



## RESIDENTIAL SCHOOLS AND INDEPENDENT ASSESSMENT PROCESS AND RECORDS

### OVERVIEW

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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 each 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.

On July 4, 2018, the Ontario Superior Court of Justice approved a Notice Plan to be administered by the Chief Adjudicator of the IAP. All IAP Claimants are to be provided with notice of their ability to preserve their IAP records, subject to required redaction, with the NCTR.

The Chief Adjudicator of the IAP has developed a number of communication products for public distribution. These products are consistent with the Court-approved Consent Form, and include a multi-media campaign, a pamphlet, a poster, a postcard, and videos about the IAP, the consent form, and the NCTR. The 15-year Retention Period for IAP documents has been set from September 19, 2012 until September 19, 2027.

### UPDATE

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On January 1, 2019, the Indian Residential Schools Adjudication Secretariat began to provide IAP claimants with notice that they have an option to archive their IAP and Alternative Dispute Resolution (ADR) records with the NCTR. Public Notices are being placed in newspapers, radio and television ads over a period of two years.

All individuals who applied for compensation under the IAP have the following choices for the final disposition of their records:

- do nothing: their records will remain confidential and will then be destroyed on September 19, 2027;
- get a copy for themselves to keep or share with others;
- preserve them for history, public education and research at the NCTR; or
- get a copy for themselves *and* preserve them for history, public education and research at the NCTR.

# ISSUE UPDATE

## November 2019

For those individuals who decide to preserve their records at the NCTR, they have a choice of two ways to do that: restricted access or open access. In either case the NCTR will use and share their records for public education and research to promote reconciliation. The NCTR is committed to the respectful and dignified use of records and of doing no harm.

- **Restricted access** means the NCTR may use and share records with the public for purposes such as education, but only if the NCTR removes all personal and identifying information. Personal information means information that identifies a person or could be used to identify the Claimant. Personal information will be held by the NCTR and may be made available to researchers, but only under strict confidentiality conditions. Personal information will not be available to the public and will not be published. One's family will not be allowed to see the records.
- **Open access** means the NCTR may use your records and personal information, including your name, for education and research to promote reconciliation, including sharing with the public (which could include the Claimant's family). However, the NCTR will not disclose to the

public certain personal information, such as address, phone number or First Nation.

Records archived at the NCTR are managed according to Manitoba laws, including *The National Centre for Truth and Reconciliation Act*. IAP records will not be disclosed through access requests under *The Freedom of Information and Protection of Privacy Act*. IAP records will ONLY be made available as permitted by the consent signed by a former student of an Indian Residential School.

There continues to be ongoing litigation regarding records that have been produced in the IAP process. Currently, a Request for Direction (RFD) has been brought by the Chief Adjudicator of the IAP regarding the final disposition of non-claim records (related to the operations, management and oversight of the IAP and Alternative Dispute Resolution process), which is scheduled for December 12, 2019 at the Ontario Superior Court.

The abovementioned RFD is important, as these documents contain information on how decisions of the Chief Adjudicator were made, such as the decision to exclude schools based on administrative split. Further, the Chief Adjudicator is seeking approval to transfer a majority of these records to the NCTR, which contain sensitive information.

### NEXT STEPS

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Since January 1, 2019, the AFN has established an IAP help desk. AFN Staff continue to be available to answer any questions an IAP claimant may have regarding what they would like to do with their IAP records.

Moreover, the AFN has provided outreach on this matter at the 4 Policies & Nation Building Forum in May 2019 in Edmonton, Alberta, AFN Annual General Assembly in July 2019 in Fredericton, New Brunswick, and National Gathering of Elders in September 2019 in Winnipeg, Manitoba. The AFN will continue to monitor litigation regarding this issue and will participate in the best interests of First Nations.

The AFN help desk can be reached at:

**Toll-free number:** 1-833-212-2688

**Email:** [iapdesk@afn.ca](mailto:iapdesk@afn.ca)

