



What is the history of this issue and how does it impact First Nations?

Canada developed the First Nations Child and Family Services (FNCFS) program over three decades ago to regulate the services provided to First Nations following the closure of the Indian Residential School System. The underfunded, discriminatory, and protection-focused FNCFS program has led to the needless removal of unprecedented numbers of First Nations children from their families and Nations. Today, there are over 40,000 First Nations children involved with child and family services across Canada.

In 2007, the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society launched a case at the Canadian Human Rights Tribunal (CHRT) alleging that Canada was discriminating against First Nations children by underfunding the FNCFS program on-reserve and in the Yukon. On January 20, 2016, the CHRT found that Canada had discriminated against First Nations children in the provision of services simply because they are First Nations in its historic Merits Decision, 2016 CHRT 2. The CHRT ordered the federal government to immediately and completely overhaul the FNCFS program.

In 2018, the Chiefs-in-Assembly passed AFN Resolution 11/2018, *Federal Legislation on First Nations Child Welfare Jurisdiction*, supporting federal enabling legislation on First Nations child and family wellbeing. The co-developed legislation, *An Act respecting First Nations, Inuit and Métis children, youth and families* (the Act), received Royal Assent on June 21, 2019, and came into force on January 1, 2020. The Act affirms First Nations' inherent rights to self-determination and jurisdiction and establishes national principles for child and family wellbeing, including the best interests of the child, cultural continuity, and substantive equality.

AFN Resolution 16/2019, *An Act respecting First Nations, Inuit and Métis children, youth and families—Transition and Implementation Planning*, established the Chiefs Committee on Child and Family Services and Self-determination (Chiefs Committee), in order to provide input, oversight and guidance on implementation of the Act. The Chiefs Committee advocated for a distinctions-based approach to implement the Act and negotiated the terms of this approach with Indigenous Services Canada (ISC). The Protocol regarding *An Act Respecting First Nations, Inuit and Métis children, youth and families* (the Protocol) between the AFN and Canada was signed on July 7, 2020. The Protocol is a mechanism to ensure First Nations lead the development of principles and processes related to the Act. Under the Protocol, the Joint National Working Group (JNWG) was established to ensure that a First Nations distinctions-based approach is applied in the implementation of the Act.



How has the AFN's recent advocacy affected this area?

In 2019, the CHRT ordered Canada to pay \$40,000 in compensation to First Nations children and their parents and/or grandparents for this “willful and reckless discrimination,” which Canada challenged by filing multiple judicial reviews. Subsequently, in 2020, the AFN filed a class action lawsuit seeking damages for this discrimination, including additional individuals who would not be covered by the CHRT’s compensation order.

In October 2021, the AFN, Government of Canada, and other Parties agreed to enter into intensive negotiations to settle the matters of compensation and long-term reform of the FNCFS Program and Jordan’s Principle. On December 31, 2021, the Parties signed two Agreements-in-Principle (AIPs) outlining a framework toward reaching a settlement on long-term reform to end discrimination in the FNCFS Program and Jordan’s Principle, and for compensation to First Nations children and their caregivers who have experienced discrimination in the FNCFS Program and narrow application of Jordan’s Principle. The total settlement package of \$40 billion sets aside \$20 billion for compensation and \$19.807 billion over five years for long-term reform.

In developing the AIP, the AFN advocated for a series of immediate measures intended to alleviate discrimination in the FNCFS Program to be implemented as of April 1, 2022. The immediate measures include new funding for prevention at \$2,500 per capita on the on-reserve population, the addition of FNCFS post-majority care services up to and including to the age of 25, funding for further research on a new funding approach, and funding for First Nations Representative Services. The CHRT affirmed the implementation of these immediate measures on March 24, 2022 in 2022 CHRT 8. Reform of ISC has also been a subject of AFN advocacy, and as a result, ISC was ordered by the Tribunal to work with the parties to introduce lasting measures to eliminate systemic discrimination at the department.

A critical aspect of long-term reform of the FNCFS Program is funding reform. The Institute of Fiscal Studies and Democracy (IFSD) has developed a needs-based, bottom-up and results-based funding model to address the discriminatory funding shortfalls in the FNCFS Program that led to the overrepresentation of First Nations children in care. The long-term FNCFS Program funding reform outlined in the AIP is evidence-based and First Nations led. The IFSD is entering its third phase of research to model and test the reformed funding model with First Nations operating under the FNCFS Program and those asserting jurisdiction under the Act, which will inform the Final Settlement Agreement on long-term reform.

In September 2021, the Government of Quebec challenged the constitutionality of the *Act respecting First Nations, Inuit and Métis children, youth and families* in the Quebec Court of



SECTOR UPDATE
SOCIAL BRANCH: SOCIAL DEVELOPMENT SECTOR
ISSUE: FIRST NATIONS CHILD AND FAMILY SERVICES

July 2022

Appeal, which decided to uphold the Act but to strike sections 21 and 22.3 of the Act, which give First Nations laws the force of Federal law. The federal government has appealed the decision at the Supreme Court of Canada. The AFN is an intervenor in the case, as well as the provinces of New Brunswick, Manitoba, Alberta, and British Columbia.

The AFN's advocacy has also led to significant investments in First Nations child and family wellbeing. Budget 2021 proposed to invest \$1 billion over five years, with \$118.7 million ongoing, to increase funding under the FNCFS Program. It further proposed to invest \$73.6 million over four years to support implementation of the Act. Further, Budget 2022 proposes to provide \$87.3 million over three years, starting in 2022-23, to support Indigenous communities to work with various levels of government to implement their child and family services laws. The AFN continues to advocate for dedicated funding to ensure meaningful transition to First Nations jurisdiction over child and family services under the Act.

The AFN's advocacy also led to the CHRT capital order, 2021 CHRT 41, which ordered Canada to fund the actual cost of feasibility studies and needs assessment for capital projects, as well as the purchase and construction of capital assets for the delivery of FNCFS and Jordan's Principle.

Where do we hope to go in the future?

The AFN continues to advocate for First Nations children and families in negotiations towards Final Settlement Agreements on compensation and long-term reform. The AFN is also working to ensure that the compensation process is trauma-informed and is coupled with a simple application process that is supported by wellness services. Compensation is expected to start in 2023. The AFN has established an information line for First Nations to learn more about compensation by calling 1-888-718-6496.

The AFN is supporting national, regional and youth-specific engagement sessions throughout 2022 to provide First Nations with updates, to hear First Nations' perspectives and priorities for this process, and to in turn inform the AFN's advocacy for the final settlement agreement on long term reform.

The AFN will also continue to increase awareness and communications about *An Act respecting First Nations, Inuit and Métis children, youth and families* and its implementation, and to advocate for a First Nations-determined funding model for implementation of the Act. The AFN will continue to advocate for the cooperation of the Provinces and Territories in the implementation of the Act and will stand up for First Nations rights to self-determination over child and family wellbeing in the Supreme Court challenge of the Act. The AFN will also continue



SECTOR UPDATE
SOCIAL BRANCH: SOCIAL DEVELOPMENT SECTOR
ISSUE: FIRST NATIONS CHILD AND FAMILY SERVICES

July 2022

to advocate for First Nations exercising jurisdiction under the Act to receive equitable funding, including for the immediate measures and enhancements under the reformed FNCFS Program.