



## Settlement Agreement in Principle Regarding Compensation for First Nations Children



### Background

In 2016, the Canadian Human Rights Tribunal (Tribunal) found that Canada was discriminating against First Nations children and families living on-reserve by failing to properly fund child welfare services. The Tribunal also found that Canada failed to properly implement **Jordan's Principle**, a child first principle to ensure First Nations children get the services and help they need when they need it. The Tribunal ordered Canada to end the discrimination and to take measures to keep it from happening again and said that it would supervise this process.

In 2019, the Tribunal ordered Canada to financially compensate certain First Nations children, and their parents or grandparents, who were affected by its discriminatory treatment in child welfare services since January 1, 2006, or who were denied or experienced delays in other services under Jordan's Principle from December 12, 2007 to November 2, 2017. Canada was **ordered to pay \$40,000 in compensation** to each eligible person.

In addition to the Tribunal case, there are separate class action lawsuits on behalf of First Nations children affected by on-reserve child welfare services and Canada's failure to implement Jordan's Principle.

On **September 29, 2021**, the Federal Court dismissed Canada's appeal of the Tribunal's compensation order. On **October 29, 2021**, Canada appealed the Federal Court's decision to dismiss, and then requested a pause of the appeal. In November of 2021, the Caring Society and other parties involved, including the lawyers for the plaintiffs in the separate class action lawsuits, consented to Canada's request to pause the appeal for a short time and entered negotiations.

On December 29, 2021, the plaintiffs in the separate class action lawsuits signed an Agreement in Principle (AIP) with Canada. The First Nations Child & Family Caring Society (Caring Society) is not part of the class action lawsuits and did not sign the AIP regarding compensation for First Nations children.

### What the Compensation AIP Says

An AIP is a pre-agreement that lays out the process for reaching a final agreement. The AIP on compensation outlines an agreement between the parties that includes the following: the total settlement amount; definitions of groups who will qualify for compensation; responsibility for design and implementation of a Distribution Protocol; the intent of the agreement; and an outline of what the Final Settlement Agreement should include.

### Settlement Amount

Canada will pay a total of \$20 billion dollars to settle the claims of the people included in the five classes defined below. In addition to this amount, Canada will provide supports for class members in the application process, including assistance to complete compensation forms, mental health supports, cultural and spiritual supports, administration fees, and legal fees to lawyers representing the plaintiffs.

### Definitions of Groups Who Will Qualify for Compensation

**Removed Child Class** refers to all First Nations people who were under the age of majority in their province or territory between April 1, 1991 and March 31, 2022 and were taken into out-of-home care while they or one of their parents were "ordinarily resident on a Reserve" or living in Yukon.

**Removed Child Family Class** refers to anyone who is the brother, sister, mother, father, grandmother, or grandfather of a member of the Removed Child Class.

**Jordan's Principle Class** refers to all First Nations individuals who were under the age of majority in their province of residence between December 12, 2007 and November 2, 2017 and did not receive an essential public service or product they were entitled to, or experienced a delay in receiving that service or product, based on Jordan's Principle.

**Jordan's Principle Family Class** refers to the brother, sister, mother, father, grandmother or grandfather of someone who did not receive, or experienced a delay in receiving, an essential public service they were entitled to under Jordan's Principle

**Trout Class** refers to all First Nations people who were under the age of majority in the province they lived in between April 1, 1991 and December 11, 2007 and did not receive an essential public service or product they were entitled to, or experienced a delay in receiving that service or product, based on Jordan's Principle.

## Responsibility for Design and Implementation of Distribution Protocol

The lawyers for the plaintiffs involved in the class action lawsuits will be responsible for designing the compensation plan and distributing the funds to people in the groups who qualify for compensation. They may seek guidance from the First Nations Child & Family Caring Society and other experts and First Nations stakeholders to ensure the distribution plan is in the best interests of the people in each of the five classes outlined above.

## Intent of Agreement

The Settlement AIP is intended to pave the way towards a Final Settlement Agreement by March 31, 2022. Upon settlement, Canada will be released from the claims made by those involved in the proposed class actions and compensation claims ordered by the Canadian Human Rights Tribunal, including all damages based on violation of the *Canadian Human Rights Act* and the *Canadian Charter of Rights and Freedoms*.

## Final Settlement Agreement

By March 31, 2022, the parties to the AIP will draft a Final Settlement Agreement that will outline the details of the proposed settlement, including administration of the settlement, the Distribution Protocol, Breakdown of the Settlement Funds, notice to class members, and all other details relevant to the settlement. The Final Settlement Agreement will be dependent upon the Canadian Human Rights Tribunal confirming that the settlement meets its compensation order and framework, and it must also be approved by the Federal Court.

## Find Out More

For more information on the class action lawsuits and compensation, please reach out to the following:

### Sotos Class Actions - First Nations Youth:

<https://www.sotosclassactions.com/cases/first-nations-youth/>

Email: firstnationsyouth@sotos.ca

Phone: 1-888-888-3126 in English or 1-866-857-7047 in French.

### Assembly of First Nations:

<https://www.afn.ca/afn-bulletin-agreements-in-principle-on-compensation-and-long-term-reform-related-to-child-and-family-services-and-jordans-principle/>

Email: fncchildcompensation@afn.ca