

Issue Update

First Nations Child and Family Services and Jordan's Principle Long-Term Reform and Compensation

History

In 2007, the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society filed a complaint at the Canadian Human Rights Tribunal (CHRT), alleging discrimination against First Nations children and families in the delivery and underfunding of the First Nations Child and Family Services (FNCFS) Program and Jordan's Principle. In January 2016, the CHRT found that the Government of Canada was discriminating against First Nations children on-reserve and in the Yukon, and ordered the government to immediately reform the FNCFS Program and properly implement Jordan's Principle to meet the needs of First Nations children and ensure their best interests are protected.

In September 2019, the CHRT ordered the Government of Canada to pay the maximum allowable compensation for victims of discrimination under the FNCFS Program and Jordan's Principle dating back to 2006/2007. In 2020, the AFN filed a class action lawsuit to build on the work at the CHRT, including compensating individuals dating back to 1991 and setting the path forward for long-term reform. In December 2021, the AFN, the Government of Canada and other parties reached an Agreement-in-Principle (AIP) on compensation and a second AIP on long-term reform. On June 30, 2022, the AFN reached a Final Settlement Agreement (FSA) on compensation for First Nations children and their caregivers affected by discrimination under the FNCFS Program and Jordan's Principle.

The AFN has also led work to advance First Nations rights and jurisdiction pertaining to child and family well-being. In 2018, the First Nations-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 well-being. The co-developed legislation, *An Act respecting First Nations, Inuit, and Metis 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 well-being, including the best interests of the child, cultural continuity, and substantive equality.

Jordan's Principle, named in honour of Jordan River Anderson, ensures First Nations children have access to the supports they need to thrive, regardless of where they live, without denial, delay, or disruption. Between July 2016 and February 2023, Jordan's Principle has approved over 2.56 million products, services, and supports for First Nations children.

AFN's recent advocacy

The AFN advocates for First Nations children to receive the products, services and supports they need to thrive, without delay, denial, or disruption, and for First Nations to determine and advance their priorities for implementing Jordan's Principle. This advocacy led to an investment of \$4 billion over six years in Budget 2022 for continued implementation of Jordan's Principle.

Central to reform of the FNCFS Program is changing how the Program is funded to address the discriminatory shortfalls. Under the direction of the AFN, the Institute of Fiscal Studies and Democracy (IFSD) has developed a needs-based, bottom-up, and results-based funding model for the FNCFS Program and is working with First Nations to test the proposed reformed funding model, including with those asserting jurisdiction under the Act. The results of this research are anticipated in September 2023.

Also, as per Resolution 40/2022, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle*, AFN advocates ensure that reforms are based on evidence, respect First Nations rights, and ensure substantive equality, best interests of the children and appropriate services that reflect the distinct needs and circumstances of First Nations. The resolution calls for revised timelines to reach an FSA on long-term reform to allow for engagement to ensure that First Nations rights to Free, Prior and Informed Consent are respected. In response, the AFN and the Caring Society have proposed new negotiation timelines that align with the IFSD's research.

Pursuant to the AFN's advocacy, in November 2021, the CHRT ordered the Government of Canada to pay for the purchase and construction of capital assets that support the delivery of Jordan's Principle. This is a positive step towards addressing critical gaps caused by persistent underfunding. As of April 2023, over 241 requests had been approved.

In September 2022, the AFN sought the CHRT's endorsement of the compensation FSA; however, the CHRT noted that while the FSA substantially satisfied its 2019 compensation orders, more work was required. In December 2022, AFN Resolution 28/2022, *Final Settlement Agreement on Compensation for First Nations Children and Families*, established First Nations' priorities for compensation, including supporting the representative plaintiffs and all survivors and victims of discrimination to receive due compensation. Pursuant to further negotiations in early 2023, the AFN and other parties reached a revised FSA valued at over \$23.3 billion, which the First Nations-in-Assembly approved in April 2023 by way of AFN Resolution 04/2023, *Revised Final Settlement Agreement on Compensation for First Nations Children and Families*.

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 Appeal. In February 2022, the Court upheld much of the Act but struck sections 21 and 22.3, which give First Nations laws the "force of law as Federal law." The federal government appealed the decision at the Supreme Court of Canada, where the AFN participated as an intervenor. In December 2022, the AFN defended the Act and First Nations rights to self-determination and jurisdiction over their children and families, arguing that First Nations have always had the inherent right to self-government. The Supreme Court is expected to render a decision on this matter in 2023.

Next Steps

The AFN continues to advocate for First Nations children and families in negotiations on long-term reform of the FNCFS Program and implementation of Jordan's Principle, guided by First Nations-led research, engagement and relevant CHRT orders. The AFN continues to co-chair the Expert Advisory Committee to reform Indigenous Services Canada to prevent the recurrence of

discrimination within the department. In addition to recent regional engagements, the AFN will lead engagement with First Nations on long-term reform throughout fall 2023 towards seeking approval of a Final Settlement Agreement on long-term reform in December 2023.

The AFN will continue to advocate for First Nations impacted by discrimination in the FNCFS Program and Jordan's Principle at the CHRT and Federal Court of Canada, where the FSA on compensation will proceed for endorsement. Further, the AFN will ensure the compensation process is trauma-informed, coupled with a simple application process that is supported by wellness services. The AFN has established an information line for First Nations to learn about compensation and long-term reform. Access the information line by calling 1-888-718-6496.