

Indian Residential Schools

Adjudication Secretariat

Secrétariat d'adjudication

des pensionnats indiens



# Residential Schools Tribunals: Challenges and lessons learned

Daniel R. Ish, Q.C.  
Chief Adjudicator

John Trueman  
Project Manager

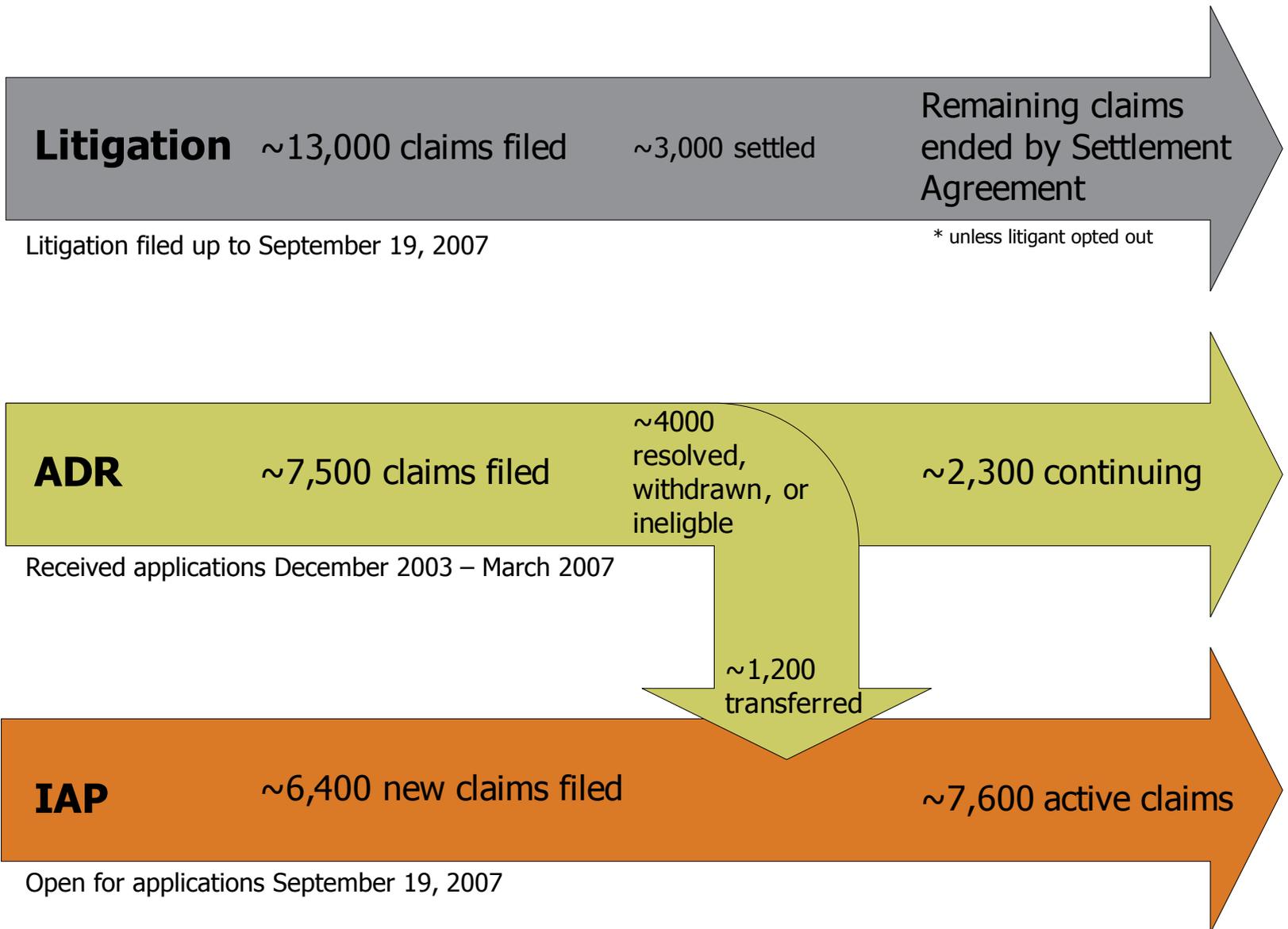
Foundation of Administrative Justice conference, Edmonton AB

April 30, 2009

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## The challenge:

- Thousands of unresolved abuse claims clogging the courts
- Many claims for low dollar values (under \$5000)
- Need for a more comprehensive approach that acknowledged concerns of former students: language, culture, education, etc.



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## The **solution**:

- Comprehensive court-supervised settlement agreement
- Compensation for all former residents based on years of attendance (CEP)
- Individual process for serious abuse claims (IAP)
- Truth and Reconciliation Commission
- Programmatic elements: Aboriginal Healing Foundation, Commemoration, health support program

# Financial components of the Settlement Agreement:

## Common Experience Payment (CEP)

All  
residents:

\$10,000  
first year of residence



\$3,000  
each additional year

paper application form and processing

## Independent Assessment Process (IAP)

Survivors  
of serious  
abuse:

Points system  
up to \$275,000



Future care  
up to \$15,000



Income loss  
up to \$250,000

face-to-face hearing with independent adjudicator, individual decision

## The IAP as an **adjudicative process**:

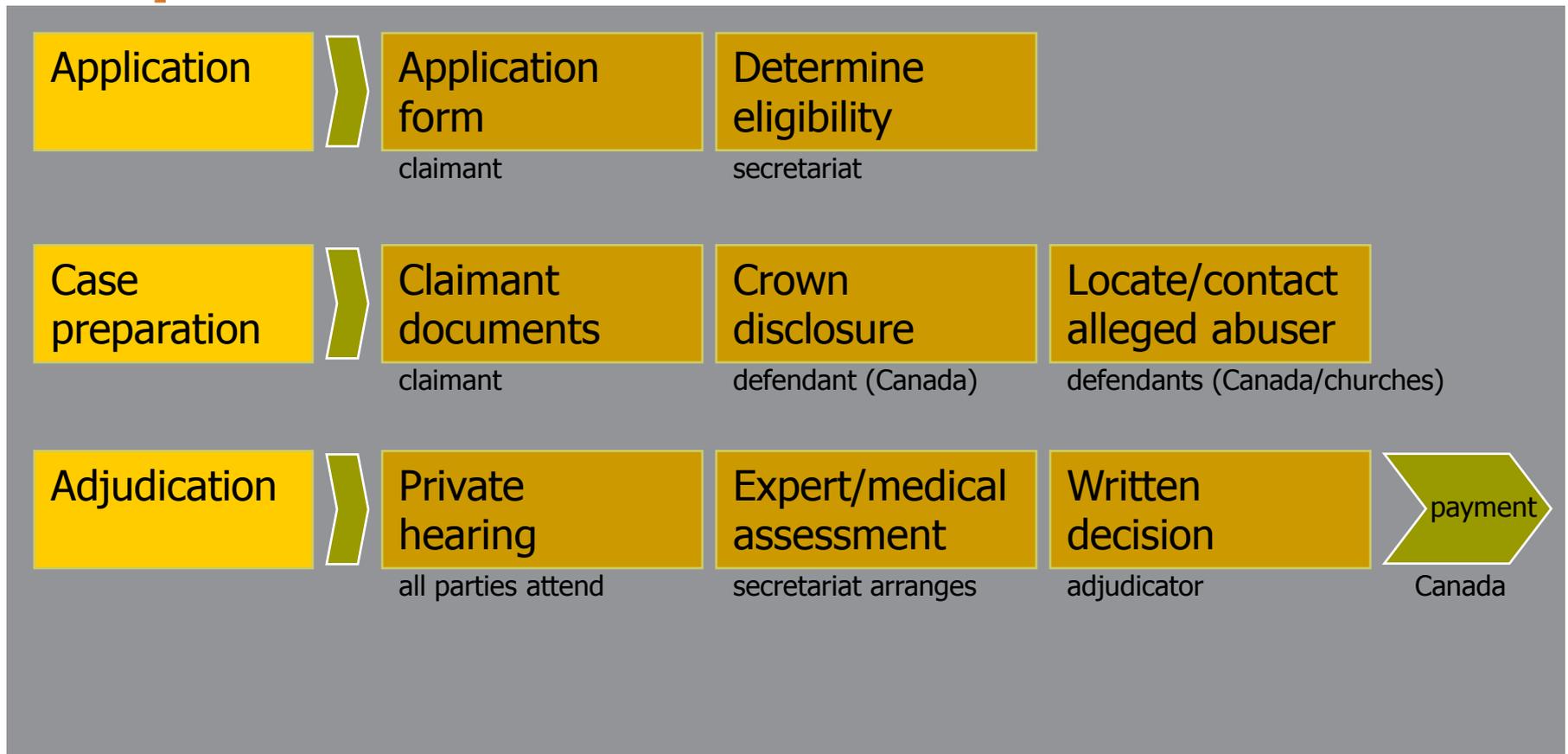
- Claims of serious abuse only:
  - sexual abuse;
  - physical abuse causing a defined lasting physical injury;
  - other wrongful acts causing serious psychological injury
- Self-contained validation process
  - Faster, more efficient, less costly
  - Confidential with support services available
  - Equivalent validation and compensation to court process
- Access to courts only in very limited cases

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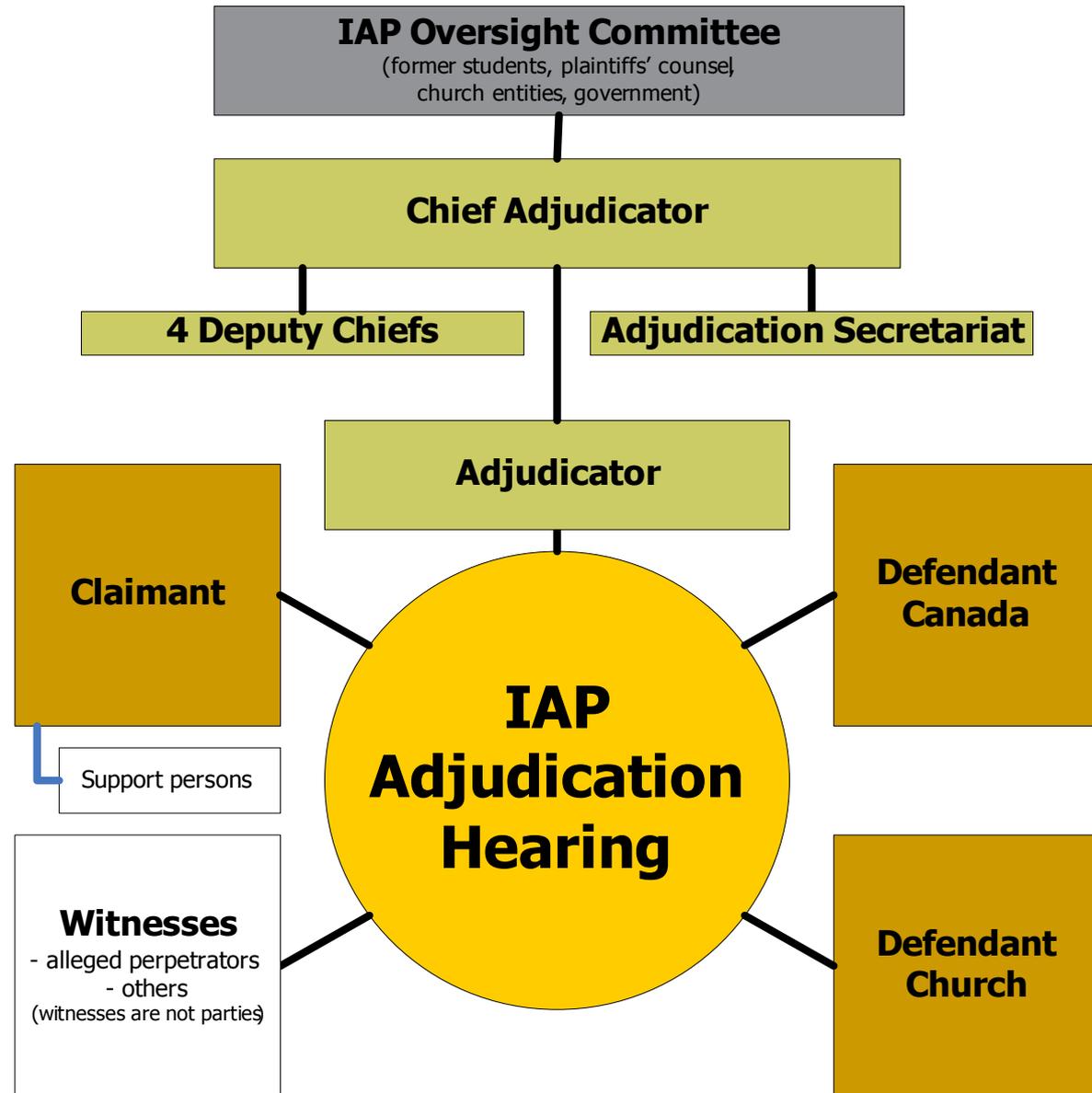
## Some unique challenges:

- Historical sexual and physical abuse cases
  - Events often took place over thirty years ago
- Claims based mostly on oral evidence
- Majority of claimants are elderly and often in poor health
- Many claimants have been waiting for justice for a very long time
- Claimants dispersed over a wide area, but primarily in the west and north
- About 20% of claimants are self-represented; in many areas there are no local lawyers available

## The process:



# The players:



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## The hearings:

- Private
- Safe, convenient location
  - Often claimant has choice of location, although we are working towards greater efficiency in the scheduling process
- Travel expenses paid for claimant and two support persons
- Health support workers and/or elders available

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## An inquisitorial model:

- Parties lead evidence and witnesses
  - (adjudicator does not conduct an investigation)
- Only adjudicator asks questions
  - Controls sensitivity of process
  - Sets tone
- Parties can suggest lines of questioning during breaks in the hearing
- No cross-examination, except of expert witnesses

## Determining compensation:

- Validation
  - adjudicator makes all findings of fact and liability
  - liability is a 'closed system' defined by the Settlement Agreement, not by case law
    - for example, "plausible link" standard of causation (to connect acts of abuse to harms they caused) was specially designed for these historic abuse cases
- Compensation points system
  - allows individualized compensation
  - ensures a degree of national consistency among adjudicators
  - recognizes that a relatively less serious act can have severe consequences, and vice versa

# Compensation point assessment:

Proven acts of abuse



Points awarded for highest level of abuse  
5-60 points

**SL5:** repeated, persistent incidents of anal/vaginal intercourse (45-60 points)

**SL1:** one or more incidents of fondling or kissing (5-10 points)

**PL:** one or more physical assaults causing a defined serious injury (11-25 points)

Consequential harm



Points awarded for highest level of harm  
1-25 points

**H5:** continued harm resulting in serious dysfunction (personality disorders, suicidal tendencies, etc.) (20-25 points)

**H3:** continued detrimental impact (difficulties with interpersonal relationships, lasting and significant anxiety, etc.) (11-15 points)

**H1:** modest detrimental impact (anxiety, nightmares, etc.) (1-5 points)

Aggravating factors



Add 5-15% of points for proven factors

Verbal abuse, racist acts, threats, intimidation, inability to complain, oppression, sexual abuse accompanied by violence, age of the victim, etc.

Loss of opportunity



Points awarded if no actual income loss  
1-25 points

**OL5:** chronic inability to obtain employment (21-25 points)

**OL3:** periodic inability to obtain or retain employment (11-15 points)

**OL1:** diminished work capacity – physical strength, attention span (1-5 points)

Total points



Points total defines range of dollars

**1-10 points:** \$5,000 to 10,000

**71-80 points:** \$106,000 to 125,000

**111-120 points:** \$211,000 to 245,000

Plus future care up to \$15,000

# Promoting access

- Largest class action notice program in Canadian history
- Outreach strategy
- Toll-free info line
- Plain-language guide and application form
- Application assistance program
- Law firm liaison

**Official Court Notice**



**The Indian residential schools settlement has been approved. The healing continues.**

The Indian residential schools settlement has been approved by the Courts. Now former students and their families must decide whether to stay in the settlement or remove themselves (opt out). This notice describes the settlement benefits and how to get them for those who stay in, and it explains what it means to opt out and how to opt out.

The settlement provides:

- 1) At least \$1.9 billion for "common experience" payments to former students who lived at one of the schools. Payments will be \$10,000 for the first school year (or part of a school year) plus \$3,000 for each school year (or part of a school year) after that.
- 2) A process to allow those who suffered sexual or serious physical abuses, or other abuses that caused serious psychological effects, to get between \$5,000 and \$275,000 each—more money they can show a loss of income.
- 3) Money for programs for former students and their families for healing, truth, reconciliation and commemoration of the residential schools and the abuses suffered: \$125 million for healing; \$60 million for research, document, and preserve the experiences of the survivors; and \$20 million for national and community commemorative projects.

You won't have to show you were abused to get a common experience payment, and you can get one even if you had an abuse lawsuit, and even if you won, settled, or not.

Eligible former students who stay in the settlement can get a payment from it. Family members who were not students will not get payments. However, former students—and family members—who stay in the settlement will never again be able to sue the Government of Canada, the Churches who joined in the settlement, or any other defendant in the class actions, over residential schools.

If you want to stay in the settlement and receive a payment from it, call 1-866-979-4913, or go to the website, and request that a claim form be sent to you as soon as it is ready.

If you opt out from the settlement you will not get any payment from it. However, former students or family members who opt out will keep any right they may have to sue over residential schools.

To opt out, you must complete, sign, and mail an Opt Out Form postmarked by August 20, 2007. You can get the form at the website below, or by calling 1-866-979-4913.

You don't have to hire a lawyer to get a common lawyer and pay that lawyer to represent you with an abuse claim.

Call 1-866-979-4913 with questions, or go to [www.residentialschoolsettlement.ca](http://www.residentialschoolsettlement.ca) to read a detailed notice or the settlement agreement. You may also write with questions to Residential Schools Settlement, Suite 3-505, 133 Weber St., North Waterloo, Ontario N2J 3G9.

**Your Options Now**

**Request a Claim Form**  
 If you are a former student and you want a payment from the settlement, and you never want to sue the Government of Canada or the Churches on your own, do not opt out. Instead, call now to register and a claim form will be mailed to you after August 20, 2007. When it arrives, fill it out and return it.

**Remove Yourself (Opt Out)**  
 If you don't want a payment, or you think you can get more money than the settlement provides by suing the Government or the Churches on your own, then you must opt out by submitting an Opt Out Form postmarked by August 20, 2007.

Do nothing: get no payment, give up rights to sue.

1-866-979-4913  
[www.residentialschoolsettlement.ca](http://www.residentialschoolsettlement.ca)

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# GUIDE

**Independent Assessment Process**

There is an official document governing the Independent Assessment Process. It is "Schedule D" of the Indian Residential Schools Settlement Agreement. It is available on the web at [www.residentialschoolsettlement.ca/English.html](http://www.residentialschoolsettlement.ca/English.html) or by calling 1-866-979-4913. If there are differences between this Guide and the official document, the official document will govern and take priority over this Guide.

24 hour IRS Crisis Line is available at 1-866-925-4419  
 Indian Residential Schools Toll-Free Info Line: 1-866-979-4913  
[www.iap-pei.ca](http://www.iap-pei.ca)

Process - Windows Internet Explorer

calendar-eng.asp

As Access... The Independent Assessment...

**Indian Residential Schools**

## Independent Assessment Process

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Home

**Former Students**

- About the IAP
- IAP eligibility
- Level of abuse and harms
- Eligible Schools
- The IAP steps
- Hiring a Lawyer
- Group IAP
- IAP Hearings
- Re-opening an ADR claim
- The Compensation Framework

**Information**

- News room
- Information Sheets
- Frequently Asked Questions
- Statistics

**IAP Administrative Framework**

- The Chief

**What's New**

**Information Workshop on Indian Residential Schools**

**St. Paul, Alberta**

Hosted by the Blue Quills First Nations College, Tribal Chiefs Ventures Inc., and Saddle Lake Cree Nation

January 8-9, 2009, Blue Quills College, St. Paul, Alberta (Left to right)

- Dr. Leona Makokis, President, Blue Quills First Nations College
- Brenda Reynolds, Regional Health Support Coordinator, Alberta Region, Health Canada
- Harvey Youngchief, IRS Coordinator, Tribal Chiefs Ventures Inc.
- Art Dedam, Sr. Program Advisor, PALO, INAC
- Jane Luhtasaari, Policy Analyst, TRC
- Eric J Large, IRS-RHSW Coordinator, Saddle Lake Cree Nation

**Crisis Line 24 H**  
**1(866)925-4419**

DOWNLOAD  
 IAP Application Form and Guide

Indian Residential Schools  
 Toll-Free Info Line  
**1(866)879-4913**

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## Ongoing support for claimants

- Self-represented applicants assigned to a claimant support provider
  - 'Single point of contact'
  - Regular updates on status of claim
  - Referral to other support services
  - Where possible, all Secretariat contact with claimant is through support provider
  - Neutral role – not an advocate for the claimant, but ensures claimant has information and support they need – akin to a Native Courtworker
- Health support program
  - Full-time Resolution Health Support Workers
  - Funding for professional counseling and elder support
  - 24-hour crisis line

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## Ensuring **fairness**

- To the claimant:
  - Adjudicator can review legal fees
- To those accused of committing abuse:
  - Canada attempts to locate and contact alleged perpetrators, if alive
  - Alleged perpetrator has right to appear as a witness – same inquisitorial model
- To the process:
  - Measures to ensure consistency of decisions
  - Parties have right to have decision reviewed by another adjudicator

## Making it happen: some **challenges**

- Many claimants cannot access legal counsel
- Community information and confusion between programs: CEP, former ADR process, etc.
  - Appropriate role of 'outreach' staff for a quasi-judicial tribunal?
  - Demand for information greatly exceeds outreach capacity
- Difficulty recruiting Aboriginal adjudicators
- Rapid growth (35 to 150 to 230 staff)
- Scalability: ramping from 750 hearings in 2006 to 4000 hearings in 2009

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## Lessons learned

- Governance structure
  - Statutory versus 'program' authority
  - Composition and structure of Oversight Committee
- Capacity of government departments to adequately support start-up of a new tribunal
- Limit use of experts
- Need to find alternatives to government procurement rules

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## More information

- **IAP Application Form and Guide** available
  - Online: **[www.iap-pej.ca](http://www.iap-pej.ca)** or call: **1 866 879 4913**
- **IAP information available**
  - Call: 1 877 635 2648
- **24-hour Crisis Counseling**
  - Call: 1 866 925 4419
- More information is available on **IAPs' official website**  
**[www.iap-pej.ca](http://www.iap-pej.ca)**