February 20, 2025: Unceded Algonquin Territory in Ottawa

CARING SOCIETY STATEMENT ON FEDERAL GOVERNMENT ALLEGATIONS OF MISUSE OF JORDAN'S PRINCIPLE

The Canadian Human Rights Tribunal has repeatedly found Canada to be discriminating against First Nations children by failing to implement the full scope of Jordan's Principle. Instead of complying with the legal orders, Canadian government officials have recently suggested, without credible evidence, that there is widespread misuse of Jordan's Principle. Here are the facts:

1. **Jordan's Principle has been lifesaving and life-changing for thousands of First Nations children who were denied equitable access to health, education, and social services, supports and products because provincial and federal governments and government departments fought over who should pay for these supports. Proper implementation of Jordan's Principle ensures that the best interests of children are the primary consideration in equitable service provision; not which government or department is funding the service.** Proper implementation of Jordan's Principle also saves the federal government money, as investing in equitable services for children at the earliest stages means saving down the road.
2. **Canada has repeatedly tried to deflect its legal responsibility by recycling failed arguments, prioritizing government interests over the interests of children, and offloading responsibility to First Nations.** The Tribunal calls this type of discriminatory conduct Canada's old mindset. The federal government alleges misuse but has not produced any credible data on the nature and extent of the problem. Instead, we see Canada shifting and deflecting its legal responsibility by alleging misuse. Using harmful stereotypes to legitimize discrimination is a hallmark of systemic racism.
3. **Canada's early interpretation of Jordan's Principle was so narrow and inadequate that no First Nations child met the government's criteria.** When the Tribunal ordered Canada to fully and properly implement Jordan's Principle, Canada considered this to be an "expansion" of Jordan's Principle (2016 CHRT 2, 2016 CHRT 10). Later, when the Tribunal ordered Canada to cease relying on *Indian Act* status to deny services and consider First Nations children who are recognized as members by their First Nations as eligible for Jordan's Principle, Canada again referred to this an "expansion" of Jordan's Principle beyond the Tribunal case (2019 CHRT 7, 2020 CHRT 20, 2020 CHRT 36). Where Canada has appealed, the Federal Court has upheld the Tribunal's decisions (2021 FC 969). Canada is now recycling this failed argument again to say that Jordan's Principle has "expanded" beyond the original intent.
4. **Canada has done nothing to address the problems with other federal programs that are driving families to place requests to Jordan's Principle.** The evidence shows that Jordan's Principle is filling gaps in underfunded federal programs, with needs relating to health and mental health, education, and poverty driving requests. The Tribunal ordered Canada to close gaps and coordinate its own federal programs to ensure that First Nations children do not experience gaps, delays, and denials in services (2016 CHRT 2). The Canadian government has not done so (2025 CHRT 6), and instead has allowed millions of dollars to lapse in Jordan's Principle funding that could have been used to address the needs of First Nations children.
5. **Canada could be seeking reimbursement from provincial or territorial governments but has not done so.** To ensure that First Nations children do not experience gaps, delays, or denials in services due to a jurisdictional dispute, the Tribunal ruled that the government or department of first contact must determine the request for services, and only after the child has received the service can reimbursement be sought from the appropriate government or department (2017 CHRT 14, 2017 CHRT 35). As the government legally responsible for implementing Jordan's Principle, Canada can seek reimbursement from provincial or territorial governments and other federal programs but has chosen not to do so (2025 CHRT 6).
6. **No one wants to see Jordan's Principle misused.** That is why registered or licensed professional recommendations are required to access Jordan's Principle and help demonstrate need. The exception is when the child is at imminent risk, in which case short-term supports are to be provided pending a professional recommendation.

Indigenous Services Canada (ISC) is ultimately responsible for approving or denying Jordan's Principle requests. ISC can deny Jordan's Principle requests that are not supported by a professional recommendation or are clearly not required to end discrimination towards the child. ISC has not consistently required professional recommendations despite repeated calls to do so by the Caring Society and First Nations.

7. **The Tribunal has affirmed that Jordan's Principle is a human rights principle grounded in substantive equality** (2025 CHRT 6). This does not mean that all requests should be approved under Jordan's Principle, or that Jordan's Principle is open-ended, but that the real needs of First Nations children are to be met. Canada has positive obligations to First Nations children under the *Canadian Human Rights Act*, the *Canadian Charter of Rights and Freedoms*, the Convention on the Rights of the Child, UNDRIP and more (2020 CHRT 20). First Nations children may need services beyond the kinds or levels of services ordinarily available because of the impacts of Canada's colonial history and discrimination (2025 FC 50). The Caring Society's position has always been that Canada should presume substantive equality applies, with the onus being on Canada to demonstrate if it does not. The Tribunal has described the presumption of substantive equality as a means to break down accessibility barriers and remove burdens on families in having to prove how their requests meet a "substantive equality test" (2025 CHRT 6).

   The Caring Society maintains that the large volume of Jordan's Principle requests is directly related to the ongoing barriers embedded in other federal programs for First Nations children. Families need to request products, services, and supports through Jordan's Principle because other federal programs are burdensome, underfunded, and fail to meet the real needs of First Nations children (2025 CHRT 6). Requests to Jordan's Principle will remain high unless Canada commits to full and proper implementation of the Spirit Bear Plan and adopts the principles of substantive equality and best interests of the child.

8. **First Nations and the Caring Society have regularly called on the federal government, including in press conferences, to comply with the Tribunal's orders on Jordan's Principle, coordinate its federal programs, and improve its management of Jordan's Principle.** Evidence-based solutions have been provided, but the federal government has chosen not to act. This has contributed to a backlog of nearly 129,000 requests, leaving many children waiting for products, services, and supports they need. The federal government manages large-scale transactions and programs every day. Why is it choosing to fail to do the same with Jordan's Principle?

Numerous legal findings substantiate the federal government's discrimination in implementing Jordan's Principle. This discrimination has arisen from the federal government's longstanding pattern of denial, deflection, and deferment, causing serious harms to children. Colonial tropes disparaging First Nations children and their families do not alleviate discrimination; Canada complying with legal orders will.

Jordan's Principle is sacred. When we speak about Jordan's Principle, we carry the legacy of Jordan River Anderson and remember the gift of his family in sharing his name.