

Without denial, delay or disruption: ensuring First Nations Children's access to equitable services through Jordan's Principle

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*Based on the work of the Jordan's Principle Working Group

Jordan's Principle

Jordan's Principle is a child-first principle and provides that where a government service is available to all other children and a jurisdictional dispute arises between Canada and a province/territory, or between departments in the same government regarding services to a First Nations child, the government department of first contact pays for the service and can seek reimbursement from the other government/department after the child has received the service. It is meant to prevent First Nations children from being denied essential public services or experiencing delays in receiving them.

Canadian Human Rights Tribunal (CHRT, 2016, p 351)



Jordan's Principle

- Jordan River Anderson (October 22, 1999–February 2, 2005)
 - Medical team approved hospital release when he was 2
 - Federal & provincial governments disagreed over payment for in-home service
 - Jordan passed away in hospital
- First Nations children susceptible to jurisdictional disputes
 - Federal, provincial/territorial & First Nations governments share responsibilities
 - Disputes between government departments also occur (e.g. INAC & FNIHB)
 - On-reserve funding/service gaps and disparities well documented
- Unanimous House of Commons resolution, 2007

First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Canada

- 2007 – Human Rights complaint filed
 - Charged discriminatory funding and management of on-reserve child welfare services
 - Failure to implement Jordan's Principle also included
- January 2016 – CHRT decision
 - Federal government's administration of on-reserve child welfare services is discriminatory
 - Affirms Jordan's Principle and orders its implementation
- April 2016 – CHRT ruling
 - Orders implementation of JP within 2 weeks

Jordan's Principle Working Group

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Amanda Meawasige
Assembly of First Nations

Doug Maynard,
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Without denial, delay, or disruption:

**Ensuring First Nations children's
access to equitable services through
Jordan's Principle**



Jordan's Principle designation pursued

Jurisdictional dispute over services for a First Nations child - ambiguity over responsibility for, or underfunding of, services

Jordan's Principle designation not pursued

8-step process to declare a Jordan's Principle case
Systematically narrows the cases eligible for child-first protections

Lower quality of services
Fewer services in-home, less access to diagnostic & prevention services, service providers with lower credentials, etc.

Increased intensity intervention
Including institutional care

Extraordinary efforts to access services
Family relocation, out of pocket payment, humanitarian efforts, etc



A First Nation child needs services other children are entitled to but neither government will pay...

Resolution reached through case conferencing at the local level

No time frame specified

1

1. Does the case involve a jurisdictional dispute between a provincial and federal government?
2. Does the First Nation child live on reserve?
3. Have they been assessed and have been found to have multiple disabilities requiring services from multiple providers?

YES

2

Referral to focal point if not resolved at local level

No time frame specified


NO

The services required by the First Nations child are not paid for by either government

Contact information for focal points not publicly available



- Required documents:
 - assessment from a health or social service professional
 - information on current proposed service plans
 - report of the issue/reason for referral to the focal point
 - summary of steps taken to resolve the issue
- Focal point makes decision
- No appeal process




If not resolved at the focal point level, relevant asst. deputy minister decides whether to declare a jurisdictional dispute

No time frame specified



Resolution at focal point level

Within an additional 45 work days



Focal point will hold an initial case conference meeting with focal points from other parties

Within 10 work days of receiving necessary information

5

4

3



6

Relevant asst. deputy minister notifies responsible counterpart in fed/prov. Ministry, in writing, of a jurisdictional dispute and requests to enter into dispute resolution process

No time frame specified

Counterpart Asst. deputy minister responds to request to enter into dispute process from primary asst. deputy minister. If accepted, Jordan's Principle jurisdictional dispute is declared.

Within a reasonable time frame

7

8

Jordan's Principle Declaration

YES

NO

Once a Jordan's Principle dispute is declared, and the service is deemed by the province as a provincial/territorial normative standard, then the First Nation child finally receives services

The services required by the First Nations child are not paid for by either government

"There are currently no outstanding jurisdictional disputes involving Jordan's Principle in Canada."

Statement issued by the office of INAC Minister (February 2015)

CHRT ruling & JWPG recommendations

- Jordan's Principle must apply to all First Nations children (*Caring Society*, p 382).
- Jordan's Principle is "relevant and often intertwined with the provision of child and family services to First Nations" (*Caring Society*, p 362). It must apply to all service domains.
- The Jordan's Principle process must not include delays resulting from elements such as "a review of policy and programs, case conferencing and approval from the Assistant Deputy Minister, before interim funding is even provided" (*Caring Society*, p 379). It must prioritize the best interests of the child, by ensuring that services are delivered without delay or disruption.

CHRT ruling & JWPG recommendations

- Jordan's Principle must apply to jurisdictional disputes, over services for a First Nations child, between federal and provincial governments *and* between departments of a single government (*Caring Society*, p 360).
 - Jurisdictional dispute not clearly defined.
 - Importance of this question demonstrated in *PLBC v. Canada*
 - CHRT interpretation seemingly extends to:
 - areas of jurisdictional ambiguity, and
 - gaps and disparities between the services that the federal government funds/provides on reserve and what provinces generally fund/provide off-reserve

Additional JWPG recommendations

- There must be clear and consistent standards and procedures for compensating all service providers, including First Nations providers, for the costs incurred during all Jordan's Principle related processes.
- First Nations must be included as true partners in all stages of development and implementation of a response to Jordan's Principle in every province/territory.
- Measures of accountability and transparency must be incorporated at the case level.
 - access, navigation, appeal.

Additional JWPG recommendations

- Measures of accountability and transparency must be incorporated at the broader level of implementation, in order to ensure compliance with responsibilities to First Nations children under international, national, provincial/territorial, and First Nations law and agreements.
 - Education, public reporting, independent oversight
- **Federal, provincial, and territorial governments must work with First Nations, without delay, in order to systematically identify and address the jurisdictional ambiguities and underfunding that give rise to each Jordan's Principle case.**
 - How will this be done?

Implementation questions

- How should a Jordan's Principle case be initiated?
- How will provincial comparability be assessed?
- How will costs incurred during Jordan's Principle related processes be covered/reimbursed?
- How will Jordan's Principle processes be monitored/evaluated?
- How will Jordan's Principle policies and procedures be documented and disseminated?
- How will families/service providers learn about Jordan's Principle processes?
- How will families/service providers appeal Jordan's Principle decisions?



The full report of the Jordan's Principle Working Group is available on the AFN website:
http://www.afn.ca/uploads/files/jordans_principle-report.pdf

For background information on Jordan's Principle:
<http://www.jordansprinciple.ca>

Thank you!

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