

## ASSEMBLY OF FIRST NATIONS BULLETIN

November 25, 2022



### Update on Compensation and Long-Term Reform to the First Nations Child and Family Services Program and Jordan's Principle

*The Assembly of First Nations issues regular updates on work underway at the national office. More information is available at [www.afn.ca](http://www.afn.ca).*

#### **SUMMARY:**

- On November 23, 2022, the Assembly of First Nations (AFN) filed an application for judicial review of the recent Canadian Human Rights Tribunal's (CHRT) decision regarding a proposed settlement on the payment of compensation to victims of Canada's discrimination under the First Nations Child and Family Services Program and Jordan's Principle.
- The AFN signed a final settlement agreement (FSA) for compensation, including a full compensation package and provisions on eligibility and the application process on June 30, 2022. The compensation is capped at \$20 billion for all the classes. The FSA settled the class action at the Federal Court and the CHRT for compensation intended to end both litigation matters.
- In September 2022, the AFN sought the CHRT's approval of the FSA on compensation, and on October 24, 2022, the CHRT released its decision that did not endorse the FSA. The CHRT's failure to endorse the settlement agreement means that over 300,000 First Nations children, youth and their caregivers would not be entitled to compensation. Only half of the of these individuals are covered under the existing orders of the CHRT.
- The AFN filed its judicial review to ensure that all individuals who were harmed by Canada's discrimination between 1991 and 2022 would be entitled to compensation, as our settlement agreement includes more individuals, and will provide higher levels of compensation than under the CHRT's compensation orders.

In 2007, the Assembly of First Nations (AFN) filed a human rights complaint, along with the First Nations Child and Family Caring Society of Canada, alleging that Canada was discriminating against First Nations children and families in the provision of child protection services and the implementation of Jordan's Principle. In 2016, the Tribunal substantiated the complaint and ordered Canada to reform its First Nations Child and Family Services Program (FNCFS) program and properly implement Jordan's Principle.

An essential element of AFN's advocacy was the payment of fair and just compensation by Canada for its discrimination. The AFN's efforts have been to ensure compensation is paid to First Nations children, youth and their families.

In fact, compensation was made possible because of the AFN's efforts. The AFN was the only party to the CHRT's proceedings to request compensation to be paid directly to victims. AFN also asked that the maximum amount of \$40,000 be paid.

However, the CHRT's compensation orders had limitations. It only covered the period between 2006/7 and 2017/22. Secondly, not all individuals are entitled to compensation under the CHRT's Orders. To be eligible to receive compensation under the CHRT process, one must have been removed from their homes, families, and community. They must meet all three parts of this criteria, which results in unfair application. For instance, a parent could have two children removed from their care. The child placed outside of their community would be entitled to compensation, but the child placed in their own community would not be eligible.

The AFN sought to correct this inherent unfairness in the CHRT compensation orders in the FSA. The AFN settlement agreement established a significant milestone in compensation. The agreement will provide compensation to all victims of Canada's discrimination regardless of where they were placed. The AFN's settlement also provides compensation to those individuals who were impacted by Canada's discrimination from 1991 to 2022 – extending 15 years beyond the timeframe of the CHRT's compensation orders.

On November 23, the AFN Executive Committee agreed to launch a judicial review of the CHRT's letter decision to not approve the final settlement agreement. The AFN does not agree that the CHRT could not approve the final settlement agreement. The Record of Decision is included below.

The AFN's judicial review is mainly focused on getting more children and families compensation. We do not agree with the limitations, or the inherent unfairness imposed by the CHRT. Our children deserve better. They deserve compensation regardless of where they were placed. It also secondarily The AFN Executive Committee is taking all steps to ensure compensation is paid to victims of Canada's discrimination as soon as possible. Our important work toward on compensation continues at the negotiation table.

The AFN is hopeful that this matter can be settled without protracted legal proceedings at the CHRT or the Federal Court of Canada. The AFN is currently considering options to get compensation into the hands of First Nation individuals. This may include an advanced partial payment of compensation to the removed children as we continue negotiations. The AFN will continue to work with Moushoom counsel to get the best possible outcome for our children and families affected by Canada's discrimination.

The AFN will continue to advocate for the approval of final settlement agreement that reflects First Nations' priorities and is based on First Nations-led processes. Our current goal is to get to compensation to uncontested classes (i.e. removed children) as soon as possible. This may result in a staggered settlement process.

For additional information, please visit [www.fnchildcompensation.ca](http://www.fnchildcompensation.ca) and sign up to receive updates.

## RECORDS OF DECISION

Executive Committee Meeting  
November 23, 2022  
1:00pm – 5:00pm (EDT)

### MOTION 3: CHRT

1. The Executive Committee reaffirm its desire and advocacy to date that all victims of Canada's discrimination receive the payment of just compensation.
2. The Executive Committee direct Legal Counsel to seek a Judicial Review of the CHRT's decision on the Final Settlement Agreement on Compensation to address precedential errors made by the CHRT that will have an adverse impact on First Nations involved in human rights disputes.
3. The Executive Committee uphold free, prior and informed consent when dealing internally with member First Nations, but direct Legal Counsel to seek a Judicial Review of the CHRT's misinterpretation of the application of Free Prior and Informed Consent as it relates to the final settlement agreement on compensation.
4. The Executive Committee direct that counsel engage in a dual track process whereby the judicial review is filed and negotiations continue.
5. Every effort be made to pay compensation forthwith to those uncontentious classes of victims such as the removed class who may benefit from compensation at this time, while discussions or litigation continue for those groups that remain contested.

MOVED: Regional Chief Joanna Bernard

SECONDED: Chief Darlene Bernard

Opposed: none

Abstentions: Regional Chief Terry Teegee  
Regional Chief Kluane Adamek  
Regional Chief Bobby Cameron  
Regional Chief Gerald Antoine

MOTION: Carried