning***

The Chief Adjudicator first developed and released a comprehensive [Completion Strategy](#) to the Courts in 2014; this was followed by updates in [2017](#) and [2018](#). The Completion Strategy and its updates lay out the anticipated timelines for the completion of the caseload and the sunset of the IAP.

The most recent update to the Strategy projected the resolution of all claims by December 2020, and the closure of the Secretariat at the end of March, 2021. These dates represent projections and targets, used for planning; they have not been confirmed by the Courts. Following consultation with the Oversight Committee, a Request for Direction to ascertain these and other significant dates and details pertaining to the closure of the IAP will be brought to the Courts in early 2020, after the deadline for additional applications from former attendees of Kivalliq Hall has passed and the final number of admitted claims is known.

The last Strategy update, and my annual report from 2018, discussed risks to the timeline of completing the IAP posed by a court case, known as the “Scout” appeal, which contested the interpretation of the original application closing date, arguing that it should have been calculated as September 20, rather than September 19, 2012. If successful, this challenge would likely have resulted in the addition of an unknown number of claims to the agreement. At this time last year, this case had been heard, but not yet decided by the British Columbia Court of Appeal. As of the end of 2019, that appeal had been dismissed and leave to appeal to the Supreme Court of Canada requested; in early 2020 that leave was declined. No further such claims are now expected to be added as a result.

As of the end of December 2019, with the low numbers of claims received from Kivalliq Hall to date, we project that we are on track to substantially meet the target of having completed remaining claims by December 2020 and to close in March 2021; however, it is possible that a minimal number of claims may still remain in progress when the Secretariat closes, due to factors beyond our control (for example, if a claimant requests and is granted leave to access to the courts, the time required to resolve such a case would extend beyond the time available). If that should be the case, the manner of concluding the remaining work required to bring any remaining claims to resolution would need to be determined by the Supervising Courts.

When the Secretariat closes and the IAP comes to an end, we will work to ensure that any residual remaining work, whether claim-related or purely administrative, is handled in a way that maintains a claimant-centered and respectful process and upholds responsibility to the public trust. In this upcoming final year, important questions will

need to be answered, by the Oversight Committee and the Courts, to determine when, and how, the IAP will complete its sunset.

### ***Administrative Planning for Wind-down and Completion***

In parallel and complement to the Chief Adjudicator's Completion Strategy and related planning, the Secretariat is implementing a gradual, controlled wind-down of activities in accordance with its internal Completion Action Plan.

### ***Resource Availability***

One of the chief considerations, entering the final years of the process, is to ensure that the necessary financial, human, and other resources remain available to complete the remaining work.

Necessary arrangements are in place to fund the Secretariat through to the end of March 2021, and according to current forecasts, it is expected to be sufficient to meet needs. Accommodations needs for the organizations' offices in Vancouver, Regina, and the National Capital Region are in place and expected to suffice.

The primary resource consideration until the end of the IAP will continue be in the area of human resources, including both staff and contracted individuals. The Secretariat is undergoing a gradual reduction in size as the caseload decreases. However, staff members, understandably, are looking to the future, and some are finding new positions before the planned closure of their positions. Remaining staff continue to rise to the challenge, taking on new responsibilities and adapting to ensure the work of the organization continues successfully, but it remains an area of significant risk, as recruitment to replace departed key individuals would be difficult if not impossible so late in the process, and the redistribution of work among remaining staff can impact morale, wellness, and stress, and the loss of important corporate memory and skills is considerable.

### ***Records management and the disposition of Non-Claimant records***

As described above, the Courts have provided clear direction as to the claimant's right to control the disposition of their claim-related records, and how these records are to be managed. However, questions still remain unresolved as to the ultimate disposition of the mass of other types of records generated throughout the administration of the IAP. These include records of potential historical value, such as the Chief Adjudicator's reports to the Courts, records of decisions made, correspondence, and so on. The Chief Adjudicator, in consultation with the parties and stakeholders and following a comprehensive archival assessment, has submitted a Request for Directions to the Court to obtain clarity as to the ownership and final disposition of these records.

The records held by the Secretariat are massive in quantity and complexity, and are held in multiple repositories of physical records, electronic records, databases, and emails.

In order to support the process of archival review and the eventual implementation of the Court's orders once received, the Secretariat has embarked upon an organization-wide project to review and organize these records according to a common and logical File Plan structure, and to identify and sort out transitory records (such as duplicates and drafts) from Records of Business Value (RBVs). All staff have been directed to contribute to this project, and the work accomplished to date has been impressive. However, depending on the final details of the orders, it may be an extremely challenging task to implement the court's directions, once received, in the anticipated time remaining before the Secretariat ceases to exist.

A Memorandum of Understanding is under negotiation with Crown Indigenous and Northern Affairs Canada for the transfer of records pertaining directly to corporate services and administrative functions on behalf of the Government of Canada – such as human resources files and financial records.

### ***IAP Report on the Achievement of Objectives (Final Report)***

In the spring of 2013, the Oversight Committee tasked the Secretariat with preparing a final report, which examines the extent to which the objectives of the IAP have been met.

This multi-year project has involved significant documentary and statistical research, as well as multiple consultations, interviews and focus groups with claimants, parties, committee members, and other stakeholder groups and individuals across Canada.

In 2018, the Secretariat presented the first draft of this report to the Oversight Committee, which has subsequently engaged an external consultant, former IRSAS Executive Director Akivah Starkman, to provide additional editing and revision. A final draft is now anticipated to be completed in June 2020 and ready for distribution in August.

## **In Conclusion**

We now embark upon what is expected to be the final full calendar year of the IAP. Excluding a small number of Kivalliq Hall claims to be added in January, at the end of 2019, 19 claims remained at all stages, of which 12 were still considered to be in progress, and seven had been resolved and were completing post-decision work (such as reviews and fee reviews). Only a small handful of new claimant hearings are

expected to be required in this final year. We are within less than a tenth of a percent from being entirely finished the resolution of all IAP claims, and the largest portion of our remaining work will be administrative in nature rather than the direct processing of claims.

Although the direction provided by the Courts and the collaborative work of adjudicators, the Secretariat, parties and stakeholders have enabled many previously unanswered questions to be resolved and the process moved forward, there remain important matters to be addressed: confirmation of deadlines, responsibilities and other important details for the completion of all claims, the transfer of any remaining claim-related or administrative work to new caretakers, the ultimate disposition of non-claim records of potential historical value and the closure of the Secretariat.

We continue to hold close the enduring core values of the IAP, including transparency, responsibility, neutrality and claimant-centredness, and it is my enduring hope that these values will remain visible in the legacy of our work in the years to follow.