

Less than a year after Justice Perell rendered his decision in the St. Anne's case, the Commission was faced with yet another document-collection issue that called for court guidance. The documents at issue were records from the Independent Assessment Process (IAP). The IAP is one of the components of the Settlement Agreement. The IAP is an adjudicative process for financial compensation to residential school Survivors who suffered serious abuse at residential schools. Consequently, the body that administers the IAP process, the Indian Residential Schools Adjudication Secretariat (IRSAS), is in possession of a wealth of documents relevant to the legacy of Indian residential schools.

The Residential Schools Settlement Agreement provides that Survivors who go through the IAP can give their consent to have their statements and testimony archived with the archive created by the National Centre for Truth and Reconciliation for future research. The intention was apparently to eliminate the need for a Survivor to have to testify before an IAP adjudicator, and then have to repeat the same story to the TRC. From mid-2010 to early 2012, the Commission engaged in negotiations with IRSAS to archive and preserve those documents. The parties' discussions focused on the development of a consent form for IAP claimants to sign during the IAP process. The consent form would explain to IAP Survivors how their information would be shared with the Commission and it would allow them to provide written consent to the sharing of their stories. The Commission had discovered that the IAP staff and adjudicators had repeatedly failed to inform Survivors of their right to have their statements delivered to the TRC's archive, and, instead, had required an undertaking of strict confidentiality of all parties to the IAP hearings, including the Survivors themselves. In June 2014, the chief adjudicator of IAP publicly announced that he supported the immediate destruction of all documents related to the adjudication of claims by residential school Survivors.

The Commission emphasized that the requirement of strict confidentiality imposed by IRSAS was incompatible with the terms of the Settlement Agreement. Furthermore, the Commission stated that the destruction of some IAP documents would constitute a major loss for future generations of Canadians. The Commission and IRSAS were unable to come to an agreement as to the mechanisms for allowing the Commission to access the documents, and the matter was brought before Justice Perell for direction.

In the hearing held from July 14 to 16, 2014, the Commission advanced the position that a notice program should be ordered by the court, which would allow IAP claimants to be notified that they may share their IAP testimony with the Commission should they so desire. The Commission narrowed the categories of documents it sought to preserve in recognition of the legitimate privacy interests of IAP Survivors. The Commission argued that it sought only to archive the IAP applications, transcripts, and audio recordings from IAP hearings and IAP adjudicator decisions.

On August 6, 2014, Justice Perell delivered reasons in which he held that the IAP documents would be subject to a fifteen-year retention period, during which a notice program to Survivors would be administered by the Commission or the National Centre for Truth