

**CHIEF ADJUDICATOR'S GUIDANCE PAPER
REGARDING WITHDRAWAL OF IAP CLAIMS**

The Settlement Agreement is silent on the claimant's ability to withdraw an IAP claim. This Paper is developed to provide guidance to parties, adjudicators and Adjudication Secretariat staff on handling withdrawal requests.

Objective

In situations where the claimant chooses to withdraw their IAP claim, the withdrawal should be processed swiftly while ensuring certainty and finality.

Because a withdrawal ends a claim, and class members are prevented from bringing any other claim, fairness requires that claimants and their counsel understand the consequences of a withdrawal.

Appropriate procedure

Before a hearing date is set, and when 10 weeks or more remain before the hearing date, claimants or their counsel may give notice of withdrawal to the Adjudication Secretariat. See Part A – Administrative withdrawal procedure, below.

If notice of withdrawal is received within ten weeks of the scheduled hearing, the withdrawal must be approved by the adjudicator. See Part B – Adjudicator withdrawal procedure, below.

Part A – Administrative withdrawal procedure

1. Initiating a withdrawal: Where the claimant or counsel has indicated they wish to withdraw the claim, they should be asked to write a letter of withdrawal addressed to the unit with carriage of the claim.
2. Letter of withdrawal: A letter of withdrawal should:
 - a. reference the claimant by name or file number;
 - b. clearly and unambiguously indicate the intention to withdraw the claim;
 - c. be signed by the claimant or counsel.
3. Acknowledging withdrawal: Upon receipt of a letter of withdrawal, the unit with carriage of the claim will send a letter acknowledging the withdrawal to the counsel, with a copy to the claimant, Canada, and any participating Church parties, that contains the following points:
 - a. the Adjudication Secretariat has received and acknowledged the withdrawal;
 - b. the IAP claim has been withdrawn and, subject to paragraph 3 (c) below, will proceed no further; and

- c. the claim can be re-filed by notice in writing to the Secretariat at any time on or before September 19, 2012, in which case the Secretariat shall provide written notice thereof to Canada and the relevant Church parties.

Part B – Adjudicator withdrawal procedure

1. Adjudicator’s approval required: Once fewer than 10 weeks remain before the hearing date, any postponement or withdrawal requires the adjudicator’s approval. The Chief Adjudicator recommends that adjudicators use the following procedure when the claimant or counsel seeks to withdraw a claim.
2. Initiating withdrawal: A withdrawal can be initiated by application to the hearing adjudicator, in the same manner as a postponement request under GP-7 (Failure of hearings to proceed), or at the hearing.
3. Statements on record: The adjudicator will arrange, where practical, to go on record and obtain confirmation from claimant counsel (or the claimant if self-represented) that:
 - a. counsel has instructions from the claimant to withdraw the claim;
 - b. counsel and claimant are aware that once a decision is rendered, the claim cannot be re-activated or re-opened; and
 - c. the case will proceed to a decision, in respect of which claimant’s rights would be limited to the process for review of a decision.
4. Withdrawal application may be heard by teleconference: Where the parties have not already convened for the hearing, the procedure in paragraph 2 above can be conducted by teleconference, which should be recorded.
5. Withdrawal application may be received in writing: At the adjudicator’s discretion, and subject to paragraphs 6 and 7 below, the adjudicator may accept written confirmation from claimant counsel (or the claimant, where self-represented) of the statements referred to in paragraph 3 above.
6. Reasons for withdrawal: It is not necessary to ascertain the reasons for withdrawal of the claim, unless the adjudicator is concerned about a potential abuse of process.
7. Determine appropriateness: In most cases, an adjudicator will not refuse a withdrawal. However, in unusual circumstances the adjudicator may: (a) order that the hearing proceed; (b) grant a postponement under the postponement policy [GP-7] or (c) permit the claim to be withdrawn, subject to the proviso that the claim can be re-filed by notice in writing to the Secretariat at any time on or before September 19, 2012, in which case the Secretariat shall provide written notice thereof to Canada and the relevant Church parties.
8. Write decision: Where the adjudicator decides to grant the withdrawal, the adjudicator should write a decision using the standard decision template (see Schedule “A” attached), with such modifications as he/she deems appropriate, briefly outlining the circumstances, including the statements made by counsel, and dismissing the claim for lack of evidence presented. A short form decision is not appropriate in this circumstance.

9. Decision letter: The CAO will send a letter with a notice of decision to claimant counsel (with a copy to the claimant), to a self-represented claimant and to the Defendants.
10. Review rights: The usual review rights as set out in the IAP apply to the decision.
11. Preserve audio recording: Adjudicators should follow normal procedure and send the audio recording and the post hearing report to the Post-Hearing Unit for retention on the claim file.

**INDIAN RESIDENTIAL SCHOOLS ADJUDICATION SECRETARIAT
INDEPENDENT ASSESSMENT PROCESS**

CLAIMANT:	
FILE NUMBER:	E5442-10-_-
TRACK:	
SCHOOL NAMED:	
ADJUDICATOR:	
HEARING (OR TELECONFERENCE) DATE (OR DATE OF WRITTEN WITHDRAWAL REQUEST):	
HEARING LOCATION:	
DECISION DATE:	____, 201__
ATTENDING:	
Lawyer for the Claimant:	
Canada's Representative:	

DECISION WHERE IAP CLAIM IS WITHDRAWN
(Counsel and Claimant Copy)

A. Summary

1. Allegation:

[1] _____ made the following allegation in his/her application:

Alleged Acts: (include brief description)

Alleged harms and opportunity loss: (include brief description)

2. Withdrawal of Claim:

[2] Claimant Counsel advised at the commencement of the hearing (modify as necessary) that he/she had obtained the Claimant's instructions to withdraw the Claimant's IAP claim.

B. Decision

[3] I accept the withdrawal of the Claimant's claim under the Independent Assessment Process on a "with prejudice" basis, namely that the Claimant has no right to re-file his/her IAP claim.

[4] The IAP claim of _____ is therefore dismissed.

Signed at _____, _____, on _____, 201_.

| _____,
IAP Adjudicator

Approved by IAPOC 04/17/12