



## Advancing Substantive Equality for First Nations Children, Youth and Families through Jordan's Principle

*Submission to the House of Commons Standing Committee on Health: Children's Health*

### Key take-aways:

- Between July 2016 and November 30, 2022, over 2.18M products, services and supports were approved for First Nations children through Jordan's Principle after the Canadian Human Rights Tribunal (Tribunal) issued 24 procedural and non-compliance orders against Canada, following its landmark decision in 2016<sup>1</sup>.
- Jordan's Principle – a child-first principle initially conceived to address issues of jurisdiction that often delay, disrupt, or deny services to First Nations children – is increasingly being used to plug gaps in existing service areas, shoring up formal equality but doing little to move the dial on substantive equality. It also calls into question the request-based process that First Nations children and families must go through to access needed services that other children receive as a matter of course.
- Over 50% of requests are for low-cost, life-changing items under \$5000, with many items costing between \$100-999. Poverty resulting from the federal government's chronic underfunding of public services for First Nations communities is a key factor behind many Jordan's Principle requests<sup>2</sup>.
- Implementing the Spirit Bear Plan<sup>3</sup>, which involves costing out the shortfalls in all government services for First Nations kids and filling the gaps in a timeframe centered on children's best interests would address the gaps in public services to shore up formal equality so that Jordan's Principle can truly advance substantive equality for First Nations kids.

### Context:

Jordan's Principle is a legal rule named in memory of Jordan River Anderson, a First Nations child from Norway House Cree Nation. Passed unanimously at the House of Commons in 2007, Jordan's Principle ensures that First Nations children can access the supports and services they need without denial, delay, or disruption.

The Caring Society and the Assembly of First Nations filed a human rights complaint in 2007 alleging that Canada was racially discriminating against First Nations children by underfunding child welfare services on-reserve and failing to implement Jordan's Principle in a manner consistent with the House of Commons motion. In 2016, the Canadian Human Rights Tribunal (the Tribunal) substantiated the complaint in its landmark decision ruling that Canada's approach to Jordan's Principle was discriminatory and ordered Canada to take immediate measures to implement the full and proper scope of Jordan's Principle<sup>4</sup>. The Tribunal ordered Canada's implementation of Jordan's Principle must be based on the principles of substantive equality and the best interests of the child, must be needs based, and must account for distinct community circumstances. Despite the order to immediately implement Jordan's Principle, it has

<sup>1</sup> <https://www.sac-isc.gc.ca/eng/1568396042341/1568396159824>

<sup>2</sup> [https://www.ifsd.ca/web/default/files/Reports/2022-09-01\\_Jordan's%20Principle\\_Final%20report.pdf](https://www.ifsd.ca/web/default/files/Reports/2022-09-01_Jordan's%20Principle_Final%20report.pdf)

<sup>3</sup> <https://fncaringsociety.com/spirit-bear-plan>

<sup>4</sup> <https://fncaringsociety.com/publications/2016-chrt-2-2016-tcdp-2>

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taken a further 24 non-compliance and procedural orders to force the federal government to act on advancing substantive equality for First Nations children, youth, and families<sup>5</sup>.

### What does the IFSD data assessment say?

In March 2022, the Tribunal ordered Canada to fund research through the Institute of Fiscal Studies and Democracy (IFSD) including:

1. IFSD's assessment on the available data on Jordan's Principle requests to inform a future cost assessment of Canada's current implementation of Jordan's Principle and program reform; and
2. upon completion of the data assessment, a needs assessment regarding a long-term funding approach for Jordan's Principle, which includes identifying gaps in services and resources available to First Nations children, youth, and families<sup>6</sup>.

IFSD analyzed the data held in the GC Case system<sup>7</sup> to assess whether Canada's implementation of Jordan's Principle is working to shore up formal equality or advancing substantive equality for First Nations children. While the data show that Jordan's Principle requests, approvals and expenditures are increasing, these increases are symptomatic of chronic and longstanding inequality in services for First Nations children, meaning that at best, Jordan's Principle is working to advance formal equality, but is not achieving substantive equality.

The data assessment shows that:

- Requests for services and supports increased 625% between 2017 and 2021 [Figure 1].
- Requests continue to increase today (10% increase due to COVID-19 in 2020-21).
- Over 50% of requests are for "low cost" but life-changing items under \$5K, with many between \$100-999 [Figure 2].
- Jordan's Principle appears to be plugging holes in underfunded service areas elsewhere.
- Poverty is a key driver for Jordan's Principle requests.
- At best, Jordan's Principle is achieving formal equality for First Nations kids.

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<sup>5</sup> <https://fncaringsociety.com/i-am-witness/tribunal-timeline>

<sup>6</sup> <https://fncaringsociety.com/publications/2022-chrt-8>

<sup>7</sup> GC Case is the Government of Canada's case management system which ISC uses to track Jordan's Principle requests and data.

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Figure 1: Aggregate funds requested v. approved and number of requests approved v. denied by fiscal year; IFSD, 2022

The data show a substantial increase in requests from FY 2017-18 and 2020-21. In the Caring Society's view, this increase is attributed to first, the landmark Tribunal decision which ordered Canada to immediately apply the full scope and meaning of Jordan's Principle, and second, 2020 CHRT 36<sup>8</sup>, which confirmed that all First Nations children are eligible for Jordan's Principle. The increase in requests is positive, as it means that First Nations children and youth are accessing supports, but these victories are the result of ongoing and persistent advocacy by the parties.

The data also found that many requests are for low-cost but life-changing items below \$5000, with many requests below \$1000 [Figure 2]. This has remained consistent over the years. Importantly, all requests move through the same process, meaning that small requests (i.e., groceries, diapers, household bills, etc.) are received and processed in the same way as large requests (i.e., housing restorations, capital construction, etc.), with significant impacts on the timely delivery of services to children.

Ensuring that families have easy access to low-cost, life-changing items is not only dignity-affirming but is also directly tied to ensuring that children can remain safe in the family home, rather than being placed into the child welfare system<sup>9</sup>.

<sup>8</sup> <https://fncaringsociety.com/publications/2020-chrt-36>

<sup>9</sup> <https://cwrp.ca/publications/denouncing-continued-overrepresentation-first-nations-children-canadian-child-welfare>

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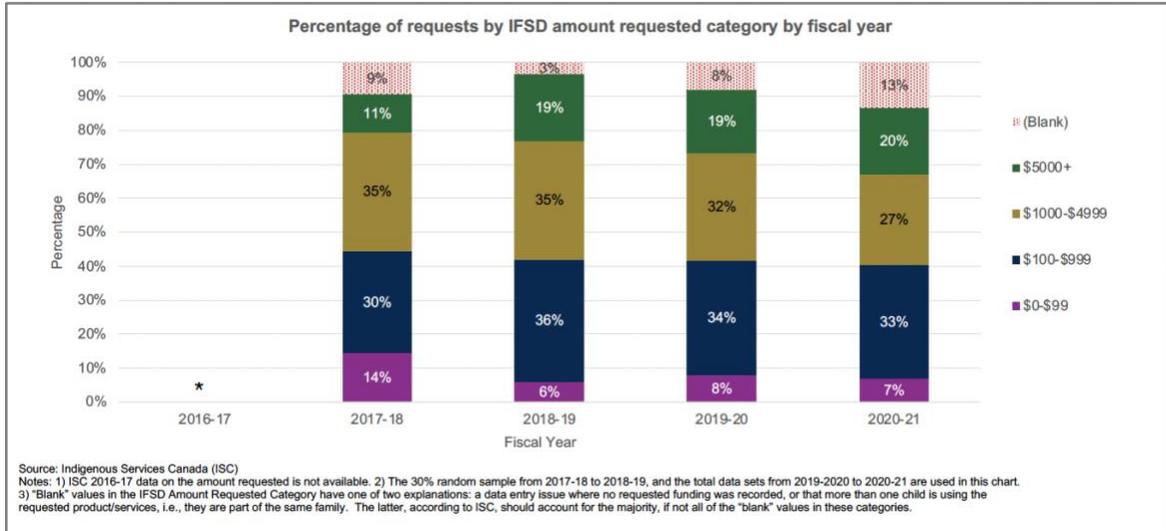


Figure 2: Percentage of requests by IFSD amount requested category by fiscal year; IFSD, 2022

A needs-analysis was undertaken to better understand why families requested services and supports through Jordan’s Principle. Among the IFSD-developed needs clusters, health and mental health had the largest number of requests, followed by education, and poverty [Figure 3].

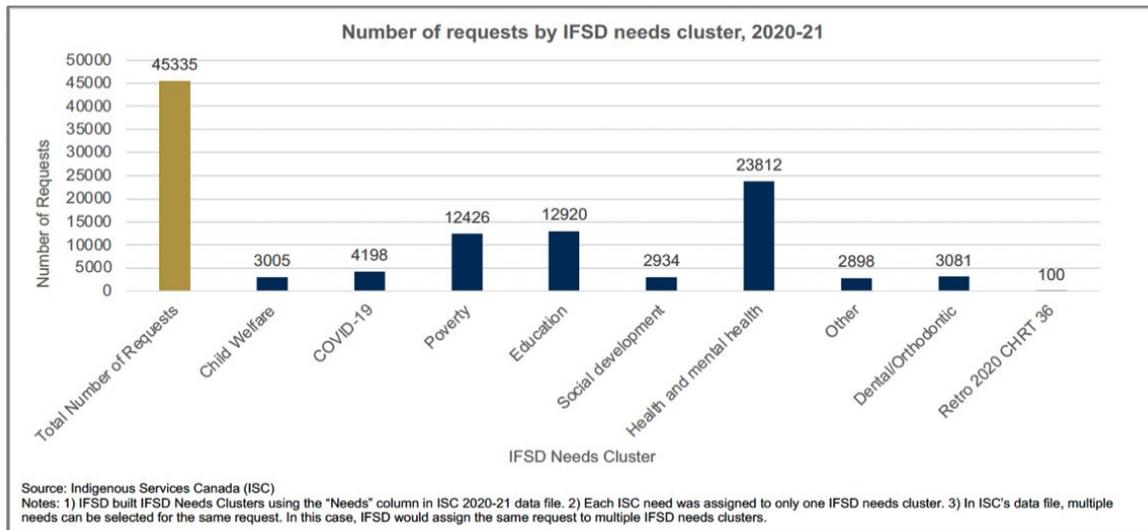


Figure 3: Number of requests by IFSD needs cluster, 2020-21; IFSD, 2022

Importantly, the report notes that while “issues and services were identified in the GC Case needs category, they were insufficient to confirm the root cause of the request” (IFSD, 2022, p.49). The only category that could point beyond immediate needs to examine the root causes of the requests is poverty. For other needs, the GC Case data cannot explain why the request was made through Jordan’s Principle as opposed to existing programming supports, nor can it confirm whether the services are actually meeting kids’ needs. This finding shows is that there is no real way of knowing whether the 2.18M approved services and supports is actually meeting the needs of children and advancing substantive equality.

At best, Jordan’s Principle is shoring up formal equality by plugging in gaps in existing service areas. However, First

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Nations children should not have to make requests for services and supports that other children get as a matter of course. A requests-based process for addressing funding and programming gaps will not advance substantive equality.

### What should be done?

To ensure that First Nations kids can access the supports they need to thrive, the Caring Society proposes the following solutions:

#### *Low-cost items should go through a minimum of red tape:*

- Presumptive approval for low-cost items (i.e., <\$250) makes sense fiscally and will prevent families from having to go through a bureaucratic request-based process. For requests higher than \$250, funding at actuals should be extended to First Nations communities and First Nations-serving organizations already providing Jordan's Principle service coordination to provide these supports.

#### *Ensure compliance with existing Tribunal orders:*

- Canada must comply with all existing Tribunal orders, particularly immediate relief measures related to decision timelines, urgent requests, and reducing the administrative barriers / red tape for families.

#### *Plug holes in other underfunded areas via the Spirit Bear Plan:*

- The rate of First Nations families making Jordan's Principle requests related to poverty and necessities of life points to clear gaps in public services provision. The Spirit Bear Plan was adopted by Assembly of First Nations Chiefs in Assembly in 2017 and requires the costing out of all public services on reserve and filling in the gaps in a timeframe sensitive to children's needs. If service gaps are remedied, Jordan's Principle can truly be used to address substantive equality for First Nations kids.

## Background:

### Jordan's Principle

Jordan's Principle is a legal rule named in memory of Jordan River Anderson, a First Nations child from Norway House Cree Nation in Manitoba. Born with complex medical needs, Jordan spent more than two years unnecessarily in hospital, waiting to leave, while the Province of Manitoba and the federal government argued over who should pay for his at-home care. Jordan died in the hospital at the age of five, never having spent a day in a family home.

With the support of their community of Norway House Cree Nation and others, Jordan's family gifted his name to the creation of a child-first principle to ensure First Nations children could access the services they need without denial, delay, or disruption.

Jordan's Principle ensures that First Nations children can access the supports they need, when they need them. Supports are provided on the basis of substantive equality, best interests of the child, culturally relevant service provision and account for distinct community circumstances.

### Spirit Bear Plan

First Nations children and families living on reserve and in the Territories receive public services funded by the federal government. Since confederation, these services have fallen significantly short of what other Canadians receive. The Spirit Bear Plan seeks to end these injustices by calling on Canada, Parliament, Government, and public servants to stop the discrimination and end the inequities in public services for First Nations children, youth, and families.