

Revised FSA: Overview



On April 19, 2023, Parties to the Final Settlement on compensation signed the Revised Final Settlement Agreement (“Revised FSA”) on Compensation. The following information sheet will provide an overview on important definitions and basics on compensation.

It is important to note that the Revised FSA is a legal agreement and to agree to the terms of this agreement is an important decision. Claimants are strongly urged to read the Revised FSA in its entirety before starting a claim and to seek legal advice if they have concerns.

This document is not intended to replace the actual Revised FSA document and only to provide an informal overview of the information contained in the Revised FSA.

Important Definitions

What is a Claimant, a Class, and a Class Member?

In the context of the Revised FSA, a **Claimant** is a person who is making a claim that they belong to a Class in order to be considered eligible to receive compensation for harms done to them.

There are many different **Classes** of Claimants under the Revised FSA. These are the different categories of people who have suffered the same kind of harm. If a Claimant is successful in their claim, they will be considered an **Approved Class Member** of a specific **class**.

What are the different classes covered under the Revised FSA?

- (1) Removed Child Class
- (2) Removed Child Family Class
- (3) Essential Services Class
- (4) Jordan’s Principle Class

- (5) Jordan’s Principle Family Class
- (6) Trout Child Class
- (7) Trout Family Class
- (8) Kith Child Class
- (9) Kith Family Class

What does “First Nations” mean under this FSA?

For all **Class Members**, First Nations means:

- Persons who are registered under the *Indian Act*;
- Persons who were entitled to be registered under sections 6(1) or 6(2) of the *Indian Act*, as it reads (as of February 11, 2022).

In addition (for **Removed Child Class only**)

- Persons who met their Band Membership requirements (under Section 10 – 12 of the *Indian Act*) by February 11, 2022.¹

In addition (for **Jordan’s Principle Class only**)

- Persons who met their Band Membership requirements (under Section 10 – 12 of the *Indian Act*) between January 26th, 2016 and November 2nd, 2017.
- Persons who were recognized as citizens or members of their First Nation before February 11, 2022 (confirmed by First Nations Council Confirmation²) **AND** who suffered Delay, Denial or a Service Gap between January 26th, 2016 and November 2nd, 2017.

What does “Ordinarily Resident’ on Reserve” mean under this FSA?

- a) A First Nations person who lives in a house, apartment or other permanent dwelling on a First Nations Reserve at least 50% of the time, and who doesn’t have a primary residence elsewhere.
- b) A First Nations person who is living off-Reserve while registered full-time in a post-secondary education/training program who is receiving federal/band/aboriginal organization funding support

¹ “Including where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List prior to February 11, 2022.”

² Whether under final agreement, self-government agreement, treaties or First Nations’ customs, traditions and laws.

and who:

- a. Would otherwise live on-Reserve;
 - b. still has a residence on-Reserve;
 - c. is a member of a family that lives on-Reserve; or
 - d. returns to live on-Reserve with parents, guardians, caregivers or maintainers when not at school or working temporarily.
- c) A First Nations person who is temporarily living off-Reserve to receive care that are not available on-Reserve and who, if they didn't need the care, would live on-Reserve.
- d) A First Nations person who is temporarily living off-Reserve for the primary reason of being able to access social services because there is no comparable services available on Reserve and who, were it not for receiving the services, would live on-Reserve.
- e) A First Nations person who at the time they were removed or placed with a Kith Caregiver were Ordinarily Resident on-Reserve³.
- f) For Yukon Class Members, "on-Reserve" within the "Community Boundary" as defined in the Umbrella Final Agreement Between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon as of February 11, 2022, and "off-Reserve" in this Agreement is correspondingly inclusive of areas outside the "Community Boundary" as of February 11, 2022.

What is an Essential Service?

A service is considered essential if the Claimant needs it because of their conditions or circumstances, and a delay in receiving the service, or not receiving it at all would a material impact.

Examples of essential services

Some services provided by (or under the guidance/direction of) health, social care and educators who specialize in:

- a) Recommending services/supports with activities of daily living and safety in the home, school and community.
- b) Helping persons with language skills (ex. speech/language pathologists, augmentative and alternative communication).
- c) Helping persons with movement of their hands, arms and

legs (ex. physiotherapists, mobility devices).

- d) Giving and interpreting hearing tests and recommending assistive devices related to hearing (ex. assessments of hearing by audiologists, hearing devices)
- e) Testing vision and recommending corrective eyewear (ex. optometrists, advising on eyewear).
- f) Teaching children with learning needs (ex. special needs education teachers; supported child development consultants).
- g) Promoting infant, early childhood or adolescent development¹ (ex. infant development consultants, child and youth workers, or early childhood educators).
- h) Conducting psychoeducational assessments, and provision of counselling (ex. psychologists, social workers).
- i) Addressing delayed or problematic behaviours (ex. early childhood educators, behavioural specialists, child and youth workers, social workers).
- j) Recommending a specialized diet or nutritional intake (ex. nutritionist, dietitian).

Equipment, products, processes, methods and technologies that are recommended in a cognitive assessment or individualized education plan.

Medical equipment, such as:

- a) Equipment, products and technology used by people to assist with daily activities (ex. environmental aids, including lifts and transfer aids and professional installation thereof)
- b) Products and technology for personal indoor and outdoor mobility and transportation (ex. mobility aids that include standing and positioning aids and wheelchairs).
- c) Hospital bed
- d) Medical equipment related to diagnosed illnesses (e.g., percussion vests, oxygen, insulin pumps, feeding tubes).
- e) Prostheses and orthotics.
- f) Specialized communication equipment (ex. equipment, products, and technologies that allow people to send and receive information that would otherwise be done verbally).

Medical transportation related to access to essential services, supports or products where the lack of transportation prevented access to the recommended service (ex. People in remote/isolated, semi-isolated communities)

Specialized dietary requirements

Treatment for mental health and/or substance misuse, including impatient treatment.

³ for the purpose of receiving child welfare and family services funding pursuant to a funding agreement between Canada and the province or territory in which the individual resided (including

Ordinarily Resident on Reserve individuals funded through the cost-shared model under the Canada-Ontario 1965 Indian Welfare Agreement);

Oral Health (excluding orthodontics), such as:

- a) Oral surgery services (including general)
- b) Restorative services (including cavities and crowns)
- c) Endodontic services (including root canals)
- d) Dental treatment require to restore damage resulting from unmet dental needs.

Respite Care

Surgeries

Compensation Basics

How will compensation be distributed?

Compensation under the Revised FSA will be in the form of either:

- a. direct payment to eligible Class Members or eligible estates of deceased Class Members (who have claimed through the claims process and been approved);

OR

- b. indirect benefit to the Class, through the Cy-Près Fund.

At what age can I receive compensation?

A Class Member may **start a claim** as of **two (2) years** before they reach the Age of Majority. However, they may only receive compensation under this FSA after they reach the Age of Majority (except in the case of an Exceptional Early Payment).

The Claims Process will include a way for Children to register with the Administrator of the Claims Process at any time before they reach the Age of Majority so that they can receive information and updates on the compensation agreement.

What if I fall under more than 1 Class under the FSA?

A person who qualifies for compensation as a member of more than 1 class under this Agreement will receive the higher amount for which they are eligible to receive. But the amounts of compensation under different classes will not be combined.

What proof is required to start a claim?

No member of the *Removed Child Class*, *Jordan's Principle Class*, or *Trout Child Class* will be made to undergo an interview, examination or other form of in person/oral evidence taking. The *Kith Child Class* and the *Kith Family Class* will have a different and separate compensation and verification process in the Claims Process, but have no requirement to submit an interview, examination or other form of in person/oral evidence taking.

How do I start a claim?

To start a claim, a Claimant must submit a Claims Form to the Administrator. Claims Form means a written declaration with supporting documentation about the Claimant's circumstances and why they believe they qualify for compensation under the Revised FSA. There will likely be different kinds of supporting documentation needed depending on what Class the Claimant is in.

Once the claim form and other supporting documents are available, they will be released online at www.fnchildcompensation.ca. Support in completing these forms will be available through the Administrator.

How do I opt out of the Settlement?

A Class Member may Opt-Out by:

- a) delivery to the Administrator of the Opt-Out Form; or
- b) After the Opt-Out Deadline: by obtaining leave of the Court to Opt-Out of the Actions (if the Claimant was unable, as a result of physical or psychological illness or challenges, including homelessness or addiction, or other significant obstacles as found by the Court, to take steps to Opt-Out within the Opt-Out Deadline).

Opt-Out Deadline: August 23, 2023

What does it mean if I opt out?

If a potential claimant chooses to opt-out of the Revised FSA, this would essentially mean that they will not be able to submit a claim or receive any settlement funds and those associated with the Canadian Human Rights Tribunal File No. : T1340/7008. If they want an opportunity to be compensated they would have to make a start their own lawsuit and engage a lawyer at their own expense.

Releases

There are paragraphs in the Revised FSA that release Canada from responsibility from further actions against them for the same claims. If a Claimant participates in the agreement, they would be releasing Canada, its servants, agents, officers and employees, predecessors, successors, from any and all actions, causes of action, in relation to the claims of discrimination at the heart of the Settlement. This means that if a Claimant seeks compensation under the Revised FSA, they cannot sue Canada again for the same harm for which they are receiving

compensation under the Revised FSA.

However, Class Members still have the right to make claims against third parties (who are not Canada and the aforementioned) for the physical, sexual or emotional abuse they suffered excluding any portion of Canada's responsibility.

It is highly recommended that Claimants look over the Revised FSA thoroughly and obtain legal advice if they have any concerns about their options, before making any decisions as to whether to opt out or not.

Legal Fees

Class Counsel will not charge individual Class Members any amounts for legal services under this Agreement. Class Members may also submit legal questions to Counsel Settlement Implementation Committee Members ("Counsel SIC Members")⁴ that are above and beyond the training and/or competence of the navigational support services provided by the Administrator of the agreement.

⁴ Counsel SIC members will be 3 members of the Settlement Implementation committee will consist of 1 lawyer appointed by Sotos LLP, 1 Lawyer appointed by Kugler Kandestin LLP and 1 lawyer appointed by the AFN Executive Committee.