

# HOW IS JORDAN'S PRINCIPLE RELATED TO THE TRIBUNAL?

## Canadian Human Rights Tribunal on First Nations Child Welfare

### What is Jordan's Principle?

Responsibility for health, social and educational services for non-Aboriginal people falls primarily under provincial/territorial jurisdiction. In contrast, responsibility for services to First Nations children is often shared by provincial/territorial, federal and First Nations governments. As a result, First Nations children are vulnerable to disagreements over who should pay for services and how much should be paid. These disagreements are referred to as jurisdictional disputes.

Jordan's Principle calls on the government in first contact with a child to cover the cost of necessary health and social services and negotiate for reimbursements later. The principle was developed in response to the tragic experience of Jordan River Anderson, a child from Norway House Cree Nation in Manitoba. Jordan was born in 1999, with a rare and serious health condition. He was hospitalized from birth, and when it was time for him to leave the hospital, the provincial and federal governments could not agree on who would cover the costs of his care. Jordan unnecessarily spent over two years in hospital, while governments argued over who should pay for the services he needed. He died in hospital, never having the chance to live in a family home.

In 2007, the House of Commons supported a motion that "*the government should immediately adopt a child first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children.*"<sup>1</sup> This private members motion was not legally binding; accordingly, Jordan's Principle has been implemented through administrative agreements.

### How is Jordan's Principle implemented?

The federal government's department of Aboriginal Affairs and Northern Development Canada (AANDC) has taken the lead in implementing Jordan's Principle, in partnership with Health Canada. AANDC's 4 criteria for a case to be considered under Jordan's Principle are:

1. The child is First Nations living on-reserve.
2. There is a federal/provincial dispute over services that impacts continuity of care.
3. The child has multiple disabilities requiring services from multiple service providers.
4. The service in question would be available to a child living off-reserve.<sup>2</sup>

#### Child Welfare Tribunal

In 2007, the First Nations Child and Family Caring Society and the Assembly of First Nations filed a complaint against the federal government of Canada, alleging that child welfare services provided to First Nations children and families on-reserve were flawed, inequitable and discriminatory. They ask that the Tribunal find that First Nations children are being discriminated against and order appropriate remedies. The government countered this, stating that its services cannot be compared to those provided by the provinces/territories and that they do not offer a service in accordance with the Canadian Human Rights Act. Accordingly, the government asks that the case be dismissed. The Tribunal began hearing evidence in 2013 and a ruling is expected in mid-2015.

## What is the Pictou Landing decision?

Jeremy Meawasige, a youth from the Pictou Landing First Nation in Nova Scotia, had multiple serious disabilities and required 24-hour care. After his mother suffered a serious stroke, the family requested respite services, which the Pictou Landing Band Council (PLBC) agreed to cover. The cost of this care represented 80% of the personal and home care services budget that AANDC provided to the PLBC. PLBC and Maurina Beadle, Jeremy's mother, requested that Jordan's Principle be invoked.

AANDC denied the additional funding required for Jeremy's care. AANDC and the province maintained that a \$2,200 cap on respite care services was the normative standard. They did so despite being informed of a recent Supreme Court ruling that this cap did not apply in a similar case involving an off-reserve resident of the province. They stated that Jordan's Principle did not apply because of the lack of a jurisdictional dispute between the federal and provincial governments.

The PLBC and Maurina Beadle took legal action and, in a 2013 ruling, the Federal Court of Canada reviewed AANDC's decision to deny reimbursements for in-home care costs. The Court ruled that Jordan's Principle applied and funds should be reimbursed:

*"I do not think the principle in Jordan's Principle case is to be read narrowly. The absence of a monetary dispute cannot be determinative where officials of both levels of government maintain an erroneous position on what is available to persons in need of such services in the province and both then assert there is no jurisdictional dispute."\**

AANDC undertakes an evaluation process to determine whether the child's needs meet Canada's eligibility requirements. According to the First Nations Child and Family Caring Society (Caring Society), this process creates exactly the kind of delay that the Principle was designed to eliminate.

## How is Jordan's Principle related to the Tribunal?

The Caring Society argues that the federal government discriminates against First Nations children by not fully implementing Jordan's Principle. They argue that the limitation of Jordan's Principle's application to those situations involving complex medical issues and inter-governmental jurisdictional disputes means it is not being implemented within the full scope of its original intent. The narrow definition leaves children with medical issues that are not labeled complex and those affected by interdepartmental disputes without protection against delays, denials, or disruptions of services. A 2013 ruling by the Federal Court, criticized the government's narrow implementation of the Principle, stating that First Nations children should receive services in line with provincial/ territorial services.<sup>3</sup> The Caring Society argues that the failure to fully implement Jordan's Principle, and the delays built into the verification process, lead to additional discrimination against First Nations children, who already suffer discrimination in the form of the underfunding of on-reserve child welfare services.

The Caring Society also attests that the gaps in services caused by jurisdictional disputes, mean that children are often placed in out-of-home care off-reserve, rather than remaining at home with their families. They argue that full implementation of Jordan's Principle would enable First Nations children on-reserve to receive the same services as other children, as afforded to them under the Constitution Act. It would prevent the denial, delay or disruption of services to children because of ambiguities around overlapping government responsibilities.<sup>4</sup>

The federal government contests this, stating that Jordan's Principle is implemented across the country, though implementation varies between jurisdictions. They argue that Jordan's Principle is not a program, but rather a policy or process that sits on top of various programs, and therefore does not have funding attached to it. The government also argues that Jordan's Principle is not a child welfare concept and is therefore beyond the scope of the complaint. From the government's perspective, the Caring Society's disagreement with the government's definition and implementation of Jordan's Principle does

not make it discriminatory.<sup>5</sup>

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To view the final submissions to the Canadian Human Rights Tribunal on First Nations Child Welfare in full, please visit: <http://www.fncaringsociety.com/final-arguments>.

**Suggested Citation:** Currie, V. & Sinha, V. (2015) How is Jordan's Principle related to the Tribunal? CWRP Information Sheet #150E. Montreal, QC: Centre for Research on Children and Families.

<sup>1</sup> Private Members Motion M-296.

<sup>2</sup> Summarized from the Aboriginal Affairs and Northern Development Canada Factum.

<sup>3</sup> Pictou Landing Band Council and Maurina Beadle v. Attorney General of Canada.

<sup>4</sup> Summarized from the First Nations Child and Family Caring Society Factum.

<sup>5</sup> Summarized from the Aboriginal Affairs and Northern Development Canada Factum.

\* Justice Mandamin, Federal Court of Canada, April 4, 2013 FC342.