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Province agrees to \$530-M settlement in CFS lawsuits



By: [Carol Sanders](#)

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Hey there, time traveller!

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Manitoba has agreed to a landmark \$530-million settlement to repay children in care after 14 years of clawing back federal payments that were supposed to go to them.

“It’s a great day,” said Trudy Lavallee, the litigation guardian and plaintiff for non-Indigenous children in care who didn’t get their children’s special allowance funding from 2005 to 2019.

“I’m very happy for the kids,” said Lavallee, executive director of Animikii



Ozozon Child and Family Services, at a news conference Monday.

The amount involves \$335 million that was clawed back, plus interest and damages for discrimination.

The aggregate settlement, which covers three certified class-action lawsuits, is expected to receive court approval this week. It includes Indigenous, First Nations, Métis and non-Indigenous children who were wards of the province during that time.

“It feels pretty good,” said Lee Malcolm-Baptiste, 24, who plans to put his settlement money towards a down payment on a house for his young family, including children ages six and five.

The Ebb and Flow First Nation member couldn’t say how much he will receive. He was apprehended in Winnipeg in 2007, when he was eight years old, and “bounced around” to 10 or so foster homes and placements.

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SUPPLIED Lee Malcolm-Baptiste, member of Ebb and Flow First Nation, was born in Winnipeg and lived with his mom until he was 8 in October 2007 and apprehended by child welfare.

When he and two younger siblings were taken into care, he said he felt he'd been "banished" from his family — "that I'd done something wrong," he said from his home in Cutler, Ont.

He was aware of CFS wards "being looked at differently" and wearing Walmart shoes when other kids wore Nikes, Malcolm-Baptiste said.

He didn't think about money, though, and had no idea that federal funding was supposed to be spent on him, he said.

The monthly special allowance was supposed to be used exclusively for

the care, maintenance, education, training, or advancement of the child in care, federal law states.

In 2005, the then-NDP government had child welfare agencies remit the federal benefit to the province, saying it was in compliance with the law because it was providing services to children in care, recalled Elsie Flette, the lead plaintiff for Indigenous children in care.

“For the province to assume, with no agreement and no authority and no provision in place that they could somehow take this money from the kids, in our opinion, was theft.”

– Elsie Flette

Flette, the former CEO of the Southern Authority, sparked the process of

recovering that money for kids in care in 2011, when she asked if they were being discriminated against by having their federal benefits clawed back.

“When the province took the money, we had group of children who had no access to money for things that regular maintenance would not pay — if they wanted to take powwow lessons or were particularly good at hockey, those kinds of expenses,” Flette said.

“For the province to assume, with no agreement and no authority and no provision in place that they could somehow take this money from the kids, in our opinion, was theft,” said Flette in Monday’s news conference.

“We’re glad the court saw it our way, that the province was wrong.”



MIKE DEAL / WINNIPEG FREE PRESS Trudy Lavallee (left) and Elsie Flette (right), with their lawyers, speak during a press conference Monday. Flette, the former CEO of the Southern Authority, sparked the process of recovering that money for kids in care in 2011,

when she asked if they were being discriminated against by having their federal benefits clawed back.

In 2019, the then-Progressive Conservative government put an end to the practice. One year later, it passed legislation to prevent children in care from suing the province to get the money back. The province was taken to court again and lost.

In 2022, Justice James Edmond ruled that the province violated equality rights under the Charter of Rights and Freedoms by denying a benefit to the claimant group — among “the most vulnerable members of our society” — that is not denied to others.

“This is righting a wrong,” Families Minister Nahanni Fontaine said when asked to comment Monday at an unrelated event at The Forks.

The minister wouldn’t comment on specifics of when and how cheques would be issued.

She said when the NDP formed government in October, her “No. 1 priority” was to enter into negotiations to “make children whole.”

The Manitoba Métis Federation said vulnerable kids in care lost out on the federal benefit that other Canadian children received.



“It should have been coming all along, just like the child tax benefit,” Mona Buors said Monday.

“This rightfully belongs to them.”

– Mona Buors

“This rightfully belongs to them,” Buors said. “Some will have bigger settlements than others depending on how many years they’ve been in our system. The main difference it’s going to make for them is they’re going to have a brighter future because they’re going to have this money coming to them,” she said.

The \$530-million settlement includes the cost of legal fees and administration.

The claimants will be awarded based on the principle amount of the benefits they had clawed back between 2005 and 2019, plus interest and 20 per cent awarded for discrimination damages, said lawyer Chris Saxberg at Cochrane Saxberg LLP.



For example, a child who had \$10,000 in federal benefits clawed back would receive that amount, plus interest, plus damages that are calculated at 20 per cent, or \$2,000. He said it will take months for the legal process and a distribution plan to be completed.

Those who've taken part in the class action lawsuit have time to opt out and file their own lawsuit, Flette said.

In the meantime, the litigation guardian said they'll work closely with agencies that have information about where the kids and young adults currently live.

"We have a number of groups here in this class because there are children who are still in care, children who are minors but who've returned home so they're no longer in care and we'll also have those kids who've aged out."

They're looking at ways to distribute their settlement money to them.

"There's a number of categories of kids that we want to look at (and) what the best way is to do this, in a way that's beneficial to them, and that actually does compensate for harm and doesn't cause future harm."

As for Malcolm-Baptiste, he said the money will help but it's not what he



missed the most growing up.

“The one thing I always thought about was to be with my family, the people I love,” said Malcolm-Baptiste. Being a parent himself now “is a treasure,” he said.

“I tell myself ‘just be that person you needed when you were young.’ That’s what I am for my kids. I’m goofy, I’m playful, I’m open and very expressive. I’m big on love.” He said he doesn’t carry around regrets about being in foster care.

“I’ve been able to keep my spirit alive to show kids there’s more to life than what they’ve designed for us.”

— *with files from Tyler Searle*

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Carol Sanders

Legislature reporter

Carol Sanders is a reporter at the *Free Press* legislature bureau. The former general assignment reporter and copy editor joined the paper in 1997. [Read more about Carol.](#)



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HISTORY

Updated on Monday, March 25, 2024 11:05 AM CDT:
Fixes typos, adds government statement

Updated on Monday, March 25, 2024 7:03 PM CDT:
Additional information included and edited.

Updated on Monday, March 25, 2024 11:14 PM CDT:
Adds photo

Updated on Monday, March 25, 2024 11:22 PM CDT:
Corrects typo

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Outlet mall-area housing proposal the shape of things to come, deputy mayor says

Joyanne Pursaga
4 minute read
Yesterday at 6:24 PM CST

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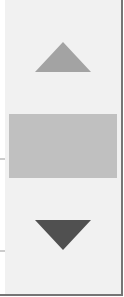


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JAN. 2, 12 AM: -14°C CLOUDY

JAN. 2, 6 AM: -13°C CLOUDY WITH WIND

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Tyler Searle
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2 minute read
12:00 AM CST

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10:13 AM

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Six slain cats found, police investigating

Malak Abas
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Steve Lambert, The Canadian Press

Opinion

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Carol Sanders

8 minute read

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