



February 8, 2022

## **BRIEFING**

### **\$40 BILLION CHILD WELFARE SETTLEMENT INFORMATION SESSION**

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#### **OVERVIEW**

1. Presentation from AFN Regional Chief Woodhouse and litigation team
  - See attachments for timelines
  - Agreement in Principle is not finalized, this is an opportunity for Regional Chief Woodhouse and her team to present information about the Agreements
2. Determine next steps for Nations
3. Provide details on how Nations can prepare for the implementation of the Agreements

#### **\$40 BILLION CHILD WELFARE SETTLEMENT FREQUENTLY ASKED QUESTIONS<sup>1</sup>**

##### **How many people will be eligible for compensation?**

The precise number is not yet known. However, as part of this process, independent third-party experts estimated that over 200,000 First Nations children, youth and caregivers were impacted by Canada's discrimination in the First Nations Child and Family Services Program and Jordan's Principle and would therefore be eligible for compensation.

In addition to compensation, all First Nations children and families will benefit from a reformed family and child services system.

##### **How can people apply for compensation?**

Details on eligibility and the application process are still being determined and will be shared once a final settlement agreement is reached.

##### **How much will each person receive?**

The total amount of \$20 billion for compensation and \$19.807 billion for long term system reform comes under the two Agreements-in-Principle.

The next step is to negotiate the Final Settlement Agreement by Spring 2022. From there the eligibility and compensation amounts will be determined, which will then be approved by the courts. A lot of work needs to be conducted before the amounts for individual compensation are released, including reviewing data on children in care and Jordan's Principle since 1991

The AFN will be setting up a help desk to answer questions and provide guidance as the process unfolds.

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<sup>1</sup> <http://www.fnchildcompensation.ca/#FAQ>

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## **How soon will people begin to receive compensation? Will it be this year?**

The AFN and other parties are working hard to get the compensation distributed by the end of 2022 or early 2023. First, the parties will need to negotiate the details of the Final Settlement Agreement. Following that will be a Notice of Certification of the settlement and the approval hearing.

## **Where can people find out more information?**

First Nations who want more information can email [fnchildcompensation@afn.ca](mailto:fnchildcompensation@afn.ca) or go to [www.afn.ca](http://www.afn.ca).

## **FIRST NATIONS CHILD AND FAMILY SERVICES SYSTEM REFORM**

### **How will the \$19.807 billion for system reform be allocated?**

The Reformed Child and Family Services Funding Approach will provide funding for:

- National baseline funding for child and family services, which is the actual cost of a child in care.
- Top-up funding for prevention, information technology, results, emergency funds, poverty, remoteness and geography, capital asset replacement, capital maintenance and recapitalization. These funds will support First Nations to have what they need to deliver the programs and services for children and families that they wish to.
- A National First Nations Secretariat to provide technical, operational and data support to First Nations and Agencies.
- First Nations Representative Services to ensure that child and family services are culturally appropriate and meet the needs of First Nations.
- Major Capital Infrastructure to ensure First Nations have the facilities needed to deliver services, in alignment with the Canadian Human Rights Tribunal's order on capital (2021 CHRT 41).

### **When will people start to see a different First Nations Child and Family Services Program?**

There is commitment from the AFN and the Government of Canada to move ahead as quickly as possible. The AFN is seeking a system that is based on wellbeing outcomes and focused on prevention.

Some elements of the Agreement-in-Principle and the funding related to system reform may begin rolling out this year, such as supports to assist parents that will keep a child in the home and extending the age-out of the program to 25 by April 2022. Other reforms will take more time to design and implement.

### **The announcement is for \$40 billion. Where's the balance of the funds for reform going?**

Indigenous Services Canada's administration costs will be covered by the balance.

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## RESOURCES/ATTACHMENTS

1. <http://www.fnchildcompensation.ca/>
2. Agreement in Principle Timeline.PDF
3. History: AFN's Advocacy at the Canadian Human Rights Tribunal on First Nations Child and Family Services and Jordan's Principle.PDF



# COMPENSATION FOR DISCRIMINATION IN THE FIRST NATIONS CHILD AND FAMILY SERVICES PROGRAM AND JORDAN'S PRINCIPLE

JANUARY 22, 2022

## EXPECTED TIMELINE

1

March 31, 2022



Assembly of First Nations (AFN), Moushoom and Canada

The parties aim to reach a comprehensive final settlement agreement (CFSA) on compensation.

The Parties have reached an Agreement-in-Principle (AIP) with Canada that will act as a framework for the final settlement discussions. There are many details that need to be worked out with Canada, Moushoom and AFN in the development of CFSA, including, but not limited to, determining the following elements:

- **Eligibility and Breakdown** – Who is eligible and potential compensation amounts.
- **Distribution Plan** – How funds will be distributed to eligible individuals.
- **Management of funds on behalf of minors** – How funds will be distributed in the case of a youth who is under the age of majority.
- **Claims Administration** – Who will administer the funds. (Note: The AFN has indicated its preference for a First Nations claims administrator.)
- **Supports for class members** – What supports will be available for individuals who are eligible for compensation and how they will be administered, with the goal of minimizing the risk of retraumatizing individuals through the compensation distribution process. These supports will potentially include, but are not limited to, funding optional (i.e. non-mandatory) programs for financial management, mental health supports and counselling services.

2

After CFSA/  
March 31, 2022



Canadian Human Rights Tribunal (CHRT)

Once the Final Settlement Agreement is signed, the Parties will seek a CHRT order stating that, by reaching a final settlement, the CHRT Compensation Order (2019 CHRT 39) has been satisfied.

3

Once CFSA is signed



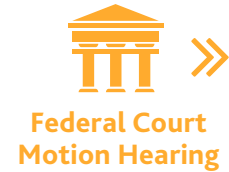
Federal Court Motion

Once the CFSA is signed, the Parties will seek a Federal Court motion for the approval of:

1. notice of certification of AFN/Moushoom Class Action
2. notice of certification of Trout Class Action
3. notice of settlement of both class actions
4. the plan to distribute the above notices

This motion is a preliminary step before we move towards the settlement approval motion. It also allows us to begin to move forward on issuing a formal notice to the class.

4



Federal Court Motion Hearing

Starting  
September  
19-23, 2022

In anticipation of a CFSA, the Federal Court has set aside the week of September 19-23, 2022 for a hearing for:

1. approving the settlement
2. approving the settlement distribution plan
3. approving the settlement administrator
4. adjudicating any outstanding contested issues amongst the parties relating to the above

The court may retain jurisdiction after this step to address possible further issues.

5

As directed by  
Federal Court after  
Motion Hearing



Payment to  
Class members

It is estimated that payments will start at the end of 2022 - early 2023, subject to decision of the Federal Court.

### Stay Connected

The AFN has **launched a website** to provide information and updates about the AIP and next steps. A broader notice plan will be developed for approval of the Federal Court in order to reach as many potentially eligible class members as possible.

For more information, please visit [www.fnchildcompensation.ca](http://www.fnchildcompensation.ca)












# History: AFN's Advocacy at the Canadian Human Rights Tribunal on First Nations Child and Family Services and Jordan's Principle



## AFN's Advocacy at the Canadian Human Rights Tribunal: Background and Timeline

 Pre-2007	<b>Findings of Discrimination</b>	The Joint National Policy Review and the Wen:de reports found serious shortfalls in the funding of First Nations Child and Family Services (FNCFS). The Canadian Incidence Studies on Reported Child Abuse and Neglect highlighted the disproportionate involvement of First Nations children in the child and family services system.
 2007	<b>Complaint Filed</b>	The Assembly of First Nations (AFN) and Caring Society filed a human rights complaint alleging that Canada was discriminating against First Nations children and families in the funding of the FNCFS Program and narrow application of Jordan's Principle.
 2016	<b>Proven Discrimination</b>	The Canadian Human Rights Tribunal (CHRT) substantiated the complaint ( <a href="#">2016 CHRT 2</a> ), and ordered Canada to immediately overhaul the FNCFS Program and fully implement Jordan's Principle.
 2017	<b>Jordan's Principle Orders</b>	The CHRT issued immediate relief orders on Jordan's Principle ( <a href="#">2017 CHRT 14</a> and <a href="#">2017 CHRT 35</a> ).
 2019	<b>Compensation Order</b>	The CHRT ordered Canada to pay \$40,000 in compensation to eligible First Nations children and their families harmed by Canada's discrimination ( <a href="#">2019 CHRT 39</a> ). In October 2019, Canada filed for a judicial review of this order.
 2020	<b>Jordan's Principle Eligibility</b>	The CHRT issued an order on eligibility for Jordan's Principle ( <a href="#">2020 CHRT 36</a> ). In December 2020, Canada filed for a judicial review of this order.
 2021	<b>Federal Court Decision &amp; Appeals</b>	In June 2021, Federal Court heard the judicial reviews of the CHRT's compensation and eligibility orders. In September 2021, the <a href="#">Federal Court upheld both orders</a> . Canada filed a "protective review" of the Federal Court decision in October 2021.
	<b>Capital Order</b>	In August 2021, the CHRT issued an interim <a href="#">letter-decision</a> regarding capital assets. Canada filed for a judicial review of this decision in September 2021. In November 2021, the CHRT issued its full order and reasons regarding capital assets ( <a href="#">2021 CHRT 41</a> ).



## History: AFN's Advocacy at the Canadian Human Rights Tribunal on First Nations Child and Family Services and Jordan's Principle



### AFN's Mandate from Chiefs-in-Assembly

The following resolutions guide the AFN's advocacy at the CHRT, including compensation and long-term reform of the FNCFS Program and Jordan's Principle:

<p><b>AFN Resolution 62/2016</b>, <i>Full and Proper Implementation of the historic Canadian Human Rights Tribunal decision in the provision of child welfare services and Jordan's Principle</i></p>	<p>Calls upon Canada to implement the CHRT's orders, including immediately remedying the discrimination found by the CHRT, and cease unilateral actions that exclude First Nations. Further, supports the re-establishment of the National Advisory Committee (NAC) on FNCFS Program Reform.</p>
<p><b>AFN Resolution 83/2016</b>, <i>National Advisory Committee on INAC's Child Welfare Reform Engagement Strategy</i></p>	<p>Calls on Canada to immediately comply with the CHRT's orders, affirms NAC as the process to advise on FNCFS reform and Jordan's Principle implementation.</p>
<p><b>AFN Resolution 40/2017</b>, <i>Call on Canada to Comply with the 2016 Canadian Human Rights Tribunal Orders</i></p>	<p>Calls on Canada to comply with all CHRT orders, including dropping an appeal, and reiterates the Chiefs-in-Assembly's concerns regarding Canada's failure to comply with resolutions on this matter.</p>
<p><b>AFN Resolution 92/2017</b>, <i>Support for the Spirit Bear Plan to End Inequities in all Federally Funded Public Services for First Nations Children, Youth and Families</i></p>	<p>Supports the Spirit Bear Plan, as developed by the First Nations Child and Family Caring Society.</p>
<p><b>AFN Resolution 27/2018</b>, <i>Support for the long-term implementation of Jordan's Principle</i></p>	<p>Calls on Canada to implement and invest in Jordan's Principle beyond March 31, 2019, including capital and First Nations control over Jordan's Principle as part of the long-term approach to implementing Jordan's Principle.</p>
<p><b>AFN Resolution 85/2018</b>, <i>Financial Compensation for Victims of Discrimination in the Child Welfare System</i></p>	<p>Calls on Canada to ensure financial compensation is the maximum allowable under the Canadian <i>Human Rights Act</i>, and ensure that siblings, parents and/or grandparents are provided with compensation.</p>

The following committees inform the work of the AFN regarding FNCFS and Jordan's Principle:

- **National Advisory Committee on Child and Family Services Program Reform (NAC):** Mandated by Chiefs-in-Assembly to provide advice and input into the design and development of reform of the FNCFS Program to promote the safety and best interests of First Nations children and to ensure substantive equality.
- **Consultation Committee on Child Welfare (CCCW):** Oversee the development and implementation of immediate relief measures ordered by the CHRT and encompassed by the Consultation Protocol, including Jordan's Principle.
- **Jordan's Principle Action Table (JPAT):** A sub-committee of the NAC that is focused on the implementation of Jordan's Principle, including reform and the long-term implementation approach, and makes recommendations to the NAC.
- **Jordan's Principle Operations Committee (JPOC):** A sub-committee of the CCCW that provides input and guidance on the operational aspects of Jordan's Principle and makes recommendations to the CCCW.