

Draft FSA Myths and Realities

Myths and Realities of the Draft Final Settlement Agreement on the First Nations Child and Family Services

MYTH: The draft FSA includes safeguards to help ensure that Canada does not discriminate against First Nations children.


REALITY: The draft FSA prohibits punitive measures to be taken against Canada if it engages in discriminatory conduct against First Nations children, even if the discrimination is wilful and reckless. The dispute resolution process created in the draft FSA available to First Nations and First Nations service providers does not allow for comprehensive and proactive solutions to be put in place to remedy and prevent widespread or systemic discrimination. The dispute resolution process available to AFN, COO and NAN provides limited tools to address problems in implementation. Even if some aspects of the draft FSA end up being harmful to First Nations children, the FSA cannot be amended. The Canadian Human Rights Tribunal (CHRT or Tribunal), in contrast, can issue new orders at any time to prevent, remedy or deter discrimination.

MYTH: The draft FSA gives more power to First Nations over child welfare.

REALITY: The draft FSA gives Canada new powers over First Nations and agencies. For example, Canada has the power to appoint three out of 12 members of the Reform Implementation Committee (RIC), which is responsible for overseeing and monitoring the implementation of the Reformed First Nations Child and Family Services Program. The other RIC members are appointed by the Assembly of First Nations (AFN), Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN). All RIC proceedings are confidential. RIC produces an annual report approved by all the parties, including Canada. There are no provisions for RIC to get direction from First Nations. First Nations and agencies must provide Canada with detailed work plans for the implementation of their services, which must include their expenditures, timeframes, and details about each activity and initiatives, as well as its explanation of its link to Prevention Services, First Nation Representative Services and Post-Majority Support Services.

MYTH: If the draft FSA is voted down, all of the funding gains in child welfare will be lost and the former discriminatory funding formulas will be applied.

REALITY: The current Tribunal orders provide approximately \$4.5 billion per year plus funding on actuals for expenses like capital. The orders do not expire. They only end if another order replaces them. The dispute resolution process available to AFN, COO and NAN provides limited tools to address problems in implementation. If the draft FSA is not approved by First Nations and/or the Tribunal, all current funding orders remain in place as a backstop. If the government changes without an FSA, all current funding orders will remain in place. If the government changes during the FSA, there are insufficient safeguards to ensure the funding promised in the FSA will be delivered. An order by the Tribunal is easier and faster to enforce than an agreement with the government.



MYTH: The FSA allocates never-seen-before investments in child welfare and represents a significant improvement on the status quo.

REALITY: We don't know how the \$47.823 billion will be allocated. There is no breakdown by the recipient, calculation methods, or supporting evidence. There are commitments for Canada, the provinces and the AFN, COO and NAN for their ongoing engagement, as well as funding to support multiple committees and a fully staffed Alternative Dispute Resolution Tribunal. It is unclear how much of the \$47.823 billion will directly support and protect First Nations children and youth. The Institute of Fiscal Studies and Democracy projects a \$10 billion loss in agency funding over 5 years, amounting to \$20 billion over 10 years.

MYTH: The FSA guarantees long-term funding and will protect First Nations against changing political winds.

REALITY: The Tribunal can make legal orders to stop and prevent the recurrence of discrimination that don't expire. The draft FSA expires after 10 years and provides inadequate protections against Canada reverting to its discriminatory conduct beyond year 10. After the FSA expires, there is little clarity that First Nations children have adequate, sufficient, and enforceable safeguards to ensure Canada does not discriminate against them again.