



## What is the history of this issue and how does it impact First Nations?

Canada developed the First Nations Child and Family Services (FNCFS) program in 1989 to regulate the services provided to First Nations after the closure of many of the schools in the Indian Residential School System. Intergenerational trauma and family breakdown caused by the Indian Residential School System has perpetuated First Nations' higher rates of involvement with child and family services in Canada. The underfunded, discriminatory, and protection-based program has led to the purposeful removal of unprecedented numbers of First Nations children from their families and Nations. Today, there are over 40,000 First Nations children involved with child and family services across Canada.

In 2007, the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society launched a case at the Canadian Human Rights Tribunal (CHRT) alleging that Canada discriminates against First Nations children by underfunding the FNCFS program on-reserve and in the Yukon. On January 20, 2016, the CHRT found that Canada had discriminated against First Nations children in the provision of services simply because they are First Nations. The CHRT ordered the federal government to immediately and completely overhaul the FNCFS program.

In January 2018, National Chief Perry Bellegarde attended the Minister of Indigenous Services' Emergency Meeting on First Nations, Inuit and Métis Child and Family Services alongside First Nations leadership, experts, and technicians, Provincial and Territorial Ministers, and federal officials. At this meeting, a six-point action plan was announced to address the overrepresentation of Indigenous children in care. The actions committed to include ensuring that the CHRT orders are fulfilled, including the development of a new funding model; the promotion of culturally-appropriate prevention, early intervention and family reunification; and most notably, the co-development of new Indigenous child and family wellbeing legislation that supports Indigenous jurisdiction over services and policies.

In 2018, the First Nations-in-Assembly passed AFN Resolution 11/2018, *Federal Legislation on First Nations Child Welfare Jurisdiction*, supporting federal enabling legislation on First Nations child and family wellbeing. The co-developed legislation, *An Act respecting First Nations, Inuit and Metis children, youth and families* (the Act), received Royal Assent on June 21, 2019 and came into force on January 1, 2020. The Act affirms First Nations' inherent rights to self-determination and jurisdiction and establishes national principles for child and family wellbeing, including the best interests of the child, cultural continuity, and substantive equality.

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## How has the AFN's recent advocacy affected this area?

The AFN continues to advocate for separate dedicated funding to ensure meaningful transition to First Nations jurisdiction over child and family services under the Act, preliminarily estimated at \$3.5 billion over five years. In the July 2020 Economic and Fiscal Snapshot, Canada committed over \$542 million over five years to support the implementation of the Act. As this level funding is far below the estimated \$3.5 billion needed, the AFN is currently advocating for Canada to provide new sustainable funding that is distinctions-based and distributed through a First Nations-led process.

AFN Resolution 16/2019, *An Act respecting First Nations, Inuit and Métis children, youth and families—Transition and Implementation Planning*, established the Chiefs Committee on Child and Family Services and Self-determination (Chiefs Committee), in order to provide input, oversight and guidance on implementation of the Act. The Chiefs Committee advocated for a distinctions-based approach to implement the Act and negotiated the terms of this approach with Indigenous Services Canada (ISC). The Protocol regarding *An Act Respecting First Nations, Inuit and Métis children, youth and families* in relation to the Assembly of First Nations (the Protocol), between the AFN and Canada was signed on July 7, 2020. The Protocol is a mechanism to ensure First Nations lead the development of principles and processes related to the Act. It defines how Canada and the AFN will explore principles and processes that will support implementation of the Act, including input, control, and decision-making by First Nations. Under the Protocol, the Joint National Working Group (JNWG) was established in early 2021 to ensure that a First Nations distinctions-based approach is applied in the implementation of the Act. The JNWG has established its workplan, informed by the priorities of the Chiefs Committee.

The AFN worked with the Institute for Fiscal Studies and Democracy (IFSD) to develop a new funding model for FNCFS. The IFSD completed their [final report](#) on FNCFS funding in August 2020, proposing a bottom-up funding approach for FNCFS that addresses ISC's funding shortfalls, which were found by the CHRT to be discriminatory. The proposed approach uses a First Nations distinctions-based framework to understand the needs of First Nations children, a new operational model that considers the root causes of inequality, and a transition plan to move away from the current funding model and protection-focused system toward the new approach. The AFN has submitted this report to the CHRT for review.

The AFN has returned to the CHRT several times to address Canada's non-compliance with the orders on FNCFS and Jordan's Principle. In September 2019, the CHRT ordered Canada to pay the maximum allowable compensation for victims of discrimination under the FNCFS Program and

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Jordan's Principle. In October 2019, Canada filed for judicial review of this ruling. Under the leadership of National Chief Perry Bellegarde, the AFN worked with the Parties to the CHRT to outline a compensation framework under the ruling. The Parliamentary Budget Officer estimated that the cost of complying with the compensation order could range from \$1.3 billion to \$15 billion. The AFN also filed a \$10 billion class action lawsuit to build on the work at the CHRT, including covering those victims who were excluded from the CHRT's ruling on compensation, which was certified in September 2020 and is currently in mediation. The National Advisory Committee on First Nations Child and Family Services (NAC) and the Consultation Committee on Child Welfare (CCCW) continue to monitor and guide the rulings of the CHRT orders.

Between January and April 2021, the AFN held a series of virtual gatherings to share critical First Nations child and family wellbeing policy, best practices, and tools on the implementation of the Act. The gatherings brought together Knowledge Keepers, Youth with lived experience in the child and family services system, First Nations leadership asserting jurisdiction over child and family wellbeing, experts and more.

In order to support First Nations youth who would normally be aging out of the FNCFS program during the COVID-19 pandemic, the AFN successfully advocated for a moratorium on youth aging out of care to ensure continued access to the supports and services youth need, and for agencies to have any costs associated with continued care covered by Canada.

Budget 2021 proposes to invest \$1 billion over five years, with \$118.7 million ongoing, to increase funding under the FNCFS Program. It further proposes to invest \$73.6 million over four years to support implementation of the Act. Due to the continued advocacy of the AFN including the Chiefs Committee, the investment in FNCFS includes funding to support implementation of the CHRT Orders and to permanently ensure that First Nations youth who reach the age of majority receive the supports that they need, for up to two additional years.

### **Where do we hope to go in the future?**

The AFN will continue to advocate for immediate, mid, and long-term relief measures and for the CHRT orders to be fulfilled through the work of the Chiefs Committee, the NAC and the CCCW. The AFN will also continue to increase awareness about the Act and its implementation. Under the guidance of the Chiefs Committee, and supported by expert technical advice, the AFN's next steps within the Protocol are to establish the sub-working groups of the JNWG and to implement the workplan.

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