



LEGAL AFFAIRS AND JUSTICE



Long-Term Reform of the FNCFS Program

September 22, 2022



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BACKGROUND:

- The First Nations Child and Family Caring Society of Canada (“Caring Society”) and the Assembly of First Nations (“AFN”) filed a complaint to the Canadian Human Rights Tribunal (“CHRT”) in 2007.
- In January 2016, the CHRT found that Canada was discriminating against First Nations children and families in its provision and funding of the FNCFS Program and narrow application of Jordan’s Principle.
- The CHRT ordered Canada to completely reform its FNCFS Program and fully implement Jordan’s Principle.



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22 YEAR ROAD TO REFORM:

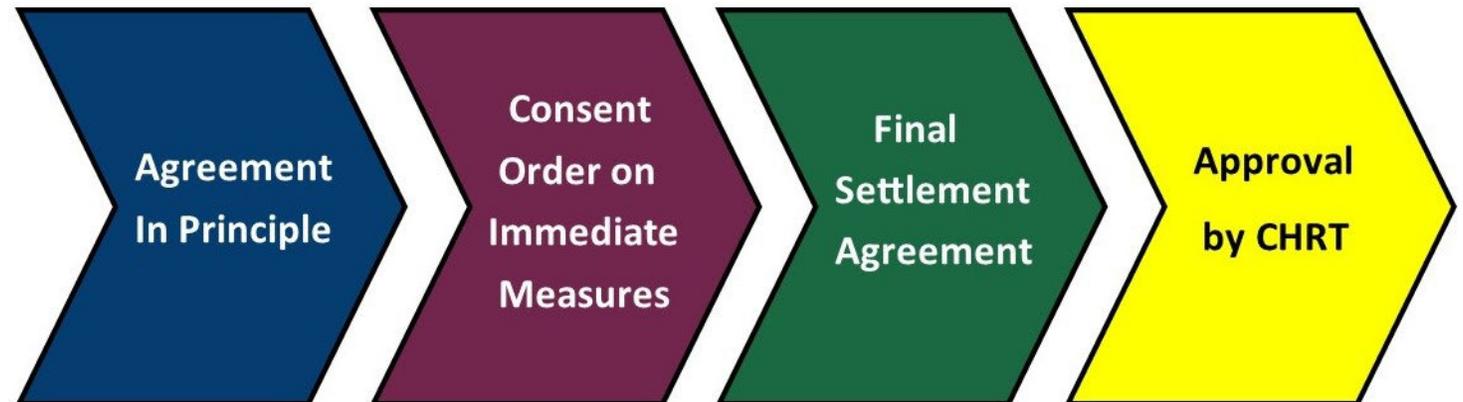
- 1991 - INAC launches the FNCFS Program.
- 2000 – Joint AFN-Canada National Policy Review & Recommendations.
- 2004-05 – Wen:De Series of Reports.
- 2007 – AFN and the Caring Society file their Human Rights Complaint.
- 2007 – House of Commons Motion 296 on Jordan’s Principle.
- 2008 – Auditor General of Canada’s Report.
- 2009 – Commons Standing Committee on Public Accounts.
- 2011 – Auditor General of Canada’s Status Report.
- 2012 – International Committee on the Elimination of Racial Discrimination.
- 2012 – Commons Standing Committee Report.
- 2015 – Truth and Reconciliation Report
- 2017 – International Committee on the Elimination of Racial Discrimination.
- 2019 – National Inquiry into Missing and Murdered Indigenous Women Report.



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THE LEGAL PROCESS

- In 2016 the CHRT ordered Canada to completely reform its FNCFS Program and fully implement Jordan's Principle.
- The Agreement-in-Principle provides a framework to implement the CHRT's orders and \$19.807 billion over five years for reforming the FNCFS Program.





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AGREEMENT-IN-PRINCIPLE

- **Baseline funding:** Based on the 2019-2020 expenditures of the FNCFS Program. Annual increases for inflation and population growth.
- **Prevention funding:** Based on multiplying \$2,500 times the First Nations population on-reserve.
- **First Nations Representative Services:** Available to each First Nation based on \$283 multiplied by the First Nations population on-reserve.
- **Information Technology:** Additional top-up funding equivalent to 6% of Baseline Funding.
- **Results:** Funding equivalent to 5% of Baseline Funding. Supports the Measuring to Thrive indicators related to First Nations wellness.
- **Emergency Fund:** Additional funding in an amount equivalent to 2% of Baseline Funding.
- **Poverty:** Additional top up funding is provided to address poverty gaps.
- **Post-Majority Care:** Funding for post-majority care for youth aging out of care up to and including the age of 25.
- **Capital:** Funding for the purchase or construction of capital assets on-reserve or in Yukon. Also needs assessments and/or feasibility studies.



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AGREEMENT-IN-PRINCIPLE CON'T

- ❖ **Block Funding:** ISC will distribute funding to the recipients using block and flexible funding mechanisms. Recipients may move funding across expenditure categories in order to meet the real needs of the children and families. Able to roll over unused amounts into future years.
- ❖ **Remoteness Funding:** Recognition of barriers that impact remote First Nation communities increased costs. Canada will index funding to account for the increased costs of delivering services in remote communities.
- ❖ **National First Nations Secretariat:** An independent and technical Secretariat to assist First Nations and FNCFS service providers through data collection, analysis, and operational support.
- ❖ **Departmental Reform:** An independent expert evaluation to identify and provide recommendations to redress internal departmental processes, procedures and practices that contributes to the discrimination.



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IMMEDIATE MEASURES

- The Parties will appear before the CHRT before March 31, 2022, to obtain an order for immediate reforms to the FNCFS program.
- The consent order will fix March 31, 2022, as the end-date for eligibility for compensation for discrimination within the FNCFS Program under the CHRT's Compensation Entitlement Order (2019 CHRT 39).

April 1, 2022

Prevention funding
based on \$2,500 per
capita of the
population on-
reserve

April 1, 2022

Post-majority care up
to and including age
25 at actual costs

Performance
informed budgeting
approach

Research on:

- Long-term funding
- Jordan's Principle gaps
- ISC Cultural Competency
- FN non-agency
communities needs
assessment



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LONG-TERM REFORM NEGOTIATIONS

- The Parties are negotiating long-term reform measures at the direction of the CHRT and pursuant to its orders.
- Negotiations commenced in January 2022 and we are working towards a Final Settlement Agreement.
- The AFN is advocating for a flexible system that provides First Nations with tools and resources to address the needs of their children and families. There can be no one-size-fits-all model. Rather, reforms must afford First Nations and its service providers with flexibility to respond to the particular circumstances of their communities.
- The AFN is also seeking to realign accountability, to ensure service providers are accountable to the First Nations governments.



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COMPENSATION FSA DELAY'S ADVERSE IMPACT

- The AIP on Long-term Reform is conditioned on the ending of the CHRT's Jurisdiction by December 30, 2022.
- The Caring Society's challenge to the Final Settlement Agreement on Compensation has created delays in the approval timeframes.
- Should timeframes to approve the compensation be prolonged, both the compensation and long-term reform processes could be jeopardized.
- While remote, it is possible that long-term reform discussions could collapse as Treasury Board Authorities will expire this fiscal year.



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NEXT STEPS

- Regional Engagements & Consultations
- Negotiations continue
- Special Chiefs Assembly
- Endorsement of CHRT