



INDEPENDENT ASSESSMENT PROCESS AND RECORDS

OVERVIEW

On October 6, 2017, the Supreme Court of Canada upheld an Order of the Ontario Court of Appeal that recognizes that Independent Assessment Process and Records (IAP) claimants have a choice to preserve their records, or have them destroyed. All IAP documents will be retained for 15 years, during which time IAP claimants have the opportunity to direct the Chief Adjudicator to transfer their records to the National Centre for Truth and Reconciliation (NCTR) or another archive of their choice. The 15 year archival deadline begins for the individual when their claim was settled or a final decision was rendered. The default position is that the records will be destroyed, unless the claimant agrees to share their information.

Over the last year, interested parties have been negotiating the development of a Notice Plan for the Disposition of IAP and Alternative Dispute Resolution (ADR) Records. Representatives participating in the negotiations included: the Chief Adjudicator, National Centre for Truth and Reconciliation, Assembly of First Nations, Inuit Representatives, Independent Counsel, NCTR Survivors Circle, University of Manitoba, and Indian Residential Schools Adjudication Secretariat (IRSAS).

The Ontario Court of Appeal tasked the Chief Adjudicator to develop the Notice Plan, which must be approved by the Courts prior to its implementation.

UPDATE

A hearing on the Notice Plan offering a choice for individuals to archive their records was held on April 24, 2018, and May 23, 2018, before the Ontario Superior Court of Justice. The Notice Plan will inform claimants about their records and provide them with the following options:

1. Preserve them at the National Centre for Truth and Reconciliation.
2. Have a copy sent to them.
3. Take no further steps, in which case their records will be destroyed 15 years after

their claim was settled or the final decision was rendered.

If the claimant chooses to preserve their records at the National Centre for Truth and Reconciliation, they have the following options:

- **Public** – An IAP claimant can give his/her permission for the National Centre for Truth and Reconciliation to share their name and personal information with the public, First Nation governments, family members etc.

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- **Confidential** - Records may be made available to approved researchers, but all personal information in the records will be redacted. Confidential records will not be made available to the general public.

The Ontario Superior Court of Justice has reserved its decision. The AFN attended and made oral arguments before the Ontario Superior Court of Justice on this matter.

NEXT STEPS

Once the Courts approve the Notice Plan, it will be implemented and rolled out across Canada.

