



CHRT: First Nations Child and Family Services Program Final Settlement Agreement

Updated as of Sept 9, 2024



Our Mandate: Resolution 24/08

- February 7, 2024: Nishnawbe Aski Nation Chiefs-in-Assembly unanimously passed Resolution 24/08 directing the NAN Executive to:
 - “strive, to the best of its ability, to achieve a Final Settlement Agreement (FSA) on long-term reform of the FNCFS program **without delay**;”
 - “only sign an FSA that includes provision for the **full implementation** of an evidence-based approach to adjusting FNCFS funding to account for the increased costs associated with remoteness;” and
 - “ensure that NAN First Nations have the opportunity to exercise their **Free, Prior, and Informed Consent** by reviewing and approving the FSA before it is brought to the Chiefs of Ontario and the AFN Assemblies for approval.”



A Longer Conversation

- The following steps were conducted with respect to review and approval of the FSA:
 - May 22-23, 2024: NAN SCA in Thunder Bay
 - July 9-11, 2024: AFN Annual General Assembly in Montreal;
 - July and August 2024: Potential NAN/COO/AFN/Canada regional engagements on the FSA;
 - July 29, 2024; August 19, 2024: Half-day information session;
 - August 1, 2024; August 22, 2024: Half-day Town Hall to answer questions stemming from July 29 and August 19 information sessions;
 - September 9, 2024: Special Chiefs Assembly



A Longer Conversation (cont'd)

- The following steps are anticipated with respect to review and approval of the FSA:
 - October 2024: Potential NAN/COO SCA to ratify FSA;
 - November 2024: AFN SCA in Calgary to ratify the FSA; and
 - Winter 2024: Anticipated CHRT motion to approve the FSA.



Update since May SCA

- Canada received its mandate in July, and counsel for the parties signed off on the draft FSA that they could support and recommend. **This does not mean NAN approved the agreement.** This meant that the agreement could be shared with leadership for their review and decision.
- It provides for \$47.8 billion* over 10 years.
- It secures the groundbreaking remoteness adjustments that were embedded in the provisional FSA that was presented in May.
- It does include changes to some sections of the agreement that were presented at the SCA. These will be highlighted below.



What this FSA is NOT

- This FSA is not about compensation. The Compensation FSA was approved by the First Nations-in-Assembly, the CHRT, and the Federal Court in 2023.
- This FSA is not about Jordan's Principle. As AFN and Caring Society proposed, Jordan's Principle reform is separate. It's under litigation brought by Caring Society.
- This FSA is not about asserting jurisdiction (Bill C-92). It only sets a "floor."
- This FSA is only about reforming the FNCFS Program to address discrimination.



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Limitations of the FSA

- In addition to understanding the benefits and drawbacks of the FSA, it is important to understand the *limitations* to the FSA
- Because the FSA settles a specific case, the settlement is focused on the issues raised in that case
- AFN and Caring Society complaint was regarding,
“the inequitable levels of child welfare funding provided to First Nations children and families on reserve, pursuant to the Indian and Northern Affairs Canada (INAC) funding formula for First Nations child and family services known as Directive 20-1, Chapter 5...” (pg. 1, the Complaint).
- The FSA is limited to on reserve children and families, because the complaint was focused on these children and families.



Highlights on Remoteness

- If approved, the draft FSA will provide remote First Nations and FNCFS Agencies with remoteness adjustment funding (RQ Adjustments) **based on full implementation of the RQAF methodology, resulting in a national average RQ Adjustment of 30% and a NAN-wide average RQ Adjustment of 98%.**
- This will represent the **first time ever** that a First Nations-sighted, evidence-based methodology for estimating the increased costs associated with remoteness has been applied to adjust funding for First Nations to account for those increased costs.
- **This will set a groundbreaking new bar for accounting for remoteness.**



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Remoteness Averages

- You may recall from previous presentations, the NAN-wide remoteness adjustment was to be 101%
- This average was based solely on the RQAF, and did not take into account population numbers or the amount of actual funding received by a community in each category
- Now with access to real numbers for each First Nation, instead of simply averaging the RQAF, we can calculate the actual increase as a result of RQAF adjustments
- this actual increase is at an average of 98%
- Note, the percentage increase for each individual First Nation may be more or less than this average



Background: The CHRT Complaint

- 2007: Assembly of First Nations (AFN) and First Nations Child and Family Caring Society filed the complaint against Canada.
- January 2016: Canadian Human Rights Tribunal (CHRT) found Canada discriminated against First Nations children, youth, and families on-reserve through First Nations Child and Family Services (FNCFS) program, 1965 Agreement, and Jordan's Principle.
- May 2016: NAN intervened to address remoteness issues.
- 2016 to 2021: CHRT ordered Canada to reform the FNCFS program and the 1965 Agreement, interpret Jordan's Principle more broadly, and compensate victims of the discrimination.



Background: Long-Term Reform AIP

- November 8 to December 31, 2021: Parties negotiated and signed the Agreement-in-Principle (AIP) on Long-Term Reform of the FNCFS program and Jordan's Principle to:
 - Commit Canada to provide **\$19.8 billion over 5 years** for reform of both the FNCFS Program and Jordan's Principle;
 - Commit Canada to addressing remoteness issues, supporting Choose Life, and funding NARC; and
 - Commit parties to reach an FSA for reform of the FNCFS program and Jordan's Principle by December 31, 2022.



Background: Long-Term Reform FSA Negotiations

- January to December 2022: Parties negotiated but did not reach an FSA for long-term reform. Parties extended their negotiating mandates.
- March 2023: Caring Society and AFN proposed negotiating reform of the FNCFS program and of Jordan's Principle separately (i.e., two (2) FSAs).
- August 2023: NAN secured its seat at the 1965 Agreement reform table.
- October 2023: Canada accepted the Caring Society/AFN proposal to negotiate separate FSAs for the FNCFS program and Jordan's Principle.



Background: FNCFS Program FSA Negotiations

- December 2023: NAN, COO, and AFN jointly proposed a schedule and agenda for intensive FNCFS Program FSA negotiations to Canada and Caring Society.
- January to May 2024: NAN, COO, AFN, and Canada intensively negotiated the provisional FNCFS FSA, which is now subject to approval by political leaders (i.e., Chiefs and Cabinet). Caring Society boycotted the FSA negotiations.
- February 7, 2024: NAN Chiefs passed **Resolution 24/08** directing the NAN Executive to pursue an FSA without delay and convene an SCA to review.
- May 2024: NAN SCA for Chiefs to review and be informed on the provisional FSA.
- July 2024: Canada received a final mandate and along with NAN, COO, and AFN finalized a draft FSA for leadership engagement and approval.



Overview: Effects of the Provisional FSA

- If approved, the draft FSA will:
 - Increase the annual funding provided under the FNCFS program;
 - Improve the accountability of FNCFS Agencies to First Nations;
 - Transition away from the “actuals” funding processes by April 1, 2025;
 - Set a groundbreaking new bar for accounting for remoteness;
 - Set a “floor” for First Nations asserting inherent jurisdiction;
 - Secure the gains made since 2016 through to March 31, 2034; and
 - Supersede related CHRT orders and settle this part of the case.



AREA 1: FUNDING FOR FIRST NATIONS

Funding Component	How is it calculated?	What is its purpose?	How is it adjusted?
Prevention* (First Nations determine allocation by April 1, 2026)	\$2,603.55 per resident on reserve, with \$75,000 minimum for small on-reserve populations.	Prevention services to support children and families, promote wellbeing, and prevent contact with the child welfare system.	Adjusted annually for inflation, population, and remoteness (partial RQ now, full RQ starting in 2025-26).
First Nation Representative (aka “Band Rep”) Services	Based on previous actual expenditures and per capita rates, with \$75,000 minimum for small on-reserve populations.	Supporting representatives of First Nations in addressing matters related to the delivery of services to their citizens by a child welfare agency.	Adjusted annually for inflation, population growth, and remoteness (full RQ starting in 2025-26).
Post-Majority Support Services	Per eligible youth rate based on regional household spending data.	Supporting youth in care approaching age of majority and young adults up to age 26 who have transitioned out of care.	Adjusted annually for inflation, population, and remoteness (full RQ starting in 2025-26).



AREA 1: FUNDING FOR FIRST NATIONS

Funding Component	How is it calculated?	What is its purpose?	How is it adjusted?
Information Technology Top-up	6% of baseline funding, split between the Agency's First Nations based on population share.	Supporting information technology needs for implementation of the Reformed FNCFS Program.	Adjusted annually for inflation, population, and remoteness.
Results Top-up	5% of baseline funding, split between the Agency's First Nations based on population share.	Supporting data capture and reporting requirements for implementation of the Reformed FNCFS Program.	Adjusted annually for inflation, population, and remoteness.
Emergency Top-up	1% of baseline funding, split between the Agency's First Nations based on population share.	Supporting responses to unanticipated circumstances affecting provision of services.	Adjusted annually for inflation, population, and remoteness.



AREA 1: FUNDING FOR FIRST NATIONS

Funding Component	How is it calculated?	What is its purpose?	How is it adjusted?
Household Supports Top-up	Based on a First Nation's share of the total national population in low-income households on reserve.	Supporting meeting the basic needs of families that could, if unmet, lead to children being taken into care.	Adjusted annually for inflation, population, and remoteness.
Capital Funding (application-based)	Based on prior actual expenditures and cost data for new builds.	Capital infrastructure to support the delivery of FNCFS programming.	N/A.
Housing Funding (first 4 years only)	\$250,000 base amount plus a formula based on rates of overcrowding, population, and remoteness.	Supporting meeting the housing needs of families and beginning to address lack of safe and suitable housing as a driver of children being taken into care.	N/A.



AREA 1: FUNDING FOR FNCFS AGENCIES

Funding Component	How is it calculated?	What is its purpose?	How is it adjusted?
Baseline Funding	Based on an agency's previous actual expenditures.	An agency's costs for operations, protection services, and maintenance of children in care.	Adjusted annually for inflation and population growth.
Prevention* (First Nations determine allocation by April 1, 2026)	\$2,603.55 per resident on reserve.	Services to support children and families, promote wellbeing, and prevent the need for protection services interventions.	Adjusted annually for inflation, population, and remoteness (partial RQ now, full RQ starting in 2025-26).
Emergency Top-up	1% of baseline funding.	Supporting responses to unanticipated circumstances affecting provision of services.	Adjusted annually for inflation and remoteness.
Capital Funding (application-based)	Based on prior actual expenditures and cost data for new builds.	Capital infrastructure to support delivery of FNCFS programming.	N/A.



Prevention Funding Allocation

April 1, 2024, to March 31, 2026:

- Prevention funding will remain shared between First Nations and agencies.

Starting April 1, 2026:

- In Ontario, prevention funding will remain shared between First Nations and agencies as the default.
- Outside Ontario, First Nations will receive all prevention funding as the default.
- In both cases, First Nations can elect to re-allocate their prevention funding to themselves or their agencies as they see fit by giving written notice to ISC.



Band Rep Services Funding

2018-2022: In 2018, the CHRT ordered Canada to fund the actual costs of Band Rep services in Ontario. Canada complied and provided funding at actuals in Ontario.

2022-2025: In 2022, Canada began providing Band Rep allocations, which were the highest of: highest annual amount claimed through actuals, a per capita rate, or \$75,000. **First Nations in Ontario still have access to actuals for Band Rep until March 31, 2025, if they expend 75% of their allocation.** This funding is not adjusted for remoteness.

From April 1, 2025: **A First Nation's Band Rep funding will be their highest annual funding amount from 2019-20 to 2022-23, adjusted for inflation and remoteness.***



RQ Adjustments to Funding

- If approved, the draft FSA will provide remote First Nations and FNCFS Agencies with remoteness adjustment funding (RQ Adjustments) **based on full implementation of the RQAF methodology, resulting in a national average RQ Adjustment of 30% and a NAN-wide average RQ Adjustment of 98%.**
- RQ Adjustments will be applied to Prevention, Band Rep Services, Post-Majority Support Services, IT, Results, Emergency, and Household Supports funding.
- This will represent the **first time ever** that a First Nations-sighted, evidence-based methodology for estimating the increased costs associated with remoteness has been applied to adjust funding for First Nations to account for those increased costs.
- IFSD proposed a 2-8% adjustment.



Transitioning from “Actuals”

- The “actuals” funding processes that Canada currently provides for the following will end **as of April 1, 2025**:
 - Agency costs for intake and investigation, legal fees, and building repairs;
 - Post-Majority Support Services;
 - Band Rep Services in Ontario; and
 - Capital for FNCFS purposes.
- The deadline to submit actuals claims for 2024-25 will be **September 20, 2025**.



Agency Accountability

- To improve accountability to First Nations, FNCFS Agencies will be required to:
 - Co-develop with their affiliated First Nations (and submit to ISC) multi-year child and community wellbeing plans, incorporating:
 - **priorities** of their affiliated First Nations;
 - mechanisms to facilitate **information-sharing**;
 - an **integrated approach** to service delivery; and
 - requirements for the agency to report to their affiliated First Nations.
 - Collect data and report to their affiliated First Nations on community wellbeing indicators and implementation of their co-developed plans.



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NAN's Ongoing Role in Reform

- **Reform Implementation Committee (RIC)**: NAN will be part of RIC to oversee, monitor, and make recommendations to Canada on reform implementation.
- **National Secretariat**: NAN will be a member of the National Secretariat, which will serve as a hub for FNCFS data collection and dissemination of best practices.
- **Remoteness Secretariat**: NAN and NARC will establish the Remoteness Secretariat to serve as a hub for remoteness research, data, and dissemination of best practices.
- **NARC-Canada Remoteness Table**: As a member of NARC, NAN will have a voice at the table dedicated to addressing remoteness issues at a national level.
- **NAN-Canada RQ Table**: The work of this NAN-specific process will continue.
- **1965 Agreement Reform**: NAN will negotiate reform with COO, Canada, and Ontario.²⁵



ANALYSIS: LITIGATION vs. NEGOTIATION

Issue	Litigation/CHRT Orders	Negotiation/AIP + Provisional FSA	Analysis
Prevention Funding	<ul style="list-style-type: none">- Findings of discrimination and orders to reform- Actuals funding for agencies only from 2019-20 to 2021-22	<ul style="list-style-type: none">- \$2,500 per capita split between First Nations and agencies from 2022-23, adjusted for inflation- Partial RQ adjustment from 2023-24 to 2024-25- Full RQ adjustment from 2025-26	<ul style="list-style-type: none">- Negotiation secured significant increased funding commitment and prevention funding for First Nations
Post-Majority Support Services Funding	<ul style="list-style-type: none">- Consent order to fund to March 31, 2023, <u>based on AIP negotiations</u>	<ul style="list-style-type: none">- Actuals funding for First Nations and agencies from 2022-23 to 2024-25- \$1.9 billion for First Nations over 10 years from 2024-25 to 2033-34- Full RQ adjustment from 2025-26	<ul style="list-style-type: none">- Negotiation secured significant new funding commitment without findings of discrimination



ANALYSIS: LITIGATION vs. NEGOTIATION

Issue	Litigation/CHRT Orders	Negotiation/AIP + Provisional FSA	Analysis
Housing Funding	- Findings of discrimination based on lack of safe and suitable housing; <u>no orders</u>	- \$2.0 billion for First Nations over 5 years from 2023-24 to 2027-28	- Negotiation secured significant new funding commitment without orders
RQ Adjustments	- Findings of discrimination based on remoteness - Orders to reform funding formulas	- Partial RQ adjustment in 2023-24 - \$6.8 billion for First Nations and agencies over 10 years from 2024-25 to 2033-34 - Full RQ adjustments from 2025-26	- Negotiation secured significant new funding commitment and set a new bar for accounting for remoteness
Other reforms	- Findings of discrimination and orders to reform	- Improved agency accountability - Reform Implementation Committee - Dispute Resolution Tribunal - National and Remoteness Secretariats - NARC-Canada Remoteness Table - NAN-Canada RQ Table, etc.	- Negotiation secured significant commitments to structural reforms above and beyond increased funding



Conclusions

- Litigation only gets you so far.
- Some gains cannot be won in court.
- All bets are off when the government changes.
- The probability of reaching a better deal in the short to medium term is extremely low (nil).
- The **\$47.8 billion** draft FSA would secure the many gains made since 2016 for **10 years**.
- **Bottom-line question: Is now the time to make a deal?**



Next Steps

- The following steps are anticipated with respect to review and approval of the FSA
- October 2024: Potential NAN / COO SCA to ratify FSA.
- November 2024: AFN SCA in Calgary to ratify the FSA.
- Winter 2024: Anticipated CHRT motion to approve the FSA.



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