



ASSEMBLY OF FIRST NATIONS
Special Chiefs Assembly

December 5-7, 2023

Shaw Centre – Ottawa, Ontario

Ottawa is located on the unceded unsurrendered Territory of the Algonquin People.

ASSEMBLÉE DES PREMIÈRES NATIONS
Assemblée extraordinaire des Chefs

Du 5 au 7 décembre 2023 - Centre Shaw - Ottawa (Ontario)

Ottawa est située sur le territoire non cédé et non abandonné du peuple algonquin.



Jordan's Principle

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 narrow application of Jordan's Principle. In January 2016, the CHRT upheld the complaint and ordered the government to immediately reform the FNCFS Program and properly implement Jordan's Principle.

In September 2019, the CHRT ordered the Government of Canada to pay the maximum allowable compensation to victims of discrimination under the FNCFS Program and Jordan's Principle dating back to 2006. 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. In September 2022, the AFN sought the CHRT's endorsement of the FSA on compensation; however, the CHRT noted that while the FSA substantially satisfied its 2019 compensation orders, more work was required. At the 2022 Special Chiefs' Assembly, First Nations-in-Assembly passed AFN Resolution 28/2022, *Final Settlement Agreement on Compensation for First Nations Children and Families*, establishing First Nations' priorities for compensation, including supporting the representative plaintiffs and all survivors and victims of discrimination to receive their compensation. Pursuant to negotiations in early 2023, the AFN and other parties reached a revised FSA valued at more than \$23.3 billion, which the First Nations-in-Assembly approved in April 2023 via AFN Resolution 04/2023, *Revised Final Settlement Agreement on Compensation for First Nations Children and Families*.

The AFN has also led work to advance First Nations rights and jurisdiction over 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 Métis Children, Youth and Families*, 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 is named in honour of Jordan River Anderson, a First Nations child from Norway House Cree Nation who spent his entire life and passed away in hospital because the governments of Canada and Manitoba could not agree on who would pay for his home-based care. Jordan's Principle ensures First Nations children have access to the supports they need to thrive, regardless of where they live, without denial, delay, or



ASSEMBLY OF FIRST NATIONS
Special Chiefs Assembly

December 5-7, 2023

Shaw Centre – Ottawa, Ontario

Ottawa is located on the unceded unsundered Territory of the Algonquin People.

ASSEMBLÉE DES PREMIÈRES NATIONS
Assemblée extraordinaire des Chefs

Du 5 au 7 décembre 2023 - Centre Shaw - Ottawa (Ontario)

Ottawa est située sur le territoire non cédé et non abandonné du peuple algonquin.



disruption. Between July 2016 and August 2023, Jordan's Principle has approved over 3.55 million products, services, and supports for First Nations children.

AFN's recent advocacy

The AFN advocates for the full and proper implementation of Jordan's Principle and for First Nations to determine and advance their priorities for Jordan's Principle. The AFN's advocacy led to an investment of \$4 billion over six years in Budget 2022 for the continued implementation of Jordan's Principle. Additionally, the AFN's 2024 Pre-Budget Submission calls for \$2.485 billion over five years to fund post-majority supports for First Nations youth aging out of Jordan's Principle coverage.

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. The IFSD is working with First Nations to test the proposed funding model, including those asserting jurisdiction under the Act, with results anticipated in early 2024.

As per Resolution 40/2022, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordans Principle*, the AFN advocates for reforms that are evidence-based, respect First Nations rights and substantive equality, and ensures the best interests of the children. The AFN also works to ensure that appropriate services reflecting the distinct needs and circumstances of First Nations are prioritized.

The Resolution calls for timelines to reach an FSA on long-term reform that allow for engagement to guarantee that First Nations rights to free, prior and informed consent (FPIC) are respected. In response, the AFN and the Caring Society proposed new negotiation timelines that align with IFSD's research and uphold First Nations rights to FPIC. The AFN and Caring Society provided this proposal to Canada in March 2023 and waited seven months for Canada's response. Negotiations on long-term reform are expected to continue into 2024.

In July 2023, the AFN sought and received the CHRT's approval of the FSA on compensation. On October 24, 2023, the AFN and other parties received approval of the FSA on compensation from the Federal Court of Canada. This milestone is a step forward to compensate First Nations children and families harmed by the discriminatory practices in the FNCFS Program and the narrow application of Jordan's Principle.

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 Quebec Courts upheld much of the Act but struck sections 21 and 22.3, which give First Nations CFS laws the "force of 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 before the end of 2023.



ASSEMBLY OF FIRST NATIONS
Special Chiefs Assembly

December 5-7, 2023

Shaw Centre – Ottawa, Ontario

Ottawa is located on the unceded unsurrendered Territory of the Algonquin People.

ASSEMBLÉE DES PREMIÈRES NATIONS
Assemblée extraordinaire des Chefs

Du 5 au 7 décembre 2023 - Centre Shaw - Ottawa (Ontario)

Ottawa est située sur le territoire non cédé et non abandonné du peuple algonquin.



Next Steps

The AFN continues to advocate for First Nations children and families in negotiations on the long-term reform of FNCFS 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.

The parties are developing a distribution protocol for compensation, that will determine the compensation process for claimants. The parties will seek First Nations feedback on the distribution protocol before taking it to be approved by the Federal Court of Canada before compensation can begin. The AFN will continue to ensure the compensation process is trauma-informed with a simple application process supported by wellness services. The AFN has established an information line for First Nations to learn about compensation and long-term reform. Supports can be reached at 1-888-718-6496.

The AFN continues to advocate for the full and proper implementation of the *Act respecting First Nations, Inuit and Métis Children, Youth and Families*. To support this advocacy, the AFN has contracted the Indigenous owned Firelight Group to complete research on First Nations' priorities for the Act and develop tools to support First Nations in asserting jurisdiction.

Contact:

Stephanie Wellman,
Director of Social Development,
swellman@afn.ca