



# Without denial, delay or disruption: Ensuring First Nations children's access to equivalent services through Jordan's Principle

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This information sheet presents an overview of *Without denial, delay or disruption: Ensuring First Nations children's access to equivalent services through Jordan's Principle*<sup>1</sup>, a report prepared by researchers from McGill University, the University of Manitoba and the University of Michigan, working in collaboration with the Assembly of First Nations, the Canadian Paediatric Society, and UNICEF Canada.

## Background

Jordan's Principle is a child-first principle intended to ensure that First Nations children do not experience denials, delays, or disruptions of services ordinarily available to other children due to disagreements between governments/government departments over payment for services. It states that, in cases involving jurisdictional disputes, the government/department first approached should pay for and provide services without delay; the dispute over payment for services can be settled afterwards.<sup>2</sup> Jordan's Principle is named in honour of Jordan River Anderson, a young boy from Norway House Cree Nation. Jordan was born with complex medical needs for which he required hospitalization for the initial part of his life. A medical team first recommended that he be transferred to a specialized foster care home, near his home community, in 2001. However, disputes between the provincial and federal governments, over payment for outpatient services and supports, denied him an opportunity to live outside of a hospital setting before his death in 2005.<sup>3</sup>

Jordan's Principle responds to complex systems for funding and delivering services, which treat Status First Nations children differently than other children in Canada. Responsibility for services to First Nations children is often shared by federal, provincial/territorial and First Nations governments. In contrast, responsibilities for services to most other children in Canada are solely under provincial/territorial jurisdiction.<sup>4</sup> Because of this, First Nations children face unique challenges in accessing services, and Jordan's Principle is an essential mechanism for

ensuring their human, constitutional, and treaty rights. The House of Commons unanimously adopted a resolution endorsing Jordan's Principle in 2007,<sup>5</sup> and over 8,000 individuals and organizations have signed on as supporters of a Jordan's Principle campaign spearheaded by the First Nations Child and Family Caring Society of Canada website.<sup>6</sup>

The federal government has driven the development and implementation of a governmental response to Jordan's Principle. However, there is growing recognition that this response does not reflect the vision of the principle advanced by First Nations and endorsed by the House of Commons. Reviews by the Canadian Paediatric Society and UNICEF Canada,<sup>7</sup> a consensus resolution passed by the Assembly of First Nations,<sup>8</sup> and a 2013 Federal court ruling<sup>9</sup> have criticized the narrow operational definition of Jordan's Principle embodied in the current governmental response. Indeed, the federal government itself has acknowledged widespread discontent with the response to Jordan's Principle.<sup>10</sup> The development and implementation of a governmental response which reflects the vision of Jordan's Principle advanced by First Nations and endorsed by the House of Commons is among the remedies requested in *First Nations Child and Family Caring Society of Canada and the Assembly of First Nations v. Attorney General of Canada*.<sup>11</sup> A Human Rights Tribunal ruling on this case is expected in April of 2015.<sup>12</sup>

## Research Findings

*Without denial, delay or disruption: Ensuring First Nations children's access to equivalent services through Jordan's Principle* describes the existence of widespread jurisdictional ambiguities and underfunding in health and social services for First Nations children. The research presented in the report indicates that jurisdictional ambiguities and underfunding give rise to gaps and disparities in the services available to First Nations children. It further suggests that, as a result, First Nations children can encounter differential standards of service, require increased-intensity interventions by health and social service systems, and even face increased risk of institutional care. The report highlights several shortcomings in the current, governmental response to Jordan's Principle:

- It is applied to on-reserve children with complex medical needs and multiple service providers, rather than all First Nations children.
- It is not applied in all service domains.
- It fails to recognize disputes between federal government departments or between the federal government and First Nations governments as disputes to which Jordan's Principle applies.
- It institutionalizes delays in services to a First Nations child when a jurisdictional dispute occurs.
- It fails to define a consistent mechanism for repayment of the costs of services provided during a jurisdictional dispute.
- It has not included First Nations in the implementation of Jordan's Principle, or in the case resolution processes.
- It lacks transparency, independent oversight, and accountability at both the case and systemic levels.
- It does nothing to remedy the underfunding and jurisdictional ambiguity that give rise to Jordan's Principle cases.

In the absence of a governmental response to Jordan's Principle which reflects the vision advanced by First Nations and endorsed by the House of Commons, the families, communities, and service providers of First Nations children are forced to take extraordinary efforts in order to ensure access services. Examples include relocation in order to access services, out-of-pocket payment or fundraising efforts to cover the costs of services, and negotiation of discounts with drug/equipment manufacturers. These efforts place additional burdens on the already-strained systems of care for First Nations children.

## Call to Action

Based on the research findings, **The Assembly of First Nations, the Canadian Paediatric Society, and UNICEF Canada call on federal, provincial, and territorial governments to work with First Nations, without delay, in order to:**

1. **Develop and implement a governmental response that is consistent with the vision of Jordan's Principle advanced by First Nations and endorsed by the House of Commons.**
2. **Systematically identify and address the jurisdictional ambiguities and underfunding that give rise to each Jordan's Principle case.** By clarifying jurisdictional responsibilities and eliminating the underfunding identified in individual cases, governments can *prevent* denials, delays, and disruptions in services for other children in similar circumstances. Accordingly, they can better assume the responsibilities to ensure equitable treatment of First Nations children outlined in *the Convention on the Rights of the Child*, *the United Nations Declaration on the Rights of Indigenous Peoples*, *the Canadian Charter of Rights and Freedoms*, *the Canadian Human Rights Act* and other federal, provincial/territorial, and First Nations legislation and agreement

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<sup>1</sup> Jordan's Principle Working Group (2015) *Without denial, delay, or disruption: Ensuring First Nations children's access to equitable services through Jordan's Principle*. Ottawa, ON: Assembly of First Nations. Retrieved from <http://cwrp.ca/publications/Jordans-Principle-Working-Group-Report>

<sup>2</sup> First Nations Child and Family Caring Society. (2011). *Jordan's Principle: Fact sheet*. First Nations Child and Family Caring Society. Retrieved from <http://fncaringsociety.com/sites/default/files/jordans-principle/docs/JPfactsheet2011-en.pdf>

<sup>3</sup> Lavallee, T. (2005). Honouring Jordan: Putting First Nations children first and funding fights second. *Paediatrics and Child Health*, 10(9) 527-529. Blackstock, C. (2008). Jordan's Principle: Editorial update. *Paediatrics and Child Health*, 13(7), 588-590.

<sup>4</sup> See, for example : Carlos R. Quiñonez, & Josée G. Lavoie. (2009). Existing on a boundary: The delivery of socially uninsured health services to Aboriginal groups in Canada. *Humanity & Society*, 33(Feb/May), 35–55. Sinha, V., & Kozłowski, A. (2013). The structure of Aboriginal child welfare. *International Indigenous Policy Journal*, 4(2), 1–23.

<sup>5</sup> Private Member's Motion M-296, Support for Jordan's Principle. 2007.

<sup>6</sup> First Nations Child and Family Caring Society. (n.d.). *Jordan's Principle - supporters*. Retrieved December 3, 2014, from <http://www.fncfcs.com/campaignsupporters/jordan>

<sup>7</sup> Canadian Paediatric Society. (2012). *Are We Doing Enough? A status report on Canadian public policy and child and youth health*. Retrieved from <http://www.cps.ca/advocacy/StatusReport2012.pdf>; UNICEF Canada. (2012). *Invited Response to Concluding Observations for the United Nations Committee on the Elimination of Racial Discrimination: Canada's 19th and 20th reports on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)* (Brief submitted by UNICEF Canada to the Human Rights Program, Department of Canadian Heritage, Government of Canada). Toronto, ON: UNICEF Canada. Retrieved from [http://www.unicef.ca/sites/default/files/imce\\_uploads/submission\\_by\\_unicef\\_canada\\_re\\_cerd\\_concluding\\_observations\\_for\\_canada\\_aug\\_2012\\_final.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/submission_by_unicef_canada_re_cerd_concluding_observations_for_canada_aug_2012_final.pdf)

<sup>8</sup> *Resolution 63/2008: Implementation of Jordan's Principle*. Assembly of First Nations Special Chiefs Assembly. Retrieved from AFN website: <http://64.26.129.156/article.asp?id=4442>

<sup>9</sup> *Pictou Landing Band Council & Maurina Beadle v. Attorney General of Canada*, 2013 F.C. 342. Retrieved from <http://www.fncaringsociety.com/sites/default/files/Ruling-%20Fed%20Court%20Beadle%20and%20Pictou%20Landing%20FN.pdf>.

<sup>10</sup> Aboriginal Affairs and Northern Development Canada. (2011b, July 25). *Deputy ministers' recognition award nomination form*, p. 4. Access to information document.

<sup>11</sup> *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada)* (2014), CHRT T1340/7008 (Complainant Caring Society's Closing Arguments). Retrieved from <http://www.fncaringsociety.ca/sites/default/files/Caring%20Society%20-%20Closing%20Submissions.pdf>