

Draft FSA Report Card

Evaluation of the Key Elements of the Final Settlement Agreement on First Nations Child and Family Services



August 2, 2024

Draft FSA	Grade	Comment
Security of Funding Across Government Changes	D	Current Canadian Human Rights Tribunal (Tribunal) orders provide approximately \$4.5 billion per year plus orders on actuals for expenses like capital. Orders do not expire, they only end if another order replaces them. The current orders (status quo) provide better protection for the funding than the draft Final Settlement Agreement (FSA), which allows Parliament to vote on funding levels every year. If the draft FSA is not approved by First Nations and/or the Tribunal, all current funding orders remain in place. 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 is easier to enforce than an agreement with the government.
Protecting Future Generations	F	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.
Funding Level	D	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 significant commitments to fund the Assembly of First Nations (AFN), the Chiefs of Ontario and Nishnawbe Aski Nation for their ongoing engagement, as well as funding to support multiple committees and a fully staffed Alternative Dispute Resolution (ADR) 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 (IFSD) projects a \$10 billion loss in agency funding over five years, amounting to \$20 billion over 10 years.

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Funding Structure	D	There are significant departures from the First Nations–informed IFSD research. Contrary to 40/2022, regional experts did not inform the funding structure and the National Advisory Committee did not complete its review. Nothing has been disclosed regarding what this means for First Nations/agencies/regions. There are concerns that the funding structure is entrenching aspects of Canada’s discrimination that the Tribunal identified by diverting prevention funding away from agencies, ultimately resulting in their inability to deliver prevention as required under Bill C-92.
FSA Governance/UNDRIP	F	Canada failed to consult with First Nations as required by United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and abide by AFN Resolution 40/2022 directing the Parties to develop options for long-term reform. Under the draft FSA, First Nations leadership cede governance of the overall agreement (including funding levels) to a confidential process without representation from all regions.
Alternative Dispute Resolution (Parties Disputes)	D	The process fails to take a human rights approach to resolving disputes, resulting in significant deference to Canada regarding issues of compliance and ignores the power imbalance given that Canada is the perpetrator of discrimination. Furthermore, the ADR cannot compel Canada to take specific corrective or remedial actions in cases of non-compliance, nor does it allow for punitive measures against Canada.
Alternative Dispute Resolution (Claimants Disputes)	D	The process does not provide First Nations claimants with the same level of protection and remedies available under the <i>Canadian Human Rights Act</i> including systemic remedies even if Canada’s conduct harms multiple children or Nations. Claimants are not entitled to compensation for discrimination even if it is wilful and reckless. The process is not child-centered, or in accordance with the best interests of the child and Article 12 of the United Nations Convention on the Rights of the Child. Critically, the draft FSA does not include a process to fast-track urgent cases when Canada’s conduct might harm a child.
Internal First Nations Governance	D	Canada has new powers over First Nations and agencies and approval of First Nations and agency work plans.
Principles	C+	The principles include some good definitions. However, it defines “First Nations child” per the <i>Indian Act</i> .
Consistency with AFN Resolution 2022/40	C	Includes some provisions but did not return with options or ensure that regional experts or the NAC informed the draft FSA. There are alternatives to the draft FSA (and supporting materials) that could have been presented and have not been presented to leadership, despite this requirement.