

The Federal Court Approved the Revised Final Settlement Agreement SO What's Next?

November 2023

ON OCTOBER 24, 2023 the Federal Court approved the \$23.4 billion Revised Final Settlement Agreement (FSA) on Compensation for First Nations children and families who experienced discrimination because of Canada's inequitable provision of the First Nations Child and Family Services (FNCFS) and flawed, narrow implementation of Jordan's Principle. The FSA stems from 2016 when the Canadian Human Rights Tribunal (Tribunal) ruled that Canada is discriminating against First Nations children and ordered it to stop the discrimination, as well as a 2019 ruling whereby the Tribunal ordered Canada to pay the maximum human rights compensation to each eligible victim of Canada's discrimination.

These are the broad groups of people who qualify for compensation: Removed Child and Family Class, Essential Services Class, Jordan's Principle Class, Trout Child and Family Class, Kith Child and Family Class.

To learn more about who qualifies for compensation, please visit fnchildcompensation.ca. You may also visit bit.ly/revised-FSA-info for information sheets on the Revised FSA. The Caring Society's primary role in compensation was before the Tribunal, and we are not a party to the class action. The class action lawyers alongside the committees they create will take the lead role on compensation and the Caring Society has a limited role in compensation going forward.

While the Revised FSA is implemented, the Canadian Human Right Tribunal continues to hold jurisdiction to ensure Canada's discrimination stops and does not happen again. The following information will provide an overview of important questions about next steps following the Federal Court's approval of the Revised FSA.



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Who will make decisions about the compensation?

Once the Distribution Protocol is approved, victims will be able to apply for compensation. Applications will be made to and decided by the Administrator. The Administrator is Deloitte LLP and was appointed by the Federal Court.

The Revised FSA includes several other key governing committees/positions with members appointed by the Assembly of First Nations (AFN) and the class action parties. These committees include:

1. **Settlement Implementation Committee:** Composed of five persons who oversee the implementation of the entire settlement. This includes providing guidance about enhancement payments to the Removed Child Class, monitoring the work of the Administrator, and supervising the implementation of the supports.
2. **Investment Committee:** Composed of three persons nominated by the Settlement Implementation Committee who are responsible for the investment of funds;
3. **Trustee:** Is appointed by the Federal Court and oversees the settlement funds held in trust for beneficiaries

The Class Action Lawyers are:

- Sotos LLP, Kugler Kandestin LLP, Miller Titlerle + Company: Moushoom Action and Trout Action
- Assembly of First Nations, Nahwegahbow Corbiere and Fasken LLP: AFN Action

What about my records?

The goal is to identify as many people as possible using existing records.

The Caring Society is suggesting regional and national teams of archivists and genealogists to assist claimants, First Nations and First Nations service providers and other record holders to locate the necessary documentation.

Canada is preparing a data base of all the eligible children in care, and from care, that it can identify. There will likely be some gaps in data, which may require records from First Nations Child and Family Service Agencies and Provinces to support eligibility. Records may also be necessary for those who were placed in voluntary arrangements off-reserve with non-family members.

Records for the Trout and Jordan's Principle classes are still being worked on by the class action lawyers.

What About Supports?

The Revised FSA provides for Canada to fund mental wellness, navigator and application supports. The Caring Society has provided class action parties and Deloitte with significant recommendations including:

1. Supports before, during and after the compensation period that meets the distinct needs of children, young adults and families;
2. Surge capacity funding to support the additional demands on First Nations services (including child and family services), regional organizations, First Nations and First Nations authorized services off-reserve;
3. Rapid response teams to support communities in crisis;
4. Community information and preparation kits that include communication.

The Caring Society can only recommend these services and ultimately it is up to the AFN and class action parties to adopt them and the Federal Court to approve them.

What are the next steps and where can I find an application?

There is no application at this time. Before any compensation can be paid to the victims, the Federal Court must first approve the Distribution Protocol. This protocol will set out compensation eligibility criteria, procedures, the necessary forms to be filled out, and the supports for beneficiaries. Compensation cannot be rolled out until the Distribution Protocol is approved by the Federal Court. While timing is not finalized, it is likely compensation distribution will begin in fall 2024.

Where can I find more Information?

Keep up to date on compensation at fnchildcompensation.ca.

For additional information on the case before the Canadian Human Rights Tribunal, please visit fnwitness.ca.

Do I need a lawyer?

No. You do not need a lawyer to assist with this process.