



AIP on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle

Background

On February 23, 2007, the First Nations Child & Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a human rights complaint alleging that Canada's flawed and inequitable provision of First Nations Child and Family Services (FNCFS) and its failure to properly implement **Jordan's Principle** were discriminatory. On **January 26, 2016**, the Canadian Human Rights Tribunal (Tribunal) substantiated the discrimination and ordered Canada to immediately cease its discriminatory conduct. Although Canada acknowledged the finding of systemic discrimination and did not challenge that decision, it has received 20 non-compliance and procedural orders and has challenged the Tribunal's orders in the Federal Court regarding compensation to First Nations children and families and orders about funding the purchase and construction of capital assets for First Nations child and family services and Jordan's Principle.

On **September 29, 2021**, the Federal Court dismissed Canada's challenge to the Tribunal's compensation orders. On **October 29, 2021**, Canada appealed the Court's decision to dismiss, and then requested a pause of the appeal. In November of 2021, the Caring Society and other parties consented to Canada's request to pause the appeal for a short time and entered negotiations. The Parties to the negotiations are the Caring Society, the AFN, the Attorney General of Canada (on behalf of Canada), the Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN).

Purpose of the Agreement in Principle

On December 31, 2021, the Parties reached an Agreement in Principle (AIP) on Long-Term Reform of the First Nations Child and Family Services (FNCFS) Program and Jordan's Principle. An AIP is a pre-agreement that lays out the process for reaching a final agreement. This AIP sets out a framework by which Canada will implement the necessary reforms to its FNCFS Program and

Jordan's Principle to provide funding of services to First Nations children, youth, and families in ways that meet the orders to cease its discriminatory conduct and ensure that the discrimination is not repeated.

Funding Commitment

In the AIP, Canada commits to providing \$19.807 billion over the first five years for the Reformed Child and Family Services Funding Approach, for capital assets required to properly administer the FNCFS Program, and for capital assets required to administer Jordan's Principle. Canada understands that additional funds above the \$19.807 billion may be required to achieve long-term reform and agrees not to apply any of the original amount promised to pay for its own departmental expenses. Funding amounts and structures will be based on the needs and outcomes of First Nations children, youth, and families and provide for culturally appropriate services that align with the unique circumstances of the respective First Nation(s).

Principles Guiding Long-Term Reform

The AIP provides that Canada's policies, practices, and agreements regarding First Nations child and family services and Jordan's Principle must be non-discriminatory, and funding will be culturally appropriate and focus on prevention and **substantive equality**. Funding will be based on the actual needs of children, youth, young adults, families, and First Nations, and will align with a reformed funding approach that ensures funding is based on well-being indicators and high-quality data collection and analysis. Funding will address the root causes of structural inequities that have led to the over-representation of First Nations children and youth who encounter the child welfare system. These structural inequities include poverty, poor housing, multi-generational trauma, substance misuse, and domestic violence. Funding will be flexible and responsive to specific needs over time and will support holistic wellness.

Reformed CFS Funding Approach

Guidelines set out in the AIP to reform Canada's FNCFS funding approach include following recommendations by the Institute of Fiscal Studies and Democracy at the University of Ottawa (IFSD). IFSD recommendations are based on a 3-phase study focusing on what FNCFS agencies need to deliver services that meet the Tribunal's orders to provide substantive equality, the best interests of the child, and a culturally informed approach to services for First Nations children, youth, and families. The Reformed CFS Funding Approach will use block funding to allocate funds to First Nations and/or FNCFS service providers and will be flexible and adjust upwardly for inflation. The new approach will also fund post-majority care for young people aging out of care and for those who were formerly in care up to and including the age of 25. Top-up funding for prevention, information technology, poverty gaps, and remoteness are also included in the plan.

Review, Evaluation, and Accountability of FNCFS Program and Jordan's Principle

To ensure that Canada's discrimination against First Nations children and families via its FNCFS Program and Jordan's Principle does not reoccur, the Parties to the AIP agree that there must be robust measures for review, evaluation, and accountability carried out at intervals, and that these measures will be enforceable through a dispute resolution process. Details of the review process will be decided prior to implementing the Final Settlement Agreement. In addition, Parties may propose legislation to ensure institutional accountability for full and proper implementation of Jordan's Principle.

Reform of Indigenous Services Canada

The Tribunal identified that the "old mindset" ingrained in Indigenous Services Canada (ISC) sustains systemic discrimination in the department's FNCFS Program and implementation of Jordan's Principle. To address this ongoing systemic discrimination, ISC and the Parties to the AIP will establish an expert advisory committee that will help design and implement a third-party evaluation of ISC, which will include, but is not limited to: policy and decision-making processes; cultural norms and attitudes; human resource activities; values and ethics; cultural competency; and accountability mechanisms. The Parties, along with ISC, will also develop a work

plan to implement the reforms recommended by the expert advisory committee and seek advice on the reforms from First Nations youth in care and young adults formerly in care.

Final Settlement Agreement

The Parties will seek to reach a Final Settlement Agreement by Fall of 2022, which will be binding and include a dispute resolution mechanism to hold Canada accountable after the Tribunal ends its jurisdiction. The Final Settlement Agreement will lay out the required changes to federal policy, procedures, and agreements necessary to implement the long-term reform of Canada's FNCFS Program and implementation of Jordan's Principle to ensure substantive equality for First Nations children, youth, and families. Once the Final Settlement Agreement is completed, the Parties will, on or before November 30, 2022, bring a consent motion to the Tribunal and request a final order that resolves the complaint and ends the Tribunal's jurisdiction by December 31, 2022.

Click here for more information on the [timeline](#) for reaching a Final Settlement Agreement.