

FEDERAL COURT OF APPEAL

B E T W E E N:

ATTORNEY GENERAL OF CANADA

Appellant

and

JOANNE POWLESS

Respondents

**MOTION RECORD OF THE PROPOSED INTERVENER
THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF
CANADA**

September 5, 2025
FAMILY LAW

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Court File No.: A-270-25

FEDERAL COURT OF APPEAL

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

AND

JOANNE POWLESS

Respondent

**NOTICE OF MOTION OF FIRST NATIONS CHILD AND FAMILY
CARING SOCIETY OF CANADA
(Motion For Leave to Intervene, to be heard in writing)**

TAKE NOTICE THAT the First Nations Child and Family Caring Society of Canada (the “**Caring Society**”), having its head office at 350 Sparks Street, Suite 202, Ottawa, ON K1R 7S8, will make a motion the Court, in writing, pursuant to Rules 109 and 369.2 of the *Federal Court Rules*.

THE MOTION IS FOR

1. Pursuant to Rule 109, the Caring Society be granted leave to intervene in this Appeal on the following terms:
 - a. The Caring Society may file a memorandum of fact and law of no more than 20 pages, or such other length as this Court may direct;
 - b. The Caring Society may make oral submissions at the hearing of this Appeal not exceeding 30 minutes, or such other duration as this Court may direct;

- c. The Caring Society shall accept the record as adduced by the parties and shall not file any additional evidence;
 - d. The Caring Society may participate in any future case conferences that pertain to this Appeal;
 - e. Any documents served on any party in this Appeal must also be served on the Caring Society;
 - f. The Caring Society may not seek costs or have costs awarded against it on the Appeal; and
 - g. Such further and other terms as this Court deems just.
2. The style of cause for this Appeal be amended to add the First Nations Child and Family Caring Society of Canada as an intervener.
 3. The Caring Society shall not seek costs and no costs will be awarded against it on this motion.

THE GROUNDS FOR THIS MOTION ARE:

1. The Caring Society will be directly affected by the outcome of the Appeal and it has a genuine interest in the Appeal;
2. The Caring Society will dedicate the necessary knowledge, experience, skills, and resources to assist the Court to the best of its abilities;
3. This Appeal gives rise to issues of public importance that will have a significant impact on First Nations children who are protected by the *Canadian Human Rights Act* (“**CHRA**”) and the multiple decisions made by the Canadian Human Rights Tribunal (the “**Tribunal**”) in relation to Jordan’s Principle. Conclusions in this Appeal regarding the scope, nature and application of Jordan’s Principle will impact the determination of Jordan’s Principle requests by First Nations children, young people and their families.
4. The Caring Society will make useful submissions on issues in this Appeal that are different from those advanced, or anticipated to be advanced, by the parties. As

such, the Caring Society's positions will not be advanced in the Appeal if it is not granted leave to intervene.

5. The Caring Society's intervention is in the interests of justice:

- a. The issues in this Appeal have an important public dimension, are complex and involve vulnerable First Nations children. The ramifications of this decision are not just limited to the present Appeal. This Court's decision may impact the scope and nature of the existing Tribunal orders in relation to Jordan's Principle and will almost certainly affect First Nations children and youth who receive services and supports through Jordan's Principle and who will need access to services and supports through Jordan's Principle in the future.
- b. The Caring Society has a genuine interest in the Appeal and has extensive experience in supporting Jordan's Principle since 2007 and advocating for its full implementation pursuant to the Tribunal's orders, starting in 2016. The Caring Society is therefore, best positioned to provide the perspective on the nature and scope of Jordan's Principle and its profound importance to the substantive equality rights of First Nations children and youth in the context of this Appeal;
- c. The Caring Society's intervention will not cause prejudice to the parties or cause delay in the Appeal; and
- d. The Caring Society's intervention is consistent with the objectives of Rule 3, namely to "secure the just, most expeditious and least expensive outcome of every proceeding".

6. The Caring Society is aware of the urgency in relation to this Appeal and the expedited timelines that have been set down. The Caring Society will meet any deadline for the filing of its memorandum of fact and law as ordered by this Court.

7. The Caring Society does not seek costs on this motion and, if granted leave, will not seek costs on the Appeal. The Caring Society asks that no costs be awarded against it;

8. Rules 109 and 369 of the Rules; and

9. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Cindy Blackstock, affirmed September 5, 2025

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of September, 2025.



September 5, 2025

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Court File No. A-270-25

FEDERAL COURT OF APPEAL

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**AFFIDAVIT OF CINDY BLACKSTOCK
(September 5, 2025)**

I, Cindy Blackstock, of the City Kamloops, in the Province of British Columbia,
SOLEMNLY AFFIRM THAT:

1. I am Gitxsan and a professor at McGill University's School of Social Work. I am also the Executive Director of the proposed intervener, the First Nations Child and Family Caring Society of Canada (the "**Caring Society**") and have held this position since 2002. As such, I have personal knowledge of the facts deposed to in this affidavit, except where stated to be on information and belief, and where so stated, I believe them to be true.
2. I have worked in the field of child and family services for over thirty-five years. I hold a doctorate in social work from the University of Toronto (2009), a Master of Management from McGill University (2003), a Master of Jurisprudence in Children's Law and Policy from Loyola University Chicago (2016) and a Bachelor of Arts from the University of British Columbia (1987).

3. I have received honorary doctorates from Blue Quills First Nations University, the University of Western Ontario, the University of Saskatchewan, the University of Waterloo, Thompson Rivers University, the University of Northern British Columbia, Mount Saint Vincent, the University of Winnipeg, the University of Manitoba, Toronto Metropolitan University, Osgoode Hall Law School, St. John's College, Memorial University, Dalhousie University, the University of Ottawa, the University of Toronto, the University of Victoria, McMaster University, Trent University, the University of Lethbridge, and the University of Calgary.

4. Through a global children's vote, I received the 2023 World Children's Prize, known as "The Children's Nobel Prize." Also in 2023, I received the Social Sciences and Humanities Research Council Gold Medal and was named the Canada Research Chair for First Nations Child and Family Services Implementation. I am an Honourary Witness for the Truth and Reconciliation Commission in 2014 and was appointed an Officer of the Order of Canada in 2018. I received Amnesty International's Ambassador of Conscience Award, the Law Society of Upper Canada's Human Rights Award and the Janusz Korczak Medal for Children's Rights Advocacy. In 2018, I was the inaugural recipient of the Children's Aid Foundation of Canada's Lynn Factor Stand Up for Kids National Award. In 2019, I was also awarded the Canadian Public Health Association's National Public Health Hero Award and in 2020 I was admitted as an Honorary Member to the Canadian Paediatric Society and received the National Indian Child Welfare Association (U.S.A.) Champion for Native Children Award. In 2021, I received the Canadian Psychological Association's Humanitarian Award and in 2022 I received the Key to the City of Winnipeg. Also in 2022, I was named Chancellor of the Northern Ontario School of Medicine where I continue to serve.

5. Prior to working at the Caring Society, I was the Executive Director at the Caring for First Nations Children Society in British Columbia (1999-2002), Assistant to the Social Development Director for the Squamish First Nation (1995-1999), and a senior social worker with the Province of British Columbia (1987-1995).

6. I have also received academic appointments and served on international committees and working groups focusing on the rights of Indigenous children with a

particular emphasis on culturally based equity. I served as a Commissioner for the Pan American Health Commission's study on Health Equity and Inequity, which had a particular focus on Indigenous peoples and persons of Afro-descent, participated in a legal forum on children's environmental rights in Onãti Spain and an international forum on self-determination and Indigenous children's rights in Sydney, Australia in 2025.

7. Through my various positions and education, I have gained significant knowledge regarding the intersecting and compounding barriers often experienced by First Nations children, youth and their families, the rights of Indigenous children, youth and peoples, and the development of equality and human rights in Canada and abroad, particularly as they affect First Nations children, youth, families and their communities. As set out below, I have also been at the forefront of the recognition and implementation of Jordan's Principle. A copy of my curriculum vitae is attached hereto as **Exhibit "A"**.

8. I affirm this affidavit in support of the Caring Society's motion for leave to intervene in the above noted Appeal. I am authorized by the Caring Society to affirm this affidavit.

1. About the Caring Society

A. The Caring Society's Mandate

9. First founded in 1998, the Caring Society is a national non-profit organization committed to research, training, networking, policy, and public education to promote the well-being of First Nations children, youth, and families, including those living on reserve. The Caring Society believes First Nations communities are in the best position to design and implement their own child and safety and wellbeing solutions while recognizing Canada's ongoing obligation to ensure First Nations children can access substantively equal services, supports and products that honour their cultures and distinct circumstances. As a national organization, it is our role to provide quality resources for First Nations communities and service providers to inform community-focused solutions for children, youth and families.

B. The Caring Society's National and International Work

(i) Jordan's Principle

10. Jordan's Principle is named after Jordan River Anderson. A child from Norway House Cree Nation who spent over two years unnecessarily in hospital as governments argued for over 2 years on payment for the in-home care he needed. Five-year-old Jordan sadly passed away in 2005 before ever getting a chance to go home.

11. Prior to his passing, I joined Jordan's family, his community of Norway House Cree Nation and medical professionals in trying to get the help he needed so he could go home. It was frustrating to see the federal and provincial governments argue over payments for Jordan's in home care related to his First Nations status while the child languished in hospital. Following Jordan's devastating passing, the family asked that I attend Jordan's memorial ceremony, where the blue bear to symbolizing Jordan's Principle was unveiled. The headstone marking Jordan's final resting place in Norway House Cree Nation reads, "Jordan River Anderson: Founder of Jordan's Principle."

12. Since then, I have been inspired by the dedication that Jordan's family has shown to ensure Jordan's Principle is honoured and other children get the help they need when they need it. This has included: meetings with elected leaders and officials from various provincial and federal governments, public awareness and educational events, collaborating on a children's book and animation that includes Jordan's Principle entitled "Spirit Bear and Children Make History," Jordan's Principle parades, and more. This past week I had the deep honour of joining them on a visit to the hospital where Jordan spent his entire life. The family has always been forever grateful to the doctors, nurses and staff at Winnipeg's children's hospital at the Health Sciences Centre.

13. Jordan's Principle was first published in a report authored by the Caring Society regarding Canada's provision of First Nations child and family services in 2005: *Wen:De We Are Coming to the Light of Day*. This report was an essential piece of evidence relied on by the Canadian Human Rights Tribunal (the "**Tribunal**") in the Canadian human rights complaint that led to full recognition of Jordan's Principle.

14. The Caring Society has been at the forefront of advocating for the full implementation of Jordan's Principle. On December 12, 2007, I accompanied Jordan's father, Ernest Anderson, his family, Chief Marcel Balfour (then Chief of Norway House Cree Nation), and families to watch Parliament's unanimous adoption of Jordan's Principle, in a standing vote on then Member of Parliament's Jean Crowder's Motion 296.

15. Prior to and since the unanimous adoption of Jordan's Principle, the Caring Society has consistently and persistently advocated directly to the federal government, is a co-complainant before the Tribunal in a historic case involving Jordan's Principle and child and family services (discussed in more detail below) and has intervened in individual Jordan's Principle cases in an effort to ensure that Jordan's Principle is applied in keeping with the existing Tribunal orders: ensuring that all First Nations children have access to the services, products and supports they need when they need them, in a manner consistent with their right to substantive equality.

16. The Caring Society has tracked Canada's implementation of the Tribunal's Jordan's Principle orders to ensure compliance and remedy discriminatory conduct. Unfortunately, Canada's non-compliance has been wide-sweeping and often has devastating impacts for children including being linked to the deaths of some children. We documented Canada's non-compliance in a 2018 document titled Concerns with Canada's Compliance with the Tribunal orders on Jordan's Principle" ("**Jordan's Principle Concerns Document**"). After its creation, the Jordan's Principle Concerns Document was updated in December 2018, January 2019, April 2019, May 2019, June 2019, August 2019, November 2019, March 2020, June 2020, October 2020, and April 2021 and was used as an advocacy tool with Canada in an attempt to ensure compliance. A further version was created in June 2023, in the context of confidential mediation discussions. The April 2021 Jordan's Principle Concerns Document is attached hereto as **Exhibit "B"**.

17. As a result of the discussions flowing from the Jordan's Principle Concerns Document, the Caring Society, along with the Assembly of First Nations (the "AFN"), engaged with Canada to develop the Back-to-Basics Approach in 2021. A cornerstone

of the approach was that there should be a presumption of substantive equality, rather than requiring families to “prove” that substantive equality applies.

18. On December 31, 2021, the Caring Society signed the Agreement-in-Principle on the Long-Term Reform of the First Nations Child and Family Services Program and Jordan’s Principle (“AIP”). Appended to the AIP was a Jordan’s Principle Workplan, which included commitments for Canada to put in place a variety of measures and remedies aimed at addressing the systemic issues the Caring Society had been raising for years, including through the Jordan’s Principle Concerns Document. ISC reviewed, provided feedback, and negotiated items on the AIP Workplan, which I was involved in. Canada did not follow through on its commitments in the Jordan’s Principle workplan causing the Caring Society to file a non-compliance motion resulting in 2025 CHRT 6, as discuss below.

19. In addition to direct advocacy and discussions with ISC, the Caring Society also attends meetings of the Jordan’s Principle Operations Committee (“JPOC”) which is co-chaired by Canada. This group has been operational since November 2018. Its mandate is to:

- a. Provide operational guidance on the implementation of the Jordan’s Principle;*
- b. Provide input into the development of a longer-term approach;*
- c. Champion Jordan’s Principle within ISC, other federal departments, among First Nations partners and the broader community;*
- d. Discuss and provide input on key policy and operational issues;*
- e. Periodically review updates on progress, performance, and the achievement of key milestones; and*
- f. Keep participating organizations and the wider community informed about the work accomplished by the Jordan’s Principle Operations Committee.*

20. Over the years, the Caring Society has also directly supported Jordan’s Principle service coordinators, Jordan’s Principle navigators employed by First

Nations, and First Nations organizations who assist families in accessing Jordan's Principle. We have also helped individual families who have contacted the Caring Society with difficulties accessing supports, products, and services from Canada under Jordan's Principle. The Caring Society's direct support of Jordan's Principle requestors was meant to be time limited after the Tribunal made orders in 2017 that set out a clear approach to Jordan's Principle. I had not anticipated that Canada would fail to establish effective mechanisms to discharge its obligations including a complaints mechanism as proposed in an expert report in 2022: "Doing Better for Indigenous Children and Families: Jordan's Principle Accountability Mechanisms Report" authored by Naomi Metallic, Hadley Friedland and Shelby Thomas, attached hereto as **Exhibit "C"**.

21. Throughout 2022 and 2023, the Caring Society observed consistent issues respecting (i) Canada's failure to determine cases, including urgent cases, within the timelines; (ii) a lack of focus on the child's needs and substantive equality rights; (iii) over 100,000 requests backlogged and therefore unaddressed; (iv) funding and reimbursement delays; (v) lack of quality control and accountability; and (vi) lack of compassionate and culturally appropriate conduct, leading the Caring Society to file a non-compliance motion, as discussed below. Moreover, from our experience, these issues continue to persist today.

22. Between January 2023 and May 2025 alone, the Caring Society has raised over 420 cases regarding Jordan's Principle to ISC Headquarters and senior ISC officials. Most of these cases relate to (i) First Nations families and service coordinators not being able to reach ISC staff through the National Call Centre, regional contact centres or email, (ii) urgent requests going undetermined and ISC not putting place immediate compassionate supports, (iii) other determination delays with detrimental impacts on children who are waiting for services, products and support they need, and (iv) reimbursement and funding delays. Of the more than 420 cases raised with Canada by the Caring Society since January 2023, forty percent (roughly 165 cases) have been resolved at the level of the child.

23. The case of a 2024 Jordan's Principle group request for school-based pediatric services is illustrative of the issues plaguing Canada's approach to Jordan's Principle. In March 2024, the Caring Society directly advocated for Canada to determine a Jordan's Principle group request within the Tribunal ordered timelines on behalf of a northwestern Ontario First Nation. The group application supported by top medical professionals, education professionals and First Nations leadership, set out the crisis facing First Nations children in the community, including multiple suicide attempts taking place at school and the lack of emergency services for the community's children. Throughout March 2024, I wrote directly to Canada on multiple occasions about this case, imploring Canada to approve this critical application or at least determine it within the timelines. Sadly, while the Jordan's Principle application was under review, beyond the Tribunal ordered timelines, a three-year-old child died in the community.

24. In other instances, the Caring Society has used its own limited funds to provide emergency supports for children given Canada's failure to comply with the Tribunal orders; many times, these funds have not been reimbursed by Canada. While it clearly cannot meet the needs of all First Nations children, the Caring Society, First Nations, First Nations organizations and service providers have taken desperate measures to prevent the severe harms flowing from Canada's discriminatory conduct. For example:

- a. On August 18, 2023, I directed the Caring Society staff to issue emergency supports to a family fleeing wildfire during a territorial wide state of emergency. The family had tried to access supports through Jordan's Principle, but ISC told the family they were not able to provide access to supports in an urgent manner and required the family to seek reimbursement. This was not consistent with the family's circumstances, including one of financial hardship and simply not having basic necessities, including items for an emergency kit, as they fled wildfires. The financial supports were provided to the family while the Caring Society communicated with ISC to ensure that the family's emergency needs were met.

- b. On November 6, 2023, the Caring Society transferred immediate compassionate and safety supports to a family fleeing domestic violence due to the family and the Caring Society not yet hearing back from ISC. These financial supports were provided to the family all while the Caring Society communicated with ISC to ensure that the request was dealt with.
- c. On May 31, 2023, I directed the Caring Society staff to extend compassionate funds to support two children to attend a memorial potlatch for their parent and sibling who had died within weeks of one another after ISC failed to determine the request in a compassionate and compliant manner. Indeed, instead of focusing on the needs of children during this difficult time, ISC was focused on getting validation of the children's attendance at the potlatch even though the Chief had already provided a letter.
- d. On December 13, 2024 I directed the Caring Society to extend urgent funding to support another family fleeing domestic violence. The family's First Nation had been supporting the family as they transition to permanent, safe housing, but the First Nation was no longer able to provide immediate support to the family due to ISC issuing unilateral changes to the First Nation's ability to extend Jordan's Principle supports to their children and families. The family attempted to contact ISC to place an urgent Jordan's Principle request but was unable to reach anyone. As such, the Caring Society extended the urgent supports while connecting with ISC, who eventually confirmed that they would extend supports until the family transitioned into permanent, safe housing.
- e. On February 5, 2025, the Caring Society extended compassionate travel support from Manitoba for a child and her family to attend the child's last-resort brain cancer treatment at SickKids Hospital in Toronto. The family and the Jordan's Principle services coordinator was forwarded to Jordan's Principle after receiving denials Non-Insured Health Benefits (NIHB). Despite responding to ISC's requests for additional information, ISC also

denied the Jordan's Principle request for the child's family to accompany the child citing that there is no unmet need and that substantive equality did not apply. The Caring Society and the AFN wrote a joint letter to the Deputy Minister, asking that she immediately address the child's needs. This letter went unanswered.

(ii) National Initiatives and Research

25. The Caring Society engages in national initiatives and research. A part of the Caring Society's research mandate is the First Nations Children's Action and Research Education Services ("FNCARES") initiative. This initiative is a partnership with the University of Alberta aiming to generate and distribute research related to First Nations children's services and children's engagement in reconciliation to inform best practices and policies benefiting First Nations children, youth, families and Nations.

26. The Caring Society is a nationally recognized leader in reconciliation education through our Reconciling History initiative, which is a partnership between Beechwood Cemetery, former Truth and Reconciliation Commissioner Marie Wilson, historian John Milloy, Project of Heart and the Assembly of 7 Generations. In the spirit of the Truth and Reconciliation Commission and its Calls to Action, we provide free learning materials for children and youth across Canada to learn about Canada's treatment of Indigenous children and families, including through the residential school system, in ways links lessons of history to contemporary injustices. Through this initiative, conduct free public education tours and erect historically accurate plaques of those involved in residential schools who are buried at Beechwood Cemetery. In 2021, over 2,000 people attended the free Reconciling History walks guided by First Nations, Metis and Inuit youth partnered with historians at Beechwood Cemetery on Orange Shirt Day (September 30, now also known as the National Day for Truth and Reconciliation). It has become an annual event and in 2022, the City of Ottawa in partnership with the Caring Society erected the first historical plaque on residential schools in the city.

27. Reconciling History is particularly important to our work with Jordan's Principle. The Truth and Reconciliation Commission's third Call to Action calls upon all levels of government to fully implement Jordan's Principle. The Survivors of the residential school system gifted Indigenous peoples and all Canadians the Calls to Action to remedy the residential school system and achieve reconciliation. A key part of remedying the legacy is to ensure that First Nations children have substantively equal access to needed services, supports and products.

28. In addition to numerous education resources on reconciliation for all age groups, the Caring Society created and delivers the Touchstones of Hope program, which is a reconciliation framework that supports and promotes First Nations communities and allies in developing and implementing culturally based vision of healthy families, youth and children. The Touchstone of Hope program is a key framework used by many First Nations across Canada, and by Indigenous Peoples in the United States and in Taiwan. It was also cited as a best practice in the Truth and Reconciliation Commission's final report.

29. The Caring Society conducts numerous public education lectures and events. For example, our public education activities in 2023 included 95 public education events to audiences in Canada and around the globe and we appeared in over 100 Canadian and international media pieces.

30. With respect to our public engagement and policy activities, the Caring Society works closely with First Nations child-serving agencies and Nations, assisting them in working with local and national governments to address the needs of the community.

31. The Caring Society has also been heavily involved in advocating for the rights of First Nations children and families in court and administrative proceedings. This involvement has taken the form of co-filing a historic case with the AFN pursuant to the *Canadian Human Rights Act* ("CHRA"), serving as an expert witness and intervening in proceedings, which will be described in more detail below.

(iii) International Work

32. One of the Caring Society's key goals is to ensure the experiences of First Nations children and families are included in international discussions relevant to services and matters that affect First Nations children, youth, and families. The Caring Society has prepared and presented submissions to the United Nations, including: the United Nations Committee on the Rights of the Child ("UNCRC"), the United Nations Permanent Forum on Indigenous Issues, the Committee on Economic, Social and Cultural Rights, the Universal Periodic Review, and the Subgroup on Indigenous Child Rights.

33. In my capacity as the Caring Society's Executive Director, I have made presentations in South Africa, New Zealand, Norway, Ireland, Taiwan, Australia, Switzerland, Colombia, Mexico, Sweden, the United Kingdom, and the United States, making important connections with Indigenous Peoples and international child rights organizations.

34. The Caring Society works actively to promote the United Nations Convention on the Rights of the Child, particularly as it applies to First Nations children in Canada. In my capacity as Executive Director of the Caring Society, I convened the Indigenous Sub-Group, which consisted of child rights and Indigenous rights experts from all over the world, that assisted the UNCRC in developing and drafting General Comment 11 on Indigenous Children and their Rights. The General Comment was adopted by the UNCRC in 2009.

35. The Caring Society follows and comments on Canada's implementation of its obligations pursuant to the United Nations Convention on the Rights of the Child through its publications and ongoing research, and has presented reports and submissions to the UNCRC, the Universal Periodic Review, the Committee on the Elimination of all forms of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, and the Inter-American Commission on Human Rights addressing Canada's systemic underfunding of public services for First Nations children, youth and families.

2. The Caring Society's Legal Interventions

36. As part of its mandate to promote the rights of the First Nations children, youth, and their families, and given the impact that legal decisions can have on their rights and realities, the Caring Society has engaged in several legal interventions to promote First Nations children's rights and to try to assist courts in their determination where these rights are affected. These interventions include:

- a. On October 5, 2022, the Caring Society was granted leave to intervene at the CHRT in *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2022 CHRT 4. The Caring Society was permitted to make legal submissions on the remedies that the CHRT should award.
- b. The Caring Society was granted leave to intervene at the Federal Court of Appeal in *Alliance for Equality of Blind Canadians v Canada (Attorney General)* (Court File No. A-242-21, 2023 FCA 31). The Caring Society made submissions regarding the importance of complainant status for third-party organizations in protecting the interests of marginalized groups under the CHRA and noted the Canadian Human Rights Tribunal's treatment of similar issues in the First Nations Children's Discrimination Complaint (noted below).
- c. On May 11, 2022, the Caring Society was granted leave to intervene at the Court of King's Bench of Manitoba in *Manitoba Human Rights Commission v The Government of Manitoba, et al and The Government of Manitoba v Manitoba Human Rights Commission, et al* (Court File Nos. CI20-01-28360 and CI20-01-28403). This application for judicial review addresses the provision of services to children living on-reserve by Manitoba. The Caring Society made submissions regarding the scope and impact of Jordan's Principle in the provincial sphere in October 2023.
- d. The Caring Society was granted leave to intervene by the Québec Court of Appeal in the *Reference to the Court of appeal of Québec in relation with the Act respecting First Nations, Inuit and Métis Children, Youth and Families, Québec (Attorney General) v Canada (Attorney General)* (Court

File No. 500-09-028751-196, 2022 QCCA 185). The Caring Society filed a factum on April 30, 2021 and presented arguments at the September 14-16, 2021 hearings, making submissions regarding the scope of the federal government's responsibility in relation to the well-being of First Nations children; the responsibility of both the federal and provincial governments in relation to the well-being of First Nations children due to Jordan's Principle; and the importance of First Nations' self-government to achieving equitable outcomes in First Nations child and family services. The Caring Society was also a respondent on the Attorney General of Quebec's appeal to the Supreme Court of Canada (Court File No. 40061) from the Québec Court of Appeal's decision and an intervener as-of-right on the Attorney General of Canada's appeal. The Supreme Court of Canada granted leave to appeal on April 20, 2022. The Caring Society made submissions on the historic and current harms that face First Nations children and how an *Act respecting First Nations, Inuit and Métis children, youth and families* (the "**Federal Act**") operates in harmony with Canada's constitutional architecture and its underlying constitutional principles. The appeals were heard December 7 and 8, 2022.

- e. The Caring Society was granted leave to intervene by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. The Caring Society made submissions regarding the impact of administrative decision-making on First Nations children and families. The Caring Society stressed the importance of maintaining a focus on the best interests of the child in evaluating the reasonableness of decisions impacting children.
- f. The Caring Society was granted leave to intervene by the Supreme Court of Canada in *Canadian Human Rights Commission v Attorney General of Canada*, 2018 SCC 31. The Caring Society made submissions regarding the importance of ensuring that the CHRA is interpreted in a manner that confers the broadest protections to First Nations children, youth, and

families, arguing in particular that the conferral of Registered Indian status entails eligibility to a range of services and benefits related to the recognition of one's identity, thus falling within the definition of "service" under the CHRA.

- g. The Caring Society was granted leave to intervene at the Federal Court in *Shiner (in her personal capacity and as guardian of Josey K. Willier) v Canada (Attorney General)* (Court File No. T-492-16, 2017 FC 515). The Caring Society made submissions regarding the relevance of the right to equality and the best interests of the child in discretionary decisions impacting First Nations children. In particular, the Caring Society argued that Canada must not, by its laws, policies and discretionary decisions reinforce the perverse incentives created by its child welfare program funding formulas, which lead to removing First Nations children from their homes and communities. The application for judicial review was dismissed in *Shiner v Canada (Attorney General)*, 2017 FC 515. This decision was appealed to the Federal Court of Appeal, where the Caring Society was also granted intervener status. The appeal was settled prior to the hearing.
- h. The Caring Society was granted leave to intervene at the Federal Court of Appeal in *Canada (Attorney General) v Pictou Landing Band Council et al* (Court File No. A-158-13, 2014 FCA 21). The Caring Society made submissions regarding: (i) the proper interpretation and scope of Jordan's Principle; (ii) the inappropriateness of narrowly construing Jordan's Principle, and the potential impact of such an approach on First Nations children living primarily on reserve; and (iii) the impact of narrowly construing Jordan's Principle on Canada's obligations under the United Nations Convention on the Rights of the Child. Canada discontinued its appeal on July 11, 2014, prior to the hearing.
- i. The Caring Society was granted leave to intervene by the Supreme Court of Canada in *Moore v British Columbia (Education)*, 2012 SCC 61. The Caring Society made submissions regarding the remedial role of human

rights legislation in relation to historically disadvantaged groups, such as First Nations Peoples; the inappropriateness of strictly requiring a formal comparator groups analysis and the potential impact of such an analysis on the sui generis situation of First Nations Peoples in the context of a human rights complaint; and the need for, and appropriateness of, cross-jurisdictional analysis in assessing certain claims of discrimination.

3. The Caring Society's Interest in the Present Appeal

37. The Caring Society seeks leave to intervene in this Appeal because this Court's decision will have a significant impact on the children in this case and on the implementation of Jordan's Principle for First Nations children across Canada. . The Appeal will directly affect the scope and nature of Canada's approach to the adjudication of Jordan's Principle requests, thus directly impacting the Caring Society's continuing litigation and the advocacy role on behalf of First Nations children and youth. This appeal could also deepen the discrimination identified by the Tribunal and further create obstacles for First Nations children seeking to access supports through Jordan's Principle, by allowing governments to narrowly frame requests rather than assess them through a substantive equality lens as required under Jordan's Principle.

38. The decision under appeal builds on significant human rights advancements for First Nations children and youth the Caring Society was directly involved in achieving. In 2005, the First Nations Child and Family Caring Society released the Wen:De reports in which we recommended the adoption of Jordan's Principle as a child-first principle in the resolution of jurisdictional disputes that impact First Nations children in accessing services and supports. The Caring Society worked with Jordan's family and Norway House Cree Nation to name the child-first principle in Jordan's honour and memory. Jordan's family remains actively involved in ensuring Jordan's Principle is respected and honoured.

39. Since 2007, the Caring Society and the AFN have successfully litigated a discrimination complaint against Canada pertaining to the government's discriminatory conduct in the provision of child and family services for First Nations children and families including Canada's failure to implement Jordan's Principle (the

“**Complaint**”). This litigation led to numerous decisions benefiting First Nations children, youth and families from the Canadian Human Rights Commission (“**CHRC**”), the Tribunal, the Federal Court, and the Federal Court of Appeal.

40. The Caring Society and the AFN brought a complaint under s. 5 of the *CHRA*, which alleged that Canada discriminated against First Nations children and families living on reserve in the Yukon based on race and/or national or ethnic origin because of its policies and practices, including the provision of inequitable and insufficient funding.

41. The Complaint has been a significant undertaking for the Caring Society. At times during the hearing on the merits, budgetary constraints led the Caring Society to lay off staff to continue funding the complaint. The litigation impacted me personally as well, as detailed in the Tribunal’s June 5, 2015 decision awarding me \$20,000 due to Canada’s retaliatory conduct towards me. The Privacy Commissioner of Canada also found, on October 29, 2013, that the federal government breached my rights under the *Privacy Act* by monitoring social media sites on which I was active and tracking my personal movements. Government of Canada documents demonstrate that Canada engaged in this conduct in a failed attempt to get the case dismissed on vexatious or frivolous grounds. As a result of Canada’s retaliatory behaviour, Frontline Defenders, an international NGO safeguarding human rights defenders provided me with training and supports. Canada’s retaliatory behaviour also aimed to discourage other individuals from filing human rights complaints. This monitoring began in or about 2010, within the same time period as proceedings before the Tribunal related to a motion to strike the Caring Society and the AFN’s complaint. All of this behaviour was related to the Caring Society properly accessing the human rights system to seek relief for First Nations children who had suffered from Canada’s discrimination for over a century.

42. The hearings on the merits of the Complaint were held in 2013 and 2014. Canada did not argue that its obligations under Jordan’s Principle could be offset or augmented through the application of ameliorative programs under the *Canadian Charter of Rights and Freedoms* nor did it marshal evidence on financial hardship that would prevent it from discharging its human rights obligations.

43. In a historic decision issued in 2016, the Tribunal found that Canada discriminated against First Nations children, youth, and families in two ways (the “**Merits Decision**”). First, Canada discriminated by providing inadequate and flawed funding for child and family services, hindering the delivery of culturally appropriate services, incentivizing the placement of First Nations children into care, and failing to consider the unique needs of First Nations children, youth and families. Second, Canada discriminated by taking an overly narrow approach to Jordan’s Principle, resulting in service gaps, delays, disruptions, and denials. From 2016 to 2025, the Tribunal made more than 20 non- compliance and procedural orders relating to Canada’s failure to fully implement the Tribunal’s 2016 order. Canada’s failure to end this discrimination has real and devastating consequences on the affected individuals: for example, Canada’s non- compliance was linked to the deaths of three children in 2018.

44. To be clear, in the Complaint the Tribunal found that First Nations children and families were the victims of Canada’s discrimination in a “worst-case scenario”. Canada’s choice to provide funding for First Nations children’s services despite not delivering the services in question, did not prevent the Tribunal from recognizing the individual children, youth and families who experienced discrimination because of Canada’s conduct. The Tribunal found sufficient that Canada provided funding and exerted significant influence over the provision of those services and had the power to remedy inadequacies.

45. The Caring Society has been at the forefront of shaping the legal parameters around Jordan’s Principle, often acting as the moving party or in coordination with the Tribunal parties, in bringing the motions that have resulted in 2017 CHRT 14, 2017 CHRT 35, 2019 CHRT 7, 2020 CHRT 20, and 2020 CHRT 36. Many of these key decisions are directly referenced in the underlying Federal Court decision in this case.

46. More recently, on December 12, 2023, the Caring Society brought a non-compliance motion for further relief from the Tribunal, alleging that Canada was not complying with the CHRT’s orders on Jordan’s Principle and to ensure the CHRT’s order in the Merits Decision, 2016 CHRT 10, 2016 CHRT 16, 2017 CHRT 14, 2017

CHRT 35, 2019 CHRT 7, 2020 CHRT 20 and 2020 CHRT 36 are effective. The Tribunal issued its full reasons on the Caring Society's motion on January 29, 2025 (2025 CHRT 6), affirming that the commitment to substantive equality at the heart of Jordan's Principle. While Canada sought judicial review of 2017 CHRT 14 and 2020 CHRT 20, both of those decisions were ultimately upheld: the parties resolved 2017 CHRT 14 with the clarification order of 2017 CHRT 35 and 2020 CHRT 20 was determined to be reasonable by the Federal Court in 2021 FC 969. Canada initially sought judicial review of 2025 CHRT 6 but later discontinued that judicial review application.

47. As I explained earlier, the Caring Society has a genuine interest this Appeal. This Appeal gives rise to issues that fall squarely within the Caring Society's mandate and the extensive work that it has done to advocate for the full implementation of Jordan's Principle in a manner that safeguards the rights of First Nations children, youth and families. The Caring Society is concerned about the arguments being advanced by Canada in this Appeal, which, in my view, may deepen the discrimination for First Nations children and attack the uncontested Tribunal's orders on Jordan's Principle.

48. The Caring Society will dedicate the necessary, experience, skills, and resources to assist the Court to the best of its abilities. The Caring Society is aware that this Appeal is proceeding on an expedited schedule and will abide by any filing deadlines set by the Court. The Caring Society has no interest in delaying the determination of this important case.

(4) The Caring Society's Proposed Intervention

49. As outlined in its Written Representations on this motion, the Caring Society's proposed submissions, if it is granted leave, will differ from those that are anticipated to be raised by the Respondent. The Caring Society will not raise new issues, and it will not adduce any evidence. Any exhibits referenced in this affidavit will not be introduced or relied on in our written submissions on the appeal if leave is granted.

50. The Caring Society will not seek any costs either on this motion or on the Appeal, if leave to intervene is granted, asks that no costs be awarded against it.

AFFIRMED BEFORE ME over video
 teleconference on this 5th day of
 September 2025 in accordance with
 O. Reg. 431/20, *Administering Oath or
 Declaration Remotely*. The
 Commissioner was in Toronto, Ontario
 and the affiant was in Kamloops,
 British Columbia.



Commissioner for Taking Affidavits
 Sarah Clarke LSO #57377M



CINDY BLACKSTOCK

This Exhibit "A" to the Affidavit of Cindy
Blackstock affirmed before me this 5th
day of September 2025

A handwritten signature in blue ink, appearing to be 'S. Clarke', written over a horizontal line.

A Commissioner for taking Affidavits etc.

Sarah Clarke
LSO #57377M

Cindy Blackstock (Gitxsan First Nation)

Executive Director, First Nations Child & Family Caring Society of Canada

Professor, School of Social Work, McGill University

ACADEMIC RECORD (*4 Academic degrees; 21 Honorary Doctorates*)

PhD (Social Work)	University of Toronto, Toronto, Ontario (2009)
Master's degree (Jurisprudence)	Loyola University (Faculty of Law) Chicago, Illinois (2016)
Master's degree (Management)	McGill University Montreal, Quebec (2003)
Bachelor of Arts (Psychology)	University of British Columbia Vancouver, British Columbia (1987)
Doctor of Laws (Honorary)	University of Northern British Columbia Prince George, BC (2012)
Doctor of Letters (Honorary)	Thompson Rivers University, Kamloops, BC (2015)
Doctor of Laws (Honorary)	University of Saskatchewan (2016)
Doctor of Iyiniw Kiskeyihtamowingq Asonamakew (Passing Knowledge on)	Blue Quills First Nations University (2016)
Doctor of Laws (Honorary)	Western University (2016)
Doctor of Laws (Honorary)	Waterloo University (2016)
Doctor of Letters (Honorary)	Mount Saint Vincent University (2016)
Doctor of Laws (Honorary)	University of Winnipeg (2017)
Doctor of Laws (Honorary)	Ryerson University (2017)
Doctor of Laws (Honorary)	Osgoode Law School (2017)
Doctor of Cannon Law (Honorary)	St. John's College (November 2017)
Doctor of Laws (Honorary)	University of Manitoba (May 2018)
Doctor of Laws (Honorary)	University of Toronto (June 2018)
Doctor of Laws (Honorary)	Memorial University (June 2018)
Doctor of Laws (Honorary)	University of Ottawa (June 2018)
Doctor of Laws (Honorary)	Dalhousie University (May 2018)
Doctor of Laws (Honorary)	University of Victoria (2018)
Doctor of Laws (Honorary)	McMaster University (2018)
Doctor of Laws (Honorary)	Trent University (2019)
Doctor of Laws (Honorary)	University of Lethbridge (2019)
Doctor of Laws (Honorary)	University of Calgary (2020)

AWARDS AND HONORS (104)

2024	Champion for Children Award
2024	Kings Medal
2024	Canadian Podcast Awards, Best Indigenous Series (Spirit Bear Podcast)
2023	World Children's Prize
2023	Canada Research Chair: First Nations Child and Family Services Implementation
2023	World Children's Prize Child Rights Hero
2022	Inaugural Chancellorship for Northern Ontario School of Medicine (NOSM) University
2022	SSHRC Gold Medal
2022	City of Winnipeg Key to the City
2022	McGill University, Principal's Prize for Public Engagement through Media: Changemaker Prize
2021	BC General Employees' Union Spirit of Leadership Award
2021	Canadian Psychological Association Humanitarian Award
2021	BCGEU Leadership Award
2021	Because Mothers Matter Award
2021	Macleans Magazine: The Power List: 50 Canadians who are shaping how we think and live
2020	Fraser Mustard Lecture
2020	CSWE Lecture
2020	Canadian Paediatric Society, Honorary Life Membership
2020	National Indian Child Welfare Association of the USA: Champion for Native Children
2020	Child Welfare League of Canada, COVIDCARING recognition
2020	Federation of Saskatchewan Indigenous Nations: Star blanket Honouring
2019	Unreserved: Class of 2019
2019	Officer of the Order of Canada: Investiture
2019	American Society of Pediatric Otolaryngology Kerschner Lecture
2019	National Public Health Hero Award: Canadian Public Health Association
2019	Human Concern International: Canadian Women Making a Positive Difference
2019	Chatelaine Magazine: Women of the Year
2018	TD Spotlight on Achievement, Family Physicians Assoc. of Canada
2018	Mahatma Gandhi Peace Prize, Mahatma Gandhi Assoc. of Canada
2018	Officer, Order of Canada
2018	Women Making an Impact: Status of Women Canada
2018	Indspire: Promising Practice: Spirit Bear and children make history
2018	Stand Up for Kids Inaugural Award
2018	Profile, The Lancet (http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)30429-X/abstract)
2017	Newsmaker of 2018 (CBC)
2017	Chiefs of Ontario Honouring
2017	Gitksan First Nation Honouring
2017	Treaty 8 Honouring for work on Jordan's Principle and the CHRT
2017	Senior Fellow, Raoul Wallenberg Centre for Human Rights
2017	Fellow, Broadbent Institute

2017	Presbyterian Church of Canada, Dr. E. H. Johnson Memorial Award
2017	United Church of Canada, Human Rights Award
2017	Amnesty International, Ambassador of Conscience Award
2017	Canadian Labour Congress, Award for Outstanding Service to Humanity
2017	Janusz Korczak Medal for Children's Rights Advocacy
2017	Jack Layton Progress Prize, Broadbent Institute
2017	Law Society of Upper Canada, Human Rights Award
2017	150 Great Canadians @Canadians150
2016	Canadian Institute of Child Health Award
2016	Ontario Association of Social Workers: Social Change and Human Rights Champion award
2016	Assembly of Manitoba Chiefs Honoring
2016	Neil Reimer Award: UNIFOR
2016	Jordan's Principle Honoring: Norway House Cree Nation
2016	Champion for Children: Defense for Children International
2016	Honorary Recipient, Peter Henderson Bryce Award
2016	Honoring: BC First Nations Leadership Forum on Child Welfare
2016	Golden Whistleblower Award: Canadians for Accountability
2016	Liberty Award (individual): BC Civil Liberties Association
2016	Honouring, Assembly of First Nations
2016	Order of the Buffalo Hunt, Government of Manitoba
2015	Assembly of First Nations Honoring for work on Canadian Human Rights Tribunal
2015	Courage in Law Award, UBC Indigenous Law Students
2015	Distinguished Patron, Defense for Children International
2014	Canadian Society for Training and Development, President's Award
2014	Canadian Civil Liberties Association, Community Award
2014	University of Alberta, Community Scholar Award
2014	Honorary Witness, Truth and Reconciliation Commission
2014	The Federation of Community Social Services of BC Award of Excellence
2013	Human Rights Activist, 16 Days of Activism, Nobel Women's Initiative
2013	Human Rights Defender, Frontline Defenders (Dublin, Ireland)
2013	Friend of Child and Youth Award, North American Council on Adoptable Children
2013	Distinguished Person endorsing the Joint Statement against the Physical Discipline of Children
2013	Champion of Child and Youth Rights Award, First Call (BC)
2012	Recognition, Canadian Journalists for Free Expression
2012	Honorary Lifetime Member, Indigenous Bar Association
2012	Essential Piece Award: Kasohkewew Child Wellness Society
2012	Trudeau Foundation Mentor
2011	National Aboriginal Achievement Award (Public Policy)
2011	Ashoka Fellow (announced 2010 and formally inducted in 2011)
2010	J.W. McConnell Family Foundation Social Innovation Generation Fellows
2010	Canadian Association of Social Workers Outstanding National Service Award
2010	Ontario Municipal Social Services Association, Outstanding Human Services Award
2009	Manitoba First Nation Child Welfare Gala Leadership Award

2009	Yellowhead Tribal Services Recognition Award
2009	Atkinson Foundation Economic and Social Justice Fellowship
2009	Defense for Children International, Canada: Champion for Children Award
2008	University of Western Australia, Healthway Indigenous Scholar Fellowship
2008	Leader in Social Work, National Social Work Week, Ontario Association of Social Workers
2008	Adel Sedra Distinguished Scholar Award, University of Toronto
2008	Inclusion in the United Nations database on Indigenous experts and professionals, United Nations Permanent Forum on Indigenous Issues
2007	Assembly of Manitoba Chiefs Recognition Award, Jordan's Principle
2007	Perry Shawana Aboriginal Child Care Advocacy and Leadership Award
2007	Norway House Cree Nation Recognition Award for Jordan's Principle
2007	Canada Graduate Scholarship (PhD), Social Science and Humanities Council
2006	Wi Chi Ti Zon Group Home Recognition Award
2006	Victor Marchessault Advocacy Award, Canadian Paediatric Society.
2005	Honorary Foster Parent, Aboriginal Foster Doll Project, BC Youth in Care Network; Aboriginal Foster Parents Association and the BC Federation of Foster Parents
2003	Sarah Berman Memorial Award for Public Speaking, North American Council on Adoptable Children
2003	Queen's Golden Jubilee Medal
2003	Yellowhead Tribal Services Child and Family Services Recognition Award
2002	Caring for First Nations Children Society Recognition Award
2001	Province of British Columbia Ministry for Child and Family Development, Instructor Recognition Award
1998	Sto:lo Nation recognition for Instruction of the Aboriginal Social Worker Training Program

ACADEMIC APPOINTMENTS (7)

2022	Northern Ontario School of Medicine, Inaugural Chancellor
2018-Present	University of Alberta, Adjunct Professor, Faculty of Education
2014–2015	OISE, University of Toronto, External Scholar, Faculty of Graduate Studies
2013	Dalhousie University, External Scholar, Faculty of Graduate Studies
2011–2015	University of Ottawa, Faculty of Women's Studies and Graduate Studies
2005	University of Toronto, Senior Instructor
2005	University of Victoria, Adjunct Professor
2000	University of Manitoba, Professional Affiliate

PROFESSIONAL APPOINTMENTS (7)

2016–Present	Professor, McGill University, School of Social Work
2011–2016	Associate Professor (tenured), University of Alberta, Faculty of Extension
2003–Present	Executive Director First Nations Child and Family Caring Society www.fncaringsociety.com

1999–2003	Executive Director Caring for First Nations Children Society <i>www.cfncs.com</i>
1995–1999	Assistant to the Social Development Director The Squamish First Nation
1987-1995	Senior Social Worker Province of British Columbia

RESEARCH (16)

2022	Canada Research Chair: First Nations child and family service implementation
2019	SSHRC Aid to Scholarly Journals Grant Supplement: 2018–2021 – 5K per annum for 3 years (15K).
2018-2021	SSHRC Insight Research Grant: Just because we are small doesn't mean we can't stand tall (teacher's perceptions of children's direct engagement in reconciliation based social justice). Principle Investigator: Cindy Blackstock
2018-2021	SSHRC Aid to Scholarly Journals Grant for First Peoples Child and Family Review (2019–2022): Principle Investigator: Cindy Blackstock 26.5 per annum for 3 years (79.5)
2015-2019	SSHRC Journal Grant for First Peoples Child and Family Review (2015–2018): Principal Investigator: Cindy Blackstock.
2015	Advisor, New Zealand Royal Society Marsden Fund Research Program “Children visiting a museum: information gathering or creative capacity building?”
2012	Building Capacity with First Nations and mainstream Youth Protection services in Quebec. Collaborator: Principal Investigator: Nico Trocmé.
2011	SSHRC grant for First Peoples Child and Family Review. Principal Investigator: Cindy Blackstock
2007-2009	Nova Scotia Department of Community Services and Mi'kmaw Family and Children's Services. <i>When Everything Matters: Comparing the factors contributing to the reunification or continuance in child welfare care for First Nations and non-Aboriginal children in Nova Scotia.</i>
2007	National Collaborating Centre on Aboriginal Health. <i>Development of the Scientific Vision for NCCAH.</i> 2007. Public Health Agency of Canada and the United Nations Committee on the Rights of the Child. <i>Supporting the development of the UNCRC general comment on Indigenous child rights.</i>
2005	Department of Indian Affairs and Northern Development. <i>Wen:de: The Journey Continues.</i> Available on line at www.fncaringsociety.com
2005	Department of Indian Affairs and Northern Development. <i>Wen:de: We are coming to the light of day.</i> Available on line at www.fncaringsociety.com
2004	Department of Indian Affairs and Northern Development. <i>Bridging Econometrics with First Nations child and family service practice.</i> Available on line at www.fncaringsociety.com

2004	Department of Indian Affairs and Northern Development. <i>Staying at Home: Least Disruptive Measures</i>
2004	Health Canada. <i>Keeping the Promise: The United Nations Convention on the Rights of the Child and the Lived Experience of First Nations Children and Young People</i>
2003–2004	Voluntary Sector Initiative, Government of Canada. <i>Caring Across the Boundaries: Exploring the Nature and Extent of Engagement of the Voluntary Sector with First Nations Children and Families.</i>

SERVICES RELATED TO RESEARCH (22)

2025	Expert co-convenor, International symposium on self determination in Indigenous child protection
2025	Data Exchange on Child and Family Services, McGill University
2024	Visiting Research Fellow, University of Melbourne
2020	Co-convenor, Working group on COVID-19.
2017-2019	Research Steering Group Member, Global Child CIHR project to develop compliance indicators for the UN Convention on the Rights of the Child.
2016	Co-convenor, Reimagining Child Welfare Symposium. Partnership with Osgoode Law School, TAG, African Canadian Legal Centre and the Caring Society
2016	Moderator: Big Thinking Lecture by Noaimi Klein; Federation of the Humanities and Social Sciences
2015	Moderator: Big Thinking Lecture by Justice Murray Sinclair: Federation of Humanities and Social Sciences.
2015	Symposium participant, Neocolonialism and Indigenous children's rights: University of Technology, Sydney: AU
2014	Moderator, Big Thinking Lecture by Dr. Jim Miller, House of Commons, Federation of Humanities and Social Sciences.
2014	Board Member, Federation of the Humanities and Social Sciences
2013–Present	Director, First Nations Children's Action Research and Education Centre (FNCARES), University of Alberta
2010	Reviewer, Research Grants for the Social Science and Humanities Council
2009	Advisor, Centre of Excellence for Child and Youth Mental Health at CHEO
2006–2009	Facilitating consultation with the Indigenous Sub Group for the United Nations Committee on the Rights of the Child in the development of the General Comment on Indigenous Child Rights

2006	Reviewer, Harvard University John F. Kennedy School of Government, American Indian Program evaluation of the Longitudinal Survey on Aboriginal Health
2006–2008	Expert Panel on Health Literacy, Canadian Public Health Association
2004–2008	Canadian Incident Study on Reported Child Abuse and Neglect, research team member.
2003–2009	Co-director, Centre of Excellence for Child Welfare
2001	Grant Reviewer, Centre of Excellence for Child Welfare.
1997–2002	Advisory Committee Member, Joint National Policy Review of First Nations Child and Family Services, the Assembly of First Nations and Department of Indian Affairs and Northern Development.
2000–2002	Advisory Committee Member, Centre of Excellence for Child Welfare.

ADVISORY BOARDS/EXPERT ADVISOR/EXPERT WITNESS (15)

2023	Chancellor, Northern Ontario School of Medicine University Board of Directors
2021	Advisor, Alaskan Native child welfare collective
2020	Witness, Laurent Commission: First Nations children.
2018	Witness, Commission d'enquete sur les relations entre les Autochones et certain services publics au Quebec.
2018	Expert Witness, Murdered and Missing Indigenous Women's Inquiry
2016–Present	Commissioner, Pan American Health Organization, Review of Health Inequities and Inequalities in the Americas.
2017–Present	Advisory, Hand to Hold Campaign to ensure children who are medically transported in Quebec can travel with a guardian/other caring adult.
2014	Reviewer, Indigenous Ethics of Predictive Risk Modeling for Maori Children and Families
2011–2013	Expert Advisor, UNICEF on UN Declaration on the Rights of Indigenous Peoples
2010–2011	Advisor to Microsoft Corporation Canada, First Nations education initiative
2010–2012	Ashoka Changemaker's First Nations, Metis and Inuit Changemaker's Competition Advisory Committee
2010–2012	Mount Royal University, Continuing Education Department. Child and Youth Human Rights Extension Certificate Advisory Committee
2010	Member, Audit Advisory Committee, Auditor General of Canada
2010	Expert Child Welfare Committee, Northwest Territory Government
2010	Expert Panelist, United Nations Permanent Forum on Indigenous Issues

FILMS, PODCASTS AND EXHIBIT CURATION

- 2025 Spirit Bear Podcase “Courageous Conversations) series. Cindy Blackstock, host
- 2024 Spirit Bear and Children Make History Exhibit, Museum exhibit co-curated by and based on the books by **Cindy Blackstock**
- 2024 Spirit Bear Podcast “Ask the Expert” series. Cindy Blackstock, host.
- 2023 *Spirit Bear: Honouring Memories, Planting Dreams*. Film adaptation of book by the same name. **Cindy Blackstock** – book author, co-wrote screenplay, voice actor and executive producer. Presented by The First Nations Child and Family Caring Society of Canada and Spotted Fawn Productions.
- 2022 *Spirit Bear: Fishing for Knowledge, Catching Dreams*. Film adaptation of book by the same name. **Cindy Blackstock** – book author, co-wrote screenplay, voice actor and executive producer. Presented by The First Nations Child and Family Caring Society of Canada and Spotted Fawn Productions.
- 2021 *For Love*, Production of Carrier-Sekani Family Services and Walk Tall Productions, Inc. Shania Twain (Narrator), Matt Smiley (Director), Mary Teegee Producer, Warner Adam and **Cindy Blackstock, Executive Producers.**
- 2020 *Spirit Bear and Children Make History*. Film adaptation of book by the same name. **Cindy Blackstock** – co-book author, co-wrote screen play, voice actor and executive producer. Presented by The First Nations Child and Family Caring Society of Canada and Spotted Fawn Productions.
- 2016 *(Dis)placed: indigenous youth and the child welfare system*. **Cindy Blackstock**, co-producer. Melisa Brittain, Director and film maker.
- 2013 *Fighting for Shannen and all the kids too!* **Cindy Blackstock**, Executive Producer. Andree Cazabon: Director and film maker.
- 2013 *Letters to Canada*. **Cindy Blackstock**, Executive Producer. Andree Cazabon: Director.
- 2012 *I am a witness: A short film*. **Cindy Blackstock**, Executive Producer. Andree Cazabon: Director.
- 2009 Caring Across Boundaries: Reconciliation in a child’s world. **Cindy Blackstock**, Curator, with photography by Liam Sharp. Premiered at First Canadian Place (Bank of Montreal headquarters) in Toronto. Since toured to the AFN Special Chiefs Assembly, New Brunswick First Nations, University of Ottawa and the Canadian Labour Congress National Conference.

REFEREED JOURNAL EDITORIAL BOARDS/REVIEWS (23)

- 2023 Reviewer, *Lancet*

2021	Reviewer, <i>Canadian Journal of Family Law</i>
2020	Reviewer, <i>Canadian Journal of Family Law</i>
2020	Reviewer, <i>Paediatrics & Child Health</i>
2020	Reviewer, <i>Canadian Journal of Family Law</i>
2019	Reviewer, <i>Canadian Journal of Family Law</i>
2017	Reviewer, <i>Lancet</i>
2015	Reviewer, Fernwood Publications
2014	Editor in Chief, <i>First Peoples Child and Family Review</i>
2014	Reviewer, <i>International Indigenous Policy Journal</i>
2013	Reviewer, <i>Canadian Medical Association Journal</i>
2012	Reviewer, <i>Child Abuse and Neglect</i>
2012	Reviewer, <i>Child Abuse and Neglect</i>
2012	Reviewer, <i>First Peoples Child and Family Review</i>
2011	Reviewer, <i>Violence Against Women</i>
2011	Reviewer, <i>Child Abuse Review</i>
2009–Present	Reviewer, <i>First Peoples Child and Family Review</i>
2007	Co-wrote editorial, <i>First Peoples Child and Family Review</i>
2007	Reviewer, <i>Violence Against Women</i>
2006	Reviewer, <i>Violence Against Women</i>
2005	Guest Editor, <i>Pediatrics and Child Health</i>
2004–Present	Founding Editorial Board Member, <i>First Peoples Child and Family Review</i>
2003	Guest Editor, <i>Journal on Developmental Disabilities</i>

PUBLICATIONS IN REFEREED JOURNALS (47)

- Asmundson, G., **Blackstock, C.**, Bourque, M., Bimacombe, G., Crawford, A., Deacon, S., McMullen, K., McGrath, P., (2020). Easing the disruption of COVID-19: supporting the mental health of people of Canada- October 2020- an RSC Policy Briefing. *FACETS*, 5(1), 22 December 2020.
- Blackstock, C.**, Bamblett, M. & Black, C. (2020). Indigenous ontology, international law and the application of the Convention to the over-representation of Indigenous children in out of home care in Canada and Australia. *Child Abuse & Neglect*.
- Hay, T., Kirlew, M. & **Blackstock, C.** (2020). Dr. Peter Bryce (1832-1932): whistleblower on residential schools. *Canadian Medical Association Journal (CMAJ)*, 192 (9) E2223-E2224.
- Blackstock, C.** (2019). Revisiting the breath of life theory. *British Journal of Social Work*, 2019 (49), 854-859.
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CURRICULUM WRITING (11)

- | | |
|------|---|
| 2017 | First Peoples Social Work, Bachelor of Social Work, McGill University |
| 2018 | Advocacy Course, Master of Social Work, McGill University |
| 2011 | Mosquito Advocacy. Master degree level course. Faculty of Extension, University of Alberta |
| 2008 | <i>Touchstones of Hope: Bachelor of Social Work Course</i> . Centre of Excellence for Child Welfare, University of Toronto. |
| 2005 | <i>Leadership and Followership: the Honor of Both in Effective Indigenous ECD Management</i> . University of Victoria. |
| 2002 | <i>Negotiations Module, Supervisory Training</i> , Aboriginal Social Worker Training Project (1/2-day course) |
| 2002 | <i>Ethics Module</i> , First Nations Partnership Program, University of Victoria |
| 2002 | Blackstock, C and Kovach, M. <i>Social Work 451 Curriculum</i> . Faculty of Social Work, University of Victoria. |
| 2000 | <i>Aboriginal Child and Family Service Programs</i> , Aboriginal Social Worker Training Program (1/2-day course) |
| 2000 | <i>Team Assistant Training Curriculum</i> , Ministry for Children and Families |
| 1999 | <i>Aboriginal Child and Family Services</i> , Ministry for Children and Families CORE Training (1-day course) |

LITIGATION (14)

In the following litigation, I was the instructing client for First Nations Child and Family Caring Society of Canada and assisted with legal research and writing of legal submissions. I also testified 6 times over various legal proceedings and have submitted numerous affidavits. According to Government of Canada estimates, this litigation has resulted in an additional \$634 million in First Nations child and family services funding in addition to over 777,000 services, products and supports for First Nations children via Jordan's Principle between 2016 and 2020. The litigation is ongoing. I wish to acknowledge the exceptional contributions of Caring Society staff and legal counsel in achieving these results as well as those of the other parties to the proceedings.

- 2025 *First Nations Child and Family Caring Society et al. V. Attorney General of Canada*, 2025 CHRT 4. Non-compliance order v. Government of Canada
- 2023 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2023 CHRT 44. Ruling provides detailed reasonings following letter-decision finding that the revised final settlement agreement on compensation satisfies its compensation orders.
- 2022 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2022 CHRT 8. Canada is ordered to fund at actual cost post-majority care to youth aging out of care and young adults who were formerly in care up to and including age 25, and assess the resources required to extend Jordan's Principle supports to young adults past the age of majority.
- 2021 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2021 CHRT 41 Amendment. Canada ordered to fund at actual cost all First Nations or First Nations-authorized service providers for the full cost of the purchase and/or construction of capital assets that support the delivery of child and family services and Jordan's Principle services to children on reserve, including Ontario and the Yukon.
- 2021 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2021 CHRT 12. Over \$500 million provided in prevention services to First Nations children and families served by federally funded provincial and territorial child welfare providers. This laid a framework for the Government of Canada to commit to \$40 billion in compensation and additional services for First Nations children.
- 2020 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2020 CHRT 36. Non-status First Nations children granted access to Jordan's Principle.
- 2019 *Attorney General of Canada v. First Nations Child and Family Caring Society of Canada et al.*, 2019 FC 1529. Federal Court dismisses Canada's application to stay the Tribunal's compensation order (2019 CHRT 39).
- 2019 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2019 CHRT 39. Award maximum compensation to victims of Canada's discrimination.

- 2019 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2019 CHRT 7. Interim order ensuring non-status children off reserve can access Jordan's Principle in urgent circumstances.
- 2019 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2019 CHRT 1. Cost award v. Canada for failing to disclose.
- 2018 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2018 CHRT 4. Order to fund First Nations child and family services prevention, legal, building repairs, intake and assessment and band representatives and mental health at actual cost retroactive to January 26, 2016 and on a go forward basis.
- 2017 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2017 CHRT 35. Amendment of 2017 CHRT 14 to allow for some documentation re: Jordan's Principle.
- 2017 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2017 CHRT 14. Order for Canada to fully implement Jordan's Principle.
- 2016 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2016 CHRT 2. Order substantiating the complaint filed by the First Nations Child and Family Caring Society and the Assembly of First Nations in 2007 alleging that Canada's systemic under-funding of First Nations children's services was discriminatory on the prohibited grounds of race and national or ethnic origin.
- 2016 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2016 CHRT 10. Non-compliance order with 2016 CHRT 2.
- 2016 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2016 CHRT 16. Non-compliance order with 2016 CHRT 2.
- 2013 *Attorney General of Canada v. First Nations Child and Family Caring Society et al.* 2013 FCA 75. Federal Court of Appeal upholds Federal Court decision to overturn Tribunal decision to dismiss.
- 2012 *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2012 FC 445. Federal Court overturns Tribunal decision to dismiss the case.

UNITED NATIONS COMMITTEES AND INTERNATIONAL ORGANIZATIONS

(23)

- 2021 Presenter, UNICEF side event at UN Permanent Forum on Indigenous Issues (Impacts of COVID on First Nations children)
- 2021 Presenter, Indigenous youth delegation from Canada, UN Permanent Forum on Indigenous Issues (Advocacy and leadership in international human rights law)

2021	Participant, UN Social Development Goals Task Team Frontier Dialogue, Addressing Structural racial and ethnicity-based discrimination in COVID 19 recovery plans.
2019	Presenter, Pan American Health Organization (Health equity and inequity)
2018	Delegate, UN Committee on the Rights of the Child Day of Discussion: Children as Human Rights Defenders
2018	Presenter, Universal Periodic Review: Pre-session for Canada
2018	Presenter, Inter-American Commission on Human Rights
2017	Presenter, United Nations Committee on the Elimination of Racial Discrimination
2016	Presenter, Inter-American Commission on Human Rights
2016	Commissioner, Pan American Health Organization Review of Equity and Health Inequalities in the Americas.
2013	Presenter, Special Rapporteur on Indigenous Issues, Ottawa, Canada
2012	Presenter, United Nations Committee on the Rights of the Child pre-session for review of Canada, Geneva
2012–2013	Expert Advisor, UNICEF New York
2011	Presenter, United Nations Permanent Forum on Indigenous Issues side event on Indigenous children and youth, New York
2010	Expert Member, United Nations Permanent Forum on Indigenous Issues forum on Indigenous children and youth, Vancouver, BC
2009	Presenter, United Nations Permanent Forum on Indigenous Issues. Side Event, New York
2006–2009	Assisted the United Nations Committee on the Rights of the Child in the development of a General Comment on Indigenous child rights.
2007	Presenter, United Nations Permanent Forum on Indigenous Issues, Side Event, New York
2007	Presenter, United Nations Committee on the Rights of the Child, Geneva
2006	Presenter, United Nations Permanent Forum on Indigenous Issues, Side Event. New York
2006	Presenter, United Nations Committee on Economic, Social and Cultural Rights, Geneva
2006	Presenter, NGO Group for the UN Convention on the Rights of the Child, Geneva
2004	Presenter, United Nations Permanent Forum on Indigenous Issues Side Event, New York
2003	Participant, United Nations Committee on the Rights of the Child Day of General Discussion on Indigenous Children

PRESENTATIONS TO SENATE COMMITTEES AND HOUSE OF COMMONS COMMITTEES (17)

2023	Presentation to Senate Committee on Indigenous Peoples (Call for Justice 1.7)
2023	Presentation to the House of Commons Standing Committee on Health: Children's Health
2019	Presentation to the House of Commons on Indigenous and Northern Affairs (Bill C-92)

2019	Presentation to the Senate Committee on Indigenous Peoples (Bill C-92)
2017	Presentation to the House of Commons Committee on Heritage (racial discrimination and First Nations children)
2017	Presentation to the House of Commons Committee on Indigenous Affairs (youth suicide)
2016	Presentation to the House of Commons Finance Committee
2016	Presentation to the House of Commons Indigenous Affairs Committee
2016	Presentation to the House of Commons Finance Committee
2014	Presentation to the Special House of Commons Committee on Violence Against Indigenous Women
2011	Presentation to the Standing Committee on Women on First Nations child and family services
2010	Presentation to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities on First Nations Adoption
2010	Presentation to the House of Commons Aboriginal Affairs Committee on First Nations child welfare funding
2009	Presentation to the Senate Committee on Human Rights
2007	Presentation to the Senate Committee on Sexual Exploitation
2006	Presentation to the House of Commons Aboriginal Affairs Committee on First Nations child welfare policy
2006	Presentation to the Senate Standing Committee on Human Rights on First Nations child welfare policy
2005	Presentation to the Senate Standing Committee on Aboriginal children off reserves who come into contact with the child welfare system

PROVINCIAL/TERRITORIAL/JUDICIAL CHILD WELFARE REVIEW SERVICES
(10)

2022	Witness: Devon Freeman Inquest, Hamilton, ON
2017	Presenter, Alberta Ministerial Panel on Child Intervention
2016	Witness, Inquiry into the deaths of 7 First Nations youth, Thunder Bay, ON
2016	Presenter: Government of Manitoba Premier's Council on First Nations Child Welfare
2014	Presenter: Government of Manitoba Premier's Council on First Nations child welfare
2014	Presenter: Government of Alberta on First Nations child welfare
2014	Witness, Canadian Human Rights Tribunal on First Nations Child Welfare
2013	Expert Witness, Phoenix Sinclair Inquiry
2013	Witness, Canadian Human Rights Tribunal on First Nations Child Welfare
2010	Expert Committee Member, Standing Committee of the Legislature, Northwest Territories Review on child welfare
2010	Expert Committee Member, Auditor General of Canada: Audit of Nunavut child and family services
2009	Advisor, New Brunswick Child and Youth Advocate review of First Nations child welfare

PRESENTATIONS AT JURIED CONFERENCE (178)

2025	Dean's Lecture, University of Technology Sydney (The Children's Case)
2025	Keynote, Canadian Paediatric Society (Jordan's Principle)
202	President's Lecture Series, Northern Ontario School of Medicine (Jordan's Principle)
2024	Dean's Lecture, Melbourne's University Fellowship (Loving Justice)
2024	Keynote: International Conference on Social Work, (Standing in the Winds of Discrimination)
2024	Panel Presentation: International Well Building Institute, (What Shapes Us: Impact through Equity)
2024	Presentation: International Institute for the Sociology of Law, Onati, Spain, (Clash Actions: Class Actions and Indigenous children's rights)
2023	Presenter: Court of Appeal for Ontario Speaker Series (CHRT)
2023	Panel Presentation: UNICEF Canada Youth Advocacy Summit: Right to be Heard
2023	Presenter, Council of School Leaders of The Manitoba Teachers' Society PD Day and Fall Conference
2023	Child Welfare Data Exchange (McGill): Doing Right vs. Being Right: Ensuring Evidence-based Solutions in Social Movements
2023	Keynote: 2023 Bravo Gala (McGill)
2023	Chinese Canadian National Council for Social Justice Policy, Analysis and Research: CHRT
2023	Indigenous National Conference on Prevention: Addressing the Overrepresentation of Indigenous Children in Care
2022	Presentation: University of Calgary Cumming School of Medicine Building the Equity Bridge Symposium
2022	Presentation: Our Children Our Way November 2022 Conference (Best practices in Child and Family Services)
2022	Presentation: University of Toronto's Leong Centre for Healthy Children Inaugural Symposium (structural inequities in health for First Nations)
2022	Presentation: Indigenous Child and Family Wellbeing Conference 2022
2022	Keynote: Council of Yukon First Nations Family Strengthening Conference (CHRT)
2022	Campagnolo Lecture in Restorative Justice (CHRT case, reconciling history)
2022	Discussant: Panel of First Nations Thought Leaders: 4 th Biennial 2022 International Childhood Trauma Conference
2022	Presentation: Ontario Human Rights Code 60 th Anniversary Conference (CHRT)
2022	Presentation: Centre for Intellectual Excellence World Diversity in Leadership Conference
2022	Presentation: Canadian Bar Association Aboriginal Law Section Symposium (CHRT)
2022	Presentation: International Union for Health Promotion and Education World Conference on Health
2022	Presentation: Province of New Brunswick Ministers Responsible for Social Services Forum Secretariat (AIP)

2022	Keynote, Pro Bono Student National Leadership Conference
2022	Keynote, Faculty of Medicine, University of Ottawa (reconciling history, equity and Indigenous health)
2022	Keynote, Faculty of Education Symposium, University of Ottawa (TRC Calls to Action)
2022	Keynote, Children First Forum, Okanagan Nation Child and Family Team (AIP, Jordan's Principle)
2022	Keynote, Shaar Shalom Lecture, Dalhousie University (TRC Calls to Action, equity for First Nations children)
2022	Keynote, Bridging the Equity Gap Symposium, Cumming School of Medicine, University of Calgary – (equity and First Nations child health)
2022	Keynote, Macnamara Lecture, McGill University Department of Psychology (TRC Calls to Action, CHRT)
2021	McGill-wide Department of Medicine Medical Grand Rounds (TRC Calls to Action, Jordan's Principle)
2021	Emergency Department Rounds, Children's Hospital of Eastern Ontario (TRC Calls to Action, Jordan's Principle)
2021	Keynote, International Childhood Trauma Symposium
2021	Keynote, Canadian Psychological Association
2020	Keynote, Fraser Mustard Lecture, Kids Brain Health Network
2020	CSWE Conference: Hokenstad International Lecture
2019	Keynote, Women in Medicine (Jordan's Principle)
2019	Keynote, American Society of Pediatric Otolaryngology (equity and Indigenous child health)
2019	Keynote, College of Alberta School Superintendents (Jordan's Principle)
2018	Keynote, Provincial Court Judges of British Columbia (CHRT)
2018	Grand Rounds, Montreal Children's Hospital (Jordan's Principle)
2018	Keynote: Early Childhood Australia (children's engagement in reconciliation)
2018	Workshop: Early Childhood Australia (mosquito advocacy)
2018	Conversation: Jackson Lecture, OISE U Toronto (First Nations children's rights)
2018	Keynote: International Social Work Conference (children's engagement in reconciliation)
2017	Keynote: Indspire (First Nations children's equity)
2017	Keynote: Yukon Bar Association (Canadian Human Rights Tribunal Case)
2017	Keynote: PSA Super Conference (First Nations children and reconciliation)
2017	Keynote: Ontario Tribunals (Canadian Human Rights Tribunal Rights Case)
2017	Keynote: Yukon Bench Association (Canadian Human Rights Tribunal Case)
2017	Keynote: Federal Family Court of Australia (Indigenous child welfare)
2017	Keynote: University of New South Wales, Bringing them Home 20 th Anniversary (Engaging children in reconciliation)
2017	Keynote: City of Ottawa (Reconciliation and Municipalities)
2017	Keynote, Alberta School Superintendents Association (Equity and First Nations children)
2017	Keynote, Expanding Horizons for Early Years (Stigma and effect on First Nations children)
2017	Keynote, Legal Education Action Fund (LEAF), Vancouver
2017	Keynote, Equity and Child Welfare, London, UK (engaging children in equity)

- 2017 Grand Rounds, Queens University School of Medicine (Jordan's Principle)
- 2016 Keynote, ISPCAN (First Nations children's equity)
- 2016 Keynote, Prairie Child Welfare Consortium (First Nations children's equity)
- 2016 Big Thinking Lecture, Parliament Hill (The Perils of Incremental Equality for First Nations children).
- 2016 Keynote, 50th Anniversary of Sir Wilfred Laurier Faculty of Social Work
- 2016 Keynote, Office of the Senior Practitioner, New South Wales, AU (Child participation in reconciliation)
- 2016 Keynote, Crown Counsel Summer School (Canadian Human Rights Tribunal)
- 2016 Keynote, Gov't Great Failure: Not Doing Better for First Nations Children when they Knew Better (Congress 2016)
- 2016 Panel Presentation, Ontario Court of Justice (Reconciliation and Children's Rights)
- 2016 Keynote, Pathways to Reconciliation (Reconciliation and children)
- 2016 Keynote, Defense for Children International (Canadian Human Rights Tribunal)
- 2016 Keynote, Indigenous Health Conference (Equity)
- 2016 Workshop, Royal Society of Rural and Remote Physicians (Jordan's Principle)
- 2016 Webinar, Canadian Bar Association (Canadian Human Rights Tribunal)
- 2016 Keynote, Jack Layton Lecture, Ryerson, ON (Indigenous children's rights)
- 2016 Keynote, Broadbent Institute Progress Summit, Ottawa, ON (Incremental equality)
- 2016 Keynote, Upstream, Ottawa, ON (Incremental equality)
- 2016 Keynote, Better Outcomes, Connexus (Reconciliation)
- 2015 Panel presentation, SNAICC, Perth, AU (Neocolonialism and child welfare)
- 2015 Workshop, SNAICC, Perth, AU (Mosquito Advocacy)
- 2015 Panel presentation, Federation of the Humanities and Social Sciences Congress (Equity and Aboriginal children)
- 2015 Keynote, C & K Conference, Brisbane, AU: Reconciliation: the children's version
- 2015 Master class, C & K Conference: Mosquito Advocacy
- 2015 Panel Presentation, SPUR Festival, Disposable Lives: Murdered and Missing Indigenous Women
- 2015 Keynote, CIEC Diversity, Equity and Inclusivity Symposium (Equity)
- 2015 Keynote, Royal Society of Rural and Remote Medicine (Jordan's Principle)
- 2015 Keynote, MacEwan University: Aboriginal lecture series (Reconciliation)
- 2015 Expert panel: 6th International Meeting on Indigenous Health (equity)
- 2015 Keynote: Weld Kernohan Lecture, Dalhousie University
- 2015 Keynote: Wiichitaakewin Lecture, Confederation College
- 2015 Keynote: Woodrow Lloyd Lecture, University of Regina
- 2014 Keynote: Una Ridley Lecture, University of Lethbridge Faculty of Health Sciences: Reconciliation
- 2014 Keynote: SSHRC Imagining Canada's Future: Reconciliation
- 2014 Keynote: Mallory Lecture, McGill University: First Nation's Children's Equity
- 2014 Master class: Childhood Trauma Conference, Melbourne, AU: Mosquito Advocacy
- 2014 Expert panel: Childhood Trauma, Melbourne, AU
- 2014 Keynote: Childhood Trauma Conference, Melbourne, AU: Touchstones of Hope

- 2014 Keynote: Leading Practice Conference, Sydney, AU: Reconciliation and children
- 2014 Keynote: W.K. Kellogg Foundation American Healing Panel: Addressing Indigenous children at the international level (Indigenous children's rights)
- 2014 Keynote: Wunusweh Lecture on Aboriginal Law, (First Nations children's rights, University of Saskatchewan.
- 2013 Keynote: Inaugural Kagedan Lecture on Social Work and Human Rights, (Equity Matters), McGill University
- 2013 Workshop presenter, (Equity Matters), International Conference and Summit on Violence, Abuse and Trauma, San Diego, USA
- 2013 Plenary panel presenter, (Prevention- moving from ideas to action across the lifespan), International Conference and Summit on Violence, Abuse and Trauma, San Diego, USA
- 2013 Keynote speaker, SNAICC (Canadian Human Rights Tribunal and child engagement), Cairns, Australia
- 2013 Master class presenter, SNAICC (Mosquito Advocacy), Cairns, Australia
- 2013 Keynote speaker, Mowafaghian Visiting Scholar Lecture, Simon Fraser University (Mosquito advocacy)
- 2013 Keynote speaker, Rheal Brant Memorial Lecture, Carleton University (First Nations children's rights)
- 2013 Keynote speaker, Connexus, Ottawa, ON (Children's Voices have Power)
- 2013 Keynote speaker, *Te Rangi Pūahotanga, Otaki, New Zealand (Children standing in solidarity with First Nations children)*
- 2013 Keynote speaker, Montreal Women's Canadian Club (Children's Voices have Power)
- 2013 Carol Harrison Memorial Lecture, Sick Kids Hospital, Toronto
- 2012 Keynote speaker, British Columbia Association of Social Workers (Moral Courage: Kids have it and adults need it)
- 2012 Keynote speaker, National Child Maltreatment Symposium (UN Convention on the Rights of the Child and First Nations Children)
- 2012 Speaker, Montreal Children's Hospital Grand Rounds (First Nations child welfare)
- 2012 Keynote speaker, New Zealand Public Health Association (Mosquito Advocacy)
- 2012 Keynote speaker, World Conference on Social Work, Stockholm (First Nations human rights)
- 2012 Keynote speaker, University of Saskatchewan Indigenous Law Conference (First Nations child welfare case and UNDRIP)
- 2012 Keynote speaker, Ottawa/Carleton Elementary Teachers Federation (human rights for First Nations children)
- 2011 Panel presenter, Canadian Association of Health Sciences
- 2011 Keynote speaker, First Nations Education Steering Committee
- 2011 Keynote speaker, British Columbia Nurses Union
- 2011 Presenter, Indigenous Bar Association, Ottawa
- 2011 Presenter, Canadian Association of School Boards, Ottawa
- 2011 Presenter, Grand Rounds, Children's Hospital Eastern Ontario
- 2011 Presenter, Webinar Canadian Association of Social Workers
- 2011 Keynote speaker, Hidden Legacy Conference
- 2011 Plenary speaker, US National District Attorneys Association
- 2010 Keynote speaker, Ontario Association of Social Workers

- 2010 Keynote speaker, World Indigenous Women's Conference, Darwin, Australia
- 2010 Keynote speaker, SNAICC conference, Alice Springs, Australia
- 2010 Workshop presenter, SNAICC conference, Alice Springs, Australia
- 2010 Keynote speaker, PrevNet conference, McMaster University
- 2010 Keynote speaker, Canadian Pediatric Society Resident's Seminar
- 2010 Keynote speaker, Waterloo University, Social Innovation Generation Speakers Series
- 2010 Panel presenter, Osgoode Law School, Post-Gladue Conference
- 2010 Keynote speaker, National Indian Child Welfare Conference, Portland, Oregon
- 2010 Workshop presenter, National Indian Child Welfare Conference, Portland, Oregon
- 2010 Keynote speaker, Alberta Association of Social Workers Conference, Edmonton
- 2010 Keynote speaker, Early Childhood Conference, Victoria
- 2009 Keynote speaker, Indigenous Child Welfare Research, Victoria
- 2009 Keynote speaker, Canadian Council on Social Development, Calgary
- 2009 Keynote speaker, Towards 2020 Conference, Ottawa
- 2009 Presenter, Aboriginal Health Conference, Taipei
- 2009 Keynote speaker, Compassion International Conference on Child Welfare, Taipei
- 2009 Keynote speaker, Aboriginal Head Start, Edmonton
- 2009 Keynote speaker, Ontario Children's Mental Health Organization conference, Toronto
- 2008 Keynote speaker, Department of Community Services, Sydney, Australia
- 2008 Keynote speaker, World Conference for Women's Shelters, Edmonton
- 2008 Keynote speaker, Legal Services Society, Vancouver
- 2008 Keynote speaker, Association of Child Welfare Agencies, Sydney, Australia
- 2008 Presenter, Association of Child Welfare Agencies, Sydney, Australia
- 2008 Keynote speaker, North American Council on Adoptable Children, Ottawa
- 2008 Keynote speaker, Cultural Diversity and Vulnerable Families, Universite du Quebec, Montreal
- 2008 Presenter, Community of Practice Tele-symposium. American Institute for Research, Washington, DC
- 2007 Keynote speaker, Canadian Association of Pediatric Health Centers, Annual Conference, Montreal, Quebec
- 2007 Keynote speaker, Childhoods conference. Hamilton, New Zealand
- 2007 Keynote speaker, SNAICC conference, Adelaide, Australia
- 2007 Keynote speaker, Yellowhead Tribal Services National Conference on First Nations child welfare, Edmonton
- 2007 Keynote speaker, Indigenous Law Conference, Toronto, Ontario
- 2007 Workshop presenter, National Indian Child Welfare Conference, Oklahoma City, USA
- 2007 Plenary speaker, National Indian Child Welfare Conference, Oklahoma, USA
- 2007 Keynote speaker, Third International Conference on Domestic Violence, London, Ontario
- 2007 Plenary speaker, North American Indigenous Health Conference, Montreal
- 2007 Workshop presenter, North American Indigenous Health Conference, Montreal
- 2007 Abstract co-presenter, North American Indigenous Health Conference, Montreal
- 2006 Keynote speaker, C and K Early Education Conference, Cairns, Australia

- 2006 Keynote speaker, Forum on Epidemiology, University of Ottawa School of Medicine.
- 2006 Keynote speaker, Aboriginal Health Symposium, University of Ottawa, School of Medicine.
- 2006 Keynote speaker, National Indian Child Welfare Association Conference, San Diego, USA.
- 2005 Keynote speaker, World Indigenous Peoples Conference on Education, Hamilton, New Zealand
- 2005 Keynote speaker, Many Hands: One Dream Conference on Aboriginal Child Health, Victoria, BC
- 2005 Keynote speaker, Canadian Association for Community Living, Saskatoon
- 2005 Keynote speaker, Millennium Scholarship Conference. Ottawa
- 2005 *Structural Risks to Aboriginal Children*, Workshop, Childhoods Conference, Oslo, Norway
- 2005 *Indigenous Children's Rights*, Workshop, United Nations Permanent Forum on Indigenous Peoples, New York, USA.
- 2005 Plenary speaker, Rethinking Development, Antigonish, NS
- 2005 Keynote speaker, Resiliency Conference, Halifax, NS
- 2005 *National Policy Review*, Workshop, Yellowhead Tribal Services National Conference, Victoria, BC
- 2005 Plenary speaker, Courageous Conversations, Harvard University
- 2005 Keynote speaker: Sparrow Lake Alliance Conference, Sparrow Lake, ON
- 2005 Keynote speaker: Walking in Both Worlds, Winnipeg, MB
- 2004 Keynote speaker, What Works in Social Policy, New Zealand
- 2004 Keynote speaker, Pacific Islander Indigenous Research Fono, New Zealand.
- 2004 Plenary speaker, ISPCAN Conference, Brisbane, Australia
- 2004 *Caring Across the Boundaries*, ISPCAN Conference, Brisbane, Australia
- 2004 Plenary speaker, International Conference Promoting Resiliency for Children Receiving Care. Ottawa, ON
- 2004 *Making Child Welfare Research Accessible: Workshop for Young People*, International Conference Promoting Resiliency for Children Receiving Care. Ottawa, ON
- 2004 Keynote speaker, Rheal Brant-Hall Memorial Lecture, Carleton University. Ottawa, ON
- 2003 Keynote speaker, International Promises into Practice Conference
- 2003 Keynote speaker, North American Council on Adoptable Children, Vancouver, BC
- 2003 Keynote speaker, Association of Native Child Welfare Agencies conference. Sault St. Marie, ON
- 2002 Keynote speaker, Canada's Children: Canada's Future. Toronto, ON
- 2000 Keynote speaker, Child Welfare Symposium. Cornwall, ON

PRESENTATIONS AT COMMUNITY EVENTS/CONFERENCES (360)

- 2025 Confederacy of Treaty Six First Nations, Canadian Human Rights Tribunal Update

2025	Mi'kmaw Chiefs of Nova Scotia, Canadian Human Rights Tribunal update
2025	Council of Yukon First Nations, Canadian Human Rights Tribunal update
2025	Chiefs of New Brunswick, Canadian Human Rights Tribunal update
2025	Sqwa' Justice Conference, Canadian Human Rights Tribunal update
2024	Keynote: Indigenous Well-Being Conference (Honouring Children)
2024	Presentation: Better Evidence Conference (Evidence in Action)
2024	Presentation: IFSD 2nd National Gathering, (Honouring Children)
2024	Presentation: Grand Council Treaty #3 (CHRT and Funding Update)
2024	Presentation: Tsihqot'in Nation (CHRT and Funding Update)
2024	Virtual Presentation: Wolastoqey Tribal Council AGA (Canada's non-compliance with Jordan Principle)
2024	Keynote: AFN's Jordan Principle Service Coordinator Gathering (Canada's non-compliance with Jordan Principle)
2024	Presentation: Alberta Delegated First Nations Agencies (CHRT Update)
2024	Keynote: Manitoba Chiefs Assembly (Jordan Principle Update)
2024	Keynote: Intersect Child and Youth Services (Spirit Bear's Guide to Reconciliation)
2024	Virtual Presentation: Child Welfare League of Canada, (National Youth in Care Day)
2024	Presentation: First Nations of Northern Manitoba CFS Authority (Loving Justice)
2024	Keynote: Legal Representation for Children and Youth (Loving Justice)
2024	Presentation: Technical Policy and Strategy Session (FNCFCs and Jordan Principle)
2024	Presentation: New Brunswick Chiefs, (Draft FSA Presentation)
2024	Presentation, West Region Child and Family Services, (Draft FSA Presentation)
2024	Keynote: Loving Justice Conference, (Draft FSA Presentation)
2024	Presentation: Southern Chiefs Ontario, (Long Term Reform)
2024	Keynote: School District 67 (Spirit Bear's Guide to Reconciliation)
2024	Keynote: Yellowknife Education District No. 1 (Spirit Bear's Guide to Reconciling History)
2024	Keynote: AFN SCA Draft FSA LTR (We Can Do Better)
2024	Keynote: Our Children Our Way Conference (Loving Justice)
2024	Presenter: AFN SCA Trade Show (Path to Ending Canada's Discrimination)
2023	Presenter: AFN Dialogue Session Technical Update (Long-Term Reform of Jordan's Principle)
2023	Keynote: Social Work and Social Sciences Conference
2023	Hope Restored – Trauma Invested Conference (Spirit Bear's Guide to Reconciliation)
2023	Honorary Chair: Children's Aid Foundation of Canada Gala – Teddy Bear Affair
2023	Presenter: Institute of Fiscal Studies and Democracy (First Nations Prevention Services)
2023	Workshop: Education on Liability
2023	Virtual Presentation: FNCARES Fall Talk
2023	Cree Board of Health and Social Services of James Bay: Launch of Cree Youth Protection Commission
2023	British Columbia Aboriginal Child Care Society National Webinar: CHRT Compensation

2023	Abinoojii Inakonigewin 4 Directional Workshop Hosted by Grand Council Treaty #3
2023	Zagime Anishinabek In-service for Council and Management Presentation
2023	British Columbia Assembly of First Nations Special Chiefs Assembly: Children and Families Panel: Long-term Reform
2023	Canadian Forces Morale and Welfare Services: Reconciliation and Equality: How to Act and be an Ally
2023	Yukon Tribal Council Chief and Council and CFS Technician Workshop: Long-term reform of FNCFS and Jordan's Principle
2023	SSHRC In Conversation With: Finding oxygen for the misfit academic: why academia and activism should coexist
2023	Federation of Sovereign Indigenous Nations First Nation Child Welfare Best Practices Forum
2022	National Forum on Aboriginal Child and Family Well-Being reform
2022	Virtual Presentation: Federation of Sovereign Indigenous Nations Best Practices Forum (CHRT)
2022	Virtual Presentation: Wolastoqey Nation of Chiefs (CHRT)
2022	Virtual Presentation: Yellowhead Institute's A Calls to Action Conversation for the National Day for Truth and Reconciliation (child welfare)
2022	Treaties 1-11 Gathering (CHRT)
2022	Nuu-chah-nulth Tribal Council AGM (CFS jurisdiction)
2022	Global Leadership Initiative Summit (child-friendly reconciliation)
2022	Virtual Presentation: FNCARES Mind Control & Colonization
2022	Federation of Sovereign Indigenous Nations Chiefs Forum on First Nations Child & Family Services Long-Term Reform
2022	Virtual Presentation: Court of Appeal for Ontario Education Seminar (Indigenous justice)
2022	Virtual Presentation: Canadian Association of Law Libraries (Reconciliation)
2022	Virtual Presentation: Riverdale Historical Society (Reconciliation: is it what you thought?)
2022	Virtual Presentation: Council of Yukon First Nations Jordan's Principle Symposium
2022	Virtual Presentation: 2022 Northern Secwepemc te Qelmuw Citizens Assembly
2022	Virtual Presentation: FNCARES Spring Talk (Reconciling History)
2022	Panel: National Arts Centre Indigenous Theatre, The Mush Hole Discussion (Residential schools)
2022	Virtual Presentation: Battlefords Agency Tribal Chiefs (LTR, AIP)
2022	Virtual Presentation: International Women's Forum, Ottawa Chapter (CHRT, AIP, Jordan's Principle)
2022	Virtual Presentation: Tiriti-Based Futures + Anti-Racism, Auckland University of Technology (equity and First Nations children)
2022	Virtual Presentation: Meadow Lake Tribal Council (LTR, AIP)
2022	Virtual Presentation: National Forum on Aboriginal Child and Family Well-Being Reform, Native Child and Family Services Toronto (AIP)
2021	Virtual Presentation: Merkur Lecture Series (TRC)
2021	Virtual Presentation: First Nations Children's Action Research and Education Service Fall Panel (CHRT)
2021	Virtual Presentation: BC Public Interest Disclosure Conference (Dr. Bryce)

- 2021 Virtual Presentation: Night for Rights by Society for Children and Youth of BC (2019 FN/CIS, CHRT)
- 2021 Presentation: Canadian Institute for the Administration of Justice (C-92)
- 2021 Virtual Lecture: University of British Columbia Dean's Distinguished Lecture (Colonialism, CHRT, 2019 FN/CIS)
- 2021 Virtual Presentation: The Early Childhood Development Association of Prince Edward Island Fall Conference (Dr. Bryce, 2019 FN/CIS, CHRT)
- 2021 Virtual Presentation: North Shore Tribal Council Technical Committee (CHRT, 2019 FN/CIS)
- 2021 Virtual Presentation: Federation of Sovereign Indigenous Nations (CHRT and C-92 funding)
- 2021 Virtual Presentation: Directors of Child Welfare (2019 FN/CIS)
- 2021 Virtual Presentation: Directors of Child Welfare (Caring Society Updates)
- 2021 Virtual Lecture: McGill Faculty of Medicine Annual Osler Lecture (Colonialism, Dr. Bryce, CHRT)
- 2021 Presentation: MoveUP Convention (historic and continuing inequity, CHRT)
- 2021 Virtual Presentation: Carrier-Sekani Family Services Annual General Assembly (CHRT, C-92)
- 2021 Virtual Presentation: The Law Society of Manitoba Access to Justice Week Panel (TRC, CHRT)
- 2021 Virtual Presentation: The Law Society of Manitoba Annual Child Protection Program (Jordan's Principle, CHRT)
- 2021 Virtual Presentation: McGill University 4th International Congress on Whole Person Care (Dr. Bryce, 2019 FN/CIS, CHRT)
- 2021 Presentation: City of Victoria Reconciliation Dialogue No. 4 (Spirit Bear: Echoes of the Past)
- 2021 Virtual Presentation: Manitoba College of Social Workers Annual General Meeting & Education Event (historic and continuing inequity, CHRT)
- 2021 Presentation: Child Welfare Legislation Updates to Gitxsan Child and Family Services (CHRT, C-92)
- 2021 Presentation: CHRT and C-92 Funding Consideration to Grand Council Treaty 3
- 2021 Virtual Presentation: BC Aboriginal Child Care Society Conference (Dr. Bryce, Jordan's Principle, CHRT)
- 2021 Virtual Presentation: Law Class 272 – Queen's University for Professor Sarah Clarke (historic and continuing injustice, CHRT)
- 2021 Virtual Presentation: Loyola University Coffee Talk (residential schools, Dr. Bryce, CHRT)
- 2021 Virtual Presentation: Kings University College Veritas Lecture Series (Dr. Bryce, CHRT)
- 2021 Virtual Presentation: UN Committee on the Rights of the Child Day of General Discussion on Children's Rights in Alternative Care
- 2021 Virtual Keynote: British Columbia Teachers' Federation (Dr. Bryce, TRC, CHRT)
- 2021 Virtual Presentation: Royal College of Physicians (Dr. Bryce, CHRT)
- 2021 Virtual Presentation: University of British Columbia EDST 565 (Dr. Bryce, CHRT)

- 2021 Virtual Panel: Spirit Bear Teacher Professional Summer Retreat (TRC, historic and continuing inequity)
- 2021 Virtual Presentation: McGill University Law/Arts Faculty At-Home Homecoming (historic and continuing inequity)
- 2021 Virtual Presentation: Ottawa Community Pediatricians (Spirit Bear, Dr. Bryce)
- 2021 Virtual Presentation: Easter Seals Social Justice Speaker Series (youth activism)
- 2021 Virtual Presentation: Canadian Women's Initiative & Deloitte Indigenous (current and past litigation with the government)
- 2021 Virtual Presentation: Dodem Kanonhsa' Indigenous Education and Culture Facility (Spirit Bear)
- 2021 Virtual Presentation: Ontario's Children Advancement Coalition (systemic racism)
- 2021 Virtual Presentation: Canadian Psychological Association Annual General Meeting Convention Address (Spirit Bear)
- 2021 Virtual Presentation: BC Aboriginal Child Care Society Directors Forum (CHRT and Jordan's Principle update)
- 2021 Virtual Presentation: Canadian Society for the History of Medicine Annual Conference (colonialism)
- 2021 Virtual Presentation: Australia Childhood Foundation International Childhood Trauma Symposium (trauma of colonization)
- 2021 Virtual Lecture: McGill Indigenous Field Course (2019 FN/CIS, C-92)
- 2021 Virtual Presentation: Saskatchewan Association of Social Workers Annual General Meeting (C-92)
- 2021 Virtual Presentation: Chiefs of Ontario C-92 Forum
- 2021 Virtual Presentation: Commentary for OCAC Child and Youth Day (Jordan's Principle)
- 2021 Virtual Presentation: Wabano Bear Witness Day (Spirit Bear and Jordan's Principle)
- 2021 Virtual Keynote: Diversity, Equity and Inclusion Conference at Appleby College
- 2021 Virtual Panel: AFN Quebec and Labrador: Systemic discrimination and Joyce's Principle
- 2021 Virtual Panel: National Indian Child Welfare Association and First Nations Child and Family Caring Society (Touchstones of Hope: Non-discrimination).
- 2021 Virtual Presentation: First Nations Leadership Council (Jordan's Principle judicial review)
- 2021 Virtual Presentation: In Path (Arts as advocacy)
- 2021 Juniper Elementary School: Spirit Bear
- 2020 Keynote, Okanagan Nation Child Wellbeing Event
- 2020 Virtual Keynote: Person's Day: University of Windsor: Invisible colonialism
- 2020 Virtual Keynote: BC Women's Transition Houses: Inequity
- 2020 Virtual Keynote: Kempe Centre, Denver, Colorado: Systemic racism
- 2020 Panel: book launch: Fighting for a Hand to Hold
- 2020 Virtual Panel: UNICEF Canada: UNICEF report card 16
- 2020 Virtual Keynote: Youth in Care Canada and the Child Welfare League of Canada (advocacy)
- 2020 Virtual Keynote: Together Ensemble: Moral Courage and Reconciliation
- 2020 Virtual Keynote: ISPCAN Webinar: First Nations Children's Equity
- 2020 Keynote: Council of Yukon First Nations: CHRT and C-92

2020	Keynote: BC Indigenous Heath: First Nations Children's Equity
2019	Keynote: QATSICPP Conference, Brisbane, AU (Child Engagement)
2019	Master Class: QATSICPP, Brisbane, AU (Mosquito Advocacy)
2019	Panel: University of Ottawa IFSD: Democracies: Non-violent struggles for recognition
2019	Panel: Young Public Servants Conference (How does Government learn?)
2019	Keynote: Early Childhood Education BC (Jordan's Principle)
2019	Keynote: Aboriginal Child Welfare Conference, MCFD (Jordan's Principle and CHRT)
2019	Keynote: Walpole Island First Nation (Jordan's Principle)
2019	Presentation: Walpole Island Elementary School (Spirit Bear)
2018	Keynote: Ontario School Counsellors Association (Child engagement in reconciliation)
2018	Keynote: Seven Oaks School Division (Child engagement in reconciliation)
2018	Keynote: Vision Institute (Jordan's Principle)
2018	Keynote: Indigenous Bar Association (Child rights litigation)
2018	Keynote: Mahatma Gandhi Assoc./U Manitoba (CHRT)
2018	Keynote: Mi'kmaw Confederacy of PEI
2018	Keynote: AFN Jordan's Principle Conference (Jordan's Principle)
2018	Keynote: Prince George Friendship Center (CHRT)
2018	Keynote: Mozilla Foundation (Reconciliation)
2018	Panel: Finding Peter Bryce (Peter Henderson Bryce)
2018	Keynote Speaker: Elementary Teacher's Federation of Ontario
2018	Keynote Speaker: CUPE (Reconciliation)
2018	Keynote Speaker: City of Ottawa International Women's Day (human rights)
2018	Panel: McGill University Have a Heart Day
2018	Keynote: Dawson College Montreal (First Nations children and reconciliation)
2017	Presentation: Rotaract Ottawa
2017	Presentation: Canadian Association of Pediatric Health Centers (Jordan's Principle)
2017	Chiefs of Ontario: (Child Welfare Reform)
2017	Treaty 8 Jordan's Principle Conference (Jordan's Principle)
2017	Presentation: FNCARES (Incremental Equality)
2017	Keynote: Elizabeth Fry Society of the Yukon Territory (First Nations children and reconciliation)
2017	Keynote: Elizabeth Fry Society of Quebec in collaboration with the Universite de Montreal (First Nations children and reconciliation)
2017	Keynote: Presbyterian Women's Organization (Learning from history to engage in reconciliation today)
2017	Panel presentation: Peter Henderson Bryce: Honouring a Man of Conscience (reconciliation)
2017	Presentation: Bringing them Home in University of Technology in Sydney in collaboration with the Jumbunna Indigenous House of Learning (First Nations child welfare tribunal and child engagement).
2017	Keynote: Presbyterian Church of Canada (Reconciling history).
2017	Keynote: Community Foundations of Canada (BELONG), First Nations children's equity)
2017	Presenter: Canadian Labour Congress (First Nations children's equity)

- 2017 Ottawa Muslim Women's Association (human rights and First Nations children)
- 2017 Keynote: Manitoba Nurses Association (Jordan's Principle)
- 2017 Keynote: Representative for Children and Youth BC (CHRT)
- 2017 Manitoba School Superintendents Conference, Winnipeg (First Nations children's equity and Shannen's Dream)
- 2017 Panel: TIFF (Foster Child) Panel with Jesse Wentz
- 2017 Master Class: McGill Students Indigenous Solidarity Week (advocacy)
- 2017 Keynote: Student Nurses Association of Canada
- 2017 Keynote: McGill Global Nursing Conference
- 2017 Presentation: McGill Journal on Health and the Law
- 2016 Keynote: McGill Indigenous Alumni Gathering
- 2016 Keynote: Rotary Winnipeg
- 2016 Panel: Ontario Bar Association: 2016 CHRT 2
- 2016 Keynote: TAG- the action group to access justice, enveloping legal cases in social movements
- 2016 Keynote: Rotary Clubs Zone 23 and 32 Institute, First Nations children and reconciliation
- 2016 Question period: Calgary International Film Festival ("We Can't Make the Same Mistake Twice")
- 2016 Question period: Toronto International Film Festival ("We Can't Make the Same Mistake Twice")
- 2016 Keynote: QCAIPP, Gold Coast, Australia (Mosquito Advocacy)
- 2016 Keynote: New Brunswick First Nations CFS (CHRT case)
- 2016 Keynote: UFCW North American Women's Conference
- 2016 Keynote: High Risk Youth Conference (First Nations human rights)
- 2016 Panel: Ontario Court of Justice AGM (Canadian Human Rights Tribunal)
- 2016 Keynote: Lighting the Fire (First Nations education and Jordan's Principle)
- 2016 Keynote: BC First Nations Leadership Forum
- 2016 Keynote: Law Society of Upper Canada (Canadian Human Rights Tribunal)
- 2016 Keynote: Association of Native Child and Family Service Agencies in Ontario
- 2016 Panel: Economic Club of Ottawa (Leadership)
- 2016 Keynote: University of Alberta Alumni Association- Edmonton (Reconciliation and First Nations children)
- 2016 Keynote: University of Alberta Alumni Association- Calgary (Reconciliation and First Nations children)
- 2016 Keynote: School Board 57 Aboriginal Education (First Nations children and education).
- 2016 Keynote: Walpole Island First Nation Special Needs Conference
- 2016 Keynote: McGill Faculties of Law and Social Work (Canadian Human Rights Tribunal)
- 2016 Keynote: Aboriginal Nurses Association (Jordan's Principle)
- 2015 Presentation: Assembly of First Nations Special Chiefs Assembly (Tribunal update).
- 2015 Keynote: BC Non-Profit Housing Conference (First Nations children's rights)
- 2015 Keynote: First Nations Education Steering Committee (First Nations education)
- 2015 Panel: University of Alberta (Reconciliation in Post-Secondary)
- 2015 Presentation: Indigenous Bar Association (Mosquito Advocacy)

- 2015 Workshop: Federation for the Humanities and Social Sciences and SSHRC (Touchstones of Hope)
- 2015 Panel: Assembly of First Nations (First Nations Child Welfare)
- 2015 Presentation: Voices-Voix Parliamentary Breakfast
- 2015 Briefing: Union of BC Indian Chiefs (First Nations Child Welfare Tribunal)
- 2015 Keynote: Toronto Rotary Club (Reconciliation)
- 2015 Keynote: UNIFOR (Reconciliation)
- 2015 Briefing: First Nations Summit (First Nations Child Welfare Tribunal)
- 2015 Presentation: First Nations of Quebec and Labrador (Canadian Human Rights Tribunal and Best Practices in First Nations child welfare)
- 2015 Master class: First Nations child welfare (Secwepemc Child and Family Services, Kamloops)
- 2015 Presentation: Union of BC Indians (Canadian Human Rights Tribunal and best practices in First Nations child welfare)
- 2015 Moderator: Youth Panel, Journey to Reconciliation, Edmonton
- 2015 Keynote: University of Alberta Indigenous Knowledge Conference
- 2015 Master class: Independent First Nations of Ontario Youth Gathering (Mosquito advocacy)
- 2015 Keynote: Independent First Nations of Ontario Youth Gathering (First Nations' children's rights)
- 2015 Keynote: Wabano Health Center
- 2015 Workshop: National Indian Child Welfare Association of the USA: Touchstones of Hope
- 2015 Keynote: Lawyer's Rights Watch (Canadian Human Rights Tribunal case on First Nations child welfare)
- 2014 Keynote: University of Alberta Gall Lecture on Human Rights
- 2014 Presentation: Assembly of First Nations (Canadian Human Rights Tribunal on First Nations child welfare)
- 2014 Presentation: FNCARES (Government surveillance)
- 2014 Keynote: LEAF Ottawa
- 2014 Keynote: LEAF Edmonton
- 2014 Keynote: Wikwemikong First Nation (First Nations children's rights)
- 2014 Presentation: Whitefish River First Nation (First Nations children's rights)
- 2014 Keynote: Prairie Child Welfare Consortium, Saskatoon, Sask. (First Nations child welfare human rights tribunal)
- 2014 Keynote: IAP2 Conference, Winnipeg Manitoba (Reconciliation: the children's version). Collaboration with Fiona Cavanagh, Faculty of Extension U Alberta).
- 2014 Keynote: British Columbia Teachers' Federation (First Nations children's human rights)
- 2014 Presentation: Alberta First Nations Child and Family Service Agencies (Canadian Human Rights Tribunal on First Nations child welfare)
- 2014 Keynote: Catholic Women's Association, Thunder Bay (Reconciliation and children)
- 2014 Presentation: Sioux Lookout Health Authority (First Nations child rights and the Canadian Human Rights Tribunal)
- 2014 Keynote: Ontario Association of School Board Trustees (Equity in First Nations education)

- 2014 Presentation: Federation of Saskatchewan Indian Nations Health and Social Services Forum (Canadian Human Rights Tribunal)
- 2014 Moderator: Truth and Reconciliation Commission Youth Panel (Toronto Event)
- 2014 Keynote: Mi'kmaq Confederacy of PEI and Canada World Youth Aboriginal Youth Gathering (Indigenous children's rights)
- 2014 Presentation: First Nations Child and Family Services Directors' Forum (Canadian Human Rights Tribunal)
- 2014 Keynote: Justice, Diversity and Inclusion for All (Children's Rights)
- 2014 Keynote: Central Alberta Social Worker's Association (Mosquito Advocacy)
- 2014 Plenary Presentation: Privacy Conference hosted by Faculty of Extension of U Alberta (Domestic Government surveillance of Human Rights Defenders)
- 2014 BC Civil Liberties Association (Domestic Government surveillance of Human Rights Defenders)
- 2014 Workshop presenter: National Indian Child Welfare Association, Fort Lauderdale (trajectories of First Nations children in care)
- 2014 Moderator: Truth and Reconciliation Commission Youth Panel (Edmonton Event)
- 2014 Keynote: Moving forward- building culturally safe organizations (First Nations children's equity)
- 2014 Keynote: Ontario Association of Social Workers (First Nations children's equity)
- 2014 Panel Discussion: Hi-Ho Mistahey, FNCARES
- 2014 Presentation: Aboriginal Youth Advisory Circle, Alta. Child and Youth Advocate (Mosquito advocacy)
- 2014 Keynote: Alberta Association of Services for Children and Families (First Nations children's rights)
- 2013 Keynote: HIPPPY Canada, Calgary (First Nations children's rights)
- 2013 Keynote: Peel Teachers Association, Shannen's Dream
- 2013 Keynote: (First Nations child welfare tribunal), Best practices in legal representation, Jasper, Alta.
- 2013 Testimonial: Frontline Defenders, Dublin, Ireland (Civil society and protection against government repression)
- 2013 Keynote Presenter: Aboriginal Foster Parent's Federation of BC, Penticton (equity and First Nations children)
- 2013 Keynote Presenter: Prevention Matters, Saskatoon, Saskatchewan (children's rights and child welfare)
- 2013 Keynote Presenter: Waving the Magic Wand, Enoch Cree Nation, Alberta (structural risks and responses)
- 2013 Presenter: Pacific Business and Law Institute (First Nations child welfare human rights tribunal)
- 2013 Keynote Presenter: Algonquin College Aboriginal Graduation
- 2013 Keynote Presentation: Alberta Aboriginal Child Welfare Forum (Structural risks and solutions)
- 2013 Keynote Presenter: Walkers of Nishiyuu Youth Forum (First Nations human rights)
- 2013 Keynote Presenter: Elementary Teachers Federation of Ontario (First Nations children's rights)
- 2013 Keynote Presenter: University of Ottawa Education Student's Forum (First Nations children's rights)

2013	Keynote Presenter: First Call (First Nations children's rights)
2013	Keynote Presenter: Indigenous Physicians Association of Canada (First Nations children's rights and Jordan's Principle)
2013	Ontario University Students Association
2012	Plenary Presenter: Assembly of First Nations Special Chiefs Assembly
2012	Keynote Presenter: West Region CFS (First Nations child rights)
2012	Keynote Presenter: Advocate's Society (First Nations child rights)
2012	Keynote Presenter: Atlantic Policy Congress Health Conference (Canadian Human Rights Tribunal on FN Child Welfare and Jordan's Principle)
2012	Human Concern International and Youth for Northern Communities (First Nations children's rights)
2012	Keynote Presenter: West Region CFS Women's Gathering (First Nations Child Rights)
2012	Keynote Presenter: BC Association of Social Workers (Moral Courage)
2012	Keynote Presenter: Manitoba First Nations (First Nations child welfare)
2012	Keynote Presenter: KAIROS (Mosquito advocacy)
2012	Presenter: Assembly of First Nations education forum (First Nations children's human rights)
2012	Keynote: Temagami First Nation (Children's voices have power)
2012	CUP Annual General Meeting (Children's voices have power)
2012	Presentation: Directors of Child Welfare (First Nations child welfare)
2012	Keynote presentation: QCAIPP, Brisbane, Australia (Voices of children in human rights)
2012	Presentation: Yirkalla Community, Australia (First Nations children human rights)
2012	Keynote presentation: Supporting Aboriginal Children Together, Darwin, Australia (Children have voices)
2012	Keynote presentation: United Church of Canada General Council, Ottawa (Residential school and First Nations children today)
2012	Panel presentation: Assembly of First Nations Annual General Assembly
2012	University of Ottawa, Forum on Reconciliation (Reconciliation: implications for the current generation of FN children)
2012	Keynote presentation: Wabano Health Centre (Structural issues for FN children and Touchstones of Hope)
2012	Keynote presentation: Westboro Church, Ottawa (Equity and Social Justice for FN children)
2012	Keynote presentation: University of Ottawa Bachelor of Education Conference (Shannen's Dream)
2012	Plenary presentation: BC Government (Touchstones of Hope)
2012	Keynote presentation: Ottawa/Carleton Native Studies Teachers Conference (Shannen's Dream)
2012	Keynote presentation: Best Start Conference, Ontario (First Nations children's rights)
2012	Keynote presentation: Chiefs of Ontario ECD conference (structural risks and human rights)
2012	Presentation: Canadian Council of Child Advocates (structural risks and human rights)

- 2011 Presentation: Sir Wilfrid Laurier Secondary School. (Shannen's Dream, Jordan's Principle and I am a witness campaigns)
- 2011 Panel presentation: Assembly of First Nations Special Chiefs Assembly (First Nations children's rights)
- 2011 Keynote presentation: Indian Child Welfare Forum in Saskatoon (First Nations children's rights)
- 2011 Workshop: Assembly of First Nations Health Forum (Mosquito Advocacy)
- 2011 Panel presentation: Assembly of First Nations Health Forum (Jordan's Principle)
- 2011 Keynote: Cowichan Tribes Child Welfare Forum (7 ways to make a difference)
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- 2011 Northern BC Chiefs Forum (First Nations children's rights)
- 2011 Keynote, KAIROS Women of Courage Tour (Social Justice)
- 2011 Keynote, Whitefish River First Nation (Touchstones of Hope)
- 2011 Keynote, Manitoba FN CFS (Touchstones of Hope)
- 2011 Keynote, Native Women's Association AGM (First Nations children's rights)
- 2011 Presentation, Combined Voices, Brisbane, Australia
- 2011 Keynote, Victoria Council of Social Services, Melbourne, Australia
- 2011 Keynote, Queensland Council of Social Services, Brisbane, Australia
- 2011 Keynote, Victoria Leadership Forum, Adelaide, Australia
- 2011 Master Class: Berry Street Family Services, Melbourne, Australia
- 2011 Panel Presentation, Queensland Council of Social Services, Brisbane, Australia
- 2011 Panel Presentation, Two Ways Together, Melbourne, Australia
- 2011 Presentation, Assembly of First Nations Social Development Forum
- 2011 Presentation, Assembly of First Nations Education Forum
- 2011 Keynote Presentation CAPDHHE Conference, Edmonton
- 2011 Presentation, KAIROS Banner March, Ottawa, ON
- 2011 Presenter: Building Bridges, Carleton Place
- 2011 Keynote Presentation, OASIS
- 2011 Presentation: Anglican Church Conference
- 2011 Keynote Presentation, Building Bridges Partnership
- 2011 Keynote Presentation, UBC Aboriginal Social Work Gathering
- 2011 Keynote Presenter, Guelph Children's Aid Society Aboriginal Conference
- 2011 Panel Presenter, Manitoba School Board's Association
- 2011 Keynote speaker, Ontario Aboriginal Child Welfare Conference
- 2011 Keynote speaker, Wesley Prankard's Camp out, Niagara Falls
- 2011 Workshop, Attawapiskat First Nation
- 2011 Catholic High school, Ottawa
- 2011 Presenter, UCFW Human Rights Committee
- 2011 Keynote speaker, Payukotayno CFS, Moose Factory FN
- 2011 Plenary speaker, International Indigenous Health Conference
- 2011 Keynote speaker, Early Childhood Development Support Services, Edmonton
- 2011 Keynote speaker, National Aboriginal Health Survey Conference
- 2011 Keynote speaker, Chiefs of Ontario Health Forum
- 2011 Keynote speaker, Wabano Health Center Youth Forum
- 2011 Presenter, Public Service Alliance of Canada, Aboriginal Forum
- 2011 National Women's Legal Association Forum
- 2010 Workshop presenter, Rise up for Rights, Canadian Labour Congress
- 2010 Keynote speaker, National Youth in Care Network 25th anniversary

- 2010 Keynote speaker, Native Women's Centre of Hamilton
- 2010 Workshop presenter, Rise up for Rights, Ottawa
- 2010 Workshop presenter, Covenant Chain Aboriginal Conference
- 2010 Keynote speaker, Assembly of First Nations Youth Gathering
- 2010 Workshop presenter, Yellowhead Tribal Services National Conference
- 2010 Keynote speaker, Saskatchewan Association of Social Workers
- 2010 Keynote speaker, the Charter and You, Ontario Bar Association
- 2010 Plenary speaker, Post-Gladue, Osgoode Law School
- 2010 Keynote speaker, Carrier-Sekani Northern Chiefs Summit on Child Welfare
- 2010 Keynote speaker, BC Provincial Touchstones of Hope Forum
- 2010 Keynote speaker, Treaty 6, 7 and 8 Chiefs Health Forum
- 2010 Keynote speaker, Carleton University Aboriginal Awareness Week
- 2009 Keynote speaker, CECW International Prevention of Child Abuse Event, Toronto
- 2009 Keynote speaker, Manitoba First Nations CFS Gala
- 2009 Keynote speaker, New Brunswick Ombudsman's Expert Panel
- 2009 Keynote speaker, Northern Social Workers Conference, Whitehorse
- 2009 Keynote speaker, George Hull Centre, Toronto
- 2009 Keynote speaker, Uniting Care, Australia
- 2009 Keynote speaker, SNAICC, Australia
- 2009 Keynote speaker, Department of Communities, Australia
- 2009 Keynote speaker, Allied Iroquois and Algonquin Indians Health Retreat, Niagara Falls, Ontario
- 2009 Keynote speaker, Nicola Valley Institute of Technology, Burnaby, BC
- 2009 Keynote speaker, Nurturing Families, Prince George, BC
- 2009 Keynote speaker, Southern First Nations Network of Care, Winnipeg
- 2009 Touchstones of Hope Conference, Toronto, Ontario
- 2009 Keynote speaker, Ktunaxa Kinbasket Child and Family Services Conference, Cranbrook, BC
- 2008 Keynote speaker, Treaty 7 Child and Family Service Conference, Calgary, AB
- 2008 Keynote speaker, Northern Social Workers Association, Yellowknife, NWT
- 2008 Keynote speaker, University of Western Australia Rural and Indigenous Health, Geraldton, Australia
- 2008 Keynote speaker, Vancouver Island Chiefs Forum, Vancouver, BC
- 2008 Keynote speaker, Benevolent Society, Orange, Australia
- 2008 Presentation, Government of Australia FACSIA, Canberra, Australia
- 2008 Keynote speaker, Indigenous Child at the Centre 2, Vancouver, BC
- 2008 Keynote speaker, Vancouver Island Chiefs Forum, Duncan, BC
- 2004 Keynote speaker, Indigenous Research Symposium, University of Victoria, BC
- 2005 Keynote speaker, Canadian Association of Social Workers Conference, Toronto, ON
- 2008 Keynote speaker, Quebec First Nations, Quebec City, PQ
- 2008 Keynote speaker, University of Alberta Medical School, Edmonton, AB
- 2008 Keynote speaker, Indigenous Child at the Centre Forum, Vancouver
- 2007 Speaker, Alberta Ministry for Children's Services Native Unit, Calgary AB.
- 2007 Keynote speaker, 50th Anniversary of the New Brunswick Community Living Association Conference, Fredericton, NB
- 2007 Keynote speaker. North Peace School Board

- 2007 Keynote speaker, Wee-chi-te-win CFS
- 2007 Keynote speaker, Ontario Association of Municipal Social Services
- 2007 Keynote speaker, Federation of Saskatchewan Indian Nations
- 2007 Keynote speaker, Many Hands One Dream, Ottawa
- 2007 Keynote speaker, Council of Health and Social Development, First Nations of Quebec
- 2007 Workshop presenter, National Children's Alliance, Middle Childhood Forum, Ottawa.
- 2007 Keynote speaker, Superintendents of Schools, Regina
- 2006 Keynote speaker, Superintendents of Schools Association, Winnipeg
- 2006 Keynote speaker, Wi Ci Ti Zon Child Welfare Conference, Saskatoon
- 2006 Keynote speaker, Awasis FNCFS Annual General Meeting, Prince Albert
- 2006 Presenter, Assembly of First Nations Executive Council, Rama First Nation.
- 2006 Keynote speaker, Métis Nation of Ontario, Annual General Assembly. Garden River First Nation, Sault St. Marie.
- 2006 Keynote speaker, National Association of Friendship Centers National Youth Forum, Saskatoon
- 2006 Keynote speaker, Boys and Girls Clubs of Canada
- 2006 Keynote speaker, Canadian Political Science Students Association
- 2005 Presentation, Amnesty International
- 2005 Presenter, Joining Hands Across the World for Indigenous Children, Toronto
- 2005 Keynote speaker, Annual General Meeting of Superintendents of Schools, Winnipeg, Manitoba
- 2005 Keynote speaker, Nog da win da min Child and Family Services Annual General Meeting.
- 2005 Plenary speaker, Rethinking Development Conference, St. Francis Xavier University, Nova Scotia.
- 2005 Keynote speaker, Resiliency Conference, Halifax, Nova Scotia
- 2005 Keynote speaker, Heart of the Matter, Malaspina University College
- 2005 Workshop, *Caring Across the Boundaries*, Heart of the Matter, Malaspina University College.
- 2005 Workshop, *Community Development and First Nations Child Welfare*, Heart of the Matter, Malaspina University College
- 2004 Plenary speaker, International Indigenous Child Rights Symposium, University of Victoria.
- 2004 Keynote speaker, Policy Link Conference, New Brunswick
- 2004 Plenary speaker, Assembly of First Nations General Assembly
- 2004 Keynote speaker, Saskatchewan Adoptive Parents Association
- 2004 Plenary speaker, National Indian Child Welfare Association Conference
- 2004 Presenter, Big Brothers Big Sisters of Canada Annual Meeting
- 2004 Keynote speaker, Family Resource Programs of Canada Annual General Meeting
- 2004 Keynote speaker, First Nations Youth at Risk Conference
- 2004 Keynote speaker, Yellowhead Tribal Services Agency, National Conference
- 2004 Panel presentation, National Children's Alliance Annual Meeting
- 2003 Keynote speaker, Winnipeg Planning Council, AGM
- 2003 Keynote speaker, Prairie Child Welfare Consortium Conference
- 2003 Presenter, FNCFCS Indigenous Research Workshop, Halifax
- 2003 Presenter, Malaspina College Conference

ACADEMIC PLACEMENT SUPERVISION/PhD COMMITTEE SERVICE (35)

2025	Caterina Salenteg, ISP, McGill
2024	Olivia Dumas, ISP, McGill
2024	Samara Al-Dada, ISP Social Work and Law
2021	PhD External, Tania Tautari-Clife, University of Auckland (underway)
2020/21	Hannah Crawford, Laurier MSW
2018	PhD External, La Trobe University (Misha McMahon)
2017	MSW Thesis Supervisor (Tyson Kensall), McGill University
2017	PhD Internal, McGill University (Amal El Sana), McGill University
2016	MSW Placement Supervisor, Carleton University
2015	BSW Placement Supervisor, Carleton University
2015–Present	PhD Committee Member: York University (Fariyah Ali)
2015	MSW Placement Supervisor, Carleton University
2015	External Examiner, Australian Catholic University, AU (Bindi Bennett) “Developing identity as a light-skinned Aboriginal person with little or no community and/or kinship ties.”
2015	BSW Placement Supervisor, Carleton University
2014	BSW Placement Supervisor, University of Calgary
2014	External Examiner, UTS, Sydney, AU (Susan Green) “The History of Aboriginal Welfare in the Colony of NSW”
2014	BSW Placement Supervisor, Carleton University
2014	External Examiner, University of Toronto OISE
2014	BSW Placement Supervisor, Carleton University
2013	MSW Placement Supervisor, Carleton University
2013	MSW Placement Supervisor, Laurentian University
2013	MSW Placement Supervisor, Carleton University
2012–2015	Doctoral Committee Member, McGill University, School of Social Work (student withdrew from program)
2012–2020	Doctoral Committee Member, Dalhousie University, School of Social Work (candidate: Nancy MacDonald)
2012	BSW Placement Supervisor, Carleton University
2012	BSW Placement Supervisor, Sir Wilfred Laurier University
2011	Placement Supervisor, University of Ottawa
2011	BSW Placement Supervisor, Carleton University
2011	MSW Placement Supervisor, University of Victoria
2010-2011	BSW Placement Supervisor, Carleton University
2010-2016	Doctoral Committee Member, University of Ottawa (candidate: Cynthia Stirbys)
2010	Lauren Scholar Supervisor, McGill University
2009	Lauren Scholar Supervisor, University of British Columbia
2007	MSW Social Work Placement Supervisor, Carleton University and the University of Lapland, Finland
2005	MSW Social Work Student Placement Supervisor, Carleton University
2004	MSW Social Work Student Placement Supervisor, Carleton University
2003	BSW Social Work Placement Supervisor, Carleton University
1999	BSW Social Work Placement Supervisor, University of British Columbia

SELECTED INVITED TEACHING (148)

2025	Toronto Metropolitan University, Political Science
2025	University of Melbourne, Faculty of Social Work
2025	University of Melbourne, Faculty of Public Health
2024	Queens University Faculty of Law: First Nations Human Rights Case
2024	McGill University: First Peoples Social Work
2024	Metropolitan University, Faculty of Political Science: First Nations children's human rights
2023	UBC Faculty of Law: Child Welfare
2023	McGill School of Social Work: Evidence Informed Advocacy
2023	Harvard University: Leadership Course for Physicians
2023	Queen's University Law: Indigenous Child Welfare
2022	University of Alberta Visiting Lectureship in Human Rights: Reconciling history
2022	St. Thomas University Chancellor's Lecture Series on Indigenous Issues: CHRT case
2021	Selkirk College: invisible colonialism and systemic racism
2020	University of Dublin: International Social Work
2020	Lougheed College: Public Policy and Inequity
2020	McGill School of Social Work: Child Protection
2020	McGill School of Social Work: Anti-oppressive Practice
2020	University of Windsor: Invisible colonialism
2020	Brock University, School of Child and Youth Care: Systemic Discrimination
2020	CHEO/University of Ottawa Faculty of Medicine: Reconciliation
2020	University of Toronto Faculty of Social Work: Research Methods
2020	UBC Faculty of Law: CHRT
2019	Mount Allison University: Is it Genocide?
2019	First Nations University: Is it Genocide?
2019	Dalhousie University, Policy Matters: Equity
2019	Monmouth University, Greta Singer Memorial Lecture: Moral Courage
2019	Monmouth University, Bachelor of Social Work: Indigenous Peoples
2019	Queens University, Thomas Courchene Lecture: Equity and Reconciliation
2019	McGill Debating Team, Equity and Reconciliation
2019	Dalhousie University, Kawaskimhon National Law Moot
2019	Dalhousie University, Faculty of Law (Mosquito Advocacy)
2019	Thompson Rivers University, Faculty of Law (CHRT)
2019	Thompson Rivers University, School of Nursing (Jordan's Principle)
2018	Harvard University, Faculty of Law (CHRT)
2018	University of Victoria, Faculties of Social Work and Indigenous Studies (First Nation's children's equity)
2018	McMaster University, Faculties of Social Work and Indigenous Studies (CHRT, ethics, etc.)
2018	Charles Sturt University, Australia (Breath of Life theory)
2018	Charles Sturt University, Australia (Moral Courage)
2018	Yale University, Faculty of Law, USA (CHRT case and Social Movements)
2018	McGill University, School of Social Work (Advocacy)
2018	University of Alberta, Faculty of Education (Child Engagement)
2017	St. Thomas University, School of Social Work (First Nations human rights)

2017	McGill University, Indigenous Student's Assoc. (Mosquito Advocacy)
2017	Thompson Rivers University Faculty of Global Studies (Equity)
2017	Thompson Rivers University Faculties of Social Work/Nursing (CHRT)
2017	University of Ottawa, Faculty of Education (Equity and reconciliation)
2016	University of Ottawa, Faculty of Education (Equity and Reconciliation)
2016	University of Alberta, School of Public Health (Mosquito Advocacy)
2015	University of Toronto, Faculty of Social Work (Breath of Life Theory)
2015	University of Toronto, Faculty of Social Work (Mosquito Advocacy)
2015	University of Toronto, Faculty of Social Work (Reconciliation)
2015	Charles Sturt University, Bathurst AU (Breath of Life Theory)
2015	Charles Sturt University, Bathurst AU (Mosquito Advocacy)
2015	University of Alberta, Sociology (Privacy)
2015	University of Alberta, Human Ecology (Mosquito Advocacy)
2015	University of Ottawa, Faculty of Management (Communications)
2015	University of Ottawa, Faculty of Education (First Nations education)
2015	University of Ottawa, Faculty of Law (Mosquito Advocacy)
2015	University of Regina, Indigenous Students Association (Leadership)
2015	University of British Columbia, Faculty of Law (First Nations children's rights)
2014	University of Alberta, Public Health (Mosquito Advocacy)
2014	University of Calgary, Faculty of Social Work (First Nations children's rights)
2014	University of British Columbia Okanagan, Faculty of Social Work (First Nations children's equity)
2014	University of Saskatchewan, Faculty of Law (First Nations child welfare tribunal and Jordan's Principle)
2014	University of Alberta, Human Ecology (Mosquito Advocacy)
2014	University of Ottawa, Faculty of Education (First Nations Education)
2014	University of Toronto, Faculty of Social Work (Quantitative methods)
2013	University of Alberta, Public Health, (Mosquito Advocacy)
2013	Vanier College, Social Sciences, (Children's voices have power)
2013	University of Ottawa, Political Science, Indigenous Peoples
2013	University of Alberta, Human Ecology (First Nations children's human rights)
2013	University of Alberta, Sociology (First Nations children's human rights)
2013	University of Alberta, Extension (Breath of Life Theory)
2013	University of Ottawa, Indigenous Studies (Mosquito Advocacy)
2013	McGill University, Indigenous Studies (First Nations children's rights)
2013	Kew Beach Public School, Toronto (Shannen's Dream)
2013	University of Toronto, Faculty of Social Work (Evidence based advocacy)
2013	University of Toronto, Social Work
2012	University of Alberta, Faculty of Public Health (Mosquito Advocacy)
2012	Sacred Heart Secondary School (Children's Voices have Power)
2012	University of Ottawa, Faculty of Law (First Nations child welfare tribunal)
2012	McGill University Faculty of Social Work and Faculty of Law (First Nations child welfare tribunal)
2012	Georgian Bay College (First Nations children's human rights)
2012	University of Moncton (First Nations children's human rights)
2012	University of Manitoba (First Nations children's human rights)
2012	Red River College (First Nations children's human rights)

2012	University of Ottawa, Graduate Students Association (Shannen's Dream and Jordan's Principle)
2012	Dalhousie University, Faculty of Political Science, (structural risks)
2012	Workshop, Milne Valley Middle School, Toronto (Equity for FN children)
2012	McGill University, School of Social Work (structural risks and human rights)
2012	Carleton University, Bachelor of Social Work (Breath of Life Theory)
2012	University of Alberta, Human Ecology (structural risks and human rights)
2012	Pierre Elliott Trudeau Elementary School (Have a Heart for First Nations Children Day)
2012	University of Alberta Aboriginal Student's Association (structural risk and human rights)
2012	University of Ottawa, Faculty of Law (human rights case)
2012	University of Toronto, The case for courage in quantitative research for First Nations children
2012	University of Ottawa, Faculty of Law
2012	University of Ottawa, Faculty of Law
2012	York University, Children and Youth Studies
2012	University of Ottawa, Faculty of Law
2011	University of Alberta (CUP), Evidence base for advocacy
2011	Carleton University, Aboriginal Students Association (First Nations Human Rights)
2011	University of Ottawa Law School (Human Rights Case)
2011	University of Northern British Columbia (Breath of Life Theory)
2011	Dalhousie University, School of Social Work (First Nations children's rights)
2011	University of Alberta, Faculty of Nursing (First Nations children's rights)
2011	University of British Columbia, Aboriginal Forum (Breath of Life Theory)
2011	NVIT, Social Work
2011	Carleton University, Social Work
2011	St. Pius X Catholic High School, Ottawa
2010	St. Paul University, Social Work
2010	University of Toronto, Faculty of Law
2010	Ryerson University, Faculty of Social Work
2010	University of Ottawa, International Development
2010	University of Toronto, Research Methods, Faculty of Social Work
2009	University of Toronto, Faculty of Social Work
2009	Queensland University of Technology, Australia
2009	University of Queensland, Australia
2009	James Cook University, Australia
2009	Nicola Valley Institute of Technology, Faculty of Social Work
2009	University of Toronto, Faculty of Social Work
2009	University of Manitoba, School of Social Work
2009	Ryerson University, School of Social Work
2009	Carleton University, School of Social Work
2008	Faculty of Social Work, University of Toronto
2008	University of Ottawa Law School
2008	School of Graduate Studies, University of Toronto
2008	Faculty of Social Work, University of Toronto
2008	Symposium, University of New South Wales, Australia

2008	Symposium, Murdoch University, Australia
2008	Symposium, University of Western Australia
2008	Faculty of Social Work, University of Victoria
2008	Faculty of Social Work, University of Toronto
2007	Faculty of Social Work, University of Toronto
2006	Human Rights, Carleton University
2006	Faculty of Social Work, University of Toronto,
2006	Department of Aboriginal Health, University of Western Australia.
2005	Master of Social Work program, University of Toronto
2005	American Indian Program, Harvard University
2005	Human Rights, Carleton University.
2004	MSW program, Carleton University
2004	PhD. and MSW programs, University of Toronto
2003	MSW program, Carleton University
2003	School of Social Work, University College of the Caribou

INSTRUCTION (17)

2023	Instructor, Evidence Informed Advocacy, McGill University
2023	Instructor, First Peoples Social Work, McGill University
2021	Instructor, First Peoples Social Work, McGill University
2020	Instructor, Evidence Informed Advocacy, McGill University
2020	Instructor, First Peoples Social Work, McGill University
2019	Instructor, Evidence Based Advocacy, McGill University
2019	Instructor, First Peoples Social Work, McGill University
2018	Instructor, Community Organization: Advocacy, McGill University
2018	Instructor, First Peoples Social Work, McGill University
2014	Instructor, Mosquito Advocacy, University of Alberta
2012	Instructor, Mosquito Advocacy, University of Alberta
2006	Instructor, Aboriginal Early Childhood Development Program, University of Victoria
2002	Instructor, Aboriginal Social Work module, Provincial Social Worker Training Program, Justice Institute of British Columbia
2002	Instructor, Aboriginal Social Worker Training Program
2001	Instructor, Aboriginal Social Worker Module, Provincial Social Worker Training Program, Justice Institute of British Columbia
1998–2001	Instructor, Aboriginal Social Worker Module, Provincial Social Worker Training Program, Province of British Columbia
1998	Instructor, Pilot Program of the Aboriginal Social Worker Training Program.

SELECTED MEDIA COVERAGE (410)

2025	Globe and Mail: Jordan's Principle
2025	CBC: Jordan's Principle
2025	CBC: Jordan's Principle
2024	APTN: AFN SCA Child Welfare

2024	CBC Radio One The Current: Draft FSA
2024	Pam Palmater: Our Kids Deserve Better
2024	APTN: Draft FSA
2024	The Globe and Mail, the Decibel podcast: Draft FSA
2024	CPAC: Draft FSA and Child welfare reform
2024	APTN Nation to Nation: Federal Government failure to meeting Jordan Principles and FSA
2024	CTV: National Truth and Reconciliation Day
2024	CBC North: Discuss perspective on Indigenous Children in welfare in the north
2024	APTN Winnipeg: Child welfare compensation
2024	Pam Palmater: Draft FSA
2024	CBC Radio: Prime Minister apology for First Nations Child Welfare Discrimination
2024	Global National: Prime Minister apology for First Nations Child Welfare Discrimination
2024	CBC Ottawa Morning: Prime Minister apology for First Nations Child Welfare Discrimination
2024	APTN News: CHRT Hearing on non-compliance
2024	CBC News: affidavits non-compliance
2024	Media Indigena Podcast: Bill C-92
2024	Warrior Life Podcast: Bill C-92
2024	CBC News: Supreme Court decision on Bill C-92
2024	CPAC: Supreme Court decision on Bill C-92
2024	APTN: Supreme Court decision on Bill C-92
2024	Global News and Mail: Supreme Court decision on Bill C-92
2024	CTV: Child welfare law decision
2024	Radio-Canada: Supreme Court decision on Bill C-92
2024	CBC Indigenous: Non-compliance for Jordan's Principle
2024	CTV's Your Morning: : Non-compliance for Jordan's Principle
2024	APTN: Trudeau government's record in Indigenous child welfare
2023	CTV New: CHRT
2023	APTN: Child Welfare
2023	Ottawa Life Magazine: Women of Impact
2023	CBC News: Canada's Liabilities
2023	BBC News: Federal Court's Approval of Compensation Agreement
2023	CTV News: Compensation Agreement
2023	CTV News: Indigenous History Series
2023	CTV News: Realities of Racism Panel
2023	CBC News: Spirit Bear Animations
2023	CBC News: First Nations Education
2023	CBC National: World Children's Prize Nomination and CHRT compensation
2023	Canada Files (PBS): CHRT advocacy
2023	Indigenous Legal Theories Podcast (University of Victoria)
2023	CTV National: CHRT Compensation
2023	The Globe and Mail: CHRT Compensation
2023	CBC Power and Politics: CHRT
2023	SPARK Podcast: Northern/remote pediatrics
2022	Women of Ill Repute Podcast

2022	Warrior Life Podcast: CHRT
2022	CBC: A National Crime & Orange Shirt Day
2022	APTN: Federal Court Hearings
2022	Ben & Jerry's Q&A: Advocating for First Nations kids
2022	SNAICC: Indigenous children's rights at home and abroad
2022	The Negotiators Podcast: CHRT case
2022	CTV News: Compensation and settlement agreement
2022	CBC National: One-year anniversary of Tkemlups
2022	BBC World News: Royal Visit to Canada
2022	The Globe and Mail: First Nations youth in care
2022	The Future of Good: supporting First Nations children and youth
2022	Canadian Chair of the Trilateral Commission: Agreement in principle
2022	Indian Country Today: Agreement in principle
2022	APTN Investigates
2022	Sirius XM Same Six Questions
2022	SiriusXM The Kim Wheeler Show
2022	CTV News: Indigenous youth in foster care
2022	Wall Street Journal Podcast – The journal on the CHRT case
2022	CBC: CHRT case
2022	APTN: CHRT case
2022	The Walrus: CHRT case
2022	CTV News – Realities and Racism Panel: Agreement in principle
2022	BBC World News: CHRT case
2022	CTV Your Morning: CHRT case
2022	CBC Radio The Current: CHRT case
2022	CTV Power Play: CHRT case
2022	CBC Power and Politics: CHRT case
2021	Global News: CHRT case
2021	CTV: Vatican visit for residential school apology
2021	CBC, Canadian Press: CHRT case
2021	CTV News Power Play: CHRT case
2021	Canadian Press: CHRT case
2021	Cable Public Affairs Channel: Child welfare compensation
2021	CBC Power and Politics: Child welfare compensation
2021	CBC Radio: Child welfare compensation
2021	Radio-Canada: Child welfare compensation
2021	CBC News: CHRT case
2021	APTN: Child welfare compensation
2021	Global News: CHRT case
2021	CBC News: Child welfare compensation
2021	SiriusXM Dahlia Kurtz Canada's National Talk Show
2021	CTV Your Morning: Compensation for First Nations schools
2021	CBC Power and Politics: Court ruling and government's decision regarding an appeal
2021	CTV Power Play and National News
2021	APTN
2021	Global News: The Pope's potential apology
2021	CTV News: Appeal ruling

2021	CBC: On Chretien
2021	CBC
2021	APTN: CHRT
2021	Globe and Mail; Response to Prime Minister appeal comments
2021	CBC Power and Politics: Reaction to Prime Minister visit to Tk'emlups
2021	CTV Question Period: Federal court ruling, National Day for Truth and Reconciliation
2021	CBC Pedro Sanchez: PH Bryce and learning from the past
2021	CBC Adrian Harewood: PH Bryce and learning from the past
2021	CBC Radio The Current: Federal court Judicial review
2021	CTV National News
2021	CityNews: Federal court
2021	Global News National: National Day for Truth and Reconciliation
2021	CBC News Power and Politics: Federal Court
2021	CTV Morning Live: Beechwood event
2021	Your Morning - Bell Media: National Day for Truth and Reconciliation
2021	CTV National News: National Day for Truth and Reconciliation
2021	Rogers- Breakfast Television: Residential schools and foster care
2021	Globe and Mail: Beechwood event
2021	SiriusXM Dahlia Kurtz Canada's National Talk Show: What the government needs to do moving forward
2021	CTV National News: Catholic Bishops and Canada's Appeal
2021	Global News: National Day for Truth and Reconciliation
2021	CBC Radio: Federal election and Indigenous peoples
2021	Global News: Election promises and Indigenous kids in care
2021	Swiss Public Broadcaster SRF: Residential schools, intergenerational trauma, and continuing inequity
2021	CTV News: Federal government postponing release of MMIWG action plan
2021	CTV News: Fact-checking the English language debate
2021	Al Jazeera: The election and the rights of Indigenous peoples
2021	Al Jazeera: residential schools and mass graves
2021	Global News: Liberal platform promises
2021	DeutschlandFunk (German Radio): Residential schools and foster care system discrimination
2021	APTN: Federal leader debate questions
2021	CTV: Federal election overshadowing residential school graves
2021	CBC Radio: Federal election
2021	CTV Your Morning: Federal funding to search for residential school graves
2021	Global News: Residential schools and how to charge abusers
2021	Al Jazeera: Residential schools, government funding
2021	CTV: Residential schools, government funding
2021	CBC: Indigenous children in foster care
2021	CBC Radio: Child welfare agreement signing between federal government and Cowessess First nation, new Governor General
2021	CTV: Child welfare agreement signing between federal government and Cowessess First Nation, new Governor General
2021	CTV National News: Kuper Island Residential School
2021	BBC: Indigenous children in foster care

2021	Australia Broadcasting Corporation: Unmarked graves at residential schools
2021	Global News: Cowessess First Nation discovery
2021	CTV Your Morning: Cowessess First Nation discovery
2021	Global National: Cowessess First Nation discovery
2021	CTV National News: Cowessess First Nation discovery
2021	BBC: Cowessess First Nation discovery
2021	Al Jazeera: 215 children in Tk'emlups (panel)
2021	Espaces Autochtones Radio-Canada: Discrimination in education and health services
2021	Rabble Off The Hill: 215 children in Tk'emlups, TRC, reconciliation
2021	Global News: Indigenous children in foster care
2021	KALW Radio (San Francisco): 215 children in Tk'emlups and Canada's litigation v. First Nations Children
2021	IndigiNews: Judicial Review
2021	SiriusXM: Judicial Review
2021	CBC News Canada Tonight: Judicial Review
2021	CTV Power Play: Judicial Review
2021	CBC All in a Day: Judicial Review
2021	CBC Radio As It Happens: Judicial Review
2021	CTV News: Judicial Review
2021	CTV Your Morning: Judicial Review
2021	CTV News: Jordan's Principle court case
2021	CBC Kids: How Canadian children can be better allies to Indigenous communities
2021	The Canadian Press: Canadian Human Rights Tribunal and Jordan's Principle
2021	BBC London: Indigenous children in foster care
2021	SiriusXM National morning show with Dahlia Kurtz
2021	CTV News: Dr. Bryce
2021	CTV Your Morning: 215 children in Tk'emlups
2021	CBC Power and Politics: NDP Motion
2021	CTV Power Play: NDP Motion
2021	Global News National: Indigenous children in foster care
2021	CTV Your Morning: 215 children in Tk'emlups
2021	CTV News Channel (Panel)
2021	National Post: Truth and Reconciliation Commission Calls to Action
2021	CBC: 215 children in Tk'emlups
2021	CityNews National: 215 children in Tk'emlups
2021	Democracy Now: 215 children in Tk'emlups
2021	CBC The National: 215 children in Tk'emlups
2021	Global News: 215 children in Tk'emlups
2021	CBC Radio: Peter Henderson Bryce and Memorials
2021	CTV News: 215 children in Tk'emlups
2021	Al Jazeera: 215 children in Tk'emlups
2021	CBC The National: 215 children and Canada's litigation v. First Nations children
2021	CTV Power Play: 215 children in Tk'emlups
2021	CTV National News: 215 children in Tk'emlups
2021	Rabble: Indigenous rights and reconciliation
2021	CTV National News: MMIWG report

2021	APTN
2021	APTN: Judicial Review Submissions
2021	Global News: Judicial review of Jordan's Principle order
2021	APTN: Nation to Nation: Judicial review of Jordan's Principle order
2021	Maclean's Magazine: Vision for the future
2020	CTV News: Systemic racism
2020	Global News: Reconciling History
2020	CTV News: John A. Macdonald
2020	CBC National News: John A. Macdonald
2020	Chatting with Homies: Shannen's Dream and the AFN protocol on child welfare
2020	CTV: AFN protocol on child welfare
2020	CBC Sunday Edition: Michael Enright's last broadcast (systemic racism)
2020	The West Block, Global News: Systemic racism
2020	Two Crees and a Pod: Breath of Life Theory
2020	CTV National News: MMIWG
2020	APTN in Focus: Shannen Koostachin
2020	APTN In Focus: Peter Henderson Bryce
2020	CTV National News: MMIWG
2020	APTN Nation to Nation: CHRT Compensation
2019	Wall Street Journal: CHRT Compensation
2019	CBC Mainstreet Halifax: CHRT Compensation
2019	CTV Regina: CHRT Compensation
2019	APTN Nation to Nation: CHRT Compensation
2019	CBC the House: CHRT Compensation
2019	CBC National News: CHRT Compensation
2019	CTV Power Play: CHRT Compensation
2019	CBC As it Happens: CHRT Compensation
2019	CBC Radio Winnipeg: CHRT Compensation
2019	CBC: Unreserved: Profile of Cindy Blackstock
2019	BBC5: MMIW
2019	BBC4: MMIW
2019	The Guardian: MMIW
2019	CTV News: MMIW
2019	CBC Metro Morning: MMIW
2019	CBC News: MMIW
2019	New York Times: MMIW
2019	CBC the Current: RCMP sexual assault interview with First Nations youth in care.
2019	CTV Powerplay: CHRT
2019	CBC Power and Politics: Jane Philpott and SNC Lavalin
2019	APTN: Bill C-92
2019	APTN: CHRT compensation
2019	CTV National News: Budget 2019
2019	APTN National News: Budget 2019
2019	CBC World at Six: Budget 2019
2019	CBC The National: Budget 2019
2019	Winnipeg Free Press: Budget 2019
2018	CBC the House: CHRT and Indigenous child welfare legislation

2018	APTN: Indigenous child welfare legislation
2018	CTV: Child Welfare and Spirit Bear
2018	Globe and Mail: MMIW and child welfare
2018	CTV: Stand Up for Kids Award
2018	Australian Broadcasting Corporation (radio): early childhood involvement in reconciliation
2018	Australian Broadcasting Corporation: Indigenous theory and children's rights
2018	Gamechangers with Tom Parkin (change leadership)
2018	TVO: Reconciliation in education in Ontario
2018	CBC the Current: Removal of John A. MacDonald's statue
2018	CBC News: Budget 2018
2018	APTN News: Budget 2018
2018	CBC the House: Emergency Meeting on First Nations Child Welfare
2018	CBC National News: CHRT non-compliance order
2018	APTN Nation to Nation: CHRT non-compliance and budget 2018
2018	CTV PowerPlay: CHRT non-compliance order
2017	CBC the House: Jordan's Principle Judicial Review
2017	CTV PowerPlay, Census data on Indigenous children
2017	Globe and Mail: Census data on Indigenous children
2017	CTV Winnipeg: Caring Society Gala and Spirit Bear
2017	The Guardian, First Nations youth suicide
2017	CBC, First Nations youth suicide and equity
2017	CBC, PM Trudeau's statements about Indigenous Peoples in Rolling Stone Magazine
2017	APTN Face to Face, CHRT and Jordan's Principle
2017	Global Television, Jordan's Principle
2017	Chatelaine Magazine http://www.chatelaine.com/news/first-nations-kids-cindy-blackstock/
2017	CBC: As it Happens (Budget 2017- CHRT Non-Compliance Hearings)
2017	CBC the National (Budget 2017- First Nations children)
2017	APTN: Canadian Human Rights Tribunal non -Compliance Hearings
2017	CPAC: Budget 2017 and CHRT Non-Compliance Hearings
2017	Toronto Star: Canada's non-compliance with Jordan's Principle
2017	APTN Nation to Nation: Jordan's Principle
2016	Global News: Canada's non-compliance with CHRT orders
2016	Canadian Press: Canada's non-compliance with CHRT orders
2016	Aljazeera, Canadian Human Rights Tribunal
2016	CCTV America, The Heat (Inequity for First Nations children)
2016	McGill Reporter (Cindy Blackstock joins Faculty of Social Work)
2016	The National, Attawapiskat Suicide Crisis
2016	CBC Peter Mansbridge One on One: Systemic discrimination
2016	CTV Canada AM: Canadian Human Rights Tribunal
2016	CBC: The National: Canadian Human Rights Tribunal
2016	Sunday Edition: Cultural Diversity?
2016	Global National News: Canadian Human Rights Tribunal
2016	APTN National News: Canadian Human Rights Tribunal
2015	APTN National News: Federal election
2015	CBC National News: First Nations water

2015	Sunday Edition: Canadian Values?
2015	CBC Radio: Dr. Peter Henderson Bryce
2015	APTN: Dr. Peter Henderson Bryce
2015	CTV: Truth and Reconciliation Commission Report
2015	CBC National News: Truth and Reconciliation Commission Report
2015	APTN National News: Truth and Reconciliation Commission Report
2015	CBC Winnipeg: Connection between childhood inequity and MMIW
2015	CTV National News: Child in care assault in Manitoba
2015	APTN Nation to Nation: Access to Information
2015	APTN In Focus: Jordan's Principle
2015	CBC Halifax: First Nations child welfare tribunal
2015	CBC Regina: First Nations children's equity
2015	Global TV Regina: Woodrow Lloyd Lecture
2015	CTV Regina: First Nations children's equity
2015	Georgia Straight: Equity for First Nations children
2015	APTN In Focus: Jordan's Principle
2014	CBC Ottawa: Big Thinking Lecture with Jim Miller
2014	CBC Thunder Bay, Jordan's Principle
2014	CBC Edmonton AM: Truth and Reconciliation Commission
2014	APTN Nation to Nation: First Nations child welfare tribunal
2014	CTV Powerplay: First Nations education announcement
2014	CBC As it Happens: First Nations education announcement
2014	CBC National News: Phoenix Sinclair Inquiry
2014	APTN National News: Run away children in foster care
2013	CBC Sunday Edition: What do we owe the future?
2013	CBC radio, Edmonton (Over-representation of Aboriginal children in child welfare care)
2013	APTN, Canadian Human Rights Tribunal
2013	Irish Medical Times: First Nations children's equity
2013	CTV National News: Nutrition Experiments on Indigenous children
2013	ABC Life Matters: Children's rights in Indigenous communities
2013	Koorie Radio: Canadian Human Rights Tribunal
2013	CTV Powerplay, Privacy Commissioner's report
2013	Macleans magazine, Privacy Commissioner's report
2013	CBC Power and Politics, Privacy Commissioner's report
2013	Toronto Star, Privacy Commissioner's report
2013	APTN National News, Privacy Commissioner's report
2013	CBC As it Happens: Privacy Commissioner's report
2013	Globe and Mail, Canada withholding documents in Indigenous human rights case.
2013	Aboriginal Peoples Television Network: Canada withholding documents in FN child welfare case.
2013	CTV National News: Federal Budget 2013
2013	CBC radio, Yukon: Federal Court of Appeal
2013	CBC radio, Saskatchewan: Federal Court of Appeal
2013	APTN National News: First Nations child welfare tribunal
2013	CBC radio, Ottawa: First Nations child welfare tribunal
2013	Nationtalk, First Nations child welfare tribunal

2013	CBC radio, Saskatoon: First Nations child welfare tribunal
2013	CBC radio, Northern BC: First Nations child welfare tribunal
2013	Metro News, First Nations youth employment
2013	CBC Sunday Edition: Idle no More
2013	CTV National News: Idle no More
2012	Toronto Star: Retaliation complaint CHRT
2012	CBC Radio: As it Happens: Retaliation complaint CHRT
2012	APTN: UNCRC concluding observations for Canada
2012	Canadian Press: Federal government spending millions on advertising while cutting social programs
2012	CTV Powerplay: Canada spending millions to avoid hearing on FN child welfare case
2012	Globe and Mail: Canada spending millions to avoid hearing on FN child welfare case
2012	Toronto Star: Canada spending millions to avoid hearing on FN child welfare case
2012	CBC radio: Canada spending millions to avoid hearing on FN child welfare case
2012	APTN National News: Dates set for FN child welfare case
2012	CTV National News: Assembly of First Nations AGA
2012	Aboriginal Peoples Television Network: Assembly of First Nations National Chief Election
2012	CTV Newshour: Assembly of First Nations National Chief Election
2012	Prince George Citizen: Cindy Blackstock to receive Honorary doctorate degree from UNBC
2012	National Maori Radio, New Zealand: First Nations children's health
2012	CTV National News: First Nations health
2012	CTV National News: Federal budget and First Nations education
2012	CBC BC Region: Federal budget and First Nations education
2012	CBC the Current: UN attention to First Nations child rights
2012	APTN: First Nations Child Welfare Federal Court Case
2012	Ottawa Citizen: Have a Heart for First Nations Children's Day
2012	CBC: First Nations Child Welfare Federal Court Case
2012	Toronto Star: First Nations Youth Ambassadors
2012	CTV: First Nations Child Welfare Federal Court Case
2012	Edmonton Journal: First Nations Child Welfare Case
2012	CTV Powerplay: Crown-First Nations gathering
2012	CBC Power and Politics: Crown-First Nations gathering
2012	Aljazeera: Crown- First Nations gathering
2012	CBC National Radio: Trailblazers: Profile of Cindy Blackstock
2012	Guelph Mercury: Canada's native communities deserve justice now
2012	APTN: CHRT Chair Chotalia responsible for harassment of staff
2011	Toronto Star: Three women who fought back against the Conservatives
2011	CTV Powerplay: Monitoring by the Government of Canada
2011	CTV: Sexual abuse and First Nations Communities
2011	CBC, the Current: Government surveillance of Native youth advocate
2011	Midnorth Monitor: From nightmare to dream
2011	Montreal Gazette: FN school conditions
2011	National Post: Residential school memorial and education inequities

- 2011 Vancouver Sun: UNCRC report with KAIROS
- 2011 Winnipeg Free Press: UNCRC report with KAIROS
- 2011 CBC NWT: UN CRC report with KAIROS
- 2011 CBC Atlantic: UN CRC report with KAIROS
- 2011 CTV: UN CRC report with KAIROS
- 2011 Rutherford Show, Alberta: UNCRC report
- 2011 CBC Yukon: UN CRC report with KAIROS
- 2011 Toronto Star: UN CRC report with KAIROS
- 2011 Australian Broadcasting Company: Indigenous child welfare
- 2011 Aboriginal Peoples Television Network: Jordan's Principle
- 2011 Canada AM: Shannen's Dream
- 2011 Reuters: Our Dreams Matter Too
- 2011 Silobreaker: Our Dreams Matter Too
- 2011 India Times: Our Dreams Matter Too
- 2011 CNBC: Our Dreams Matter Too
- 2011 Money Magazine (on line): Our Dreams Matter Too
- 2011 La Press Canadien Ottawa négligerait les jeunes autochtones dans le domaine de l'éducation
- 2011 Frankfurter Rundschau: Our Dreams Matter Too
- 2011 Toronto Star: Atkinson Fellowship
- 2011 CTV: First Nations Child Welfare and Education (AFN)
- 2011 The Globe and Mail: First Nations Child Welfare and Education (AFN)
- 2011 Toronto Star: Risks to First Nations Students Attending School Away from Home
- 2011 CBC the Current: Shannen's Dream
- 2011 CKVU radio: Shannen's Dream
- 2011 Toronto Star: Aboriginal Child Welfare Summit
- 2011 National Post: letter to the Editor on Child Welfare
- 2011 CBC Radio: Child Welfare Northwest Territory
- 2011 CBC Radio: FN children's equity as an election issue
- 2011 Global Television and APTN: Aboriginal Achievement Awards
- 2011 APTN: Child Welfare Tribunal Rules
- 2011 APTN Investigates: Child Welfare Tribunal
- 2011 APTN In Focus: Jordan's Principle
- 2010 CBC Radio: Shannen's Dream
- 2010 CTV Powerplay: Shannen's Dream
- 2010 Aboriginal Peoples Television Network: *Sisters in Spirit*
- 2010 Aboriginal Peoples Television Network, In Focus: *Child Welfare*
- 2010 Caama Radio, Alice Springs, Australia: *Human Rights Tribunal*
- 2010 CBC Sunday Edition: *Human Rights Tribunal*
- 2010 CBC The Current: *Native Child Welfare*
- 2010 Aboriginal Peoples Television Network: *First Nations Child Welfare Tribunal*
- 2010 CBC radio, Yukon Territory: *First Nations Child Welfare Tribunal*
- 2009 Toronto Star: *Caring Across Boundaries Photography Exhibit*
- 2009 CBC The Current: *Jordan's Principle*
- 2009 Toronto Star: *Atkinson Social Justice Fellowship*
- 2009 Toronto Star: Shortage of Funds: Surplus of Suffering
- 2009 CBC radio: Yukon Territory: *First Nations Child Welfare Tribunal*

- 2009 Aboriginal Peoples Television Network: *First Nations Gala*
- 2009 CHOU radio: *Canadian Human Rights Tribunal*
- 2009 The Aboriginal Peoples Television Network: *Canadian Human Rights Tribunal*
- 2009 The Devoir: *First Nations Child Welfare*
- 2009 The Courier Mail, Queensland: *First Nations Child Welfare*
- 2009 Contact, Aboriginal Peoples Television Network-*Child and Family Services*
- 2009 Globe and Mail: *Federal Budget*
- 2009 Aboriginal Peoples Television Network: *Is this our Canada? project*
- 2008 CBC radio: *First Nations Child Welfare Tribunal*
- 2008 CBC radio: *Dr. PH Bryce and Cindy Blackstock*
- 2008 Aboriginal Peoples Television Network: *Canadian Human Rights Complaint*
- 2008 Globe and Mail: *Child Welfare in BC*
- 2008 The Australian: ACWA Conference
- 2008 Indigenous radio-Northern Territory, Australia
- 2008 APTN: *Human Rights Case in Child Welfare*
- 2008 CBC news: *Attawapiskat School*
- 2008 APTN: Nomination for International Children's Peace Prize
- 2008 Maclean's Magazine: *First Nations child welfare*
- 2008 Victoria Times Colonist: *Jordan's Principle*
- 2008 Aboriginal Peoples Television Network: *Jordan's Principle*
- 2007 Australian Broadcasting Network (ABC): *Jordan's Principle*
- 2007 Te Ao Hou: The Maori Magazine: *Human Rights Complaint and Jordan's Principle*
- 2007 CBC news: *Manitoba Child Welfare*
- 2007 CBC news: *Jordan's Principle CMAJ editorial*
- 2007 Globe and Mail: *Jordan's Principle CMAJ editorial*
- 2007 Edmonton Sun: *Jordan's Principle CMAJ editorial*
- 2007 Belleville Intelligencer Newspaper: *First Nations child welfare*
- 2007 Press conference: Launch of the First Nations family and community institute in Saskatchewan, Saskatoon
- 2007 CTV news: *Launch of First Nations family and community institute in Saskatchewan*
- 2007 CBC radio: *Many Hands One Dream*
- 2007 Aboriginal Peoples Television Network: *Jordan's Principle tabled in the House of Commons*
- 2007 News conference- House of Commons, Canada: *Jordan's Principle*
- 2007 Aboriginal Peoples Television Network: *Norway House Cree Nation and Jordan's Principle*
- 2007 CBC radio, Winnipeg: *Norway House Cree Nation and Jordan's Principle*
- 2007 News conference, House of Commons, Canada: *Human Rights Complaint*
- 2007 CBC radio, Montreal: *Human Rights Complaint*
- 2007 Aboriginal Peoples Television Network: *Human Rights Complaint*
- 2006 Aboriginal Peoples Television Network:
Contact: Aboriginal child welfare
- 2005 CBC Television:
Adoption of Aboriginal children
- 2005 CBC Radio:
Reconciliation in Child Welfare

2005	Global Television Network: <i>Reconciliation in Child Welfare</i>
2005	Aboriginal Peoples Television Network: Reconciliation in Child Welfare

COMMUNITY WORK AND PROFESSIONAL MEMBERSHIPS (22)

2020-Present	Member, Leadership Council of Global Systemic Racism Working Group
2020-Present	Member, First Nations Leadership Council, funding technical table
2018-2020	Interim Board Member: 60's scoop Foundation
2015-Present	Chair of Reconciliation Historical Plaque Working Group, Beechwood Cemetery
2016-2017	Juror, Samara Everyday Political Citizen Youth Awards
2016-Present	Member, IAM Committee, McGill School of Social Work
2015-2017	Advisory Board Member, Canadian Difference
2015-2018	Member, City of Winnipeg, Indigenous Advisory Circle
2014-Present	Social Worker (provisional), Alberta Association of Social Workers
2009-Present	Member, Ontario Association of Social Workers
2014-2018	Board Member, Federation of the Humanities and Social Sciences
2014-2018	Chairperson, Equity Committee, Federation of the Humanities and Social Sciences
2011-Present	Member, Indigenous Bar Association
2014-Present	Member, BC Civil Liberties Association
2014-Present	Member, International Commission of Jurists Canada
2009-2014	Member, NGO Group on the United Nations Convention on the Rights of the Child Indigenous Sub Group
2005-2009	Co-convener, NGO Group on the United Nations Convention on the Rights of the Child Indigenous Sub Group
2006-2008	Board Member, Canadian Education Association
2005-2008	Board Member, Boys and Girls Clubs of Canada
2005-2006	Member, Youth Engagement Ethical Guidelines Sub Group
2004-2005	Board Member, Canadian Coalition of the Rights of the Child
2004-2014	Member, NGO Group, Convention on the United Nations Rights of the Child

This Exhibit "B" to the Affidavit of Cindy
Blackstock affirmed before me this 5th
day of September 2025



A Commissioner for taking Affidavits etc.

Sarah Clarke
LSO #57377M

Concerns with ISC's Compliance with CHRT Orders on Jordan's Principle Updated April 2021



First Nations Child & Family
Caring Society of Canada

www.fncaringsociety.com



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Immediate Remedies

The Caring Society has identified the following remedies that ISC can immediately undertake to address often longstanding concerns identified in this document:

1. Communicate to Focal Points and all staff that the normative standard cannot be used as sole grounds to deny a request or decrease the terms of a previously approved request. Denial letters to families must not reference the normative standard as the sole reason for denial.
2. ISC consult the Privacy Commissioner for feedback on its procedure for data collection and the privacy rights of children and families. This includes feedback on the request form and GC Case Management System.
3. ISC work with the Caring Society to undertake training for all focal points to properly and proactively identify urgent cases. Forms should be updated to include a mandatory and obvious “yes” or “no” box in regards to whether the case is urgent.
4. Communicate to all regions ISC's commitment to capital costs, with reference to the terms provided by Dr. Valerie Gideon in her testimony before the Tribunal in May 2019.
5. ISC provide an update to the Caring Society on the Clinical Case Conferencing Strategy. The Caring Society provided feedback in May 2020.
6. In consideration of the risks associated with changes to living arrangements and service providers, ISC to seek authority to extend Jordan's Principle past the age of majority to prevent the destabilization of care during the COVID-19 pandemic.
7. ISC provide an update on the request forms, specifically committing that it is the responsibility of focal points and 24-hour Call Centre staff to complete the forms, not families.

1. Substantive Equality

- a. ISC's approach puts the onus of proving substantive equality on requesters. April through June 2020, members of the Jordan's Principle Oversight Committee (JPOC) and the Jordan's Principle Action Table (JPAT), were invited to provide feedback on ISC's request (intake) forms for individual and group requests. Along with many other points of feedback, including the length and inaccessibility of the forms, the Caring Society flagged that the forms require the requester to provide detailed information about how substantive equality applies. While the Caring Society and others were clear in their feedback of these forms, especially in relation to substantive equality, it has been a year and to our knowledge, the forms have not yet been completed.
- b. The Caring Society continues to stress that a substantive equality analysis does not need to be applied when: i) it is clear and obvious on the facts that substantive equality applies (e.g.: a former child in care struggling with mental health issues; a community that does not have potable water, etc.) or ii) there is a clear service need (e.g.: child needing medical equipment to breathe). The Caring Society maintains that it is ISC's responsibility to carry out a substantive equality analysis when required. The substantive equality lens needs to be applied at every stage of requests, from the time the requester contacts ISC until the end of the request when the child receives the service and it is paid for. For example, substantive equality (the economic circumstance of families) ought to be made a priority in the turnaround time for reimbursing families for out-of-pocket expenses.



The Caring Society was notified by a First Nation who placed requests for an in-community land-based education program and an off-reserve wrap-around after school program. The First Nation is a remote, northern community in British Columbia facing multigenerational trauma resulting from residential schools and erosion of culture/language due to resource extraction. The First Nation does not have a high school and all children in the community must relocate to an urban centre 400km away to complete Grades 10-12. The community is taking steps to ensure that youth have the opportunity to complete high school in the community and that youth who do relocate have the supports in place to ensure they are safe. Both requests were denied partly on the basis of substantive equality despite the evidence being clear and obvious that substantive equality does apply [see also 9(b) and 15(c)].

In August 2020, the Caring Society was contacted by a family whose child had been in a serious automobile collision in which the child sustained a complete spinal cord injury resulting in tetraplegia. The child's circle of care evaluated the family's home to determine what home modifications were required for the child to be able to safely, hygienically and comfortably. The request was placed to the Ontario region for "bare minimum" home modifications that would allow the child to live at home. The request was denied in April 2020 because the "request does not have sufficient information to determine that this product/service/support should be provided to ensure substantive equality" and "the supporting documentation provided with the request does not sufficiently link the requested product/service/support to the identified needs of the child." Instead, ISC funded the child to live in a hotel upon discharge from the hospital. It is unfathomable that ISC was not able to connect the needs of a child with a spinal cord injury to the need for home modifications. It is even more disconcerting that the solution was to fund the child to stay in a hotel in the midst the COVID-19 pandemic when those with spinal cord injuries are predisposed to respiratory issues. The Caring Society continues to work with this young person and their family with ongoing challenges with ISC [see also 2(e), 4(d), 6(b), 7(d) and 24(b)].

- c. The Caring Society continues to see a pattern of Focal Points asking parents for notes from professionals (e.g., family doctor, counsellor, etc.) to show that substantive equality applies. At the same time, Canada seems to disregard or not accept as legitimate, extensive explanations directly from parents and those same professionals on how substantive equality applies.

In August 2020, the Caring Society was contacted by a social worker in a Neo-natal Intensive Care Unit in BC. She was working with a single mother who had given birth to a baby who experienced significant brain injury during delivery and would require full care for the rest of life. The mother wanted to bring her baby home and the social worker was unclear how long the baby would survive. The request included respite costs for the grandmother to stay with her to assist as the mother also has toddler twins. The request also included a bus pass and rental costs so the mother could move the family to a larger space that was mould-free (their current apartment was so bad it was set for demolition). The request was denied as the region felt there were no grounds for substantive equality, despite the need being clear and obvious as well as numerous letters of support from treating professionals.

- d. There is evidence that ISC's failure to take steps to determine substantive equality has resulted in delayed determinations. Not assisting requesters in showing how substantive equality applies may also be a contributing factor for the requests that have not been determined.
- e. Despite Jordan's Principle being a substantive equality rule, data indicates that the majority of requests are for services and supports within the normative standard. In August 2020, ISC provided data that, among other things, indicated that in Fiscal Year 2019-2020, 67 percent of individual requests and 87 percent of group requests were within normative standard. In keeping with the best interests of children, ISC ought to be working proactively to address those requested items that are within normative standard so that families do not have to place a Jordan's Principle request for supports that all other children receive.



Possible Remedies:

- f. Given ISC's colonial practices and policies that have harmed and continue to cause harm to First Nations communities, Focal Points should begin with the assumption that substantive equality will apply in all cases. This means that the burden is on ISC to demonstrate why substantive equality does not apply.
- g. ISC needs to continue to ensure all staff working on the implementation of Jordan's Principle, including policy, finance and the staff at the national office, have a clear understanding of substantive equality through regular training and ongoing follow-up. This is especially important given the turnover rates on Regional Focal Point teams. ISC needs to provide guidance on when it is unnecessary to collect information on substantive equality, when to apply the substantive equality analysis, and to ensure that these policies are consistent across all provinces and territories.
- h. In cases where the request is denied on other grounds (i.e. not medically necessary), the Focal Point can then undertake a substantive equality analysis to determine whether the service should be provided on this basis – keeping in mind that the burden rests on ISC.
- i. It should also be clear that the burden to prove “substantive equality does not apply” rests with ISC. If, after a thorough analysis of the information provided, the Focal Point determines that substantive equality does not apply, it is the responsibility of ISC to demonstrate, clearly, the reasoning behind the decision.
- j. ISC needs to analyze information including family history, geographic location, etc. for substantive equality issues. Families may not flag or frame this information in terms of substantive equality and ISC needs to be alert to their own responsibility to interpret the material through a substantive equality lens. Further, if a request is denied, it is insufficient to rely on boiler plate language and any denial letters must have clear information and reasoning as to why the request is being denied so that a requester has sufficient information to appeal.

Progress to date:

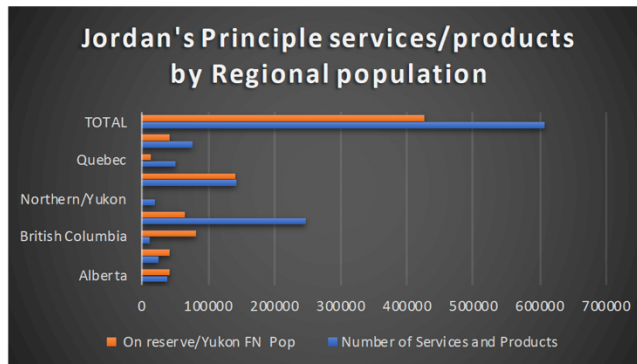
ISC created a document outlining substantive equality, including questions to assist Focal Points in applying a substantive equality lens. All Focal Points have this document which is part of the Standard Operating Procedures (“SOP’s”) and have attended training on the document in November 2018, June 2019 and November 2019. At the AFN’s March 2021 Jordan’s Principle Virtual Gathering, there was a session on Substantive Equality. We are unclear if a representative from each ISC region was required to attend that session and how the information was passed along to all ISC staff working on Jordan’s Principle requests.

Although there are clearer guidelines regarding substantive equality and its application, the Caring Society remains unclear as to whether or not Focal Points are actually applying this lens to requests, and/or have procedures in place to ensure all staff working on Jordan’s Principle, including new staff and those in finance and policy, are trained on substantive equality. Following a request through the CHRT for ISC’s numbers of approved requests, the Caring Society created a chart (see Table 1 below) with per capita calculations for approved Jordan’s Principle services/products by region. The numbers appear to be low for many regions. Ontario, for example, which is demographically similar to Manitoba, has 1 service/product per person versus Manitoba at 4. The Caring Society believes that the low per capita rates in some regions could be partly due to ISC’s misapplication of substantive equality. Canada has not shown reasonable evidence that the regions with low capita rates have fewer children in need. In response to the Caring Society’s table below, ISC did provide a presentation on the per capita rates at the September 2020 JPOC meeting.



Jordan's Principle services/ products per capita by region (May 31, 2020)

Region	Number of Services and Products	On reserve/Yukon FN Pop	Per Capita services/products
Alberta	37845	41804	0.9
Atlantic	24471	41837	0.58
British Columbia	11023	81326	0.135
Manitoba	246344	64510	3.88
Northern/Yukon	19276		
Ontario	142367	140608	1.01
Quebec	50208	13464	3.72
Saskatchewan	75557	41684	1.8
TOTAL	607091	425,233	1.42



(Table 1: Jordan's Principle Service/Products per capita by Region)

2. Best Interests

- We remain concerned that the best interests of children are not always being considered when Focal Points gather information from families and Service Coordinators on substantive equality and in making their decisions.
- As outlined in the SOP's, ISC has made a commitment to upholding the Touchstones of Hope principles including self-determination. Self-determination uplifts First Nations communities and families as the decision makers in deciding what is best for their children and families. Despite their stated commitment to Touchstones, ISC continues to question the capacity of First Nations families to determine their own best interests.



In May-June 2020, the Caring Society brought to ISC's attention difficulties a service provider was experiencing in BC. Staff from the Caring Society participated in a call with ISC Headquarters and the BC Region on June 3, 2020, and had further discussions with ISC Headquarters on September 25, 2020. ISC BC Region maintains that the service provider is not acting in the best interests of children. The service provider provided ISC documentation from two communities, the community health nurse, medical doctors and other health/education professionals indicating the service provider acts in an ethical manner that upholds the best interests of children. While the BC region has stated that the service provider is benefitting monetarily by recommending and providing the service and is therefore in a "conflict of interest", there has been no clear definition set forward on the parameters of "conflict of interest" in the CHRT rulings nor the SOP's. One of the community letters of support echoes what other communities have said and what the Caring Society has been flagging for ISC, that many communities are "located in a rural area with chronic shortages of service providers, mixed with poverty, and transportation challenges". This results in a situation where often the only professionals in a community to recommend the service are also the only ones available to provide the service. Professional colleges prohibit professionals from providing a service that a client does not require. On the balance, ISC must operate from the standpoint that service providers, like families and communities, operate in the best interests of the child. While professional colleges do have regulations prohibiting professionals from being in a conflict of interest, ISC must consider the reality of First Nations communities and the ways that existing institutions (i.e. community health centers) work to safeguard the best interests of the child [see also 2(j) and 8(c)].

In this case, the service provider contacted their professional college to ensure their compliance with professional regulations. The service provider indicated to the Caring Society that their professional college assured them that they are acting in accordance with their professional regulations.

- c. Further to the example in 2(b), the letters of support for the service provider indicated that the service provider had built relationships with the children, families and communities they have been serving since 2016, and are now considered a culturally safe service provider. One of the cornerstones of the Touchstones of Hope movement is building safe spaces to allow relationship building to occur. It can be challenging for communities to feel safe amidst mainstream service providers and this needs to be considered by ISC as an issue of substantive equality, especially given the lack of service providers in remote First Nations communities to begin with.
- d. Another example of how the the Touchstones of Hope apply to Jordan's Principle is in regards to a holistic approach. Applying a holistic approach means considering the best interests of the child in relation to the wellbeing of the entire family when reviewing Jordan's Principle cases. This is especially the case if there are multiple children in the family, the child has chronic needs (i.e. a diagnosis that is unlikely to change) and/or the child has complex needs (will reasonably require multiple supports, products or services).

As stated in 1(c), ISC denied a request for home modifications for a child with complex needs that would allow her to reside at home with her family. It is not clear how, if at all, ISC interpreted what was in the child's best interest, as the child was left to live in a hotel upon hospital discharge. Not only did this pose an increased risk of the child contracting COVID-19, it also meant shuttling back and forth from the hotel to the family home so that the child could maintain family life.



In October 2020, the family placed a request for an interim housing solution for the child and the siblings while the home was undergoing modifications which would displace the family. This interim housing solution was proposed as means of allowing the child, who was still residing at the hotel, to reside safely with family while work on the permanent residence was underway. The Ontario region engaged in administrative procedures by having at least two meetings to discuss the request rather than working proactively with the family and circle of care. The request from the family was for supports to winterize a trailer they already owned. It was suggested by ISC that tarps and straw would be sufficient in doing this. It was only when the Caring Society and the child's circle of care indicated to HQ that this was not in keeping with the best interests of all the children in the family did ON region take proactive steps to work with the family to support winterizing solutions that were both safe and hygienic.

ISC has consistently failed to consider the chronic and complex needs of this child. In November 2020, a further request for home modifications was submitted that would allow the child to visit and potentially stay at home sooner while the family waited for the entirety of the home modifications to be completed. The contractor indicated that this would allow the child to visit home at least 5 months sooner than if this particular home modification was not done. The family and circle of care had made several attempts to find an interim housing solution (i.e. accessible trailer) that would allow the child to live close to home in a manner that was consistent with COVID-19 public health protocols (i.e. limit contact to within the household). The request was denied as the "child is being provided with safe, temporary accessible lodging at hotel and home is being renovated in order to support her long-term accessibility needs." The decision demonstrates failure consider the best interests of the child in a meaningful sense. Health professionals involved in the child's circle of care indicated that COVID-19 reasonably poses harm to those with spinal cord injuries given their predisposition to respiratory issues and indicated that residing in a hotel increases risk of the child contacting COVID-19. Furthermore, the child, and the child's circle of care and family consistently indicated that the child feels unsafe and fearful for their wellbeing residing in a hotel. The child's circle of care noted a deterioration in the child's mental wellbeing which is associated with the child's isolation at the hotel.

When the Caring Society raised concerns with how ISC arrived at the conclusion of denial, ISC required a meeting with the child's circle of care to further understand the child's needs, despite the fact that the family and circle of care already furnished ISC with ample documentation and recommendations. At this meeting, ISC suggested that the child could forgo the hotel room in favour of residing in the one accessible room at the home in the midst of home modifications. When the child's circle of care indicated that the child would not have access to hygiene supports and would not have space to conduct the therapies at home, ISC suggested the child could make use of a local YMCA for hygiene purposes. Again, it is not clear how ISC considered the best interests of the child when engaging in administrative delays and making such suggestions [see also 1(c), 4(a), 6(a), 7(b) and 24(b)].

- e. Further, the Caring Society has concerns about ISC's practice of requiring families to renew or reapply for already approved services. The Caring Society has not been made aware of any maximum approval periods (including in the SOPs), however we have seen many instances where requesters are being asked to re-submit documentation for the same service even if the professional has recommended the service for longer or the professional does not recommend an end date. If a service or support is recommended by a professional for a year, for example, and ISC only approves 6 months of the request, the onus is on ISC to ensure that services are not delayed to the child for administrative reasons. It is taxing for families to have to provide all of the information again, especially if no information has changed and the child's needs have not changed.



This practice is particularly taxing on families of children with disabilities and special needs, including special health needs, who typically require multiple services over a long period of time. The requirement by ISC to “reapply” on a regular basis is inconsistent with the lived realities of children with disabilities and special needs and places an additional burden on families who are often stretched with caregiving responsibilities. ISC needs to consider how this practice may discriminate against children who do not have discrete or short-term needs.

In March 2021, the Caring Society was notified by a family in BC who had to “reapply” for Jordan’s Principle supports for their child’s speech language pathology. The family worked with a service coordinator to reapply beginning in December 2020 as it was indicated that “funding” would be finished by mid-February 2021. It was also indicated that a progress report and a quote for these supports would be required when making the request. In addition to the additional burdensome administrative procedures, this process to reapply was exasperated by the First Nations Health Authority (FNHA) no longer be providing the Jordan’s Principle service navigation function as of March 2021.

- f. The Caring Society position is that Canada’s decision to apply for judicial review of the CHRT decision on eligibility for Jordan’s Principle overrides the best interests of children, especially in life-altering cases (see also section 10).

Possible Remedies:

- g. ISC needs to develop and implement training for Focal Points on the best interests of the child (from an Indigenous perspective) and establish mechanisms to ensure that all decisions and processes used for Jordan’s Principle cases meet the best interests test.
- h. ISC needs to develop and train Focal Points on procedures for urgent/life-altering cases and clarify how these cases are identified as urgent and/or time sensitive. For example, even if the family or service coordinator does not specify the request as urgent, Focal Points must take the initiative to consider urgency and mark the request accordingly. Forms should be altered to require Focal Points (or Call Centre staff) to clearly mark the request as urgent or not urgent.
- i. All staff working on Jordan’s Principle must take Touchstones of Hope training.
- j. ISC must develop procedures that uphold the best interests of children and the realities of First Nations communities when determining if a service provider is in a “conflict of interest.” At the February 2021 JPOC meeting, ISC confirmed that when there is a direct link between the professional recommending the service and the professional conducting the service, the department will typically require a third-party support letter. As discussed above, this practice is inconsistent with the realities of many First Nations families requires immediate attention.
- k. ISC must not apply maximum approval periods to requested supports, particularly when the recommending professional does not indicate that there is an end date. Further, ISC must work proactively with families with children who do not have discrete, short term needs and who will require ongoing support to ensure that administrative procedures do not delay or disrupt receipt of service.

Progress to date:

The Caring Society provided training on the Touchstones of Hope in 2017 and in 2020, Dr. Blackstock proposed additional topics for training.



While ISC has established mechanisms for tracking urgent cases in its database, it is clear that gaps remain as the Caring Society continues to escalate urgent cases that have not been properly identified.

3. CHRT Time Frames

- a. The Caring Society remains concerned that CHRT time frames for determining requests are not being followed by many ISC regions. While ISC provides updated data at the JPOC meetings, it is clear that the data does not provide the full picture. For example, as ISC states in its data tables, the numbers do not reflect cases that are outstanding.
- b. The Caring Society also questions ISC's interpretation of the CHRT orders. 2017 CHRT 35 states: "The initial evaluation and a determination of requests by individuals shall be made within 48 hours of the **initial contact** for a service request [...] The initial evaluation and determination of requests for groups shall be made within one week of the **initial contact** for a service request" (2.A.ii.). The ruling goes on to say:

"For non-urgent cases in which this information cannot be obtained within the 48-hour time frame, representatives from the Government of Canada will work with the requester in order to obtain the needed information so that the determination can be made as close to the 48-hour time frame as possible. In any event, once representatives from the Government of Canada have obtained the necessary information, a determination will be made within 12 hours for urgent cases, and 48 hours for non-urgent cases"

The latter paragraph seems to have become the norm at ISC versus staying true to the CHRT's ruling. Feedback received from families and Service Coordinators indicates that there is often a gap between when the request is submitted and Focal Points follow-up to request additional information, and that ISC does not consider the clock to start until Focal Points are satisfied with the information provided. This practice does not reflect with the spirit of the CHRT orders, in which 48-hour (or 12-hour for urgent cases) starts when the request is submitted [see also section 4.]

- c. In January and February 2021, the Caring Society carried out research conversations with Service Coordinators in the Atlantic for a project on Jordan's Principle and children with disabilities and special needs. Concerns about the turnaround time for requests were raised in every instance. Communities also reported being told that "ISC is only dealing with COVID related requests right now." Service Coordinators said that it was taking weeks to hear back about requests not related to COVID. Service Coordinators expressed concerns about having no recourse or options when timelines were not met, even in cases where families were waiting for months with no decision.

Service Coordinators provided information about a few cases still awaiting a decision. When the Caring Society followed up about these requests, HQ indicated that although the requests were outstanding, the timeline was not as long as indicated by Service Coordinators. One explanation for this could be that Service Coordinators interpret the timeframe as beginning when they submit a request and that ISC starts the clock when Focal Points determine they have all the necessary information. Unfortunately, the Caring Society has heard that there is often lag time between when the request is submitted and when Focal Points request further information. The burden of multiple information requests by ISC is felt by children who are left waiting for a needed service [see also section 4].



- d. In March 2021, a family contacted the Caring Society regarding the delays that were experiencing with their Jordan's Principle request. The request included medically necessary classroom fans for their child who experiences serious anaphylactic allergies. The request was placed in November 2020. Nothing was heard back from ISC other than a response indicating that there were delays due to COVID-19. It was not until March 2021 that the request was heard at HQ amounting to a delay of four months. This meant that the child went through nearly half the school year without the fans, which placed the child in great danger. The Caring Society does not know if ISC marked the request as urgent, even though the family and child's circle of care were clear of the reasonable harm that could come to the child if the fans were not provided [see also 7(a)].
- e. Concerns about ISC not respecting CHRT timelines were also raised by community members during presentations given by the Caring Society in February 2021 and March 2021.

Possible Remedies:

- f. The Caring Society has previously recommended a triaged approach in all regions to ensure that urgent individual and group requests are prioritized and that the remaining requests are processed in order to be compliant with the CHRT timeframes.
- g. In February 2021, Ontario region indicated that the team is working weekends to reduce the accumulation of requests. The Ontario region expressed that while this is not an ideal situation, it does demonstrate the dedication and commitment of the region. While the Caring Society does not doubt the dedication of individual Focal Points, it is not sufficient to overcome the serious, systemic issues that families face when accessing Jordan's Principle. The Caring Society provided recommendations to remedy the significant and longstanding delays in the Ontario region. Most of the recommendations relate to administrative practices that are in many cases not necessary and not in keeping with the CHRT orders, such as: multiple information requests and follow-up questions from Focal Points, over-riding professional treatment plans and requiring multiple letters of support/documentation, and requiring families to resubmit requests for the same supports when nothing in the child's context has changed. As of April 2021, the Ontario region has yet to respond to the recommendations [see also sections 4, 5 and 8].

Progress to date:

While some regions continue to have high success rates in staying within the CHRT timeframes, other regions continue to have challenges in meeting the needs of children and families in a timely way.

4. Information Requests

- a. The Caring Society continues to see issues with Focal Points not carefully reading submissions, invoices or not checking their files for questions they have relating to requests, which delays services to children and reimbursements.



In the case of the child with complex needs including home modifications, the family submitted a request for additional home modifications in February 2021. The request was for the removal of a cistern that was needed in order for previously approved home modifications to proceed. As part of these previous home modification requests, the child's circle of care included contractor drawings which showed that the only option was to remove the cistern. ISC Focal Points failed to include these drawings in the package that was sent to HQ for review and as a result the request was denied. It was only when the child's circle of care asked if the drawings were part of the request package that the Focal Points corrected the error. The request was re-evaluated and approved, but there were significant delays and it is concerning that ISC failed to carefully review the wealth of documentation and supporting letters that had been already furnished to the department [see also 1(c), 2(d), 6(a), 7(b) and 24(b)].

- b. Given the turnover rates of the Focal Point teams and the expansion of Focal Point teams, the Caring Society stresses the importance of continuation of care and ensuring information is passed on in a timely manner.
- c. We still see that some Focal Points are not asking for all relevant information at one time. The lack of complete information requests and delays between information requests mean that the child's needs are not being responded to within the CHRT timeframes.
- d. There have been concerns from requesters and service coordinators that Focal Points are asking for invasive information from families, including in-depth information regarding their personal and/or financial situations as well as a child's diagnoses which is not always needed [see also 8(c)]. The Caring Society's review of the Jordan's Principle request forms flagged many questions/requests for information that seem to go beyond the scope of the CHRT, beyond what seems reasonable to be asking from families and children and brings privacy concerns to the forefront [see also section 6].
- e. The Caring Society has continued to highlight the importance of ensuring forms are clear, simple, and accessible to a broad range of literacy levels.
- f. We reiterate the importance of ensuring that new Focal Points have training on how to use the GC Case Management system¹ and other internal processes as soon as they start and that existing staff have ongoing support in using the system.

In October 2021, the Caring Society was contacted by a family who had placed an orthodontic request for their child about a year earlier and had not heard back with a determination despite following up with the Call Centre multiple times. It later came to light that a determination had been reached in March 2021, but either due to a GC Case Management system glitch or some other oversight the determination was never communicated to the family. While this determination was reached far outside CHRT-compliant timeframes [see also section 3], it was exasperated by this "systems glitch."

Possible Remedies:

- g. Focal Points need to carefully read all material submitted to them and only ask for additional information if it is required to determine the case.
- h. Requests for information from Focal Points should be made at one time and not staggered so as to avoid time delays. Focal Points must review all the information on file before requesting any additional information to ensure all questions are sent at once.

¹ Also referred to as Synergy in Action (SIA) in previous version of this document.



- i. In those cases where there have been multiple approved requests, Focal Points need to carefully read previously furnished documentation and collate information without continuing to ask families to re-supply information.
- j. ISC needs to take measures to ensure its information gathering is absolutely necessary to make a determination of the “requesters’ needs” and does not amount to an administrative procedure that delays services to children. More specifically, ISC must comply with 2017 CHRT 35 (amended orders):
 - i. [3]b.ii. “Where clinical case conferencing is reasonably necessary to understand a First Nation’s child’s clinical needs, and where professionals with relevant expertise are already involved in the First Nations child’s case, those are the professionals that must be consulted.” (p. 2)
 - ii. [135]B.iii. “... Canada may only engage in clinical case conferencing with professionals with relevant competence and training before the recommended service is approved and funding is provided to the extent that such consultations are reasonably necessary to determine the requester’s clinical needs. Where professionals with relevant competence and training are already involved in a First Nations child’s case, Canada will consult those professionals and will only involve other professionals to the extent that those professionals already involved cannot provide the necessary clinical information. Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified (p. 5-6)
 - iii. 2.A.iii. “Canada shall cease imposing service delays due to administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided.” (p.8)
- k. Focal Points should be required to fill out paperwork for individuals submitting requests as well as provide support to groups when filling out paperwork unless otherwise specified by the individual or group, particularly given the uneven literacy levels, and access to computers as well as reliable internet among applicants.
- l. It must be clearly articulated to Focal Points that they cannot unilaterally decide what information is relevant and/or valid. As an example, it came to the Caring Society’s attention in May 2020 that ISC changed its referral policy for physiotherapy and occupational therapy. Previously, referrals were accepted for these services from special education teachers (learner support teachers) for children with high needs. ISC changed the policy requiring referral for therapy from a doctor or nurse practitioner. This has led to delays in medical treatment as many of the children live in remote communities with limited access to doctors or nurse practitioners. Families then have to find transportation to see a family doctor. In a lot of cases, families have to see a doctor who is outside the child’s circle of care as many do not have access to a consistent family doctor. Family doctors often see the child for an acute condition (because many children have complex needs) and sometimes assess the most urgent and pressing issue. While doctors assess children’s development and may refer the child for therapy, they do not have as frequent contact as special education teachers. Special education teachers have frequent and consistent contact with the child and are also trained to assess children’s development. The past protocol of allowing special education teachers to make referrals ensured children were assessed quickly, allowing immediate medical treatment. The Caring Society continues to hear from schools, families and professionals in BC, AB and SK indicating that they are required to submit diagnoses and/or referrals from “third-party” professionals.



- m. All ISC forms, operating manuals and communications must be clear and written in plain language. Not only will this be accessible by everyone accessing Jordan's Principle, but it will support Focal Points in understanding how to move away from using government language. Plain language documents will support Focal Points in using language that is accessible to everyone. In addition, provisions must be made in order to support First Nations community members whose first language is not English.
- n. Focal Points need to understand that some families making requests will be unfamiliar with administrative and/or bureaucratic processes and paperwork and, as such, will require assistance. Due to ISC's colonial legacy, some families do not trust government processes. Direct work with families requires a different approach than Focal Points may be used to if they are most accustomed to lateral exchange with government colleagues/inter-office communication.

Progress to date:

We appreciate the efforts that ISC has been making to implement the GC Case Management system which aims to collect and store information data relating to Jordan's Principle requests (see also section 6). We encourage ISC to ensure that all ISC employees are properly and adequately trained on how to use GC Case in an efficient and timely way to ensure there are no delays in services for children and families due to administrative delays.

5. Referrals to Headquarters

- a. As continuously stated at JPOC, and as acknowledged by ISC, referrals to national office must be forwarded by regions in a timely way so as to ensure CHRT compliant resolution of cases once requests have been sent for review.
- b. It is unclear whether Focal Points forward the entire package of information to Headquarters on referral, or only the information they feel is relevant to the case. In curating the information sent to Headquarters, focal points may exclude relevant details and/or substantive equality information.
- c. The Caring Society is of the understanding that requests for orthodontic services are automatically sent to the national office. Unfortunately, the ISC policy on "non-medical" orthodontic requests is unclear. The Caring Society is aware of numerous cases in which national office has denied orthodontic requests even when supported by a letter from a professional and clear evidence of substantive equality.

We have heard reports of Focal Points using the possibility of "referral to headquarters" as means of encouraging Service Coordinators/families to accept a lesser level of service or more "cost effective" product. For example, we were told about a case in which a Service Coordinator requested renewal of a special education teacher for a child (service that was already approved). The Focal Point said they could not approve the renewal but could approve an education assistant (a position with a lower salary). If the Service Coordinator wanted to push for the special education teacher, it would be sent to the national office – implying that if the request was sent to the national office, it would probably be denied, so it would be better to accept the education assistant. Other responses Service Coordinators have heard from national include "I can't give you the service you requested for this family, but I can give you this one instead" and "This service is very expensive, can you find something cheaper?"

Costing exercises such as these demonstrate an ongoing colonial tactic where First Nations families and communities are told that it is better to get something than nothing, and points to the continuation of the "old mindset" at ISC, in that the department continues to bargain down needed services and supports.



- d. Related to this, it would appear that ISC is creating arbitrarily standards/caps for requests. For example, Service Coordinators in the Atlantic have been told that National has determined \$600 to be the standard for iPads or laptops. If the requested laptop needed costs \$700, the request will be denied. No information or rationale has been given for the \$600 cap. The standards are unclear and we have been told that ISC will not provide a list or concrete response when asked about where these standards are coming from or how they are being determined.

Possible Remedies:

- e. Although there are now clearer criteria in place for the types of referrals to national office, the CHRT timelines must be followed.
- f. ISC must immediately communicate to all Focal Points and other staff working on Jordan's Principle that imposing a cap on products or services is a violation of the CHRT orders. Determinations must be made on the basis of substantive equality, the best interests of the child, must be needs-based, and account for distinct community circumstances.
- g. As part of the referral process, regions should take proactive steps to determine substantive equality, best interests of the child and cultural appropriateness as per the CHRT orders. The Caring Society continues to see Focal Points failing to understand substantive equality, recommending cases for denial, and escalating to national office. The responsibility to show substantive equality lies with ISC. Focal Points should start with the assumption that substantive equality applies and review the information provided through this lens. If, after a thorough and proper analysis, the Focal Point determines substantive equality does not apply, then they must show why and the reason must be stated in the denial letter so that the requester has adequate information for appeal [see also 1(f) and 2(e)].
- h. If a request is escalated to the national office, Focal Points must provide the full package of information provided by the requester, not only the information that supports the Focal Points recommendation [see also 4(a)].
- i. We encourage continued systematic tracking of reasons why decisions cannot be made at the region including regular identification and solutions to any systemic barriers to CHRT compliance.

Progress to date:

The Caring Society has received differing reports on ISC's short and long-term plans to improve compliance rates for cases referred to national office. At the February 2020 JPOC meeting, it was said that increased ISC staffing is required to ensure that ISC can comply with CHRT timeframes. At the March 12, 2020 meeting however, it was indicated that it is more expedient in terms of self-determination for First Nations to retain control of Jordan's Principle and that it is for this reason that ISC is not looking at increased staffing at a long-term solution. In order to ensure the best interest of First Nations children in receiving services through Jordan's Principle, ISC must ensure that there is adequate staffing in regions and the national office until First Nations communities are in a position (and want to) take over implementation of Jordan's Principle children. It is important that this staffing is done in tandem with other remedies found within this document [see also sections 3, 4 and 8].



The Caring Society continues to stress the importance of ensuring that the priority is services for First Nations children and not what is in the best interest of the government (i.e. the government prefers not to hire more staff, even while acknowledging that more staff are required). As seen in section 2, all staff working on Jordan's Principle, from finance to regional executives must be trained on the CHRT orders including the CHRT timelines and best interests of the child. Further, the Caring Society continues to raise that there must be a long-term solution to bring ISC into compliance with the CHRT timeframes.

6. Privacy Concerns and Data Collection

- a. The Caring Society continues to iterate concerns about the privacy of information provided by families, specifically: 1) what specific policies and procedures are in place to ensure compliance with federal and provincial privacy laws, 2) whether the information being collected is actually needed to determine the request.
- b. In some provinces/territories, it is against the law for non-authorized persons to have access to private information. This is also a matter of dignity and respect. ISC has previously shared that it is following the *Privacy Act* and other internal guidelines, but processes for protecting information appear to vary by region and the actual implementation of the *Act* and guidelines remains unclear [see also 4(d)].
- c. The Caring Society has concerns about the information ISC gathers through its request forms. It is important to distinguish between the information absolutely needed to determine requests through Jordan's Principle versus information collected for data. When ISC sent its current request forms for review in April 2020, the Caring Society indicated concerns that information ISC was collecting was outside of what is needed to make a determination. The Caring Society has not received feedback on the privacy concerns.

In the request for the child with complex needs outlined in 1(c), the request package included extensive medical notes from a nurse practitioner and physician, discharge papers, an occupational therapist assessment, hospital reports, and letters from an occupational therapist, nurse practitioner and physician outlining the required home modifications to ensure the child's safety and hygiene and recommending a home assessment. In the Caring Society's view, the wealth of documents that ISC required shows how invasive the process can be. Furthermore, it is concerning that this detailed and comprehensive package was considered inadequate in supporting an approval on the basis of it being medically necessary, to ensure substantive equality and to safeguard the best interests of the child [see also 1(c), 2(d), 4(a), 7(d) and 24(b)].

- d. In addition, while the GC Case Management system is a positive step toward ensuring continuity of services for children, the Caring Society has ongoing concerns around the data collected and how it is stored and used. There are historical and ongoing issues with data collection and First Nations communities. How does ISC plan to respect OCAP (ownership, control, access, and possession) principles with this data collection?

Possible Remedies:

- e. Whereas ISC relies on internal privacy controls, ISC must consult the Privacy Commissioner for feedback on its procedure for data collection and the privacy rights of children and families rather than solely relying on its internal process.



- f. ISC must publicly share its exact procedures for protecting the privacy rights of children and families in Jordan's Principle cases including ensuring that identifying information is not shared with ISC personnel who are not directly charged with the determination of Jordan's Principle cases. These same procedures must continue to be shared with CCCW and JPOC. Stating that ISC is bound by the *Privacy Act* and other internal guidelines is not sufficient; ISC must detail the processes and procedures that are in place to implement these obligations.
- g. While all Government departments, including ISC, are bound by many privacy laws, the Caring Society is of the understanding that it is the responsibility of the regions to ensure proper handover of personal information. All Focal Points and other ISC staff charged with receiving and determining Jordan's Principle cases must be trained in the GC Case system adequately and in a timely manner and be held accountable for ensuring privacy rights are respected. All regions need to have mechanisms in place to ensure that privacy standards are maintained.
- h. ISC Focal Points must be trained on CHRT orders and in determining what documentation is reasonably necessary to determine a case.

Progress to date:

The Caring Society is still unclear as to whether there are national standardized training programs and mechanisms in place to ensure privacy is maintained for families and groups accessing services under Jordan's Principle.

Given concerns raised previously by the Caring Society around the need for plain language documents, a review of ISC's privacy statement may be needed to ensure the wording is clear and accessible.

7. Lack of a Procedure for Identifying and Responding to Urgent Cases

- a. The Caring Society has ongoing concerns around the process for identifying and responding to urgent cases. Specifically, what processes exist at every level ISC to adequately identify urgent cases and is there an effective monitoring system to ensure that cases are classified as urgent or non-urgent properly?

In October 2020, ISC national office sent the Caring Society the call volume as well as breakdown of types of requests (urgent v. non-urgent, general inquiries v. service request, etc.) from the Jordan's Principle 24/7 Call Centre. It was alarming to see that from February 1, 2018 to October 18, 2020, only 44 requests out of 8,251 were classified as urgent. The extremely small proportion of cases classified as urgent suggests that requests are not being identified and triaged properly.

In March 2021 the Caring Society was contacted by a family who was experiencing a 4-month delay in an urgent and time-sensitive request for required supports for a child with anaphylactic allergies. While it was clear and obvious that this request ought to have been classified as urgent given the reasonable harm that could come to the child if supports were not extended, the delay demonstrates that ISC did not make this connection or failed to effectively monitor the request [see also 3(d)].



- b. In addition to concerns about the Call Centre, some Focal Points are not classifying cases based on urgency either. According to the request forms that ISC sent for review in April 2020, there is not a section on the form to identify an urgent case. An updated request form seen by the Caring Society in November 2020 has the urgent classification section buried on third page of the form. While Focal Points still have a responsibility to identify cases as urgent, the fact that Focal Points are not classifying and identifying urgent cases in a standard and accessible way points to significant systemic gap in both tracking and meeting the needs of children.

For the home modifications for the child with complex needs [1(f)], ISC failed to treat the request in an urgent manner. It is unclear if the child's circle of care flagged the case as urgent, but Focal Points ought to have reasonably concluded that the child was facing irrevocable harm upon discharge from the health facility given her home was inaccessible and unsuitable for her needs. In addition, Focal Points ought to have come to the reasonable conclusion that, given the COVID-19 pandemic, the child needed be at home for safety as per public health protocols and the recommendations of her circle of care. Per 2017 CHRT 35, "in urgent cases where irremediable harm is reasonably foreseeable, immediate action should be taken to put crisis intervention supports in place until an extended response can be developed and implemented" ([3]c.ii.). Focal Points ought to have worked with the child's circle of care to ensure the child was in a safe home until the required home modifications were completed. Instead, the child was placed in a hotel indefinitely (to the best of our knowledge), in the midst of the COVID-19 pandemic and the request was denied [see also, 1(c), 2(d), 4(a), 6(a) and 24(b)].

- c. The Caring Society continues to reiterate its concerns about urgent (and all) cases involving post-majority youth. When urgent requests are denied due to age, what mechanisms exist to ensure young people are connected with other ISC services in a way that responds to the nature of the situation, i.e., the possibility of irrevocable harm? This is especially concerning in cases involving mental health needs and suicidal ideation.

Possible Remedies:

- d. ISC must continue to ensure that both Call Centre staff and Focal Points screen all cases to determine and record whether they meet the criteria for urgent cases (i.e.: any reasonable belief that irrevocable harm may come to a child, time sensitive in nature). Forms should be updated to include a mandatory and obvious "yes" or "no" box in regards to whether the case is urgent. ISC had been engaged with JPOC and JPAT to update the request forms to include a section to indicate the urgency of the request, however has yet to provide an updated request form that includes the section in a manner that is clear and obvious.
- e. Where there is doubt, Focal Points and 24-hour line staffers should default to the urgent classification.
- f. Although ISC has developed a mechanism for tracking urgent cases, it is clear that there remains inconsistencies in how urgent cases are identified and determined. Focal Points must be trained to properly and proactively identify urgent cases.
- g. Until an independent body is put in place for appeals, all appeals sent to the national office should be reviewed and 'triaged' to assess for urgency and time-sensitivity.
- h. Urgent cases involving post-majority youth should be covered by Jordan's Principle until a clear mechanism for collaborating with other government departments in a timely way is established.
- i. While ISC has agreed to extend post-majority supports to youth aging out of care during the COVID-19 pandemic, to our knowledge this support is not being extended to post-majority youth within Jordan's Principle. It is unclear why ISC believes that this provision is in the best interests of youth in CFS care, but not those receiving help through Jordan's Principle.



As one example, the Caring Society was made aware of a young person requiring 24/7 out-of-home care who was set to age out last year (2020). Service Coordinators asked ISC to extend the CFS policy to Jordan's Principle, so that the young person would continue to receive funding. ISC refused, offered no transition plan, and was fully prepared to see the youth evicted at the height of the pandemic. Thankfully the province stepped in and agreed to fund the youth at the same level [see also section 19 on the need for post-majority supports].

At the time of writing, the Caring Society was awaiting ISC's response to another young person with special needs set to age out of Jordan's Principle during the pandemic and requiring further support.

Progress to date:

ISC provides members of JPOC and the CCCW with regular updates on the numbers of urgent cases by province and territory they receive as well as the timeline for processing requests for those cases. ISC has also changed policy so that requests are time stamped in order to ensure requests are processed within the CHRT time frames.

Once a case is sent to the national office for review and determination, ISC has a triage process in place for urgent cases however it is clear that ISC HQ is struggling with the amount of cases coming in as seen by the poor compliance rates shared at JPOC. ISC has acknowledged that the current process is not working and that there is room for improvement. The Caring Society believes that ISC needs to take immediate steps (including fast tracking hiring processes) to ensure there is adequate staffing for cases sent to the national office.

8. Questioning and Over-riding Professional Treatment Plans

- a. We continue to see situations where the recommendations of licensed professionals are questioned or over-ruled by ISC even on appeal, even if the service or support is deemed necessary as part of a child's safety or treatment plan. The Caring Society has serious concerns about ISC staff positioning themselves as having the expertise to override or question professional recommendations.
- b. The practice of over-riding professional recommendations appears to be particularly acute with requests for orthodontic services for substantive equality reasons. In the course of conversations with Service Coordinators in the Atlantic for a project on Jordan's Principle and children with disabilities and special needs, the Caring Society learned of a young person whose family had requested dental work to help combat her depression and severe social anxiety (fueled in part by negative feelings about her appearance). A letter from a registered psychologist was attached to support the request.

The request was denied. When the Service Coordinator assisting the family contacted ISC for information about what could be done to strengthen the request for appeal, ISC gave the example of a child in Ontario who attempted to die by suicide because of their teeth; in that instance, the rationale of mental health was accepted by ISC.

The Service Coordinator explained to the Caring Society that were other children who met with the same psychotherapist about their feelings about their appearance/teeth. However, once the first case was denied (based on the argument of poor self-esteem), families chose not to move forward with applications as they believed they would also be denied, since their children were suffering from similar self-esteem issues.



Despite the above, Atlantic Focal Points continue to send the following advice to Service Coordinators regarding dental requests: "If there are any other supporting documents you can provide, it would greatly strengthen this request. Particularly, if the child has been experiencing any mental health issues that may be affecting her overall well-being that might relate to her need for orthodontics (bullying, lack of self-confidence, etc.). If there's a professional who can provide some support around that, it will help a lot."

In February 2021, Julien Castonguay, A/Executive Director, Jordan's Principle and Inuit Child First Initiative responded to concerns raised by the Caring Society: "There is a lack of consistency in how this information [about orthodontic requests] is communicated to Requestors, and the inference that substantive equality needs to rise to the level of the risk of suicidality in order for an approval is inaccurate. Headquarters will be providing Regional staff with language to utilize when speaking about documentation required. This will avoid unfortunate and incorrect statements and assist with national consistency." The Caring Society followed-up to inquire as to what sort of documentation is required to support a substantive equality request for orthodontic care. To date, no response has been received.

- c. As stated in 1(c), there seems to be a theme of Focal Points delaying Jordan's Principle services for reasons of requiring additional or "better" proof of need. The Caring Society believes this amounts to an administrative delay. Where more information is reasonably necessary to understanding a child's clinical needs, ISC can engage in clinical case conferencing with the licensed professionals already involved in the child's circle of care [see 4(h) for amended 2017 CHRT 35 Orders].

On a call with ISC Headquarters and ISC BC region on June 3, 2020, the BC region expressed that they required licensed professionals to include a diagnosis in order for children to receive the requested services. The Caring Society pointed out that if a treating professional recommends a treatment plan, the role of the Focal Point is to approve or deny the service, not to ask for invasive information pertaining to the child's diagnosis. Per section 6, the Caring Society also has privacy concerns regarding this practice.

- d. At the February 2021 JPOC, ISC indicated that it requires a third-party support letter to support a request when the professional who is recommending the service is also providing the service. Many families live in remote or isolated communities which makes it difficult for families to acquire a third-party support letter. While ISC indicated that it does consider remoteness when it considers asking a family for a third-party letter, it is not clear to the Caring Society if this "consideration" means that letters are not required of families living in remote locations, or how this requirement of additional letters is implemented in ways that do not disrupt or delay service provision to children. A substantive equality lens is required needed in considering families' access to professionals. Further, this process does not consider that professional college bylaws prohibit professionals recommending or conducting services for clients that do not need it. It is unclear to the extent to which ISC has received guidance from professional colleges on this process [see also 2(k) and 4(l)].

In January 2021, the Caring Society was contacted by a family who was experiencing difficulties with Jordan's Principle after placing a request for orthodontic supports. The request was placed in December 2020 and the family did not hear back from ISC for nearly a month. When the family did hear back, it was to indicate that ISC required a "third-party letter of support from a professional within the child's circle of care who can speak to the child's unmet need for orthodontic treatments." ISC also requested the family submit a statement explaining any substantive equality considerations, like financial hardship, as orthodontic treatment is above the normative standard of care. Although the family included the orthodontics treatment plan in the request, the department required a third-party letter as it felt that the orthodontist was going to "benefit." It was only when a family support worker submitted a letter indicating the treatment plan was required and that the family experienced financial hardship did ISC approve the request. The family experienced delays in receiving a determination and also had to engage in administrative procedures in order to meet ISC's administrative requirements.



- e. Further, if ISC has evidence that a service provider is not working toward the best interest of a child or, in a worst-case scenario, causing harm to children, ISC has a responsibility to contact the professional/licensure body and/or the relevant authority. Professional/licensure bodies and relevant authorities have the mandate to conduct site visits and to assess whether or not a service provider is doing what it should be doing in providing safe, high-quality services to children.
- f. We have noticed an increasing pattern whereby ISC denies requests, even on appeal, stating that there are no professional assessments or documentation that links the requested service or support to the child's needs. In most of these cases, the parent or requester has, in fact, provided one or multiple professional letters that meet ISC's policies. When requesters ask what is wrong with the documents provided or what would constitute sufficient documents, there is often no response. These requesters want to provide the necessary information, but they are receiving little or no guidance. Failing to answer families' questions so they can respond with the needed information is an administrative delay and violates the Tribunal's orders. As per 5(h), Focal Points must submit the entire package of information to the national office when they recommend a denial for service.

In September 2020, the Caring Society was contacted by a Service Navigator in ON who was working with a family in submitting a requested for urgently needed home repairs. The request included several pieces of documentation linking the requested items to the needs of the children, including from health and mental health professionals in the family's circle of care. The request was denied on the basis that it "does not ensure substantive equality" and "the supporting documentation provided with the request does not sufficiently link the requested product/service/support to the identified needs of the child." The Service Navigator made multiple attempts to connect with ISC to determine what would constitute sufficient documentation. It was only when the Service Navigator contacted the Caring Society with their concerns and the Caring Society connected with ISC did a Focal Point reach out to the Service Navigator.

- g. The Tribunal has ordered ISC to consider whether a request is being made to ensure culturally relevant service provision. The Caring Society values traditional knowledge, especially in assisting young people with things like mental health. Communities are in the best position to determine how and what this looks like, including costs to support traditional ceremonies. If a denial is given by the Department for traditional ceremonies, the Caring Society would like to know how the decision is made for denials.
- h. The Caring Society continues to flag concerns with BC region's policy of wanting children receiving therapy (i.e. physiotherapy, occupational therapy) to be reassessed every 3 – 6 months in order to verify that the children need continued therapy. Most families have difficulty accessing transportation to get to medical appointments and/or have no consistent family doctor. This creates another barrier for the child to receive the care they need [see also 2(e)].

Possible Remedies:

- i. In cases where the family has submitted a letter from a licensed professional, ISC must clearly indicate why it is asking for further documentation and/or why the letter is insufficient. To ensure that the request is not delayed, ISC should continue to review/process the request on the assumption that further documentation is forthcoming; a final decision can be made pending receipt of the requested information. ISC must also demonstrate an understanding that requiring further documentation may not be feasible for families due to remoteness and/or financial considerations. It is well documented that remote communities do not have access to professionals on a regular basis or at all. Further, many provinces/territories have a fee associated with a doctor's note.



- j. Where more information is reasonably necessary to understand a child's clinical needs and such an action is in the best interests of the child, then ISC must undertake a clinical case conferencing process in which professionals who are already involved with the child's circle of care are consulted.
- k. Focal points and other ISC policy/program staff should not have the authority to over-rule professional recommendations. This authority should be limited to a qualified professional(s) credentialed in the same area, who is prepared to provide a second opinion, can identify that such action is in the best interests of the child and only after a clinical case conferencing process has been completed. There must also be assurances that their assessment of the request will not result in delays for services for the child. In addition, the requester must be notified beforehand that a second opinion is being sought and ISC must articulate clearly why a second opinion is being sought.
- l. While the following example dates back to 2019, we believe it clearly illustrates the importance of respecting the recommendations of qualified professionals already involved in the case, as per the CHRTs order. ISC's requirement of further "proof" in this case led to a significant administrative delay. In July 2019, the Caring Society was notified by a navigator that a request placed for a dental procedure was delayed. The request for a complex dental procedure with anesthesia was submitted on July 9 with a treatment plan from the treating dentist recommending the anesthesia as the procedure was complex. The dentist noted that using anaesthesia meant that the child needs to only undergo one procedure, whereas using other sedation would require her to undergo multiple procedures. Furthermore, the family and medical professional indicated the anaesthesia is the best option due to the child's anxiety about the dental procedure. The request was initially denied as there was no letter from a professional explaining the need for anesthesia. It was indicated that there are "risks associated with general anesthesia, especially for children and for this reason, it is important to have information coming from a health professional explaining why it is necessary." It is unclear if the Focal Point had any qualifications to require this information, nor why the treatment plan from the treating dentist was not sufficient. The request was eventually approved on appeal when a letter from an RN explaining how the child was not cooperative with the dental treatment and the child's anxiety "justified" the need for anaesthesia. Consistent with 8(c), this suggests that cases beyond the normative standard are being flagged as needing additional "proof" of need, even when the treatment plan or request is clearly supported by qualified professionals. Furthermore, it is concerning that ISC did not recognize that the family was in the best place to determine the best interests of their child in this case.
- m. In accordance with the CHRT orders, ISC must consider whether the request is being made, in whole or part, to ensure culturally appropriate service provision for the child or children.
- n. If ISC denies a case because of insufficient documentation, they must clearly articulate what would constitute sufficient and reasonable documentation so that parents are in a position to make an informed appeal.
- o. ISC must develop a process outlining when it is necessary to contact a professional's licensure body when there is evidence that that professional is causing harm to children. ISC must also clarify next steps if the licensure body finds ISC's concerns to be unfounded.

Progress to date:

As of the time of this document, the Caring Society continues to see instances where ISC rejects or questions the validity of recommendations or treatment plans outlined by a professional and/or asks for further documentation from other professionals who are outside of the child's circle of care. The Caring Society also continues to see cases being denied for reasons to do with a lack of documentation linking the request support to the child's needs.



ISC and AFN made a commitment at the February 2020 JPOC meeting to continue working on developing a process for clinical case conferencing. The Caring Society maintains that creating the policy on clinical case conferencing needs to be made priority. The Caring Society provided feedback on the latest rendition of a Clinical Case Conferencing Strategy in May 2020 but has yet to receive a response from ISC nor has an update been provided on the strategy.

9. Service “Gap” and “Normative Standard” Rationales for Refusal

- a. In the last iteration of this concerns document, the Caring Society had expressed that we were pleased to see a decrease in the number of denials related to service gaps or the normative standard. While concerns about service gaps as a reason for denial seem to have been largely addressed, we continue to see denials on the basis of “normative standard” or “service not available to all children” in conjunction with failure to properly assess substantive equality (see also section 1). We maintain that it is ISC’s responsibility to take all necessary steps to ensure that substantive equality has been properly assessed for requests (see also sections 1 and 4).

As outlined in 1(b), the Caring Society was notified by a First Nation who placed requests for an in-community land-based education program and an off-reserve after school program. The First Nation is a remote, northern community in British Columbia and does not have a high school. All children in the community must relocate to an urban centre 400km away to complete Grades 10-12. Both requests were denied partly on the basis that “support not available to all children.” It is concerning that the requests were denied partly on this basis considering this support is not ordinarily available to other children because other children in the province have the opportunity to attend high school in their home community [see also 15(c)]. The Caring Society is uncertain how and why substantive equality would not apply to this request.

In March 2021, the Caring Society was notified of a case involving respite services for family of seven children. Three of the children have special needs and mom is a single parent. Funding for respite services through Jordan’s Principle had been cut by almost 50% with no warning and no explanation other than the service was above the normative standard. Documentation provided by the family showed clear evidence of substantive equality considerations (such lack of other services on reserve, making respite one of the only sources of support) and, in fact, the needs of the family have only increased in the last year. At the time of writing, the family had submitted an appeal to have the level of respite returned to the previously approved level.

- b. The Caring Society has been made aware that, in many instances, ISC will deny requests as above the normative standard, but will not provide information on what they consider the normative standard to be or disclose the source of their information. If ISC references the normative standard in its determination, it must provide a clear statement on what it considers the normative standard to be and provide a link to the source of the information.
- c. The Caring Society has also seen many denials on the grounds of insufficient documentation to determine that the product/service/support would ensure substantive equality. Per section 1, Focal Points have the responsibility to prove “substantive equality does not apply.” ISC is also responsible for ensuring follow-up on cases where the requester did not provide this information. We agree that there are situations out of the control of ISC (i.e., if the requester does not follow up) however there are situations where information can be obtained with follow up, direct work with the requester, and leveraging the support of a Service Navigator and other people in the requester’s circle of care, where feasible.



Possible Remedies:

- d. ISC must immediately communicate to Focal Points and all other relevant staff that a “gap” in services is not a CHRT compliant reason for denial.
- e. ISC must immediately communicate to Focal Points and all other relevant staff that requests cannot be determined or denied based on the normative standard. As per the CHRT, the normative standards represents the *minimum standard only*. Cases where the request aligns with the normative standard should be approved immediately, without question; requests above the normative standard must be determined in keeping with substantive equality, the best interests and needs of the child, and in a manner that accounts for distinct community circumstances.
- f. If ISC finds it necessary to make reference to the normative standard in a particular province or territory, they must state clearly the source of their information and provide a specific link/reference so the information is clear and available to all parties.
- g. ISC must immediately communicate to all Focal Points and all other relevant staff the CHRT compliant requirements for assessing cases.
- h. ISC must review all cases, including those denied on appeal, where the “gap” and “normative standard” reasons have been given and reassess those claims based on CHRT requirements.

Progress to date:

As noted, our concerns in this area have shifted to reflect a growing number of cases referred to the national office for being beyond the normative standard or denied due to lack of documentation about substantive equality as per section 1. We are also unclear as to how the best interests of the child are being considered in decision making as per section 2.

10. Exclusion on the Basis of First Nations Eligibility Criteria

- a. On February 21, 2019, the CHRT ruled (2019 CHRT 7), that urgent, life-threatening cases involving non-status First Nations children recognized by their First Nation must be funded through Jordan's Principle.
- b. On July 17, 2020, the CHRT ruled (2020 CHRT 20) that First Nations children who will become eligible for *Indian Act* registration/status under S-3 must immediately be considered eligible for services through Jordan's Principle. Two other categories of First Nations children would be eligible in the future following a further order from the CHRT:
 - i. First Nations children without *Indian Act* status who are recognized by their respective First Nations; and
 - ii. First Nations children who do not have *Indian Act* status and who are not eligible for *Indian Act* status, but have a parent/guardian with, or who is eligible for, *Indian Act* status.
- c. On November 25, 2020, the CHRT (2020 CHRT 36) issued a ruling confirming four categories of eligibility for Jordan's Principle. These categories ensure that First Nations children living off-reserve without *Indian Act* status but who are recognized by their Nations can access Jordan's Principle. First Nations children meeting any one of the following criteria are eligible for consideration under Jordan's Principle:



1. A child resident on or off reserve who is registered or eligible to be registered under the *Indian Act*, as amended from time to time;
 2. A child resident on or off reserve who has one parent/guardian who is registered or eligible to be registered under the *Indian Act*;
 3. A child resident on or off reserve who is recognized by their Nation for the purposes of Jordan's Principle; or
 4. The child is ordinarily resident on reserve.
- d. It is important that ISC communicates the following key points from the 2020 CHRT 36 ruling:
1. First Nations recognize children for the purposes of Jordan's Principle only. This recognition does not extend past Jordan's Principle.
 2. Jordan's Principle is not a fixed budget program—it is a legal obligation of the Government of Canada, meaning as more children are eligible the funding pot expands. This means that recognizing a child for the purposes of Jordan's Principle does not mean another child gets less.
 3. There is funding in the Tribunal order to assist First Nations in setting up a process for recognizing children who do not have status and are not eligible for status if the First Nation does not already have such a system.
 4. In urgent cases where children are likely to experience irremediable harm if they do not get the help they need, Canada will try to contact the First Nation to determine recognition but if unable to reach the First Nation, the child will get the services needed to remedy the immediate risk.
- e. In the previous iteration of this document, the Caring Society had expressed concerns around ISC's approach to prenatal² care programs and the considerations this poses for determining cases. See section 19.

Updates:

As per 10(c), ISC must continue to follow-up with families whose children were previously denied services.

On December 22, 2020, Canada filed a judicial review of 2020 CHRT 20 and 2020 CHRT 36. Both orders remain in place while the judicial review is underway.

11. Group Requests

- a. The Caring Society continues to raise concerns regarding group requests, including: that the process for the assessment of group requests seems very uneven across the regions; delayed determinations; incomplete and staggered requests for information by Focal Points; and consultation by Focal Points with other government departments to assess the legitimacy of the request, rather than assessing the request according to Jordan's Principle CHRT-compliant standards.

² In context of this document, the term "prenatal" also refers to perinatal care and the gestational period before birth.



In March 2021, the Caring Society was notified by a service provider located in Saskatchewan who was working with a number of northern and remote First Nations to reapply to provide supports to children, including pediatrician, physiotherapy, occupational therapy and speech language pathology. The service provider attempted many times since January 2021 to comply with ISC's process and provide the "required" information. However, the service provider felt that the "goal posts" were constantly being moved as they worked to provide the required information. Indeed, the service provider had at least two meetings with ISC to determine what ISC required, but did not receive a straight answer until the service provider indicated they had contacted the Caring Society for guidance. Eventually, ISC indicated that it required a referral and summary for each individual child detailing their needs.

- b. More recently, the Caring Society has been made aware that the process for group requests has become similar to the standard government process for proposals, requiring a level of work and detail that is beyond the operational capacity of many First Nations agencies and organizations. We have heard that some Service Coordinators have stopped considering group requests altogether, for these reasons.
- c. We have also heard concerns about ISC's policy of funding group requests on a per child basis. Per capita funding for group requests requires that Service Coordinators (or others submitting a request) provide an estimate of the number of children who will take part. However, the reality is that children move in and out of programs, some children may leave the program and new ones will join. Service Coordinators have expressed concerns about the ramifications if the numbers in the group request end up being different from the make-up of the actual program. For example, what if the request was to run a program for 40 children and only 32 end up taking part? Conversely, because funding is based on the predicated number of children, the only way to ensure that funding is sufficient is the cap the service/program. This means that if interest or need is high, children may be turned away or denied access, which violates the spirit of Jordan's Principle.

Closely related to these concerns are questions about responsibility for ensuring that the roll-out of funded programming or services matches the terms of the group request. For example, if the request was submitted on behalf of a community agency, who is responsible for tracking the kids and meeting the outcomes stated in the request? Is it the Service Coordinator agency or the agency providing the service? Service Coordinators appear to have concerns about repercussions if ISC perceives the group requests is not managed "properly".

- d. Child and Family Service Agencies are entitled to apply for services, including through group requests, through Jordan's Principle. As the Child and Family Services Program falls under ISC and ISC is bound by the Tribunal orders, the Caring Society believes that if a request is made by an agency, ISC must provide the agency with the necessary information to apply for services through Jordan's Principle. In the June 2020 concerns document, the Caring Society provided the following example:

In May 2020, we received an email from an organization in Atlantic region with concerns about accessing Jordan's Principle funding. When they tried to submit a request through Jordan's Principle, most of the products/services were denied and the organization was told to utilize their prevention dollars under the child & family services program. This is contrary to the spirit of Jordan's Principle as well as the CHRT orders.

- e. In May 2020, the Caring Society reviewed the current request forms being used by ISC. The group request form included evaluation mechanisms. It is unclear how these evaluation mechanisms are funded and why they are required when there is already a requirement for a professional to link the requested service to a need. Reporting requirements pose a barrier to many communities who may not have the capacity to fulfill this, especially without capacity funding, and speaks to the concerns raised above about group requests becoming a standard proposal process.



- f. In March 2021, it came to the Caring Society's attention that ISC had engaged in multiple information requests with an organization run by several First Nations in Alberta when they submitted a group request for speech language supports. Among the information requests, ISC required the organization to provide detailed information of each individual child who would receive services, including their diagnoses. This requirement was in opposition to the professionals involved who specifically indicated that diagnosing children when they simply needed support could pose a long-term issue for the child and was not in their best interest [see also section 1 and 8]. This example speaks to inconsistencies in decision making across the country, as Service Coordinators in other regions have indicated that an estimate of the number of children who will be served through a group request is sufficient to support the request. Furthermore, requiring communities to submit detailed information for each individual child raises serious privacy issues, as detailed in section 6.

Possible Remedies:

- g. ISC must clearly communicate with Focal Points and others involved in Jordan's Principle cases that Jordan's Principle is not a last resort measure and it is not a fixed-budget program but a legal principle. Additional training should be provided to ensure this point is clearly communicated and understood by all Focal Points.
- h. Focal Points are required to encourage group requests through Jordan's Principle, especially when they see a gap in service or a need not being met.
- i. ISC must commit to revising the process for group requests (request forms) in a way that is expedient and that reflects the reality of communities, including removing any burdensome reporting requirements from the forms.
- j. ISC must determine mechanisms for funding group requests that do not rely on a strict per capita approach. Given privacy considerations, group requests should be based on general information about the population requiring services and should not require detailed information about specific children. Under no circumstance should ISC communicate that a formal diagnosis is required to receive services.
- k. Reiterate to Focal Points and others involved in Jordan's Principle that the CHRT timelines are legally binding.
- l. There needs to be more transparency on the process for appeals of group requests.
- m. There is a need for capital costs to allow for the provision of services per group requests (see also 16).
- n. Once a request is submitted, Focal Points must make a determination and not ask for the request to be submitted in a different way.

Progress to date:

The Caring Society and other members of JPOC/JPAT provided comments on both group and individual request forms in June 2020. The Caring Society has not received feedback on provided comments nor word on when the updated group request forms will be made available.



12. Service Coordinators and Navigators

- a. The Caring Society continues to stress the importance of ensuring that Service Coordinators/Navigators have adequate knowledge of the CHRT orders and are supported to assist and to advocate for families and children; support includes adequate and consistent funding from ISC. Support for Service Coordinators/Navigators also needs to include liability protection and provisions of professional training, audits, and access to mental health support. The Caring Society also stresses the importance of uninterrupted funding for service coordinator/navigator positions and organizations during the fiscal year transition.
- b. We have been told that turnover in Service Coordinators is high in some areas due to high workloads (caseloads) and concerns over job stability as contracts are often limited to the fiscal year. Service Coordinators report that colleagues will often transfer laterally to other positions within the organization/agency that are considered “more stable” with long-term funding. Nova Scotia organizations have had turnover in Service Coordinators as often as every 3-4 months. In other situations, First Nations agencies/organizations find themselves having to cash manage to cover Service Coordinator salaries when confirmation of funding from ISC is delayed. In terms of caseloads, we heard from one Service Coordination agency that they currently have a caseload of 660 requests and four Service Coordinators; they qualified for only one Service Coordinator because the federal government was basing Service Coordinators on population (per capita). This approach is problematic as population size is not a reflection of need and does not take into account substantive equality.

Furthermore, our understanding is that ISC provides funding for case management only, with no funding for managers or policy development. Given that Service Coordinators are working with private health related information, funding for policy development and implementation in the in the areas of privacy obligations and data collection is crucial.

- c. There have been numerous instances where staff in the regions or the national office have communicated decisions to families but not to the Service Coordinators/Navigators they had been working with. Families choose to work with Service coordinators/Navigators to help with the Jordan's Principle process so Focal Points cannot circumvent families' wishes and exclude them from further communications. In keeping with section 2, Focal Points and the national office must respect the self-determination of families who have chosen to work with Service Coordinators/Navigators as well as the self-determination of First Nations communities to provide assistance to their community members for services through Jordan's Principle through service Coordinators/Navigators.
- d. Conversely, we are also concerned about the burden felt by Service Coordinators in terms being tasked with assisting families, but at the same time having no power over whether the request is approved, and no recourse for ISC employees or regions when decisions are delayed or when requests are denied with little to no information explaining the reasons for the denial. Service Coordinators lose credibility with families when they cannot explain why the service has been denied or what information families can provide to appeal successfully.



- e. In addition, we are concerned about the burden felt by Service Coordinators in terms of responding to misinformation about Jordan's Principle. One of the most common rumors heard by Service Coordinators in the Atlantic is that Jordan's Principle is "ending." They reported a pattern of communities/organizations not wanting to partner to provide services due to the perception that Jordan's Principle funding is unreliable. "You don't have permanent funding," and "We don't want to partner with you to start up a program for kids, only to risk having it taken away from them when funding ends" were cited as common responses. While Service Coordinators respond by saying that Jordan's Principle is a legal rule and cannot be cut, organizations and communities see Canada filing for judicial review of CHRT decisions and do not believe the government's commitment is permanent or reliable.
- f. The Caring Society has become aware of individuals and organizations who purport to act as advocates for families accessing Jordan's Principle. In March 2020, we became aware of one such organization attempting to bypass the health and education protocols of one First Nation and work directly with families, despite formerly working for that First Nation and no longer having the support of that First Nation. Not only is this against the self-determination of the First Nation, but it is also against the best interests of children (see section 2). Further, this organization seems to also be attempting to be a national voice addressing barriers to accessing services through Jordan's Principle without any approval from the CCCW, JPOC, CHRT, or Jordan River Anderson's family (that we know of). The Caring Society flagged this organization for ISC in the spring of 2020 and they said they would follow-up. As of April 2021, this organization is still up and running.
- g. By March 31, 2021, the First Nations Health Authority (FNHA) in British Columbia will no longer be providing the Jordan's Principle service navigation function. Numerous families have reached out to the Caring Society to indicate that this transition is exasperating the difficulties they are already experiencing with Jordan's Principle.

ISC indicated that as of March 2021, 39 agreements have been initiated to place Service Coordinators in local communities. ISC has also implemented a BC Jordan's Principle Service Coordination HUB which will act as a province-wide resource for service coordinators, providing ongoing training, tools and a community of practice. While these steps are encouraging, the Caring Society is concerned about the impacts the transition will have on First Nations communities and families given previous challenges we have seen with ISC and expediency. Furthermore, it remains to be seen if these steps will be sufficient to address the low per capita rate in BC. It is also unclear how or if ISC has ensured that new BC Service Coordinators have adequate knowledge of the CHRT orders [see also 12(a)]. ISC is still responsible for CHRT compliance and ought not "downgrade" that responsibility to the community level.

Possible Remedies:

- h. ISC must continue to approve additional staff where heavy workloads are reported to ensure that children and families receive timely and quality service on Jordan's Principle cases per the CHRT orders. ISC has the legal obligation to ensure children's access to Jordan's Principle is met and that includes providing adequate and sustained support for Service Coordination bodies.
- i. ISC must give greater attention to its national communications strategy to combat misinformation and rumors about Jordan's Principle. On evidence that ISC is ready to move forward with robust communications strategy, the Caring Society can provide guidance on misinformation that we believe needs to be challenged.
- j. ISC must commit to responding to questions and concerns raised by Service Coordinators within the CHRT timeframes. When requests are denied, ISC must provide detailed information about the reasons for the denial so that Service Coordinators can assist families in submitting a proper appeal.
- k. An Ombudsperson function for Jordan's Principle is required as a matter of priority.



- I. While ISC has taken the lead on addressing the situation outlined in 12(c), there needs to be longer term solutions to ensure that families and communities are not taken advantage of by individuals and organizations claiming to be advocates.

Progress to date:

As of the writing of this document, the Caring Society continues to wait for an update from ISC on the organization outlined in 12(f).

ISC has engaged Naomi Metallic, Hadley Friedman and Shelby Thomas to undertake the process of researching, conducting interviews, etc. to make recommendations on the best way forward for the Ombudsperson function.

13. Inconsistent Decisions and Handling of Cases

- a. The Caring Society continues to have concerns about inconsistencies across the provinces/territories in working on cases, working with requesters, and delivering decisions. There continues to be inconsistencies within regions in terms of requests being approved within the region or escalated to HQ when the content of the request is the same.
- b. We continue to notice a pattern where decisions are not being given to requesters in a CHRT-compliant timeframe. In December 2020, it came to the Caring Society's attention that the Ontario region is engaging in an administrative procedure consisting of sending "notification of the denial decision" ahead of sending out an "official denial letter." The notification does not contain denial reasons which leaves many families confused. Particularly when a denial is issued on appeal, it also leaves families in a position of having to decide whether to submit a judicial review within the 30-day timeframe without understanding the reasons for denial.
- c. Further, as seen in 12(e), we know there is misleading and incorrect information from some Focal Points in regions. For example, in March 2021, the Caring Society was contacted by a family in Saskatchewan who had contacted Jordan's Principle in Summer 2020 to place a request for home modifications but were told that it was not eligible [see also 16(c)].
- d. As seen in section 1, the Caring Society is seeing inconsistent approval data across provinces/territories. Following a request through the CHRT for ISC's number of approved requests, the Caring Society created a chart (see Table 1 in section 1) with per capita calculations for approved Jordan's Principle services/products by region. The number appear to be low for many regions. The British Columbia region is at the lowest in the country with 0.1 products/services per child. Meanwhile, the Ontario region, which is demographically similar to the Manitoba region, is at 1 product/service per child versus Manitoba at 4 product/service per child. Canada has not shown reasonable evidence that these regions have fewer children in need. Instead, this data suggests inconsistencies across regions in decisions and handling cases.
- e. Conversations with Atlantic Service Coordinators between November 2020 and February 2021 for research conducted by the Caring Society found inconsistencies in decision making by ISC to be an area of concern across this region. Concerns were raised by about inconsistent decision making between focal points within the same province, between provinces, and between decision makers at the national level. Inconsistencies are compounded by the absence of clear information in ISC denial letters to families about why the request was refused. Service Coordinators lose credibility with families because they cannot explain why the service has been denied or what information families can provide to appeal successfully.



Possible Remedies:

- f. Continue to train Focal Points and ISC staff at all levels on the CHRT orders, including that the orders are not recommendations but legally binding orders.
- g. Ensure that the SOP's are in line with feedback from parties to the CHRT. Continue to update and train Focal Points and staff at all levels on the SOP's to ensure children access Jordan's Principle in a similar way across the country pursuant to the CHRT.
- h. Although normative standard differs per province/territory, there must be consistency across the country to ensure that the substantive equality lens is used for all requests.
- i. As per 13(c), an advance notification of denial is inconsistent with the spirit of the Tribunal's orders and confusing and discouraging for families/requesters. Particularly with instances of denial on appeal, families have a right to fully understand reasons for denial and have a right to submit an application for judicial review. ISC must be clear about reasons for denial right away without engaging in administrative procedures and without relying on boiler plate language.

Progress to date:

Although many children are now receiving services as result of the CHRT orders, the Caring Society continues to see room for improvement in terms of consistencies across all Focal Point teams and others working on Jordan's Principle. Given ISC's discriminatory policies and practices, it is especially important to ensure that First Nations children, families and communities are given the best treatment in service delivery. This means treating families with dignity and respect, and in a manner that is accessible and is culturally relevant.

On a call with the national office in September 2020 and in a follow-up email in October 2020, the Caring Society recommended that ISC perform random audits of denied requests and requests that did not meet the CHRT time frames for determination for a particular Focal Point region. ISC indicated that they would be making this a priority. The Caring Society recommends this process be implemented in all regions to ensure consistency and oversight. As of April 2021, the Caring Society is not aware of progress, if any, regarding quality assurance of denied requests.

14. Coordination with Other Government Departments and Gaps in NIHB Funding

- a. The Caring Society continues to raise concerns about gaps in federal programs and funding for First Nations, particularly NIHB, as a factor contributing to the number of Jordan's Principle requests. Families and communities may need to go through Jordan's Principle to access services because the NIHB program remains discriminatory (does not fund the range of services and supports available through the provinces and territories). NIHB response times are also slow, the process is burdensome and as such does not meet the needs of children in a timely or needs-based way, even when the service is covered. Given the long-standing issues raised by First Nations about the NIHB program failing to meet the needs of First Nations children, the Caring Society has concerns about how NIHB policies are being used to inform Jordan's Principle decisions. We are uncertain as to whether NIHB staff trained on the CHRT orders and, as such, whether their guidance/recommendations to Focal Points properly align with the principles on which Jordan's Principle decisions must be based: of substantive equality, best interests of the child, distinct community circumstances, and the needs of the child.



For example, in a call between the Caring Society and ISC on April 7, 2021, the acting Executive Director of Jordan's Principle discussed how NIHB policies on dental care and orthodontics are being used to inform the development Jordan's Principle policies in this area. As per the CHRT orders, the Caring Society maintains that policy development and decision making through Jordan's Principle must be based **substantive equality**, the **best interests of the child**, be **needs-based**, and **account for distinct community circumstances**. Requests that demonstrate these principles must be approved. Reference to NIHB policy is unnecessary to determine Jordan's Principle requests. The delay in developing policies and procedures regarding dental requests amounts to an administrative delay detrimental to the well-being of First Nations children and is contrary to the Tribunal's orders.

- b. While ISC funds a wide variety of community-based programs that may apply to a request, Jordan's Principle Focal Points have a responsibility to provide services to First Nations children and families without delays. Per 2017 CHRT 35, if a service or product is available through another ISC program, the requested service should first be covered under Jordan's Principle and costs recovered after.
- c. As described in 1(e) the Caring Society was notified by a First Nation in June 2020 that they were experiencing delays in hearing the determination for an in-community land-based education program. The Caring Society escalated the concerns and were told that the region is exploring "other funding options for this request." Although the national office indicated that inquiries into other funding options would not affect the timeframe for determination, the request was already delayed by three weeks. The request was eventually denied and ISC indicated that options were available through a provincial program [see also 9(b)]. The Caring Society is on record as disagreeing with this decision.
- d. Conversely, if the decision has been made to deny supports through Jordan's Principle, we note that Focal Points should be liaising immediately with other ISC departments (as well as the Province/Territory and First Nations agencies) to find out what services are available for families. The Caring Society has also suggested that Focal Points be provided with a quick reference document outlining what ISC services/programs other departments have available [see also 15(i)].
- e. ISC needs to ensure that all Service Coordinators and Navigators are adequately supported in assisting children and families in making requests through Jordan's Principle. Service coordinators and navigators often juggle extremely large caseloads, and it is unreasonable for them to have to connect families with community or off-reserve resources rather than submitting requests through Jordan's Principle. For example, the Caring Society has been made aware of one agency in the Atlantic having a caseload of 660 Jordan's Principle requests and with funding for four Service Coordinators. The Caring Society acknowledges that Focal Points are also dealing with high caseloads, however, responsibility for implementing the Tribunal's orders lies at the federal level. It is ISC's responsibility to ensure human resources are sufficient at both the federal and community levels to ensure the proper implementation of Jordan's Principle.

Possible Remedies:

- f. ISC must set a hard deadline for developing a policy on dental and orthodontic requests through Jordan's Principle. ISC must demonstrate how the policy is based on substantive equality, the best interests of the child, is needs-based, and accounts for distinct community circumstances.
- g. ISC national office to provide Focal Points with direction on when it is appropriate to liaise with broader ISC staff and to remind staff that NIHB processes and standards must not be used to assess or determine requests – this applies to both individual requests and group requests, including the timeframes for rendering a decision.



- h. Reiterate to Focal Points that administrative conferencing, such as meetings with government departments, must not delay the timely resolution of cases as per CHRT timelines.
- i. Clearly articulate and train Focal Points on their responsibilities in terms of coordinating with other programs or departments to ensure services when the request is denied under Jordan's Principle.
- j. Focal Points have lists of common services (i.e., respite, mental health supports) based on province/territory and where families can access them whether it be from other departments or through the Province or a First Nations agency. Reiterate that this list is only to be used in cases where the request has been denied, after a proper assessment on the basis of substantive equality, the best interests of the child, distinct community circumstances and the needs of the child.
- k. The federal government must commit to the Spirit Bear Plan to end inequalities in public services for First Nations children, youth, and families. The Caring Society maintains that the large volume of Jordan's Principle requests is directly related to the ongoing barriers and discrimination embedded in all other federal services for First Nations children. Families need to access services through Jordan's Principle because the programs like NIHB are burdensome and fail to meet the real needs for First Nations children. Other community-based requests, such as requests for recreation programs, infrastructure, etc., are also likely directed to Jordan's Principle because of a broader, government-wide failure to properly fund these services. Requests to Jordan's Principle will remain high unless the government commits to full and proper implementation of the Spirit Bear Plan and until all ISC departments adopt the principles of substantive equality, and best interests of the child, as outlined by the CHRT.

Progress to date:

As of April 2021, the Caring Society is unaware of any current progress that has been made with regard to ISC addressing gaps in NIHB funding and coordination with other government departments.

15. Cultural Shifts

- a. The Caring Society maintains that many of the concerns outlined in this document, such as requests for further information, consultation with other departments, etc., appear tied to a culture of restraint and, perhaps, the fear of "mistakenly" approving a case. In some offices, the culture of restraint seems to outweigh the principle of substantive equality or the best interests of the child.
- b. The Caring Society believes cultural shifts need to happen at both the individual and systemic levels and that staff need to undergo training on an ongoing basis to ensure that they are delivering services in ways that are respectful and that preserve the dignity and respect of the requesters. Cultural shifts will not occur via a one-time training session. This is particularly the case given the high turnover/movement and growth amongst Focal Points; staff who took part in the early training sessions on the CHRT orders have likely moved on to new positions.
- c. Cultural shifts also need to happen at all levels and in all teams of ISC in order to ensure that employees are comfortable being in their roles as public servants and assisting the public. While we understand that loyalty to the ISC is important, the most important role of a public servant is to assist the public. Given the long history of discrimination and inequity for First Nations peoples, it is essential that those working in ISC build trust with those they are working with and for.



It is clear that this shift has not yet happened in all regions. In October 2020, the Caring Society received the following email: "Jordan's Principle staff have made it impossible to work with them. I therefore do not champion their cause and question the integrity of the organization". While we understand that it may be challenging at times to assist requesters, ISC has a responsibility to train its employees adequately to help parents and others who often face additional hardship. All ISC employees must act with kindness, understanding and empathy [see also 16(d)].

- d. Given that Caring Society continues to hear, on a regular basis, about requests being denied based on the normative standard or insufficient information, it appears that many Focal Points continue to struggle with the meaning of substantive equality, including what structural barriers look like for families including living in hardship, caring for a child with a lifelong disability, living in a community with contamination, among other situations. This also relates to section 18 where requesters are expected to pay for services upfront even though many First Nations families and communities are living in poverty. Again, this points to the need for ongoing training.
- e. In addition, larger systemic issues within ISC itself need to be addressed so that the ISC teams working to support First Nations families and children feel safe and supported. In April 2021, the APTN released an article revealing a toxic working environment for ISC staff. Like many others, the Caring Society has heard concerning reports of an environment that does not support staff who raise concerns with the handling of Jordan's Principle requests or the experience of families who access Jordan's Principle.

Possible Remedies:

- f. ISC national office to send a message to all staff stating that ISC is committed to the best interests of the child and substantive equality that ISC would prefer staff to "err" on the side of the child by approving cases, rather than erroneously denying them. ISC national office to reiterate that staff will not be penalized for erring on the side of substantive equality and the best interests of the child. This would help address any anxiety staff may feel about the decision-making process in regards to Jordan's Principle requests.
- g. The Caring Society recommends ongoing mandatory training about the CHRT orders and issues like structural barriers so that Focal Point teams have a better understanding of differing worldviews and experiences. This training must emphasize that Jordan's Principle is a legal obligation resulting from decades of harms and discrimination against children. Such training may be needed to address any feeling or perception on the part of ISC staff that products and services provided by Jordan's Principle are "benefits", when they are properly understood as rights.

Progress to date:

ISC has begun to pilot training for staff on five topics identified by the CCCW as necessary for public servants working on Indigenous issues. The first module, "Adverse Childhood Experiences & Historical Trauma" was piloted in February 2021. This initial test pilot will assist in determining the effectiveness of the online delivery. A member of Caring Society staff participated in the training and reports that it was well-done.

The Caring Society is not aware of the timeline for broader rollout of the piloted module or the other four modules/topics identified by the CCCW.



16. Capital Costs

- a. ISC's authorities divide capital requests into two categories: minor capital and major capital. Anything below \$5,000 is considered minor capital, and anything over is major capital.
- b. We continue to push for coverage of major capital costs to ensure adequate space for the provision of services for group requests. Even if a group is granted funding to provide a service through Jordan's Principle, there is sometimes no adequate building or place from which to provide the service.
- c. The Caring Society continues to hear from families and service coordinators/navigators that they are told by focal points that even minor capital costs are not "eligible" under Jordan's Principle.

In March 2021, the Caring Society was contacted by a family in Saskatchewan who was having difficulties accessing Jordan's Principle supports for minor capital costs, including home accessibility modifications. The home was not wheelchair accessible and the child's mother had to carry the child in and out of the home. The family had contacted Jordan's Principle in Summer 2020 to place a request but were told that home modifications were not eligible [see also 13(c)].

- d. As of February 2021, the experience of Service Coordinators in the Atlantic is that capital requests "can be done" but require a lot of back and forth. The process was described as "not easy" with "a lot of hoops to jump through." Appeals are often required.
- e. The Caring Society has heard reports of ISC requiring First Nations communities (bands) to split or cover the cost of some home modifications. This practice is inconsistent with the spirit of Jordan's Principle.

Possible Remedies:

- f. The policy of limiting capital requests to those that "directly related to the needs of children" (see below, under "Progress to date") is inconsistent with the lived reality of many First Nations communities in which services are limited by lack of infrastructure. ISC must make provisions to expand support for major capital costs under Jordan's Principle.
- g. According to ISC's FNCFCs program terms and conditions, as of August 2020 there are funds available for agency capital projects including new builds. It is not clear how ISC determined that agency funding is in the best interests of children in FNCFCs care, but not those children receiving supports through Jordan's Principle.
- h. The Caring Society requests further information about why and in what circumstances ISC would require the First Nation (band) to split the cost of the request and/or why ISC would deny the request on the grounds that the cost should be covered by the First Nation. The Caring Society is unclear on ISC's reasoning in this regard.
- i. ISC must immediately communicate to all regions its commitment to capital costs and remind regions that discouraging families to request an item due to its "ineligibility" is a denial.



Progress to date:

In addition, in her cross-examination before the Tribunal in May 2019, Dr. Valerie Gideon confirmed that Jordan's Principle authorities allow for capital expenditures over \$5,000 to make capital improvements associated with a child's specific needs related to their direct living environment. Requests must directly address the needs of the child(ren). New builds or even infrastructure modification not directly related to the needs of children (i.e. expanding a health centre was the example given in transcripts), is not something ISC has the authority to do. Dr. Gideon indicated in the same transcript that there is no cap on major capital requests.

Further work is still needed to inform Focal Points, Service Coordinators, and family/community members that capital costs are covered under Jordan's Principle. In the Caring Society's experience, this information is still not widely known.

17. Payment

- a. The Caring Society continues to receive numerous reports/calls from families, Service Coordinators/Navigators and groups experiencing significant delays in payment for services and products. ISC has committed to processing invoices within 15 business days of receiving invoices. However, it seems this may be an on-paper commitment only. Previously the Caring Society had flagged Ontario, British Columbia, Alberta and Atlantic as having a clear backlog of invoices and a lack of staff to process invoices, resulting in delays. ISC has a responsibility to ensure timely payments, especially in light of COVID-19.
- b. Payment delays cause significant stress for many families living in situations of hardship as well as for those delivering services. While a 15-business day turnaround may seem fast in standard government terms, ISC payment timelines, even when working on schedule, do not support the lived realities of some families. The Caring Society is also cognizant that not all regions adhere to the 15- business days for payment. As recently as November 2020, a service provider in ON had still been waiting for reimbursement for costs from September 2020.
- c. The Caring Society remains mindful that it is extremely challenging for families to retain services providers, like respite workers, and almost impossible to keep the service if payments are delayed. While services are not technically delayed, payment delays and complaints from unpaid merchants and service providers cause families significant stress and frustration. In too many cases, families are losing service providers or are forced to pay providers out of pocket, which is often a huge financial burden.
- d. We remain concerned about ISC's record keeping in regard to payment timelines/compliance being skewed. In our dealings with the financial department, it would seem that finance personnel "turn on the clock" when they receive all relevant information from Focal Points, or when they themselves have time to start working on payment. As such, the "clock" does not actually start when families submit their information; invoices and payment information may well be sitting in the Focal Point's (or finance person's) inbox for weeks before attention is given to the file. There have been instances of Focal Points or Finance not promptly notifying families when documents do not meet ISC financial standards, resulting in further delays on an already delayed system. Even in cases when invoices have been missed by Focal Points or ISC personnel, finance personnel insist there is no way to expedite the process.



- e. The Caring Society continues to receive reports that the ISC procedure of requiring families and communities to pay for the approved services/products in advance is a barrier. In keeping with substantive equality, many families and communities do not have the capital to support this and may be a barrier to the family/community fulfilling the request.
- f. There is no process for families to complain about payment delays.

Possible Remedies:

- g. ISC must ensure adequate staffing to process payments in keeping with the 15-business day commitment.
- h. ISC must implement policies that ensure the payment “clock” starts with the date the invoice is submitted, and not when finance personnel begin working on the file. This policy is needed to ensure accurate tracking of payment timelines.
- i. ISC needs to establish a mechanism for advanced payment that recognizes financial hardship as an issue that many families struggle with. Alternatively, ISC needs to assume responsibility for establishing and coordinating direct billing (at present, it seems that families who cannot wait for reimbursement are expected to navigate this option on their own). At a minimum, Focal Points must help families find appropriate options in keeping with substantive equality that will support direct billing or advance pay.
- j. Consistent with section 15, ISC staff working on Jordan’s Principle require training on the realities of financial hardship, in order to increase sensitivity to family concerns to payment delays. A reimbursement of a few hundred dollars might seem a small amount to some, especially to those with secure jobs and salaries and/or who are used to processing payment for big ticket items, but for others, this amount may be the difference between “making it” or not.
- k. Steps should be taken to ensure email addresses are shorter and user-friendly; this includes the Jordan’s Principle Finance email (sac.principedejordanfinance-on-financejordanprinciple.isc@ISC.ca) which is inaccessible (and even had a typo in previous versions of this document).

Progress to date:

The Caring Society has been flagging payment delays in the Ontario region for at least two years. It is still not clear whether ISC has taken extraordinary measures to ensure that children and families are supported. We believe that extraordinary measures should have already been put in place given ISC has known about this issue and cannot seem to overcome roadblocks with regard to payment.

At February 2020 JPOC, ISC confirmed that they are in the process of submitting a request to Treasury Board for acquisition cards for Focal Points. The Caring Society followed up with this process on 25 August 2020. ISC agreed with the Caring Society’s conclusion that work on this matter was just beginning in August 2020 despite ISC assuring JPOC that work was underway in February 2020. ISC indicated in its August 2020 Acquisition Cards Workplan that the process will take the department into February 2021. It was unclear to the Caring Society if families will begin to receive payment assistance through departmental acquisition cards beginning in February 2021. At the February 2021 JPOC, ISC indicated that the process had been delayed due to a change in the government’s provider. ISC has not indicated when acquisition cards will be in operation.

At the February 2021 JPOC, ISC indicated that some regions have determined that they will not require acquisition cards. It is not clear how the regions determined this.



ISC also confirmed that there is a process by which reimbursements can be expedited for families experiencing financial hardship. Although this is a band aid solution to a problem that requires a long-term solution and it seems to be up to families to trigger this process, this might be something that needs to be implemented across all regions until such time that ISC can manage to process reimbursements in a timely manner.

Some First Nations Navigators in Ontario now have agreements in place that allow them to reimburse families or pay for services directly once a request has been approved by ISC national office.

18. Maternal Health and Prenatal Care

In previous versions of this document, the Caring Society raised the following concerns:

- a. On January 12, 2019, Leila Gillis confirmed by email that the current definition of child under Jordan's Principle is birth to age of majority. The Caring Society disagrees with the exclusion of maternal and prenatal services.
- b. Whereas ISC has framed the issue as being about the "definition of a child" the Caring Society still sees prenatal services as a matter of maternal health. The Caring Society has expressed concerns about federal child welfare legislation—which is a non-voluntary service—having jurisdiction prenatally without conversations with all First Nations, First Nations child welfare experts, and First Nations women's organizations. However, requests under Jordan's Principle are voluntary by nature, meaning it is families themselves who are asking for help and support. The demarcation between voluntary and involuntary service provision is critical. Requests made under Jordan's Principle are much different from the involuntary context of child welfare where caution needs to be exercised in regard to prenatal intervention.
- c. Given the voluntary nature of Jordan's Principle and the significant evidence regarding the benefits of maternal and prenatal care, the Caring Society supports individual and group requests for maternal and prenatal services under Jordan's Principle. In terms of group requests, we support requests for services where there is demonstrated need (i.e., waitlists for midwifery services or lack of culturally based services) and where participation in such services/programs is voluntary.
- d. In her correspondence of January 12, 2019, confirming the exclusion of maternal and prenatal services, Leila Gillis stated that Focal Points are expected to work with expectant mothers to access the requested services (i.e., the Focal Point could connect with the Maternal Child Health Program for support). As such, it would seem that ISC is already providing maternal and prenatal services on a voluntary basis. As such, extending this support to Jordan's Principle is not outside the scope of ISC's current mandate.
- e. The Caring Society has also received inquiries regarding non-First Nation mothers of unborn First Nation children requiring prenatal services.

Case Example: Midwifery

- f. As ISC knows, the Caring Society supported the Tsuut'ina Health Centre (Alberta) in their application for midwifery services under Jordan's Principle. The Nation approached Jordan's Principle Focal Points after being repeatedly bounced between Alberta Health Services (AHS) and the First Nations Inuit Health Branch, indicating an ongoing jurisdictional issue between levels of government in terms of responsibility for services. Tsuut'ina started the request process in June 2018. The request was ultimately denied in August 2018. The proposal for midwifery was denied based on "no gap in service" and "no medical basis upon review." The rationale was later changed to "no gap in services" and "no evidence to support substantive equality."



- g. In December 2018, Tsuut'ina was advised by ISC that there are no federal funds available for midwifery under Jordan's Principle or through any other federal department. Tsuut'ina subsequently contacted Alberta Health Services to explore funding options, as per ISC's advice, but in January 2019 were advised that provincial funds are scarce with no immediate solutions or ideas to meet the funding gap.
- h. We are aware that ISC has offered to fund/partner with the Tsuut'ina Health Centre to develop a model for midwifery in Indigenous communities. The Caring Society questions the utility of this offer, as there is no indication that the development of such model would translate into funding or the ability to actually implement it.

Case Example – High-risk Pregnancy:

- i. Also in January 2019, we were advised of a case where a pregnant mother with multiple children was on bed rest due to age and it being a high-risk pregnancy. She was not able to do housework or lift objects – yet still needed to care for her other 2 children. She needed assistance with housekeeping chores to assure that her child could come to full-term.
- j. As stated in 19(d), ISC has advised that in such cases, Focal Points are expected to work with the expectant mother to access the requested services through the Maternal Child Health Program. Given that the Caring Society was contacted for assistance in regard to the above case, it seems as though Focal Points are not meeting this expectation [also consistent with section 14]. In this instance, it seemed clear that the mother's short-term medical condition made it difficult for her to care for her children or meet their needs fully. The Caring Society is aware of cases where in-home family support has been funded to ensure the safety and well-being of children when parents need mental health support; the same standard should apply to medical issues for expectant mothers.

Case example – Car Seats:

- k. Infants leaving the hospital are required to leave in car seats – go home to beds or cradles, have clothing and diapers – and have other baby equipment as required for all children. For First Nations parents with financial constraints, there may be barriers in provision of these items, resulting in prolonged stays at the hospital and undue stress on mothers/parents.
- l. In her correspondence of January 12, 2019, Leila Gillis stated that car seats are beyond the normative standard, but in the best interest of the child. She indicated that regions should be considering this and looking at requests from a substantive equality perspective on a case-by-case basis.
- m. The Caring Society has concerns about the "case by case" approach for approval of car seats and other necessities. First, we are concerned that such requests are being automatically redirected or denied, due to the "birth to age of majority" rule. As stated above, there is no indication that Focal Points are actually working with expectant mothers to access the requested services. Second, babies cannot be discharged from hospital without a car seat and keeping babies in the hospital unnecessarily is not in the best interest of the child. The time for filing and processing a Jordan's Principle case and getting the seat paid for after birth is long. Requiring families to wait until birth to apply for help leaves babies in the hospital unnecessarily and causes hardship on the mothers/parents.

Possible Remedies:

- n. In regard to the case example of car seats, the Caring Society recommends ensuring that an advance payment or pre-authorization of the purchase be readily available for expectant mothers/parents. See section 17 for more on advance payment and pre-authorization.



Progress to Date

As of April 2021, the Caring Society is unaware of any current progress that has been made with regard to maternal health and prenatal care.

19. Post-majority services

- a. The Caring Society has serious concerns regarding the lack of post-majority services available through Jordan's Principle. This concern has also been raised by First Nations partners at a number of JPOC meetings.
- b. The process for supporting the needs of post-majority youth through Jordan's Principle is unclear. As recently as March 2020, we received a notification from a parent that we had been assisting previously, whose son requires respite and medical care. There had been a commitment from the Manitoba region to cover the services until age 21. ISC has rescinded that decision when the family had to make the difficult decision to move out of the community and into an urban setting in Alberta (which is close to their community) as the travel was becoming too much for the family. The Focal Point assisting in the case claimed to have 'bridged the gap' however the recommendation was for a service that the requester's son did not even qualify for. That post-majority support was approved by one region and denied by another points to inconsistencies between regions and the need for evidence-based direction from the national office.
- c. Research conducted by the Caring Society with Service Coordinators in the Atlantic for a resource guide on Jordan's Principle and children with disabilities and special needs found post-majority support to be a major area of concern across the region. In many cases, it appears to be the provinces stepping up to continue services when young people "age out" of Jordan's Principle. In general, however, such commitments are informal and made on a case-by-case basis—provincial support is by no means guaranteed. Service Coordinators receive no funding (have no capacity) to follow-up with young people who have "aged out" of Jordan's Principle. Service Coordinators work hard to ensure that, at a minimum, a short-term solution is in place to meet the needs of the young person but have no capacity to follow-up to ensure that a long-term plan is in place.
- d. Without access to Jordan's Principle, young people requiring post-majority services are expected to pay for services and be successful even though they are impacted by colonial policies, substantive equality issues, lack of supports, and for the last year, a global pandemic.

Possible Remedies:

- e. The academic and community-based literature on child welfare offers numerous examples and recommendations as to how programs can be amended to provide post-majority support. The Caring Society calls on ISC to apply these evidence-informed-solutions to Jordan's Principle and implement a meaningful strategy for post-majority support.
- f. In the interim, Focal Points meaningfully assist families/youth and organizations to access funding through other ISC programs or through the province for post-majority services.
- g. ISC FNCFS has committed to extending the aging out of care provision during the COVID-19 pandemic. While this offers a small step in the right direction, the Caring Society reiterates that post-majority services need to be sustained regardless of a pandemic.



Despite the above commitment regarding FNCFS, ISC has not similarly extended this provision to Jordan's Principle. It is not clear how ISC determined that post-majority supports are in the best interests of children in FNCFS care, but not those children aging out of Jordan's Principle supports.

Regarding the disconnect between the extension of support for the FNCFS program but not for Jordan's Principle, a Service Coordinator in the Atlantic gave the example of a young person requiring 24/7 out-of-home care who was set to age out last year. The Service Coordinator asked ISC to extend the CFS policy to Jordan's Principle, so that the young person would continue to receive funding and not need to move during the pandemic. ISC refused, offered no transition plan, and was fully prepared to see the youth evicted at the height of the pandemic. Thankfully the province stepped in and agreed to fund the youth at the same level.

Progress to Date

As of April 2021, the Caring Society is unaware of any current progress that has been made with regard to post-majority services.

20. Jordan's Principle 24-hour Call Centre

- a. The Caring Society had previously received numerous complaints about the 24-hour Jordan's Principle Call Centre being busy or that there was no answer. It was indicated in previous iterations of this document that a call audit conducted by the Caring Society in July 2019 made clear that not all regions had consistent practices, especially in ensuring that children and families were supported after hours.
- b. The Caring Society maintains that Call Centre staff should be trained on and authorized to approve urgent cases, at least on weekends and holidays in the case that on-call Focal Points are not available to approve a request within the 12-hour or 48-hour CHRT timelines. As outlined in 7(a), ISC provided data from February 1, 2018 to October 18, 2020 showing that the Call Centre marked only 44 requests out of 8,251 as urgent. The Caring Society believes that there were likely more cases that were urgent given the disadvantage and challenges that many First Nations face.
- c. The Caring Society stresses the importance of Call Centre staff being trained on the CHRT orders and ISC's legal obligations with regards to compliance.

At the February 2021 JPOC, concerns were heard about the Call Centre's practice of referring families to the ISC Jordan's Principle website for information on how to apply rather than simply intaking the request. It was indicated that this was mostly occurring after hours. At the same time, concerns were raised that the Call Centre was informing callers that only families can place a request to Jordan's Principle and service providers are not eligible to place a request on behalf a family.

Possible Remedies:

- d. It is absolutely imperative that the 24-hour line is adequately staffed at all times and that calls are returned as soon as possible to ensure compliance with the CHRT timelines.
- e. Call Centre staff should receive ongoing "refresher" training on the CHRT orders to ensure they are fully versed in the CHRT orders and ISC's legal obligations.



- f. In Valerie Gideon's affidavit dated April 15, 2019, it is stated that the incoming calls will be recorded. No timeline for this was provided.
- g. With proper training, Call Centre staff should be given authority to approve urgent cases on weekends and holidays especially since some urgent cases cannot wait for the assistance of Focal Points.
- h. Until staff who are currently assigned to the Call Centre have the proper training and authority to approve cases, another staff person with the proper authority should be available 24/7 to approve urgent cases coming into the Call Centre.

Progress to Date

ISC national office has a staff member on-call for weekends. Although this is a positive step, it is important that a long-term solution be met as it is not sustainable for a handful of staff to be on-call for 10 or more weekends of the year.

21. Retroactive

- a. In 2016 CHRT 2, the CHRT found that ISC's definition of Jordan's Principle was discriminatory as it limited who could apply.
- b. In previous iterations of this document, the Caring Society indicated concerns over whether there was a national standard with regard to retroactive. While a national standard has been included in the SOP, it is unclear if it is being consistently applied across regions.
- c. The Caring Society believes retroactive should also be extended to those who did not apply to Jordan's Principle – whether they did not know about it or did not think they would qualify. This is further supported by the Tribunal's 2020 CHRT 15 ruling regarding compensation for First Nations children and families. The ruling outlined that children/families would be eligible to apply for compensation as outlined in 2019 CHRT 39 even if they did not make a request through Jordan's Principle. The Tribunal found that the government's definition and implementation of Jordan's Principle was discriminatory. The definition was so narrow that children did not qualify for services (which prevented people from even trying to apply) and information on how to apply for Jordan's Principle was not made public by the government.

Possible remedies

- d. With the CHRT's rulings in mind, the Caring Society believes that retroactive requests should also cover requests for services dating back to 2007 (when Jordan's Principle was passed by the House of Commons) that were not submitted due to the ISC's limited definition but would have qualified under the proper implementation of Jordan's Principle.
- e. The Caring Society has maintained from the outset that limiting retroactive reimbursement to requests that were denied or only partially approved is under-inclusive, as some families may not have applied (or did not even know they *could* apply) due to the restrictive nature of the definition and implementation.



- f. 2017 CHRT 35 states: “Canada shall review previous requests for funding that were denied, whether *made pursuant to Jordan’s Principle or otherwise*, dated from April 1st, 2009, to ensure compliance with the above principles” [*emphasis added*] ([135]1. D.). This wording indicates that denials by NIHB should qualify; if ISC had been properly implementing Jordan’s Principle at that time, NIHB should have been either referring families on to Jordan’s Principle, or been paying for the service/product/support and sought reimbursement through Jordan’s Principle after the fact.

Progress to Date

A section about retroactive funding was added to the 18 October 2019 Jordan’s Principle Standard Operating Procedures version.

22. Policy and Oversight

- a. Since the CHRT’s first ruling (2016 CHRT 2), and following subsequent orders as well as the protocol with ISC, the Caring Society has been reviewing communication and policy materials related to Jordan’s Principle. While we appreciate the opportunity to review the materials these documents often required significant amounts of editing and corrections to ensure clarity and compliance with the CHRT orders. In our view, the vast majority of the edits we submit ought to have been addressed by ISC before circulating the documents for review by the Caring Society and other Parties. The Caring Society has repeatedly urged ISC to ensure it properly edits and reviews its materials for CHRT compliance before sending to review. Nevertheless, documents continue to be provided that require extensive editing. The overall poor quality of the documents and the corresponding need for extensive revisions suggests an urgent need for ISC to strengthen its own policy capacity and ensure all employees fully understand the CHRT’s orders.
- b. Most recently, the Caring Society has noticed an increase in the number of sub-committees outside JPOC, JPAT and CCCW being created by ISC to discuss issues relating to policy and oversight of Jordan’s Principle. While the Caring Society wholly supports community feedback, the Caring Society does not believe that ISC is being effective in these processes. These processes do not consider the limited capacity of many communities who may not have the resources or time to meaningfully participate.
- c. There is a need for an independent/non-political, national oversight body to function in an ombudsperson role to help requesters and to provide feedback to ISC on Jordan’s Principle policies. There is also a want for provincial/territorial oversight bodies in addition to the national role.
- d. In February 2020, given our limited capacity, the Caring Society attempted to step back from its role in assisting requesters who encounter difficulties with Jordan’s Principle. However, given that ISC has not provided any interim solutions to support requesters who encounter difficulties, the Caring Society continues to provide limited assistance, particularly in urgent situations.

Possible remedies

- e. ISC must have more staff capacity to assist with Jordan’s Principle, not only in terms of working on requests, but also in policy and finance. All staff must ensure that policies and practices are working for the best interests of families and communities (and in ways that families and communities choose) and not the best interests of government. ISC’s implementation of Jordan’s Principle must reflect substantive equality, the CHRT orders as well as concerns of Parties and members of CCCW and JPOC.



- f. ISC, in consultation with the CCCW, must develop and implement an independent ombudsperson function immediately to receive and respond to concerns about ISC's implementation of the CHRT orders.

Progress to Date

As the Caring Society understands, the Ombudsperson function does not require federal legislation and can be set up with an Order in Council.

As of the writing of this document, work on the Ombudsperson function is currently underway.

23. COVID-19 Delays and Concerns

- a. As we have seen with the COVID-19 pandemic, extraordinary measures can be taken to ensure all people in Canada are supported through these difficult times; these same extraordinary measures need to be extended to vulnerable First Nations children and families. In May 2020, a Service Coordinator contacted the Caring Society with concerns about respite payments for almost 70 families they had been working with. The families ordinarily relied on places like schools, libraries and band offices where staff would ordinarily email or send the documents to ISC. Because these supports were closed, the Service Coordinator had to assemble and send all of the packages to ISC so families could receive payment. When the Caring Society asked if provisions could be made to waive the invoice submission, ISC indicated nothing could be done. Many of the families who require respite receive it because they have a child or children requiring additional assistance, not because they are trying to get financial gain from the situation. This type of mindset relates to the need for cultural shifts and building back the trust of First Nations communities [see also section 15].
- b. In addition to extraordinary measures, the Caring Society stresses the importance of common-sense measures and more flexibility from ISC during these challenging times. In October 2020, the Caring Society was contacted by a mother in BC whose young child (grade 2) had been bullied to the point where the child was suicidal and was referred for horse therapy. The therapy switched to an online platform (same therapist, no horse) given the mandatory social distancing measures. The ISC region would not pay for the therapy sessions that did not involve the horse. While the Caring Society understands the need to reimburse based on what is approved, ISC ought to have, at a bare minimum, reached out to the requester before denying payment for needed therapy services.
- c. In keeping with substantive equality and best interests of the child, ISC must consider COVID-19 concerns when determining requests. ISC must especially consider the ways that COVID-19 will inordinately impact children who are immunocompromised and/or the challenges that COVID-19 will pose to families and communities who are already struggling with well-documented chronic deficits in federally-funded services.

ISC failed to consider the inordinate impact that COVID-19 would have on a child with complex needs when the child's family and circle of care made a request for home modifications that would allow the child to live at home safely. It is concerning that ISC did not consider that COVID-19 could reasonably pose harm to those with spinal cord injuries given their predisposition to respiratory issues. ISC denied the request for home modifications and instead funded the child to stay in a hotel. It was only when the Caring Society interceded was the request re-evaluated and approved. As of April 2021, the child is still staying in a hotel while home modifications are underway. To the Caring Society's knowledge, there has been no initiative taken on the part of ISC to ensure the child is in a safe place [see also 1(c), 2(d), 4(a), 6(a) and 7(b)].



- d. At the same time, as we are now more than a year into the pandemic, ISC cannot rely on challenges related to COVID-19 as justification for administrative delays. Service Coordinators in the Atlantic report being told by ISC that Canada is only dealing with COVID related requests right now. If the request is not related to COVID, Service Coordinators are waiting weeks to hear back. While certainly the Caring Society is sensitive the pressures of COVID, delays of weeks or months in determining requests are simply not reasonable. Failing to take extraordinary measures to meet the administrative demands associated with COVID-19 indicates that Canada continues to prioritize internal considerations over the needs of children.

Possible Remedies

- e. If anything, the COVID-19 pandemic has highlighted the need for greater flexibility in the ways that ISC is implementing Jordan's Principle. ISC must comply with both the letter *and* the spirit of the CHRT orders by working to red tape for families and ensuring that they receive services and payments on time.

Progress to Date

ISC had provided COVID-19 updates to JPOC and AFN to JPAT in March 2020 however we have not received further updates from ISC regarding continued support or extraordinary measures for services through Jordan's Principle.

This Exhibit "C" to the Affidavit of
Cindy Blackstock affirmed before me
this 5th day of September 2025



A Commissioner for taking Affidavits etc.

Sarah Clarke
LSO #57377M

Schulich School of Law, Dalhousie University

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3-31-2022

Doing Better for Indigenous Children and Families: Jordan's Principle Accountability Mechanisms Report

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Doing Better for Indigenous Children and Families: A Report on Jordan's Principle Accountability Mechanisms

Naiomi Metallic, Hadley Friedland & Shelby Thomas

March 31, 2022

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Disclaimer

While this report was informed by interviews and feedback from stakeholders, including the First Nations Child and Caring Society and Indigenous Services Canada, the conclusions and recommendations expressed are those of the authors.

About the authors

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articles and collaborated to produce accessible Indigenous legal resources for Indigenous communities, legal professionals and the general public. Dr. Friedland co-established and was the first Research Director of the Indigenous Law Research Unit at the University of Victoria and is co-founder of the Wahkohtowin Indigenous Law and Governance Lodge, an interdisciplinary initiative developed to uphold Indigenous law and governance through supporting community-led research. She is author of the book, *The Wetiko (Windigo) Legal Principles: Cree and Anishinabek Responses to Violence and Victimization*, University of Toronto Press, 2018.

Shelby Thomas is Métis and her family comes from the Grand Marais region, which is located at the southeast corner of Lake Winnipeg. She is also a third generation Dutch and Polish settler. She pursued a Bachelor of Arts with a major in Psychology at the Université de Saint-Boniface and a Juris Doctor at the Université de Moncton. Shelby has extensive experience working as a researcher for various organizations including Manitoba Justice, Public Interest Law Centre, Manitoba Centre for Health Policy, and Manitoba Keewatinowi Okimakanak Inc's MMIWG Liaison Unit. She is currently the research manager at the National Centre for Truth and Reconciliation. Shelby will forever be grateful for her opportunity to contribute to the work of the National Inquiry into Missing and Murdered Indigenous Women and Girls as an associate commission counsel, where she often felt like the child of the staff. Children and youth hold a special place in Shelby's heart; she passionately advocates for their inclusion and meeting their needs.

Appreciation

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Executive Summary

Introduction

In the Assembly of Seven Generations' report, *Accountability in Our Lifetime: A Call to Honour the Rights of Indigenous Children and Youth*, Indigenous youth stated clearly:

Indigenous youth and children need action and it is urgent. [...] [The human rights violations experienced by Indigenous children and youth] is beyond the point of advocacy, rights promotion and the power to report. There must be accountability for those in positions of power that demonstrate prejudice and racism towards Indigenous peoples as well as accountability for the decades of broken promises on behalf of Canadian governments. The bleak reality is that government inaction and its ongoing violations of the rights of Indigenous youth and children has resulted in harms.

Accountability and advocacy mechanisms can address and prevent violations of rights to substantive equality and resulting harms. They have an important role in ensuring, strengthening and promoting good governance in democratic countries world-wide. To date, existing accountability mechanisms in Canada have not generally served the accountability needs of Indigenous children and families. Numerous reports and inquiries have identified this unmet need, including the Auditor General of Canada, the TRC Final Report and the MMIWG National Inquiry Final Report. The Canadian Human Rights Tribunal ("CHRT")'s 2016 *Caring Society* case was a watershed decision in holding Canada accountable for systemic underfunding of child welfare and other essential services. However, this was a hard-won victory and much work remains to rectify systemic inequities and discrimination.

In the summer of 2020, the Caring Society, acting jointly with the Department of Indigenous Services Canada (ISC), approached the authors to undertake research on the design of an independent accountability mechanism to oversee the government's adherence with the numerous orders that have been made by the CHRT based on Jordan's Principle and substantive equality in *Caring Society et al. v Canada*. The intended outcome of our research was this report, setting out at least three potential, well-research options "for an effective national Jordan's Principle Ombuds-like function."

There is a wide breadth of general or specialized accountability mechanisms encompassed within the broad concept of "Ombuds." Their common elements are independence and the ability to investigate and address concerns relating to government action outside of the formal court system. Ombuds-like institutions may be referred to as Ombuds, Advocates or Commissioners, and may or may not be connected to a quasi-judicial process like a tribunal. More detailed information can be found in the section, "Primer on Accountability Mechanisms" of this report. Looking at the variety of models available, our objective, and the focus of this report, most simply, is to propose accountability institutions and measures to meaningfully address the discrimination identified by the CHRT in *Caring Society* and effectively prevent similar practices in the future.

In **Part 1** of this report, we attempt to summarize the long history that forms the context of the need for independent accountability measures to meaningfully address the discrimination identified by the CHRT in *Caring Society* and prevent similar practices in the future. Drawing from this context, in **Part 2**, we set out what we identify as 10 key accountability needs of Indigenous children and families that must be addressed in order to provide effective accountability. Finally, in **Part 3**, we discuss features of effective accountability mechanisms and propose three interconnected mechanisms that we believe address the accountability needs. Any of these three mechanisms, individually, would serve to provide greater protection of the rights of Indigenous children and families from the discrimination found in the *Caring Society* case by improving government accountability. However, as outlined in this report, none are sufficient, on their own, to address all of the identified accountability needs. Therefore, we reach the conclusion that combining all three mechanisms would be the most effective way of preventing discrimination from continuing or re-emerging in the future.

These 3 Parts are summarized in this Executive Summary and discussed in greater detail in the body of this report.

Part 1: Context: The Need for an Independent Accountability Mechanism

Professor Linda Reif, an expert on international human rights and ombuds institutions, reminded us that the driving question in designing any accountability mechanism should be, “*What are the real accountability problems we want to address?*” Therefore we begin by reviewing the historic and continuing accountability problems that form the present context.

Over-representation: Governments in Canada have contributed to taking away thousands of Indigenous children from their families and communities. This started with the federal residential school system, through the so-called “sixties-scoop” and continues in the extreme over-representation of First Nation children in provincial child welfare systems today. In the last 70 years, the inadequate provision of services to meet the needs of Indigenous children living with their families has significantly contributed to this gross over-representation.

Interjurisdictional Neglect: Inequitable service provision is rooted in the “jurisdictional wrangling” between provincial and federal governments, to avoid funding these services. In its 2019 Final Report, the National Inquiry into Missing and Murdered Indigenous Women and Girls named this problem “interjurisdictional neglect.” This interjurisdictional neglect widens the gap between Indigenous children and families and other children and families in Canada.

Findings of Inequitable Funding and Inadequate Reforms: The TRC Final Report documented Canada’s refusal to adequately fund health services as a cause of high illness and death rates of Indigenous children in residential schools. There has been documented underfunding of essential services on reserve for decades, culminating in the CHRT *First Nation Caring Society* decision in 2016. First Nations began voicing concerns in the 1970s and 1980s. Canada developed the FNCFS program to address concerns, but in 2000 and 2005, the Assembly of First Nations [AFN] and Canada commissioned expert reports which confirmed the

systemic underfunding continued in the FNCFS program. Canada did little to implement the reports' recommendations. The Caring Society and the AFN finally filed a human rights complaint with the Canadian Human Rights Commission in 2007. Years of procedural arguments and delays followed.

The Caring Society Case: In 2016, the Tribunal ordered in favour of the complainants. It found that discrimination on race and/or national ethnic origin was made out. In extensive reasons, the Tribunal highlighted the real power and control Canada held over child welfare services on reserve. Funding formulas did not ensure culturally appropriate programming, were not comparable to provincial funding to meet provincial standards, and, in fact, led to perverse incentives to remove First Nations from their homes as a 'first resort' rather than a last one. The Tribunal also found that Canada had wrongly adopted a very narrow interpretation of Jordan's Principle, continuing to leave many First Nation children behind. Canada committed to not appeal this case and to make reforms to address its findings.

Non-compliance Orders and Inadequate Reforms: Since the main Caring Society decision, the Tribunal has found several instances of non-compliance by Canada, particularly its failure to implement a broad interpretation of Jordan's Principle and an effective process to respond to Jordan's Principle requests and appeals. The non-compliance decisions highlight numerous systemic and accountability issues, including following old approaches (comparability instead of substantive equality) and a too narrow definition of services and children covered by Jordan's principle, as well as using funding authorities to justify inaction, failure to collect appropriate data to properly assess Jordan's Principle requests and needs, and lack of an arms-length appeal process.

While some real reforms have been made, they remain inadequate. The Department of Indigenous Services [ISC] has attempted to respond to the CHRT rulings through internal measures, such as educating ISC staff, modifying some processes, funding community services coordinators to help applicants, and changing its Jordan's Principle's appeal process. However, meaningful internal change is challenging. There is high staff turnover, and the modified appeal process was stalled due to vacancies.

Individualization of Claims and 'Projectification': The Jordan's Principle application process remains individualized and onerous for applicants. In particular, requiring all applicants to provide documentary evidence and demonstrate how a request aligns with substantive equality is burdensome, and leads, unsurprisingly, to high numbers of requests being assessed as submitted without sufficient information (51% of all Jordan's Principle requests in 2019-2020), rather than granted or denied on their merits. This issue is part of a larger concern of "projectification", described in Sinha et al, 2021 - that ISC's view of Jordan's Principle appears to be akin to a program. The current process is individualistic case by case, demand-driven and contingent on the capacity of applicants to successfully navigate it. Systemic assessment and development of proactive policies and practices to ensure equitable services is still missing.

Canada has increased funding for FNCFS services through annual budget allocations, but has also resisted reforming its funding approach to the FNCFS Program to one that is needs-based, and informed by principles of self-government. Details of long-term reform in relation to funding have yet to be released by Canada.

Statutory Reforms with Inadequate Education, Resources or Oversight for Compliance:

Canada passed *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 ("C92"), which sets out national minimum standards and recognizes an inherent Indigenous right to self government, including child and family services. C92 legislates Jordan's Principle in s. 9(3)(e):

in order to promote substantive equality between Indigenous children and other children, a jurisdictional dispute must not result in a gap in the child and family services that are provided in relation to Indigenous children.

However, Canada has provided little to no education or resources to support understanding and implementation of C92. C92 does not specify how s. 9(3)(e) will be ensured, or whether Canada or the provinces bear responsibility for funding services to achieve the national minimum standards or Indigenous self government. There are mixed messages regarding so-called "coordination agreements" between First Nations, provinces and Canada for the self government aspect. It is unclear how, without more, C92 responds to the tribunal rulings, and there are fears it may perpetuate, or even escalate, the jurisdictional wrangling in this area.

ISC standards within *Department of Indigenous Services Act*, SC 2019, c 29, s 336 ("*DISA*"), which came into effect in July 2019, provides further grounding to respond to the tribunal rulings. The preamble includes commitments to ensure service standards are transparent and meet the needs of Indigenous groups, recognize socio-economic gaps, promote Indigenous ways of being and doing, and that ISC collaborate and cooperate with Indigenous peoples. *DISA* identifies the group ISC serves as "Indigenous peoples", which includes "Indian, Inuit and Metis peoples." In s. 6(2) it states the minister "shall" ensure a range of services, including child and family services, education and health, and in s. 7(2) it requires collaboration in the development, provision, assessment and improvement of the services listed at s. 6(2). Further, the *DISA* commits Canada to implementing the *United Nations Declaration on the Rights of Indigenous*, as does Canada's 2021 law, the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 ("*UNDRIPA*"), which affirms the Declaration as a universal human rights instrument with application to Canadian law.

C92, *DISA*, the Declaration and *UNDRIPA* provide solid statutory support for transparent, equitable needs-based and cooperative service provision. However, it is not clear to what extent *DISA* or *UNDRIPA* are being followed by the Department at this time. There is potential and a need for education and oversight of ISC regarding compliance and implementation.

Ongoing Gaps of Education, Advocacy and Accountability:

Lack of awareness and education by both governmental and non-governmental professionals continues to present significant challenges to the effective implementation of Jordan's Principle and equitable culturally appropriate services for Indigenous children and families. Generally, both the MMIWG Final Report (2019) and the TRC Final Report (2016) called for national advocates in this area. Provincial governments continue to deny responsibility for services to First Nation children and families. According to Jordan's Principle Operational Committee respondents to a survey in early 2021, specific challenges to implementing Jordan's Principle continue to include informational limits to written documentation, interpretation of reviewers or failure to follow parameters causing claims being denied in error, lack of reasons for denials, barriers to appeals due to burdensome document requirements, requiring individuals or First Nations to demonstrate how substantive equality applies, timelines and delays, lack of information and communication, lack of aging out of care supports, high turnover of ISC staff, worker burnout, lack of expertise in substantive equality, and failure of provincial governments to come to the table. Respondents identified the need for more internal training and community educational outreach as well as quicker and easier access to services.

Currently, there is some support to address some of these challenges through government funded Jordan's Principle Navigators and Regional Focal Points. However, the Caring Society, a small fundraising reliant charity with no government funding, continues to play a crucial advocacy role in supporting families in seeking to access Jordan's Principle and substantive equality, including drawing on its network of lawyers who assist on a *pro bono* basis to address denials, from liaising with ISC to filing judicial reviews. The Caring Society also informally provides oversight of ISC's implementation of the CHRT decisions, by bringing issues of non-compliance to the CHRT's attention, as well as continuing to publicly raise awareness of systemic discrimination against First Nations children and families. ISC staff are uncertain as to what they can share with the Caring Society advocates due to privacy and confidentiality. The Society's staff recognize that they cannot help all who need assistance and emphasize the need for formalized and funded advocacy services for First Nations children and families.

Part 2: Accountability Needs:

The preceding discussion demonstrates 10 major accountability needs relating to Jordan's Principle, and equitable services for Indigenous children, families and communities:

1. **Oversight of the current Jordan's Principle process at ISC:** While ISC staff may be well intentioned and committed to implementation, deep systemic inequality and the legacy of discrimination requires oversight from a body with relevant expertise.
2. **Oversight of ISC's long-term reform of CFS, including funding of agencies, as well as CIRNAC's funding and negotiation of self-government under C92:** Long term reform was a key order of the Main Decision and oversight is required to address the current lack of transparency, education and resources for understanding and implementation and funding of self government in relation to child and family services.

3. **Oversight of Canada's efforts addressing systemic inequality in services related to Indigenous children and families:** Eliminating systemic inequality in delivery of essential services is the ultimate goal of Jordan's Principle, the Main Decision, and a core recommendation in numerous reports and inquiries, including the TRC and MMIWG National Inquiry Final Reports.
4. **Oversight of federal-provincial efforts at cooperation in relation to funding and servicing of Indigenous children and families:** Ending interjurisdictional neglect requires oversight of federal-provincial cooperation and compliance with Jordan's Principle and C92 responsibilities to Indigenous children, families and communities.
5. **Ongoing education to ISC, CIRNA, provincial DCS staff, provincial agencies, Social workers, Crown lawyers, legal aid lawyers, judges:** Effective implementation of the CHRT Orders, Jordan's Principle and C92 requires more and ongoing education for all government and legal actors responsible for compliance and application.
6. **Investigating and mediating individual complaints about provincial governments funding failure to provide services to Indigenous children and families:** This is necessary as many provincial child advocates, ombuds and legal services providers aren't aware of or pursuing Indigenous children and families' rights.
7. **Investigating and mediating individual complaints about child welfare agencies' implementation of CFS laws and policies, including C92:** Several inquiries, including the MMIWG National Inquiry, called for an Indigenous-specific child advocate, as there is inconsistency with provincial child advocates ensuring compliance with provincial statutory protections, and now the C92 minimum standards.
8. **Powers for enforceable orders against Canada for non-compliance with Jordan's Principle, substantive equality and other relevant laws and international requirements (C-92, DISA, UNDRIP, CRC, etc):** Supervisory jurisdiction has been key to the CHRT's ability to affect change in the *Caring Society* and something similar to take its place is necessary for when the Tribunal is no longer seized of the case, given the extraordinary long history and seriousness of substantive equality and statutory human rights violations, and Canada's intransigence to change even after the Main Decision.
9. **Powers for enforceable orders against provinces for non-compliance with Jordan's Principle, substantive equality against provinces and relevant laws and international requirements (C-92, UNDRIP, CRC, etc):** The history of provincial neglect of Indigenous children and families' needs justifies having a body that can also grant binding orders against the provinces for their failure to respect their obligations.
10. **Legal advocacy for First Nations children, families and communities for government services and in child welfare matters:** It is evident there continues to be a strong, largely unmet need for formal, funded advocacy to support Indigenous children

and families vis-a-vis both federal and provincial governments in relation to the provision of equitable services and child and family services matters.

Part 3: Features of Effective Accountability Mechanisms and Recommendations:

Based on research into provincial, national and international ombud-like and other accountability mechanisms to address substantive equality and statutory human rights concerns, including the importance of accountability mechanisms being context driven, so impacted by the history and needs discussed above, we have identified the following five features of effective accountability:

- A. External accountability mechanisms:** Currently, there are no external non-judicial accountability mechanisms that apply to the work of ISC and CIRNAC.
- B. Legislated mechanisms, not simply created by the executive:** For effective independence from the government of the day, legislatures, and not executives, ought to create accountability bodies, appoint their leadership, oversee the bodies' functions, and be the government entity receiving reports from the body.
- C. Mechanism with specific mandates relating to Indigenous children and families:** The unparalleled gravity and longevity of the ongoing substantive equality and statutory human rights violations of Indigenous children and families in Canada requires the creation of mechanisms with specific mandates in relation to Indigenous children and families.
- D. Mechanisms with powers over all Indigenous children:** As per SCC jurisprudence, DISA and C92, federal jurisdiction applies to First Nations, both status and non-status, Metis and Inuit peoples. Powers over all Indigenous children is necessary for any mechanism to reduce, not reproduce, exclusion or jurisdictional neglect. Such an inclusive approach is not the same thing as a pan-Indigenous approach. It is equally important that the mechanisms recognize the diverse legal traditions among Indigenous peoples.
- E. Mechanisms that bypass jurisdictional wrangling:** Currently, neither human rights bodies nor the courts in Canada can hear a complaint of denial of services involving both the federal and provincial government at the same time. Ironically, and tragically, as lawyer David Taylor puts it, there appears to be a Jordan's Principle problem in vindicating Jordan's Principle claims. For an accountability mechanism to be effective, it must challenge the conventional jurisdictional boundaries that could lead to delays and denials of services under it, and have led to the decades of interjurisdictional neglect of Indigenous children and families. Canada has the power to do this under s. 91(24).

Recommendations:

Based on the accountability needs identified in Part 2, and the features of effective human rights accountability mechanisms identified in this Part, we recommend **3 interconnected mechanisms to safeguard the needs of Indigenous children and families**. While originally we expected to propose 3 independent options, we have come to the conclusion that, while any of the three mechanisms, on their own, would be an improvement over the status quo, all 3 are necessary to achieve meaningful accountability. The stakes are too high, the pattern of

discrimination too long and entrenched, and Canada's practice, policy and even legal reforms still too inadequate, for anything less to actually be effective at this point.

The 3 accountability mechanisms are:

1. **A National Indigenous Child and Family Advocate:** This would be a primarily based on the model a child advocate ombuds model, but also with specific jurisdiction to oversee governments' delivery of services to Indigenous children and families in accordance with Jordan's Principle, their right to substantive equality in statutory human rights instruments and other relevant laws and international requirements (C-92, DISA, UNDRIP, CRC, etc). The Advocate would also oversee governments' implementation of child welfare legislation and policy in relation to Indigenous children and families. In this regard, in addition to addressing systemic issues, the Advocate would assist Indigenous children and families resolve individual complaints through informal and confidential means.
2. **A National Indigenous Child and Family Tribunal:** This would have the power to hear complaints from individuals, groups, communities or the Child Advocate. Complaints would include those of a systemic nature against the federal or provincial governments and their delegates in relation to Jordan's Principle, substantive equality and the implementation of CFS laws and policies, including C92. The Tribunal should have robust remedial powers to effectively uphold the right to substantive equality and other statutory human rights of Indigenous children and families.
3. **National Legal Services for Indigenous Children and Families:** This would be designed to provide Indigenous children and families with state-funded access to knowledgeable lawyers who can support them in their attempts to access substantive equality in essential services from federal and provincial governments, and in their interactions with child welfare systems. The power imbalance between individual children and families and the state makes advocacy essential for upholding the right to substantive equality and other statutory human rights.

We conclude that all 3 of these mechanisms are necessary to effectively address the government conduct that has contributed to the harm Indigenous youth name, including the overrepresentation of Indigenous children in state care and the senseless suffering and separation of Indigenous children and families with medical and disability needs, for decades.

All 3 of these mechanisms must, at minimum, have the following features for effectivity:

- Be set out in federal legislation and not simply created by the executive, in order to ensure independence from government and the greatest degree of oversight and accountability;
- Be specific to the interest and rights of Indigenous children and families (and not wrapped into to broader mechanisms);
- Apply to all Indigenous children and families, not just First Nations on reserve (e.g., non-status First Nations, off-reserve, Métis and Inuit) while recognizing distinctions based on local needs and diverse legal traditions among Indigenous peoples; and

- Apply to conduct of both federal and provincial governments, which Canada has the constitutional jurisdiction to legislate pursuant to s 91(24) of the *Constitution Act, 1982*.

We believe all three mechanisms we have outlined can and should be legislated within one federal statute. The following chart sets out the three accountability mechanisms, with reference to the accountability needs each would address as well as essential elements for efficacy.

Accountability Mechanism 1: National Indigenous Child and Family Advocate

National Indigenous Child and Family Advocate	
Accountability needs to be addressed:	To be effective this Advocate <u>should</u> :
Need #1: Oversight of Canada's implementation of Jordan's Principle	<ul style="list-style-type: none"> a. Assess governments' obligations in relation to Jordan's Principle and substantive equality (protected under each government's human rights legislation and the <i>Charter</i>), C-92 and international instruments such as United Nations Declaration on the Rights of Indigenous Peoples, the Conventions with Rights of the Child, and the Convention of Rights of Persons with Disabilities. b. Scrutinizes governments' distinctions-based approach in relation to the need for equitable services on the grounds of the various subcategories of Indigeneity governments have relied on in the past to make distinctions (non-status, off-reserve, Metis, Inuit, etc.) as <i>prima facie</i> discrimination. c. Have the power to investigate individual, group and community complaints, as well as institute own-motion investigations, including into systemic issues. d. Have robust investigative powers to collect and compel necessary information from government parties to effectively respond to the different types of complaints as well as to be able to effectively conduct systemic oversight. e. Conduct research and hire experts in conducting systemic inquiries. f. Be mandated to meet with children and youth and ensure their voices are heard in the work of the Advocate's Office. g. Attempt to facilitate resolution of complaints through informal and confidential means. Such methods for resolving disputes should draw on Indigenous laws and the dispute resolution processes where possible. This would not prevent reporting and recommendations.
Need #2: Oversight of Canada's long-term reform of child welfare, including C92 implementation	
Need #3: Oversight Canada's implementation of substantive equality in relation to all services impacting on Indigenous Children and Families	
Need #4: Oversight of Federal-Provincial cooperation in servicing Indigenous Children and Families	
Need #5: Ongoing education for federal and provincial government actors involved in child welfare services	
Need #6: Oversight of provincial governments'	

<p>implementation of substantive equality in relation to all services impacting on Indigenous Children and Families</p>	<ul style="list-style-type: none"> h. Providing a “one stop shop” that can support Indigenous children, youth and their families in navigating the different accountability mechanisms that exist. This is not intended to limit peoples’ options for resolving complaints through other mechanisms. It is our hope that an individual or group might start with the Advocate to seek informal resolution or, at the least, obtain information to navigate their options, and possibly be connected with legal support if necessary (we explain this further below with our third mechanism, National Legal Services for Indigenous Children and Families). i. Have the power to make recommendations to governments, and to escalate these recommendations to higher levels (up to and including the Tribunal) if recommendations are not reasonably acted upon. j. Report annually to Parliament on its activities, as well as make special reports commenting on any matter within the scope of its powers that it deems appropriate. k. Intervene in any adjudicative proceedings relating to the jurisdiction of the Advocate. l. Educate the public and federal and provincial civil servants, and those involved in child welfare matters, about the right to substantive equality and Jordan’s Principle, of Indigenous children and families, as well as their rights within child welfare matters, including under C92. m. Play a ‘knowledge mobilization’ role in terms of ensuring that standards and practices are consistently applied/understood throughout the various jurisdiction and country, and act as a resource for Indigenous nations and communities to facilitate learning from each other. n. Promote connections to culture, families, lands, waters, language, songs and stories, as well as encourage the implementation of Indigenous laws in the work of the Advocate. <p>Beyond these requirements, further details about the Advocate (composition, qualifications, terms, staff, etc.) ought to be determined in discussion and cooperation with Indigenous groups, including Indigenous children and youth, the Caring Society and the pro bono lawyers who have been supporting it. We further suggest that, in the actual development of the enabling legislation, further expert advice be sought to recommend specific statutory language.</p>
<p>Need #7: Oversight of child provincial welfare agencies, including their implementation of C92</p>	

Accountability Mechanism 2: National Indigenous Child and Family Tribunal

National Indigenous Child and Family Tribunal	
Accountability needs to be addressed:	To be effective this Tribunal <u>should</u>:
Need #8: Enforce orders against Canada for non-compliance with Jordan's Principle, substantive equality and other relevant laws and international requirements (C-92, DISA, UNDRIP, CRC, etc)	<ul style="list-style-type: none"> a. Have the power to issue binding orders against both the federal and provincial governments and their public servants and agencies. b. Have the powers to craft its own procedures and rules of evidence that are more flexible than the courts, including child-informed and child-friendly procedures, and the incorporation of Indigenous law and legal procedures into the process. c. Be mandated to issue remedial orders where discrimination is established. d. Have extensive remedial powers, including powers to grant interim orders and make summary decisions, as well as the power to exercise supervisory jurisdiction made explicit. e. Be composed of adjudicators with expertise in the discrimination issues faced by Indigenous children and families. <p>Beyond these requirements, further details about the Tribunal (composition, qualifications, terms, staff, etc.) ought to be determined in discussion and cooperation with Indigenous groups, including Indigenous children and youth, including parties and lawyers that have been involved in the Caring Society case.</p> <p>The creation of a Tribunal with a focus on Indigenous child and family issues is critical to support the work of the proposed Advocate. Should Canada eventually implement recommendations from the MMWIG National Inquiry and others to create a National Indigenous and Human Rights Tribunal, we think this body could equally support the work of the Advocate, so long as the Tribunal is focused only on Indigenous matters, can bind both the provinces and governments, and has a sufficiently flexible process and robust remedies. However, until such time as a National Indigenous and Human Rights Tribunal, there needs to be a National Indigenous Child and Family Tribunal.</p> <p>Finally, to ensure the utmost independence from the federal government, the proposed Tribunal should not be included within the schedule of federal administrative tribunals falling under the <i>Administrative Tribunals and Support Services of Canada Act</i>, SC</p>
Need #9: Enforce orders against provinces for non-compliance with Jordan's Principle, substantive equality against provinces and relevant laws and international requirements (C-92, UNDRIP, CRC, etc)	

	2014, c 20, s 36.
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Mechanism 3: National Legal Services for Indigenous Children and Families

National Legal Services for Indigenous Children and Families	
Accountability needs to be addressed:	To be effective the National Legal Services <u>should</u> :
Need #10: Formal advocacy for First Nations children, families and communities for government services and in child welfare matters	<ul style="list-style-type: none"> a. Include funding support from filling forms, letter writings and speaking on their behalf, to pursuing existing Ombuds, Child Advocate, human rights processes (before the federal or provincial human rights commission, or the new Tribunal we are proposing) or judicial review in the courts. b. Take the form of a legal referral service housed in the proposed Advocate (similar to the Legal Representation for Child and Youth branch of Alberta's Office of the Child and Youth Advocate). This includes: <ul style="list-style-type: none"> i. The Advocate's Office has the power to refer children and families to lawyers and appoint lawyers to represent them to access substantive equality in services from the federal and provincial governments, and in their interactions with child welfare systems. ii. The lawyers appointed would be from a roster maintained by the Advocate. To get on the roster, lawyers would have to meet standards and expectations set by Advocate (e.g., practice experience, years at the bar of a province, knowledge of Indigenous communities, etc.).

Conclusion:

In identifying the accountability problems to be addressed by an accountability mechanism for this report, we have looked thoroughly at the context of "one of the worst possible cases" of racial discrimination, that has deeply and irrevocably harmed multiple generations of Indigenous children and families. We have also reviewed features of effective accountability mechanisms that can contribute to the imperative work of bringing an end to these ongoing harms.

There has been progress, and genuine work toward internal, policy and even legislative reform. However, there is much work to be done and many of the reforms that Canada has unilaterally

implemented have been inadequate to stymy ongoing substantive equality and other statutory human rights violations. The vast majority of meaningful reforms to date have occurred since the Tribunal issued its 2016 Main Decision and retained supervisory jurisdiction.

There will come a day when the Tribunal will relinquish jurisdiction over the case. Given the very long history of systemic discrimination against Indigenous people by the government in Canada, particularly in the area of service delivery, it will be important to have alternative accountability mechanisms in place. We have set out 3 that, together, we believe will practically address the accountability problems that have facilitated one of the worst possible cases of racial discrimination in Canadian history for over half a century. There are also internal steps ISC can take in the interim, and in addition, to external legislated accountability mechanisms, discussed in Part 3 A and in the Conclusions and Recommendations of this Report.

The Assembly of Seven Generations report clearly emphasized that “Indigenous youth and children deserve accountability and responsibility from the federal government, as well as all levels of government.” As Cindy Blackstock says, once we know better, we need to *do* better. We hope and believe a new and better chapter has begun and can be created for present and future generations. Accountability is an essential aspect of this. Indigenous children, youth and families deserve nothing less.

Introduction

In the summer of 2020, we were approached by the Caring Society, acting jointly with the Department of Indigenous Services Canada [ISC], to undertake research on the design of an independent accountability mechanism to oversee the government's adherence with the numerous orders that have been made by the Canadian Human Rights Tribunal based on Jordan's Principle and substantive equality in *Caring Society et al. v Canada*.¹ Over the fall of 2020 we developed a workplan for this research, which was signed into a contract for services with ISC in February 2021.

Our work plan called for the review and analysis of general oversight, accountability and advocacy mechanisms in Canada and internationally; a review and analysis of Jordan's Principle-specific law, policies and processes; and having conversations with key stakeholders² to help us identify current needs, gaps and promising practices to inform the necessary scope, function and approach of an accountability mechanism related to Jordan's Principle and child welfare. The intended outcome of our research was this report, setting out at least three potential, well-researched options "for an effective national Jordan's Principle Ombuds-like function."

Early into the life of this project, both the Caring Society and ISC were using the specific language of an "ombudsperson function" on "Jordan's Principle." However, as we got deeper into our research, we determined that use of these phrases were not intended as pre-determining what the accountability mechanisms we propose should look like. Speaking with the Caring Society, ISC staff and others, we realized that there are several different accountability mechanisms that are encapsulated within the meaning 'ombuds', as we explain in our next section, entitled 'Primer on Accountability Mechanisms.' We also concluded that the accountability needs of Indigenous children and families go beyond Jordan's Principle because the principle arises from, and is informed by, the *Caring Society et al. v Canada* case, what led to it, and what has happened since the main decision.

According to international human rights expert, Linda Reif, author of *Ombuds Institutions, Good Governance and the International Human Rights System*, core elements of good governance include democratic government, rule of law, accountability, transparency of government, respect

¹ *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 [*Caring Society* 2016].

² We met with various key stakeholders including First Nations Child and Family Caring Society of Canada staff; Joint Policy and Operations Committee on Jordan's Principle; National Advisory Committee on First Nations Child Welfare; National Advisory Committee on First Nations Child Welfare; Consultation Committee on First Nations Child Welfare; lawyers involved in *Caring Society et al.* matter and advancing Jordan's Principle cases; and Indigenous Service Canada staff from Jordan's Principle branches. These meetings included local Jordan Principle service coordinators; relevant staff and directors from child welfare agencies, Indigenous health organizations; representatives from Assembly of First Nations (AFN); and relevant staff from human rights commission. We also presented at a one-day AFN forum on Jordan's Principle and spoke with Linda Reif, a leading Canadian expert in accountability mechanisms.

for human rights and public participation.³ Accountability and advocacy mechanisms have an important role in ensuring, strengthening and promoting good governance. Reif explains that “[g]overnment accountability involves establishing “lines or forms of accountability” between the government and the public which can cross the spectrum from provision of information, through the application of procedural fairness legal principles, to subjection of government conduct to adjudicative decisions or prosecution”.⁴ An important element of the accountability process is a mechanism’s ability to make decisions about conduct and make determinations to resolve inappropriate conduct. Answerability and enforcement are important elements of accountability. Metis legal scholar, Larry Chartrand, explains that “accountability is inherently a reciprocal relationship. [...] In other words, accountability of government actors to the public is seen as important in promoting ethical, fair and efficient government decision-making.”⁵

To date, existing accountability mechanisms in Canada have not generally served the accountability needs of Indigenous children and families. First of all, aside from the courts and the Canadian Human Rights Commission (CHRC) and Tribunal, there are no other oversight mechanisms in relation to the federal government’s departments of ISC and Crown-Indigenous Relations and Northern Affairs Canada. Further, it has been extremely difficult for Indigenous children and families to use the courts to hold governments accountable in relation to the funding of essential services.⁶ The Canadian Human Rights Tribunal’s 2016 *Caring Society* case was a watershed decision in holding Canada accountable for systemic underfunding of child welfare services, however, this was a hard-won victory (over which the battle continues), and the fact is that the CHRC and Tribunal have significant shortcomings in meeting the various accountability needs of Indigenous children and families. There are more oversight mechanisms at the provincial level, such as ombuds and child advocates, but the extent to which they are able to or have advanced justice for Indigenous children and families is uncertain. In the Assembly of Seven Generations’ report, *Accountability in Our Lifetime: A Call to Honour the Rights of Indigenous Children and Youth*, Indigenous youth acknowledged that

Canada is long overdue in honouring inherent Indigenous rights, as demonstrated by generations and over 150 years of reports and recommendations that Indigenous peoples have provided to Canadians. Indigenous youth and children need action and it is urgent. [...] [The human rights violations experienced by Indigenous children and youth] is beyond the point of advocacy, rights promotion and the power to report. There must be accountability for those in positions of power that demonstrate prejudice and

³ Linda C. Reif, *Ombuds Institutions, Good Governance and the International Human Rights System*, 2nd rev Ed. (Boston: Koninklijke Brill NV, 2020) at 145.

⁴ *Ibid* at 119.

⁵ Larry N Chartrand “A Section 35 Watchdog: Furthering Accountability of Federal, Provincial and Territorial Governments to Aboriginal Peoples” Governance, Self-Government and Legal Pluralism Conference, April 23-24, 2003, Hull, Quebec, at 4.

⁶ Janna Promislow & Naomi Metallic, “Realizing Administrative Aboriginal Law” in Colleen M Flood & Lorne Sossin, eds, *Administrative Law in Context*, 3rd ed (Emond Publishing: Toronto, 2017) [Promislow & Metallic] at 104-108; see also Yellowhead Institute, “Looking for Cash Back in the Courts” (2021), online: <https://cashback.yellowheadinstitute.org/wp-content/uploads/2021/05/Cash-Back-Court-Cases-Yellowhead-Institute-4.2021.pdf>.

racism towards Indigenous peoples as well as accountability for the decades of broken promises on behalf of Canadian governments. The bleak reality is that government inaction and its ongoing violations of the rights of Indigenous youth and children has resulted in harms".⁷

We agree with the assessment of the Assembly of Seven Generations of the bleak nature of Canadian governments' accountability to Indigenous children and families. In Part 1 of this report, we attempt to summarize the long history that informs this conclusion. Drawing from this history, in Part 2, we set out what we identify as 10 separate accountability needs of Indigenous children and families that must be addressed in order to provide effective accountability. Finally, in Part 3, we propose three interconnected mechanisms that we believe address these accountability needs.

⁷ Assembly of Seven Generations, "Accountability in Our Lifetime: A Call to Honour the Rights of indigenous Children and Youth," (2021) at 16 [Assembly of Seven Generations].

Primer on Accountability Mechanisms

There are various accountability mechanisms in democratic nations. Similar accountability mechanisms sometimes have different names, despite having similar purposes and functions. This primer aims to provide some high level definitions of common accountability mechanisms, grouped according to purpose and function, along with examples.

1. Independent Accountability Institutions

Independent Accountability institutions are institutions that “control the actions of other state bodies through actions ranging from soft monitoring to hard coercive standards”.⁸ Accountability institutions include, but are not limited to, Ombuds. Some also have additional functions including litigation, intervention, providing, advice, research and education.⁹ Generally, these institutions are established to monitor and supervise the actions and activities of governments to make sure that they are doing their work in a fair, just and transparent way.¹⁰ They are designed to provide citizens with an accessible, impartial, and informal avenue to address problems with the actions of government.¹¹ Key roles of accountability institutions include improving human rights protection and promotion when judicial intervention not available or realistic, improving domestic human rights circumstances; changing the culture and mindset of bureaucracy, drawing attention to law reform needs; requesting binding decisions through the courts, reducing poor bureaucratic behaviour through monitoring, improving rule of law and strengthening good governance.¹²

In comparison to judicial institutions, these institutions have broad and flexible assessment criterion for determining violations. This gives them the ability to address a wider range of violations using a variety of remedies.¹³

Some examples of Independent Accountability institutions include:

- Auditor generals,
- Anti-corruption bodies,
- Electoral commissions
- Policing oversight institutions,
- Human rights commissions, and
- Ombudspersons.¹⁴

⁸ Reif *supra* note 3 at 123.

⁹ *Ibid* at 124.

¹⁰ *Ibid* at 23.

¹¹ Chartrand *supra* note 5 at 16.

¹² Reif *supra* at note 3 at 118, 147, 245.

¹³ *Ibid* at 250-251.

¹⁴ Chartrand *supra* note 5 at 5.

2. Ombuds Institutions (General or Classic)

An ombuds is one kind of independent accountability institution that reviews government, agencies, and other organizations' actions.¹⁵ According to the Forum of Canadian Ombudsmen, an ombuds is an independent and objective institution that reviews government, agencies, and other organizations' actions.¹⁶ Reif explains the classic ombuds was established to fight maladministration¹⁷ and supervise the actions of the government's administrative activities.¹⁸ The office is provided for by constitution or action by legislature and it is headed by an independent, high level public official responsible to the legislature. Typically, the core powers of an ombuds are investigations, making recommendations and submitting reports to resolve problems by securing redress and improving administrative systems and redress.¹⁹ Typical Ombuds functions include complaint handling and resolution, monitoring and reviewing functions, individual and systemic advocacy.²⁰ A small number have quasi-coercive powers.²¹ The process is usually confidential, impartial, and neutral.²²

Some examples of ombuds institutions in Canada include:

- Provincial and Territorial ombuds institutions,
- National Defence and Canadian Forces Ombudsman,
- Municipal ombuds institutions.²³

3. Thematic Ombuds Institutions

The key distinction of a thematic ombuds institution is that they have jurisdiction over a specific and distinct thematic or specialized area.²⁴ Over the years, the concept of classic ombuds institutions have expanded and tailored to meet varying needs of local regions including public and private sectors, international, national and regional levels and crossing several thematic

¹⁵ Michelle LeBaron "Watchdogs and Wise Ones in Winter Lands: The Practice Spectrum of Canadian Ombudsmen" (2008) Forum of Canadian Ombudsman (FCO) Liz Hoffman Ombudsperson Research Award Paper at 4, 5.

¹⁶ *Ibid.*

¹⁷ Reif *supra* note 3 at 5.

¹⁸ *Ibid* at 23.

¹⁹ Mary A Marshall & Linda C. Reif "The Ombudsmen: Maladministration and alternative dispute resolution" Alberta Law Review, Vol XXXIV No 1 (1995) at p. 218; *Ibid* at 225.

²⁰ Commissioner for Children and Young People Western Australia, "Oversight of services for children and young people in Western Australia" (November 2017) Commissioner for Children and Young People Western Australia, Perth at 9.

²¹ Reif *supra* note 3 at 221.

²² Mary Theresa Hunter "Canadian Child and Youth Advocates: A comparative analysis" Doctor of Philosophy Dissertation, School of Public Administration, University of Victoria, 2017 at 26.

²³ "Ombudsman Offices in Canada" (2021) online: *Forum of Canadian Ombudsmen* <http://www.ombudsmanforum.ca/en/?page_id=176>.

²⁴ Reif *supra* note 3 at 62.

areas. They require a level of expertise in the relevant area.²⁵ Thematic institutions may overlap with general accountability institutions and multiple departments may fall within the scope of thematic institutions depending on the specific focus of the institution.²⁶ Like classic ombuds, some thematic ombuds institutions have expanded to include additional mandates such as explicit human rights protection and promotion, functions related to children's rights, preventative measures, monitoring abilities,²⁷ and administrative law litigation functions. These institutions have a range of powers and functions. They are not only complaint-driven, and may have some decision-making powers and public education mandates. Some institutions have additional protection powers other than investigations including mediation and court litigation.²⁸ Some adjudicative powers have been given to thematic equality ombuds,²⁹ though these institutions rarely have coercive remedial powers.³⁰ Some can conduct audits to ensure compliance with the law in sensitive areas including police conduct, child protection, and government intrusion on private communications. Some also do administrative audits if it's in the public's best interest.³¹ Like classic or general ombuds, thematic ombuds institutions generally monitor their recommendations and will attempt to use persuasion to encourage implementation.³²

Some examples of thematic ombuds institutions in Canada include:

- Commissioner of Official Languages,
- Privacy Commissioner,
- Information Commissioner,
- Federal Correctional Investigator,
- RCMP External Review Committee, and
- Police Complaints Commissioner.

4. Thematic Ombuds Institutions – Children's Rights Commissioners and Advocates

Independent accountability institutions that focus on Children's rights are one type of thematic ombuds institution. These are typically either Commissioners or Advocates. Children's Commissioners have been appointed around the world and typically have similar powers and functions to other thematic ombuds, but in the area of children's rights.³³ Child Advocates

²⁵ Marshall & Reif, *supra* note 19 at p. 230; Jo-Ann EC Greene "On-reserve matrimonial real property following relationship breakdown: a review of tribunal, ombuds and alternative dispute resolution mechanisms" INAC Paper, May 2003, at 3, 4.

²⁶ Reif *supra* note 3 at 71.

²⁷ *Ibid* at 5.

²⁸ *Ibid* at 221.

²⁹ *Ibid* at 227, footnote 22.

³⁰ *Ibid* at 227.

³¹ *Ibid* at 230.

³² *Ibid* at 28.

³³ Daniella Bendo "The Role of Canada's Child and Youth Advocates: A Social Constructionist Approach" Master of Arts, Child and Youth Studies Thesis for the Faculty of Social Sciences, Brock University, August 2016, at p. 21.

support children and youth populations through advocacy and other activities.³⁴ An important difference to highlight from other thematic ombuds institutions is that Advocates may not necessarily act impartially. Instead Advocates will act to protect the interest of the specific population they are mandated to protect.³⁵ In Canada, there are provincial and territorial Child Advocates. Child Advocates require specialized knowledge and experience. Hunter notes that all Child Advocates in Canada had advanced degrees and levels of experiences from various backgrounds including social work, legal backgrounds, education, youth services, nursing, employment, psychology and health administration, and public administration.³⁶ While Child Advocate functions vary, common functions of nine provincial and two territorial Child Advocate offices in Canada include providing individual advocacy, examining systemic issues and systemic advocacy, raising awareness about children's rights, and giving advice to improve the provision of services to children.³⁷ Most have a mixture of traditional functions and specialize solely on rights of children and youth.³⁸

Almost all Child advocate' mandates in Canada include monitoring compliance and taking extra steps when the government is not complying with recommendations including reporting to higher authority.³⁹ Most Canadian child advocates expect governments to respond to their advice without formal means of holding the government accountable to improve services to children.⁴⁰ However, tracking and monitoring compliance were noted as key factors in influencing change.⁴¹

Some examples of Child Advocates in Canada include:

- **The Alberta's Office of the Child and Youth Advocate:** The OCYA is valued for its ability to identify systemic issues through its relationship and direct input from children and youth affected. This feedback and other quality assurance processes help to inform practice and make effective recommendations to improve services.⁴² The OCYA conducts systemic reviews and advocacy as well as providing individual advocacy services to children and youth involved in designated services. It may appoint legal representation for young people in relation to those services.⁴³
- **BC's Office of the Representative of Children and Youth:** In 2005, BC established a legislative office, the Representative of Children and Youth.⁴⁴ BC's

³⁴ Reif *supra* note 3 at 49-50.

³⁵ *Ibid.*

³⁶ Hunter *supra* note 22 at 63.

³⁷ *Ibid* at 1, 6, 72.

³⁸ *Ibid.* Note, NS and QC, and now ON provide ombuds or advocacy services for children and youth as part of larger institutions serving the entire population.

³⁹ *Ibid* at 107, 176.

⁴⁰ *Ibid* at 176.

⁴¹ *Ibid* at 177.

⁴² *Ibid* at 45.

⁴³ *Ibid* at 59.

⁴⁴ *Ibid* at 48.

model was considered a hybrid model as it has functions of an ombuds, powers of a commissioner of inquiry and structural independence of an auditor general.⁴⁵

5. Thematic Ombuds Institutions – Human Rights Commissions

Reif explains that Human Rights commissions have the same elements as a classic ombuds, other than their jurisdiction. Human rights commissions have jurisdiction over human rights protection and most have varying human rights prevention mandates.⁴⁶ Their scopes vary and may include the protection of civil, political, economic, social and cultural rights.⁴⁷ Some may have a specific role or function to monitor particular human rights issues such as the relations with Indigenous people.⁴⁸

Human rights commissions typically have a broad mandate⁴⁹ and functions including complaint based investigatory powers, own motions investigations, holding public inquiries, making recommendations and reports, powers to bring or intervene in litigation and/or other legal avenues. Some also have human right promotion powers such as research, public awareness-raising, training, education and advice to governments.⁵⁰ Other human rights mandated functions include creating promotional information, education, advising, providing recommendations to governments, law reform, and investigatory powers.⁵¹

Some examples of human rights commissions in Canada include:

- **The Quebec Commission des droits de la personne et des droits de la jeunesse** Although similar to the Commission at the federal level, the Québec CDPJ has a specific unit dedicated to handling youth protection investigations.⁵²
- **The Canadian Human Rights Commission:** At a federal level, the CHRC has numerous functions including a significant public human rights education and promotion role, public interest role by researching and monitoring systemic patterns and practices and investigating, mediating and referring matters to the CHRT.⁵³

⁴⁵ *Ibid* at 6.

⁴⁶ Reif *supra* note 3 at 61.

⁴⁷ Marshall & Reif *supra* note 19 at 232; *Ibid* at 7.

⁴⁸ Chartrand *supra* note 5 at 20.

⁴⁹ Reif *supra* note 3 at 157.

⁵⁰ *Ibid* at 15.

⁵¹ *Ibid* at 154, 155.

⁵² "Investigations (Youth Protection)" (March 2022) online: *Québec Commission des droits de la personne et des droits de la jeunesse*.

⁵³ Gwen Brodsky, Shelagh Day & Frances Kelly, "The Authority of Human Rights Tribunals to Grant Systemic Remedies" 2017 CanLIIDocs 45 at p. 34.

6. Human Rights Tribunals

A final type of independent accountability institution is a tribunal. An accountability institution becomes a quasi-judicial administrative tribunal when it has abilities to make legally binding decisions. Tribunals perform a quasi-judicial but not a purely judicial function. Administrative tribunals may have a particular expertise, and due to this expertise, they may be enabled by statute to deal with claims that are broader than those dealt with by courts and to grant forward-looking systemic remedies to deal with policy issues and further social goals and to remain seized of matters longer than courts.⁵⁴ Although the tribunal process will be formal, it does not need to be an adversarial process. It is important that the tribunal is impartial, non-political and has a level of expertise.⁵⁵ There is a wide variety of judicial and administrative tribunals in Canada.⁵⁶ There are some limitations to tribunals due to their capacity to make legally binding decisions. This capacity means the work and process of the institutions subject to administrative law standards and reviews. This can seriously limit the flexibility and informality of the institution's work and process.⁵⁷ A major concern related to this type of institution is the accessibility.⁵⁸

At times, an independent and accessible appeal tribunal is established within a broader independent accountability institution in order to hear matters where a resolution has not been reached through the "advisory" part of the institution. These enforcement and adjudication abilities are developed to ensure accountability and reform where more informal individual advocacy, systemic reports or advice to governments are not sufficient to protect human rights.⁵⁹

An example of a human rights tribunal in Canada includes:

- **The Canadian Human Rights Tribunal:** An important feature of the CHRT is its ability to make binding orders and grant remedies.⁶⁰ The CHRC and CHRT are a "federal human rights machinery [...] comprised of an adjudicative body and a Commission. Both are "essential to the remedial function of the legislation".⁶¹ Chartrand characterizes the CHRC and CHRT as "a more formally structured process than the Ombudsman Office although less formally structured than the court system. It is intended to be accessible to everyone and in particular those individuals that have been most marginalized in society".⁶²

⁵⁴ *Ibid* at 31.

⁵⁵ *Ibid* at 26.

⁵⁶ Greene *supra* note 24 at 2.

⁵⁷ Brodsky, Day & Kelly *supra* note 53 at 32.

⁵⁸ *Ibid* at 22.

⁵⁹ *Ibid* at 24, 25.

⁶⁰ *Ibid* at 19.

⁶¹ *Ibid* at 34.

⁶² Chartrand *supra* note 5 at 19.

As a final point, we wish to address possible confusion around use of different terminology for Ombuds-like mechanisms such as Ombudsman, Advocates or Commissioners. The terms are largely synonymous. Any distinction seems to be one of degree versus difference in kind (e.g., they are all forms of ombuds). For example, 'Commissions' are considered a variation/adaptation of the ombuds model, though sometimes viewed as having broader powers than the "traditional/ classic-based" model.⁶³ As between Commissions/Ombuds and Advocates, the former seem to stand in a more neutral/impartial place (until a complaint is substantiated), whereas children's advocates may have more active role in defending the rights of children and youth due to the fact that most are mandated to uphold children's rights, including the UN Convention on the Rights of the Child. However, like Ombuds/Commissions, Advocates investigate complaints and write reports about their investigations.

⁶³ See Marshall & Reif *supra* note 19 at 226 footnote 50: "The term 'Ombudsman' is used in many countries that have adapted the office from its Scandinavian roots (e.g. provinces of Canada, New Zealand). Other English language synonyms are: 'Parliamentary Commissioner for Administrative Investigations' (e.g. Queensland, Western Australia); 'Commissioner for Administrative Complaints' (Hong Kong); and 'Parliamentary Commissioner for Administration' (e.g. United Kingdom, Sri Lanka). In French-speaking jurisdictions see e.g.: Mediateur (e.g. France, Senegal, Mauritania); Protecteur du Citoyen (Quebec); Defenseur du Peuple (Madagascar). In Spanish-speaking countries see e.g.: Defensor de/ Pueblo (e.g. Argentina, Spain); Defensor de los Habitantes (Costa Rica). In India, the office is called Lok Ayukta." See also Michelle Lebaron, in "Watchdogs and Wise Ones in Winter Lands: The Practice Spectrum of Canadian Ombudsman" Liz Hoffman Ombudsperson Research Award Paper, Forum of Canadian Ombudsman (FCO) 2008 at p. 11, made the following note "No classical ombudsman has been appointed in the federal sector, while some specialized ombudsman offices have been instituted, such as the offices of the Commissioner of Official Languages, the Correctional Investigator, and newer offices like the Taxpayers' Ombudsman/Ombudsman des Contribuables.

Part 1: Why is there a need for accountability when it comes to Indigenous children and families?

Simply put, there is a need for accountability because federal and provincial governments in Canada have both contributed to the taking away of thousands of Indigenous children from their families and communities. This has wreaked countless harms on individual children, their families, their communities and nations. This started with the residential school system but morphed into the child welfare system after World War 2. In the last 70 years, the most significant contribution to this overrepresentation has been the inadequate provision of services to meet the needs of Indigenous children and families. Both the federal and provincial governments have been reluctant to fully fund services to Indigenous peoples, relying on dubious jurisdictional arguments to justify such discrimination. This continues up to the present. The watershed finding from the Canadian Human Rights Tribunal in *Caring Society* in 2016 that Canada had been knowingly underfunding its First Nations Child and Family Services Program underscores this point. The fact that the Tribunal has made 21 further orders since, many of these finding Canada to be in non-compliance with the original ruling, accentuates how pervasive these problems are. In its ruling on monetary compensation for the discrimination in the case, the Tribunal noted, “this case of racial discrimination is one of the worst possible cases warranting the maximum award.”⁶⁴ Below, we examine the context in relation to First Nations child and family services informing the need for accountability mechanisms.

a) The history of First Nations child welfare services

Paradoxically, the taking of children away from Indigenous families and communities stems from both the exercise of extraordinary amounts of control over the lives of Indigenous peoples by governments in Canada, as well as these governments exhibiting extraordinary neglect for the well-being of Indigenous children and families. To carry out its objective to ‘kill the Indian in the child,’ Canada used the *Indian Act* and RCMP, among other forms of state control, to take thousands of Indigenous children from their families and place them in residential schools between the 1880s and 1950s.⁶⁵ The TRC Final Report documented Canada’s refusal to adequately fund health services as a cause of high illness and death rates of Indigenous children in residential schools.⁶⁶ Coinciding with the federal government’s decision to gradually divest itself of residential schools, with the federal government’s endorsement in the form of reimbursement of provincial costs, provincial child welfare systems were extended on reserve to effectively become the new residential school system.⁶⁷ Especially from the 1960s to the 1980s provincial legislation was used to apprehend large numbers of First Nations children from their

⁶⁴ 2019 CHRT 39 at para 13 and 231 aff’d 2021 FC 969. Canada has sought an appeal of this decision but is simultaneously seeking to negotiate a resolution with parties at this time.

⁶⁵ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future - Summary of the Final Report of Truth and Reconciliation Commission of Canada* (2015) [TRC], at 37-134

⁶⁶ *Ibid* at 90-99.

⁶⁷ See Naomi Metallic, “A Human Right to Self-Government over First Nation Child and Family Services and Beyond: Implications of the *Caring Society* Case” (2019) 28:2 JLSP [Metallic 2019] at 8-11.

families, sometimes on the slightest of pretext (the “Sixties Scoop”).⁶⁸ Indigenous communities had no say, nor any mechanisms to stop these governments from making these forceful interventions in the lives of their children and families.⁶⁹ Overrepresentation of Indigenous children in provincial child welfare systems remains a significant problem today and has been dubbed the ‘Millennial Scoop.’⁷⁰

These problems are also rooted in over 70 years of jurisdictional wrangling between the federal government and provincial governments, with neither level of government wishing to assume full responsibility for the provision of essential services to Indigenous peoples. This includes child and family services, but also health, education, social assistance, assisted living, housing and more.⁷¹ While both levels of government gradually assumed some role in the delivery of child and family services to Indigenous peoples, perpetual disputes over who is responsible for paying for essential services for “Indians” have been used by all governments as justification for doing less, causing significant harm to Indigenous children and families.⁷² In 2019 Final Report, the National Inquiry into Missing and Murdered Indigenous Women and Girls named this problem “interjurisdictional neglect” and suggested that it violated the s. 7 *Charter* rights to life, liberty and security of the person of Indigenous women and girls.⁷³

Notably, starting in the 1960s, the federal government begrudgingly accepted temporary responsibility to provide some essential services to First Nations on reserve such as social assistance. Funding and services were intended to be provided at levels comparable to provincial services to other citizens. Although this became permanent and extended to a broader range of reserves, Canada resisted legislating in these areas or putting in place other accountability mechanisms to ensure adequate services or funding, despite the Auditor General and other reports highlighting the need for better accountability. Canada also downplayed its responsibility in relation to providing essential services, suggesting such services were not based on constitutional obligations, but simply a matter of good public policy.⁷⁴

In the 1970s and early 1980s, First Nations began voicing concerns about services that were either lacking or utterly inappropriate and calling for more community-based services. In response, Canada began to gradually devolve program delivery to First Nations through funding

⁶⁸ See *Brown v. Canada (Attorney General)*, 2017 ONSC 251.

⁶⁹ *Ibid* at paras 20-61. In the case, Canada argued that if it had honoured its contractual obligations (in Ontario) to consult with First Nations regarding child apprehension, nothing would have changed. The Court rejected this argument based on substantial evidence to the contrary, and referred to it as “an odd and, frankly, insulting submission” at para 42.

⁷⁰ Peter W. Choate, “The Call to Decolonise: Social Work’s Challenge for Working with Indigenous Peoples” (2019) 49 *British J Social Work* 1081 at 1094.

⁷¹ Metallic 2019 *supra* note 67 at 8-11; Promislow & Metallic *supra* note 6 at 93-101.

⁷² See Naomi Metallic “NIL/TU,O and Native Child v BCGSEU and CEPUC” in Kent McNeil & Naomi Metallic, eds, *Judicial Tales Retold: Reimagining Indigenous Rights Jurisprudence*, (Special Collection of Canadian Native Law Reporter, Indigenous Law Center, Saskatchewan, 2020) [*Judicial Tales Retold*] at 21-43; and Hadley Friedland, “Reference re Racine v Woods,” in *Judicial Tales Retold* at 155-190.

⁷³ *Reclaiming Power and Place – The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1a (Canada, 2019) at 567 [MMIWG Final Report].

⁷⁴ Metallic 2019, *supra* note 67 at 11-12; Promislow & Metallic, *supra* note 6 at 103.

agreements, however, the federal government maintained ultimate control over funding levels and program terms and conditions. The funding agreements lacked effective dispute resolution mechanisms to permit First Nations to hold Canada accountable for inadequate funding.

In the context of child and family services, Canada unilaterally created the First Nations Child and Family Services Program (FNCFS Program) under Directive 20-1 in 1991, which required FNCFS Agencies to operate pursuant to provincial child welfare laws, with federal funding. The creation of the FNCFS Program spurred the establishment of over 100 FNCFS Agencies across Canada, intended to provide more culturally appropriate child welfare services to First Nations children. It quickly became apparent, however, that the funding formula under Directive 20-1 was entirely inadequate to provide preventative and culturally appropriate services. The formula did not provide funding comparable to the range of child welfare services funded in the province, and often resulted in situations where children were apprehended because alternative services could not be funded under Directive 20-1.

Two expert reports commissioned by the Assembly of First Nations and Canada in 2000 and 2005 confirmed the systemic underfunding in the FNCFS program. Despite these reports, Canada did little to implement their recommendations. In 2008, Canada developed a new funding formula, called the Enhanced Prevention Focused Approach (EPFA), and slowly began implementing it in some regions of the country. The EPFA, however, was only a slight improvement over Directive 20-1 and continued to perpetuate inequities in the FNCFS.⁷⁵

An important development in this period was the Federal House of Commons unanimously affirming Jordan's Principle in 2007, a child-first principle to ensure no gaps or delays in services to First Nations children.⁷⁶ The Principle is in memory of Jordan River Anderson, a First Nations boy from Manitoba, born with multiple disabilities, who died in hospital never getting to live close to his family, due to jurisdictional wrangling between Canada and the province over who would pay his medical costs were he moved closer to home. The Principle requires that the first government approached by a First Nations community *pay* for the requested services for a First Nations child, and that any jurisdictional disputes be resolved afterwards. While Canada committed to, and ear-marked substantial funds to implement, Jordan's Principle, these funds were never used due to the very narrow interpretation given to the Principle by the federal government.⁷⁷

⁷⁵ Metallic 2019, *ibid* at 12-16; see also Cindy Blackstock, "The Complainant: The Canadian Human Rights Case on First Nations Child Welfare," (2016) 62 McGill LJ 285 [Blackstock].

⁷⁶ Private Members Motion 296, tabled by Jean Crowder, MP Cowichan-Nanaimo for (NDP) the motion reads: "in the opinion of the House, 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".

⁷⁷ See *Caring Society* 2016, *supra* note 1 at para 380.

b) *First Nations Caring Society et al. v Canada*

Given the lack of commitment by Canada to make real reform to the FNCFS Program, the Caring Society and the AFN filed a human rights complaint with the Canadian Human Rights Commission in 2007. After nine years, which saw several delays by Canada, retaliation against Dr. Cindy Blackstock, as well as attempts to strike the complaint,⁷⁸ the Tribunal ordered in favour of the complainants in 2016 ("Main Decision").⁷⁹ It found that discrimination on the basis of race and/or national ethnic origin was made out, and in the course of its extensive reasons, made several important findings, including that:

- Canada is not a "passive player" in funding child welfare services but exercises significant control and power over child welfare services on reserve. Canada may have a fiduciary obligation to act in the best interest of First Nations children and families to ensure the child welfare programming is adequate and culturally appropriate.⁸⁰
- The funding models used by Canada underfund prevention services, do not ensure services are culturally appropriate, and in fact create incentives to remove children from their homes as a first resort rather than as a last resort, replicating the residential school era. It also resembles the residential school era because the fate and future of many First Nations children is still being determined by the Canadian government.⁸¹
- Canada knew its FNCFS program was not comparable to provincial services but had resisted doing any comparative (gap) study. Evidence before the Tribunal included an internal report from 2006 showing the Department of Indigenous Services knew it was underfunding First Nations, stating, "if current social programs were administered by the provinces, this would result in significant increase in costs for INAC."⁸²
- While Canada failed to provide services comparable to the provinces, this standard in itself is discriminatory. Human rights principles, both domestically and internationally, require INAC to consider the distinct needs and circumstances of First Nations children and families living on-reserve—including their cultural, historical and geographical needs and circumstances—in order to ensure substantive equality in the provision of child and family services to them. Simply attempting to mirror provincial for First Nations communities runs afoul of human rights principles.⁸³
- Canada had wrongly adopted a very narrow interpretation of Jordan's Principle, which had been adopted by a unanimous resolution of Parliament in 2007 as being limited to children with multiple disabilities and not to child welfare or other services. Jordan's Principle requires coordination and cooperation between the provincial and federal

⁷⁸ Blackstock, *supra* note 75 at 291-297.

⁷⁹ *Caring Society 2016*, *supra* note 1.

⁸⁰ *Ibid* at paras 59-86 and paras 90-110.

⁸¹ *Ibid* at paras 458 and 423-426.

⁸² *Ibid* at paras 335-336 and 267.

⁸³ *Ibid* at paras 341-344, 388-389, and 462-465.

governments, as well as between departments of the same government, to address gaps and delays in health and social services. The Tribunal's language suggested Jordan's Principle applies to all federal programs aimed at addressing the needs of children and families on reserve.⁸⁴

The Tribunal ordered Canada to stop its discriminatory practices and reform of FNCFS programs, stating, "a REFORM of the FNCFS Program is needed in order to build a solid foundation for the program to address the real needs of First Nations children and families living on reserve."⁸⁵ It retained jurisdiction over the case in order to consider compensation and other remedies requested by the Complainants, and until all of its orders are implemented. Canada did not appeal this case and committed to make reforms to address its findings.⁸⁶

c) Canada's conduct since the Main Decision

Since the Main Decision, the Tribunal has found several instances of non-compliance by Canada, particularly its failure to implement a broad interpretation of Jordan's Principle and an effective process to respond to Jordan's Principle requests and appeals. The non-compliance decisions point to a number of systemic and accountability issues, such as resistance to depart from old approaches (using comparability instead of substantive equality and narrow definition of services and children covered by Jordan's Principle)⁸⁷, using funding authorities to justify inaction,⁸⁸ failure to collect appropriate data to properly assess Jordan's Principle requests⁸⁹ and needs, and lack of arm's-length appeal process.⁹⁰

While ISC has been attempting to respond to the rulings of the Tribunal by providing education to staff and modifying some of its processes, such as funding community service coordinators to help applicants and changing its Jordan's Principle appeals process, there is a need for ongoing, comprehensive assessment of Canada's commitment to Jordan's Principle and substantive equality. Staff turnover at the Department is reported to be high and implementing meaningful change within the bureaucracy of ISC seems to be a real challenge. Further, the modified appeal process the Department sought to introduce was stalled due to vacancies.⁹¹

⁸⁴ *Ibid* at paras 351-364, 374 and 391.

⁸⁵ *Ibid* at para 463.

⁸⁶ CBC News, "Federal Government Won't Appeal Ruling That Found It Discriminated Against Children on Reserves", CBC News (22 February 2016).

⁸⁷ See 2016 CHRT 10; 2016 CHRT 16; 2017 CHRT 35; 2019 CHRT 7 (interim) and 2020 CHRT 36.

⁸⁸ See 2018 CHRT 4 at paras 407-411; see also August 26, 2021 Letter Decision at section "VI. Financial Administration Act."

⁸⁹ See 2017 CHRT 14 at paras 73, 85 and 107.

⁹⁰ See *ibid* at paras 94-103.

⁹¹ See *Jordan's Principle Guide*, last updated May 29, 2020; *Standard Operating Procedures: Jordan's Principle Service Coordinators Gathering: Building Connections* (Indigenous Services Canada, 2019); and *Jordan's Principle and Update on Development and Implementation of Appeals Secretariat PPT*, September 2021.

A 2021 article based on assessment of the Jordan's Principle in the Alberta region highlights how onerous the Jordan's Principle application process can be for applicants.⁹² Requiring applicants to provide documentary evidence and particularize how a request aligns with substantive equality were identified as particularly burdensome, resulting in several complaints being treated as ineligible for consideration by the Department.⁹³ This was confirmed by our own analysis of data provided by ISC for the year 2019-2020, which showed that over 51% of Jordan's Principle requests in that year (32,587 out of 62,888) were not considered due to being assessed as submitted with insufficient information.⁹⁴ Finally, in interviews, Caring Society staff and lawyers for the complainants emphasized the crucial importance of oversight to ISC's approach to Jordan's Principle.

Early on in our research, we conducted a survey to gather further information about the current issues and needs for an accountability mechanism for Jordan's Principle. We received thirteen responses mostly from Jordan's Principle Navigators and a couple of Indigenous Services Canada Jordan's Principle National staff. Some challenges and barriers identified included: burdensome document requirements in the initial application and appeals process; lack of knowledge of the Indigenous context by ISC staff; high turnover of limited staff at ISC; failure of provincial governments coming to the table; timelines and delays; the perception that the current individual case-by-case process for Jordan's Principle fails to create broader and more meaningful change; the need for clear parameters and policy guidelines to assist service coordinators; ISC staff do not understand substantive equality and communities bear the burden of explaining the needs for substantive equality in their applications; lack of aging out of care supports; lack of consistency; and vague reasons for denials.

Canada has also shown ongoing resistance to reform of its funding approach to the FNCFS Program from one based on ad-hoc budget allocations to one that is needs-based, and informed by principles of self-government. Merely increasing funding for FNCFS services through annual budget allocations was found to be inconsistent with the Main Decision and the Tribunal ordered Canada in 2018 to develop an alternative system of funding based on needs assessments of Agencies and a cost-analysis of the real needs of First Nations agencies.⁹⁵ The Tribunal contemplated, however, that nation-to-nation self-government agreements over child welfare could be an alternative to Canada's FNCFS Program, however, it is clear that the funding of such self-government would need to reflect the principles set out in the Main Decision.⁹⁶ Details of long-term reform in relation to funding have yet to be released by Canada.

⁹² Vandna Sinha et al, "Substantive Equality and Jordan's Principle: Challenges and Complexities," (2021) 35 JLSP 21.

⁹³ *Ibid* at 33.

⁹⁴ Indigenous Services Canada, Deep Dive Jordan's Principle - 2020-09-22 PPT, at slides 21-22. There are similar slides in the 2020-21 Deep Dive PPT, but the information is not presented exactly in the same way as the previous year making comparison impossible. Sometimes products and service #s are shown instead of actual requests. For this reason, we were not able to provide a similar breakdown for 2020-21.

⁹⁵ See 2018 CHRT 4, *supra* note 88 at paras 402-412.

⁹⁶ *Ibid*.

As part of responding to the Main Decision, as well the Truth and Reconciliation Commissions' call to action for national child welfare legislation, Canada passed *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 ("C92").⁹⁷ The law sets out minimum standards to be followed when an Indigenous child is involved in child apprehension matters, which overlays the various provincial child welfare laws.⁹⁸ It also recognizes Indigenous groups' inherent right to self-government in the area of child and family services and sets out a framework for how Indigenous governing bodies can pass their own laws.⁹⁹ C92 legislates Jordan's Principle in s. 9(3)(e):

in order to promote substantive equality between Indigenous children and other children, a jurisdictional dispute must not result in a gap in the child and family services that are provided in relation to Indigenous children.

This was confirmed by the Quebec Court of Appeal in a recent reference decision on C92.¹⁰⁰ However, C92 remains unclear as to which level of government as between Canada and the provinces bears primary responsibility for funding compliance with national standards and self-government.¹⁰¹ Canada could have chosen to clarify this issue in the legislation, but chose not to, raising fears that C92 will be used to perpetuate the same jurisdictional wrangling that has plagued this area for over 70 years.¹⁰² This problem was also highlighted in the *QCCA C92 Reference*.¹⁰³ While C92 raises the prospect for the creation of a dispute resolution mechanism through regulation, we have yet to hear any further plans by Canada to implement such a mechanism.

Further, we have heard of some ISC staff saying that the Main Decision has no bearing on C92 issues, but we clearly believe this to be in error and demonstrative of a lack of real appreciation of the Main Decision, or the extent of Canada's obligations to conform with the right to substantive equality, statutory human rights and international law obligations in relation to Indigenous peoples.¹⁰⁴ In addition, there are concerns that the timeline for negotiating collaboration agreements under C92 (1 year) are unrealistic and may position communities to exercise jurisdiction without funding (which could be disastrous). We have heard issues of

⁹⁷ Canada first announced its plans to pass legislation at an national emergency meeting on Indigenous child welfare: see John Paul Tasker, "Jane Philpott Unveils 6-Point Plan to Improve 'Perverse' First Nations Child Welfare System", CBC News (25 January 2018).

⁹⁸ SC 2019, c 24, ss 9-17.

⁹⁹ *Ibid* at ss 18-26.

¹⁰⁰ Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis, 2022 QCCA 185 ["QCCA C92 Reference"] at para 226.

¹⁰¹ See, in particular, *supra* note 98 at s 20(2)(c).

¹⁰² See Naomi Metallic, Hadley Friedland, Aimée Craft, Jeffery Hewitt and Sarah Morales, "An Act Respecting First Nations, Inuit and Métis Children, Youth and Families: Does Bill C-92 make the grade?," Special Feature for Yellowhead Institute, March 12, 2019; and Naomi Metallic, Hadley Friedland and Sarah Morales, "The promise and pitfalls of C-92: An Act Respecting First Nations, Inuit and Métis Children, Youth and Families," Special Feature for Yellowhead Institute, July 4, 2019.

¹⁰³ QCCA C92 Reference, *supra* note 100 at paras 271-277.

¹⁰⁴ The QCCA C92 Reference also acknowledged the clear relationship between the Main Decision, subsequent decisions of the Tribunal, and C92: see *ibid* at paras 146-164.

Indigenous Governing Bodies receiving conflicting information about negotiation terms from federal negotiators and being asked to sign confidentiality agreements, which raises issues of government transparency. The QCCA's suggested approach to negotiations and paramountcy around Indigenous law under C92, if it is upheld by the Supreme Court of Canada, will require education of provinces and others about their roles and limits on their powers, as well as accessible ways to address potential disputes between Indigenous governments and intransigent provinces.¹⁰⁵ There are also significant needs for resources for carrying out education and capacity building around C92 more generally, including for communities, for ISC and CIRNAC staff, as well as those involved in the enforcement of child welfare laws and implementation on the national standards, such as social workers, Crown lawyers, legal aid lawyers and judges.¹⁰⁶ It is surprising to us that, despite the stated importance of C92 by Parliament, Canada did not commit the same amount of resources for education and capacity building as it did for changes to the *Divorce Act*, or when the *Family Homes on Reserves and Matrimonial Interests or Rights Act* was rolled out with a Centre of Excellence.¹⁰⁷

There also appears to be significant reluctance on the part of Canada to see the reform it needs to undertake to address long-standing systemic underfunding in services that affect long-term child and family well-being. It is clear from several statements from the Tribunal that Jordan's Principle is only intended as a temporary stop-gap measure to address gaps in underfunding and under-servicing in its services on the way to Canada overhauling these services to remove such gaps and inadequacy.¹⁰⁸ However, it is not at all clear that this is understood by the Department. Our concern is Canada simply seeing Jordan's Principle as akin to a program without addressing the systemic inequality that underlies the necessity for Jordan's Principle in the first place.

In their 2021 paper, Vandna Sinha, Colleen Sheppard et al., echo our concern. They characterize ISC's approach to Jordan's Principle as an individualistic, demand-driven process, and less as a requirement to ensure substantive and systematic equality in services and develop proactive policies and practices for securing equitable services for First Nations children and families. The authors describe how such an approach results in funding only being provided to First Nations individuals or communities with the capacity and wherewithal to make Jordan Principle requests, and needs are not being systematically assessed across

¹⁰⁵ The QCCA, in the C92 Reference, struck ss 21-22 from C92 and said that, instead, issues of paramountcy between provincial and Indigenous laws were to be addressed through the s 35 Sparrow framework. This also imposes additional consultation and justification requirements on governments that may need to be adjudicated. The decision is currently on appeal to the Supreme Court of Canada.

¹⁰⁶ This observation is based on the sheer volume of unsolicited requests from all of these groups that the authors, the Caring Society, and affiliated lawyers, have received, and continue to receive for support filling these needs.

¹⁰⁷ In addition to continuing and public legal education presentation and webinars discussing and explaining the Divorce Act amendments, see for example: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/index.html>; <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/fam.html>. The Centre of Excellence was in place from 2013 to March 2021 to support First Nations developing matrimonial property laws on reserve. For more information, see <https://www.coemrp.ca/>.

¹⁰⁸ See *Caring Society* 2016, *supra* note 1 at paras 362, 364, 374 and 391; 2017 CHRT 14 at paras 85 and 107; and 2020 CHRT 36, at para 12.

communities.¹⁰⁹ This is exacerbated by ISC's lack of transparency in publishing details of group requests made or approved by First Nations organizations and communities or the range of services or level of funding that First Nations can request.¹¹⁰ The authors refer to this as a "project system" or "projectification" approach and argue it is especially inappropriate given the degree of systemic inequality First Nations face:

This case by case approach to the implementation of Jordan's Principle can be described as what Tania Murray Li calls a "project system." In discussing this approach in relation to issues of rural development, she argues that the project system or "projectification" encourages people to think that a problem can be fixed without actually addressing the underlying processes that created the problem in the first place. Such an approach fails to make long-term systemic change, so when the time-bound project ends, the problems the projects were intended to address persist." ...

Under the demand-driven approach to Jordan's Principle, relief is contingent on the ingenuity, knowledge and ability of individual, community-based actors to make effective Jordan's Principle claims. Individuals or groups with identical needs may go unrecognized if they do not have the capacity to formulate Jordan's Principle requests, or if they fail to provide sufficient evidence of how the request is linked to substantive equality. ...

An individualistic, case-by-case approach to Jordan's Principle might be appropriate if First Nations children generally had access to equitable services. Exceptional, aberrant individual or group cases outside this norm of equitable services could be addressed through the Jordan's Principle claims process. However, the reality is that the problem of inequitable services for First Nations children living on reserves is persistent, systemic and impacts a wide range of health, social and education services. In such a context, the remedy of individual claims is a sorely inadequate means of addressing the challenge of larger systemic and structural problems.¹¹¹

Building on the authors point about how inappropriate projectification can be in the context of systemic inequality of services to First Nations children and families, in our review of ISC Jordan's Principle data, we noted that for 2019-2020, 67% of individual requests and 87% of groups requests were within the normative standard of care, and in 2020-21, 51% of individual requests and 40% of groups requests were within the normative standard of care.¹¹² Services meeting "normative standard of care" are those that are readily available to children and families in the province of reference.¹¹³ Thus, ISC's data reveals that a high degree of approved requests under Jordan's Principle were for services that are already provided to children within the province. Children and families in the province are not required to go through an extensive

¹⁰⁹ Sinha et al., *supra* note 92 at 33.

¹¹⁰ *Ibid* at 34.

¹¹¹ *Ibid*.

¹¹² Deep Dive Jordan's Principle - 2020-09-22 PPT, *supra* note 94 at slides 16-17; and Indigenous Service Canada, Deep Dive Jordan's Principle Q2 – 2021-05-04 at slides 25-26.

¹¹³ See Standard Operating Procedures: Jordan's Principles (18 October 2019) at 23.

process similar to the Jordan's Principle request process in order to access such services. This sheds light on the degree of systemic inequality that continues to exist within ISC's system of essential services for First Nations. Further, future plans on the direction of Jordan's Principle put forward by ISC suggest a long-term vision of Jordan's Principle funding into the future (albeit administered by communities directly), as opposed to fixing the problems in existing programs and services. We believe there is a strong need for oversight of ISC to ensure they are not getting stuck in projectification, but in fact addressing and reforming all their programs and services that further the well-being of Indigenous children and suffer from underfunding and under-servicing.

The data on Jordan Principle requests suggests systemic inequality in a wide number of areas of ISC services from education, to health services (medical equipment and supplies, medical transportation, medical / nutritional supplements, mental wellness, oral health, orthodontics and vision care), child development, assisted living and respite, infrastructure, social assistance.¹¹⁴ There are areas, such as with orthodontics and capital repairs and costs, that ISC has been reluctant to treat as falling within Jordan's Principle and intervention of the tribunal or the courts has been necessary.¹¹⁵ The Caring Society relates there are certain areas, such as administration / governance costs, that ISC remains reluctant to fund pursuant to Jordan's Principle.

Even beyond the implications of the Main Decision, ISC should be striving to reform its services based on the commitments within *Department of Indigenous Services Act*, SC 2019, c 29, s 336 ("*DISA*"), which came into effect in July 2019. *DISA* replaced the old *Department of Indian Affairs and Northern Development Act*, RSC 1985, c I-6 and introduced some important standards that were absent from the old act. These include:

- Identifying the group the Department services as "Indigenous peoples" which is defined as having the same meaning as "Aboriginal peoples" within subsection 35(2) of the Constitution Act, 1982. Section 35(2) defines "Aboriginal peoples of Canada" as including the "the Indian, Inuit and Métis peoples of Canada."
- Listing the main activities and responsibilities to be undertaken by the Department. Section 6(2) of the Act states that "[t]he Minister shall ensure services with respect to ... (a) child and family services; (b) education; (c) health; (d) social development; (e) economic development; (f) housing; (g) infrastructure; (h) emergency management; [and] (h.1) governance...".
- The preamble of *DISA* includes commitments by Canada to ensure its service standards are transparent, meets the needs of Indigenous group, consider the socio-economic gaps and negative social factors impacting Indigenous individuals in doing its work,

¹¹⁴ Deep Drive Jordan's Principle - 2020-09-22 PPT, *supra* note 94 at slide 30.

¹¹⁵ See *Shiner v Canada*, 2017 FC 515 on orthodontics, which was unsuccessful but resulted in a settlement that included a policy change that considers pain as a criteria for NIHB eligibility; and see August 26, 2021 Letter Decision, *supra* note 87 on capital services.

recognize and promote Indigenous ways of knowing, being and doing, and collaborate and cooperate with Indigenous peoples in its work.

- Section 7(a) of the Act sets out a requirement of the Minister to collaborate in the development, provision, assessment and improvement of the services listed at s 6(2).

In other words, *DISA* requires ISC to ensure that all of its services and programs are needs-based and address socio-economic gaps, and that reform of such programs be done in collaboration with Indigenous communities.¹¹⁶ It is not clear to what extent *DISA* is being followed by the Department at this time. We believe there is a need for oversight of ISC for its compliance with *DISA*.

Finally, the *DISA* commits Canada to implementing the *United Nations Declaration on the Rights of Indigenous*, as does Canada's 2021 law, the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, which affirms the Declaration as a universal human rights instrument with application to Canadian law. The Declaration contains several articles that ought to inform Canada's delivery of services to Indigenous peoples, including that Canada must take effective measures, and where appropriate, special measures to ensure the continuing improvement of Indigenous peoples' economic and social conditions.¹¹⁷ We believe there is a need for oversight of ISC for its compliance with the Declaration and *UNDRIPA*.

d) Role of First Nations Caring Society since the Main Decision

Since the Main Decision, Dr. Blackstock and the Caring Society have been playing a crucial advocacy role in supporting families in seeking to access Jordan's Principle and substantive equality, informally providing oversight of ISC's implementation of the CHRT decisions, by bringing issues of non-compliance to the Tribunal's attention as well as continuing to publicly raise awareness of systemic discrimination against First Nations children and families. Further, by drawing on its network of lawyers who assist it on a *pro bono* basis, the Caring Society has engaged in strategic interventions such as intervening with ISC National Office staff to discuss matters on Jordan Principle files as well seeking judicial review of denials, for example, in the case of Josey and Stacy Shiner regarding denial of orthodontics. While this judicial review was unsuccessful, a settlement was reached which included a policy change that considers pain as a criteria for NIHB eligibility.¹¹⁸ In the case of Carolyn Buffalo-Jackson and her son Noah, the Caring Society and a *pro bono* lawyer prevented a First Nations mother's human right complaint relating to her disabled son from being dismissed by the Canadian Human Rights Commission, leading to a settlement with ISC. In this particular case, Carolyn was both a lawyer and First Nation Chief and still faced significant barriers in navigating the Jordan's Principle and human

¹¹⁶ See also Naiomi Metallic, "Making the most out of Canada's new Department of Indigenous Services Act," Policy Brief for Yellowhead Institute, August 12, 2019.

¹¹⁷ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (Annex), UN GAOR, 61st Sess, Supp No 49, Vol III, UN Doc A/61/49 (2008) 15 at art. 21.

¹¹⁸ See *Shiner v Canada*, *supra* note 115.

rights system.¹¹⁹ This and other stories of the Caring Societies' interventions provides compelling case-studies of the ongoing needs for advocacy vis-à-vis Canada when it comes to the need for services.

The Caring Society does not receive any funding from Canada but relies on fundraising to sustain itself. In carrying out its extensive advocacy, it relies on its small staff and the generosity of lawyers and other professionals who assist it in its work. The Society and its staff recognize that they cannot help all who need assistance and support and, in our conversations with them, have emphasized the need for formalized and funded advocacy services for First Nations children and families.

e) Role of the provinces

From the 1990s and onwards, some provinces amended their child welfare policies and legislation to attempt to accommodate Indigenous cultures and give some voice to Indigenous communities in apprehension matters. However, such changes were not universal and resulted in a patchwork of protections across the country.¹²⁰ This provided unequal protections to Indigenous children across the country until the coming into force of C92. When it comes to the provision of child and family services to First Nations, we are not aware of any provinces who were willing to provide funding to meet the child and family of First Nations children and families to address the shortfalls of the FNCFS Program between the 1990s and 2016.

More broadly, in relation to the provision of services to Indigenous people, despite some provinces endorsing Jordan's Principle (AB, SK, MB, ON, NB, NFLD), up to the present, there continues to be significant reluctance on the part of the provinces to provide services to Indigenous peoples, particularly First Nations living on reserve, although, constitutionally, there is nothing preventing them from doing so.¹²¹ This is illustrated in the 2020 Manitoba Human Rights Panel decision of *Sumner-Pruden v. Manitoba*.¹²² In this case, Manitoba's Human Rights Panel agreed that the province discriminated against a young First Nations man with multiple disabilities and his mother for delay, and often denial, of healthcare and related services based on their First Nations status and the fact they lived on reserve. The Panel found that the delays and denials were caused by the policies and practices arising from the exercise of concurrent jurisdiction between the province and federal government, and this amounted to adverse effects discrimination.¹²³ Importantly, the Panel also found that the province could not rely on

¹¹⁹ Carolyn Buffalo, "Buffalo v Canada – My Family's Fight for the Right for Noah to ride a bus to school," PowerPoint Presentation, 2017.

¹²⁰ Metallic 2019 *supra* note 67 at 13-14 and Appendix B.

¹²¹ See status report on provincial action on Jordan's Principle in Canadian Pediatric Society, "Are We Doing Enough? A status report on Canadian public policy and child and youth health," 2016 edition at 27. For a discussion of the concurrent jurisdiction between Canada and the province in matters of essential services, see Metallic in *Judicial Tales Retold*, *supra* note 72; see also Sébastien Grammond, "Federal Legislation on Indigenous Child Welfare in Canada" (2018) 28:1 J L & Soc Pol'y 132.

¹²² *Sumner-Pruden v Manitoba* (2020), MHRC 15 LP 10.

¹²³ *Ibid* at paras 22-23.

jurisdictional arguments to justify the discrimination, noting, “The Canadian constitutional framework does not amount to a reasonable justification for the discriminatory treatment of the complainants.”¹²⁴ Further illustrating provincial reluctance, Manitoba has appealed this ruling, continuing to maintain Canada's ability to fund and/or provide health and disability services on the First Nation constitutes a *bone fide* and reasonable cause for discrimination. This matter also further illustrates the need and importance of advocacy support services as the complainants in the case are represented by lawyers from the Public Interest Law Centre, and only citizens of Manitoba have access to this service.

We have also heard that some provinces have recently been denying funding services for urban Indigenous children in light of Canada's approach to Jordan's Principle since the Main Decision. In our discussion with ISC, Canada advised that it has yet to develop a system for negotiating reimbursement with the provinces in relation to services that Canada determines ought to be paid by provinces. These examples illustrate a further need to hold provinces more accountable to their substantive equality and Jordan's Principle obligations. The Assembly of Seven Generations report clearly emphasized that Indigenous youth and children deserve justice and reparations for the harms that continue to impact daily lives, and in this regard “Indigenous youth and children deserve accountability and responsibility from the federal government, as well as all levels of government.”¹²⁵

Beyond the provinces providing services, another area of needed oversight is in relation to those who enforce provincial child welfare laws—and now C92 as well—including agencies, government lawyers and judges, as well as those who represent parents and communities in child welfare proceedings, namely legal aid lawyers and members of the private bar. As noted earlier, there is a major need, especially with the coming into force of C92, for these actors to learn about their obligations under C92. More generally, there is a need to ensure that child welfare law enforcement is carried out appropriately with a knowledge and sensitivity to the history of residential schools and the overrepresentation of Indigenous children in state care through the Sixties Scoop and even up to the present. There are existing accountability bodies that already provide some oversight of child welfare enforcement in the provinces, but it is questionable whether these bodies provide sufficient attention to the challenges faced by Indigenous children and families. We explore this question further in the next section.

f) Conclusion

Addressing the causes of overrepresentation of Indigenous children in state care is a complex matter with deep systemic discrimination underlying it - many of the problems stem from Canada and the provinces' reluctance to prioritize and fund Indigenous children and families' needs. Canadian courts have done little to protect or vindicate these interests over the past 70 years. While courts provide some backstop on accountability issues, such as in matters of judicial review, generally, they lack the jurisdiction to address systemic discrimination

¹²⁴ *Ibid* at para 25.

¹²⁵ Assembly of Seven Generations, *supra* note 7 at p. 31.

complaints in the same way as human rights bodies or provide the types of systemic remedies that are needed to address long-standing systemic problems.¹²⁶

Through the Main Decision and subsequent orders, the Canadian Human Rights Tribunal has been instrumental in holding the federal government accountable for systemic underfunding in the FNCFS Program and implementing Jordan's Principle. This is especially so because the Tribunal is remaining seized of its jurisdiction over the case until all outstanding remedial issues have been addressed. There will come a day, however, when the Tribunal will relinquish jurisdiction over the case. Given the very long history of systemic discrimination against Indigenous people by the government in Canada, particularly in the area of service delivery, we are not hopeful that this will signal the end of all such discrimination and believe it will be important to have alternative accountability mechanisms in place. Further, like the courts, the role of tribunals are reactive and not proactive. Tribunals and courts decide the matters in front of them based on evidence put forward by the parties. They cannot entertain or propose broader systemic solutions to problems. This is what fuels the need for consideration of other accountability mechanisms.

¹²⁶ See for example *Malone v Canada (AG)*, 2021 FC 127, where a child self-identified as Mi'kmaq Acadian with connections to the Mi'kmaq First Nations people flowing through their maternal side since 1700's was seeking judicial review of the ISC Jordan's Principle Appeals Committee's decision to deny him funding under Jordan's Principle on the basis that such funding was only available to First Nations children registered as Indians under the *Indian Act*. In denying the judicial review, the Federal Court was deferential to Canada's approach to eligibility criteria for Jordan's Principle without scrutinizing the systemic discrimination underlying such criteria. This is in stark contrast to the analysis of the Canadian Human Rights Tribunal on the issues of lack of Indian status and Jordan's Principle eligibility criteria in 2019 CHRT 7 (interim) and 2020 CHRT 36.

Part 2: What specific issues should be addressed by an accountability mechanism?

In undertaking our research, we learned there are several options and minute details to consider around different accountability mechanisms. It can be easy to get distracted by these. However, Linda Reif, author of *Ombuds Institutions, Good Governance and the International Human Rights System*, reminded us that the driving question in designing any accountability mechanism should be, “*What are the real accountability problems we want to address?*”

Based on the context and issues related in Part 1, we have identified ten different accountability problems that we strongly feel must be addressed in the context of ensuring the well-being of Indigenous children in Canada. We set these out below, explaining why these are crucial accountability needs that must be addressed. In the next section, we identify key features of effective accountability mechanisms and recommend three different accountability mechanisms that we believe can most effectively address these accountability needs if implemented together.

Need #1: Oversight of the current Jordan's Principle process at ISC

We heard very clearly from Caring Society staff and the lawyers who have been involved in the case that this has to be a key function of any accountability mechanism. We heard concerns about the design of the Jordan's Principle request process, inadequate funding to cover all costs related to the provision of child and family services, delays in process requests, inability to accommodate urgent and emergency cases, lack of transparency in decision-making and data collection, and more. In their 2021 article, Sinha et al. identify a number of short-term recommendations to improve the current Jordan's Principle process.¹²⁷ However, they also stress that ongoing, comprehensive assessment of Canada's commitment to Jordan's Principle is needed, including collection and independent analysis of data collected by ISC.¹²⁸ We agree.

At this time, given the deep systemic inequality in services faced by First Nations children, an effective Jordan's Principle process is necessary in order to meet the immediate needs of Indigenous children and families, and we believe that any body providing independent oversight and recommendations to ISC is the best way to ensure this. While ISC staff may be well-intentioned and committed to implementing the Tribunals orders, staff turnover is frequent, the legacy of systemic discrimination runs deep within ISC, challenges due to the confidential nature of Jordan's Principle requests, and concerns of retaliation when staff attempt to address systemic discrimination, all demonstrate the need for independent oversight by a body with expertise in the nature of systemic discrimination faced by Indigenous children and families in order to ensure that mistakes of the past are not repeated.

¹²⁷ Sinha et al., *supra* note 92 at 42.

¹²⁸ *Ibid* at 24 and 41.

Need #2: Overseeing of ISC's long-term reform of CFS, including funding of agencies, as well as CIRNAC's funding and negotiation of self-government under C92

Understandably, given the immediate needs of First Nations children and families, a lot of the focus and attention since the Main Decision has been on effectively implementing Jordan's Principle. However, we cannot lose sight of the fact that one of the main orders from the Main Decision was for Canada to "REFORM" the FNCFS Program, or that much of the evidence in the case was about Canada knowingly underfunding the Program for over a decade.¹²⁹ There are few public details available about the plans for long term reform in relation to the FNCFS program. We are surprised that, almost six years since the Main Decision, there isn't more available. This indicates a strong need for an independent oversight of Canada in order to ensure that it follows through with long-term reform of the FNCFS Program.

The introduction of the C92 legislation was in response to addressing long-term reform of child welfare, and needs to be viewed as such.¹³⁰ If ISC and CIRNAC staff are denying any connection between the Main Decision and Canada's obligations in relation to C92, internal education and external accountability is needed. As noted early, the Tribunal clearly made a connection between long-term reform and self-government.¹³¹ This means that the legal principles identified as applicable to long-term reform, such as Canada's key role in funding child welfare services on reserve, its fiduciary obligations to ensure the best interest of First Nations children and families,¹³² as well as the requirement to ensure substantive equality in funding and services, are equally applicable to Canada's obligations to fund self-government under C92.

There have been concerns raised about Canada using the vague funding requirements in relation to self-government in C92 to sustain the same types of jurisdictional wrangling that has been harming Indigenous children and families for decades.¹³³ Accounts of Canada not being transparent or clear in its approach to funding negotiations, and requiring Indigenous governing bodies to sign confidentiality agreements only accentuate these concerns. For these reasons, we believe oversight of long-term reform over child welfare, including the implementation of C92, is a serious accountability need that must be addressed.

Need #3: Oversight of Canada's efforts addressing systemic inequality in services related to Indigenous children and families

As noted earlier, there appears to be significant reluctance on the part of Canada to see that long-term reform includes ending the long-standing systemic underfunding in its services that

¹²⁹ *Caring Society* 2019, *supra* note 1 at para 463 and see also paras 267 and 335-339.

¹³⁰ Canada first announced its plans to pass legislation at a national emergency meeting on Indigenous child welfare - see note 97.

¹³¹ This is particularly apparent in 2018 CHRT 4, *supra* note 88 at paras 407-412

¹³² See *Caring Society*, *supra* note 1 at paras 90-110; and 2016 CHRT 10 at para 116.

¹³³ See "An Act Respecting First Nations, Inuit and Métis Children, Youth and Families: Does Bill C-92 make the grade?," and "The promise and pitfalls of C-92: *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*," *supra* note 102.

affect long-term child and family well-being. This includes, but is not limited to, ISC's programming in education, to health services, child development, assisted living and respite, infrastructure, and social assistance. It is clear from the Main Decision and several subsequent orders from the Tribunal that eliminating systemic inequality in the services that affect First Nations children and families is the ultimate long-term objective of Jordan's Principle.¹³⁴

We agree with Sinha et al. that Canada must be held accountable to achieving substantive equality in all services that affect long-term child and family well-being, not simply continuing to use Jordan's Principle as a stop gap measure.¹³⁵ Otherwise, as they observe, this will simply perpetuate 'projectification' of Jordan's Principle and not address its true purpose. In this regard, it will be crucial for Canada to see its obligation in relation to these services as providing substantive equality, not just ensure a comparable level to provincial services, as this was found to be discriminatory in the Main Decision. Further, the *Department of Indigenous Services Act* also requires Canada to provide services that, similarly, are needs-based and address socio-economic gaps faced by Indigenous groups.

Finally, there have been several reports, including from the Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women and Girls that have made several recommendations for the elimination systemic inequality in service delivery in relation to Indigenous children and families. We believe that part of the oversight of Canada here could also include assessment of relevant recommendations that Canada has committed to implementing.

Need #4: Oversight of federal-provincial efforts at cooperation in relation to funding and servicing of Indigenous children and families

Jordan's Principle recognizes that jurisdictional disputes between the provincial and federal governments (as well as disputes between departments within governments) should not result in the delay or denial of services that an Indigenous child is entitled to. It is not just a resolution of Parliament; it has been recognized by the courts and by the Tribunal as a human rights principle, which has both a substantive equality right and jurisdictional dimension to ensure First Nations children and families don't bear the brunt of jurisdictional disputes.¹³⁶

The government of first contact should pay first, with any disputes over who pays to be determined between the governments at a later time. Under Canadian constitutional principles, both the federal and provincial governments have the jurisdiction to provide services to

¹³⁴ See *Caring Society* 2016, *supra* note 1 at paras 362, 364, 374 and 391; 2017 CHRT 14 at paras 85 and 107; and 2020 CHRT 36 at para 12-14.

¹³⁵ Sinha et al., *supra* note 92 at 24.

¹³⁶ See *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342 at 96-97; and see the Tribunal in CHRT 2020 36 at para 12, "Jordan's Principle is a human rights principle grounded in substantive equality ... [i]t is part of the solution for remedying the discrimination found in [the Main Decision ... [it] not limited to the child welfare program and instead addresses all inequalities and gaps in federal programs for First Nations children." See also Colleen Sheppard, "Jordan's Principle: Reconciliation and the First Nations Child," (2018) 27:1 Constitutional Forum 1.

Indigenous peoples. This is known as an area of 'concurrent jurisdiction.'¹³⁷ Jordan's Principle therefore mandates cooperation between the federal and provincial governments to ensure essential services are received by First Nations children and families and to work out who is responsible for funding what. However, there is currently little evidence that any such cooperation is occurring. ISC has advised that it is currently not pursuing provinces for reimbursement of any Jordan Principle expenses. While a handful of provinces have endorsed Jordan's Principle, few seem to be respecting it and most seem to still take the view that funding services to Indigenous children and families is Canada's sole responsibility.

While Canada seems to be carrying a majority of the responsibility for funding at this time (while it continues to be heavily scrutinized for compliance with the Tribunal's orders), we easily can imagine a future date where a different administration of the federal government may claim it has 'done its part' on Jordan's Principle and say it is time for the provinces to pull their weight. This would likely revive the old jurisdictional wrangling that has caused so much harm to Indigenous children and families for decades. There is a need for a body to oversee and monitor Canada and the provinces' efforts to cooperate on this key human rights issue, as well as make recommendations of legal principles and processes that can inform the cooperation between Canada and the provinces on the sharing of funding responsibilities over Indigenous services. Similar oversight is needed with respect to cooperation between Canada and the provinces in relation to funding of self-government and compliance with national standards under C92.

Need #5: Ongoing education to ISC, CIRNA, provincial DCS staff, provincial agencies, Social workers, Crown lawyers, legal aid lawyers, judges.

There are ongoing education needs to ensure that ISC and CIRNA staff, as well as various actors involved in the enforcement of provincial child welfare legislation and now C92. In order for there to be meaningful change, all of these actors need to properly understand the context of the systemic discrimination in services to Indigenous children and families that has resulted in the overrepresentation of Indigenous children in care, and how this relates to and impacts how these professionals carry out the functions of their position. As noted in the previous section, some of this education is currently not happening, or only on an *ad hoc* basis. A systematic approach to educating these individuals is needed.

There is also a strong need for Indigenous communities to receive education and capacity building to support their efforts to exercise jurisdiction in relation to child and family services, as well as understand their rights as set out in the minimum national standards under C92.

¹³⁷ For a discussion of the concurrent jurisdiction between Canada and the province in matters of essential services, see Metallic in *Judicial Tales Retold*, *supra* note 72; see also Sébastien Grammond, "Federal Legislation on Indigenous Child Welfare in Canada", *supra* note 121.

Need #6: Investigating and mediating individual complaints about provincial governments' funding failure to provide services to Indigenous children and families

As noted previously, many provinces are currently not meeting their obligations to provide services to Indigenous children and families. Most continue to take the position that this is the sole or primary responsibility of the government of Canada.¹³⁸ All provinces in Canada have Ombuds or Ombuds-like offices that could, in theory, investigate denial of services by provinces to Indigenous children and families. In practice, there is no evidence that provincial ombuds or child advocates are holding provinces accountable for their responsibilities to provide services to Indigenous children and families. This may either be because provincial ombuds offices' lack awareness of the provinces' obligations in this area, or because Indigenous families do not fit within their mandated criteria, or may not be aware of, or may not feel comfortable accessing, this avenue for accountability. In any event, this gap signals the need for some further accountability mechanisms to support Indigenous children and families vis-a-vis provinces.

Need #7: Investigating and mediating individual complaints about child welfare agencies' implementation of CFS laws and policies, including C92

Currently, NL, PEI, NB, MB, SK, AB, BC, YK and NU have child advocates offices charged with oversight of provincial child welfare services. In NS and ON, concerns about the conduct of child welfare authorities are dealt with by the provincial Ombuds office. In QC, such concerns are sent to Quebec's human rights commission.

Public inquiries in MB and BC called for child advocates offices to advocate for Indigenous parents and children in the child welfare system, and to monitor the actions of the child welfare authorities.¹³⁹ The 2019 Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls called for the urgent establishment of units with specialized mandates in relation to Indigenous children and youth within the offices of child advocates in each province.¹⁴⁰ Currently, the extent of prioritization of Indigenous children within child advocate offices across the country appears to be patchwork. Only MB, AB, PEI, YK and NU have explicit provisions on Indigenous children and families in their child advocate laws.¹⁴¹ Only the websites of MB, BC, YK and NU suggest Indigenous issues are a focus of Child Advocate's work. Further, some provincial child advocates offices are more limited in the extent of own-motion or systemic inquiries they can undertake.¹⁴²

¹³⁸ See *Sumner-Pruden v Manitoba*, *supra* at note 122.

¹³⁹ See the Manitoba Justice Inquiry (1991), Chapter 14, and *British Columbia Children and Youth Review Final Report* (2006).

¹⁴⁰ MMIWG Final Report, *supra* note 73, Executive Summary, 2019, Call for Justice 12.9.

¹⁴¹ Manitoba's *The Advocate for Children and Youth Act*, CCSM, c A6.7, s 8(2); Alberta's *Child and Youth Advocate Act*, SA 2011, c C-11.5, s. 9.4; Nunavut's *Consolidation of Representative for Children and Youth Act*, SNU 2013, c 27, ss 5 and 6(1)(a); Yukon's *Child and Youth Advocate Act*, SY 2009, c 1, ss 3, 4(5)(a), 13-14 and 17; Prince Edward Island's *Child and Youth Advocate Act*, RSPEI 1988, c C-4.3, s 12(1)(c).

¹⁴² From our research, the child advocates in NL, NB, MB, for example, appear to have more limited jurisdiction over some types of complaints.

Particularly with the passage of C92, there is strong need to ensure provincial child welfare authorities across the country are adhering to the minimum standards in the new federal law, and to ensure more generally that these authorities are not contributing, through their actions or inaction, to the overrepresentation of Indigenous children in government care. It is not clear to us that this is a priority for most provincial child advocates (or ombuds) offices, which suggest the need for a further accountability mechanism to ensure the needs Indigenous children and families' for oversight of child welfare authorities are not falling through the cracks.

Need #8: Powers for enforceable orders against Canada for non-compliance with Jordan's Principle, substantive equality and other relevant laws and international requirements (C-92, DISA, UNDRIP, CRC, etc)

While we believe that having an accountability body to oversee, monitor and make recommendations to Canada on the provisions of services for Indigenous children and families is necessary (needs #1-6), we do not believe this is sufficient on its own to fully ensure accountability conditions under which Canada will make meaningful change.

While there is an important role for oversight and advice in accountability offered by bodies such as Ombuds and Child Advocates, these are circumstances that warrant stronger measures. In some countries that have faced extensive problems of political corruption, ombuds or commissions have been given enforcement powers in some cases.¹⁴³ While Canada does not face the challenges to democracy similar to those countries, we do not think it is an exaggeration to analogize the gravity of these problems to the extent of discrimination that Indigenous children and families have faced for decades. Canada's long history of systemic discrimination in relation to services resulting in the taking of thousands of children – called “one of the worst possible cases” of racial discrimination seen by the Tribunal¹⁴⁴ – as well as the intransigence the government has shown to change even following the *Caring Society* 2016 Main Decision, fully convinces us that enforcement powers must be a necessary last resort. As we stated at the outset, the overrepresentation of Indigenous children in state care and the federal government's role in this constitutes one of most serious, ongoing human rights violations in our country's history.

That said, we appreciate that it is not common within Canada to provide enforcement powers to ombuds-like bodies who primarily provide advisory functions.¹⁴⁵ Rather, as will be further developed below, what we envision is a ‘layering’ of accountability mechanisms through having both a National Indigenous Child and Family Advocate and Tribunal, the former providing ombuds-like oversight functions and the latter providing adjudication and having enforcement powers. The Advocate would have the power to investigate the implementation of Jordan's Principle and the substantive equality rights of Indigenous children and families' in relation to essential services, as well as CFS laws and policies, including C92. In addition to addressing

¹⁴³ See, for example, Reif *supra* note 3 at 556-557 (Ecuador Defensoría del Pueblo), and 646 (Kenya Commission on Administrative Justice).

¹⁴⁴ 2019 CHRT 39 at para 13, *aff'd* 2021 FC 969.

¹⁴⁵ Reif, *supra* note 3 at 24-26, 110, 243, 244, 748.

systemic and education issues, the Advocate would also assist Indigenous children and families resolve individual complaints through informal and confidential means. The Tribunal would have the jurisdiction to adjudicate individual, group, community and Advocate-initiated complaints in the same areas as noted above. We believe a dedicated Advocate and Tribunal is what will be most effective to bring real change to the long-standing discrimination and neglect of the needs of Indigenous children and families in Canada. The Tribunal would enforce Canada's substantive equality and statutory human rights obligations under domestic law (human rights legislation and the *Charter*), as well as its obligations under C92, *DISA*, the *UN Declaration* and *UNDRIPA*, as well as other international instruments such as the *Convention on the Rights of the Child*. Finally, it will be imperative that the Tribunal have strong remedial powers, including robust supervisory jurisdiction. Supervisory jurisdiction has been key to the Canadian Human Rights Tribunal ability to affect change in the *Caring Society* and something similar to take its place is necessary for when the Tribunal is no longer seized of the case.

Need #9: Powers for enforceable orders against provinces for non-compliance with Jordan's Principle, substantive equality against provinces and relevant laws and international requirements (C-92, UNDRIP, CRC, etc)

Similar to our conclusion in need #8, and building on our points discussed at needs #6-7, we believe the history of provincial neglect of Indigenous children and families needs justifies having a body that can also grant binding orders against the provinces for their failure to respect their obligations under both domestic and international instruments in relation to the Indigenous children and families.

Need #10: Formal advocacy for First Nations children, families and communities for government services and in child welfare matters

Indigenous children and their families experience significant barriers in accessing existing avenues to hold governments for violations of their rights to services. Barriers can include lack of awareness of avenues, lack of resources or capacity to advocate on their own behalf, fear of retaliation, language and literacy challenges, and more. The case of Carolyn and Noah Buffalo-Jackson, related earlier, shows that even where First Nations parents have a legal education and influence to advocate for their children, attempting to resolve disputes with Canada can be very challenging, as well as navigating the Canadian Human Rights Commission system.¹⁴⁶

While the Caring Society and its network of *pro bono* lawyers have been supporting families and communities to the best of their ability in an *ad hoc* way and on a shoe-string budget, we believe there is a strong need for formal, funded advocacy to support Indigenous children and families in their disputes with both the federal and provincial governments over the provision of services to children and families, as well as with child welfare agencies in their enforcement of child welfare laws. Such supports should run the gamut from providing information to navigate the different avenues for recourse, to filling forms, letter writings and speaking on their behalf, to

¹⁴⁶ See "Buffalo v Canada – My Family's Fight for the Right for Noah to ride a bus to school," *supra* note 119.

pursuing Ombuds, Child Advocate, human rights challenges or judicial review. To our knowledge, most legal aid plans across the country, except for the Manitoba Public Interest Law Center, largely do not see their jurisdiction as extending to advocacy for pursuing denials and delay of services.

We would also see an important role for such advocates to represent parents, care providers and communities who now have a right to be represented, appear and make submissions in child welfare proceedings pursuant to the national standards in C92.¹⁴⁷ Except for parents, other care-givers and communities are not generally eligible for representation under most provincial legal aid plans, and so, without state-funded representation in these matters, their legal rights under C92 are rendered meaningless. Further, the guarantees of substantive equality in the exercise of the rights of children, their family members and communities under C92 suggest a positive obligation on governments to make legal services available (and Jordan's Principle provides a framework for determining who pays and reimbursement).

¹⁴⁷ *An Act respecting First Nations, Inuit and Métis children, youth and families*, *supra* note 98 ss 12-13.

Part 3: What does effective accountability look like?

Here, we set out and explain those common features we believe are necessary for the accountability mechanisms to have, and then we identify and explain three accountability mechanisms we have selected. It bears repeating that what effective accountability looks like is context-driven. Therefore, the history and needs identified in Part 1 and 2 drive our recommendations in this Part.

a) External accountability mechanisms

While there can be both internal and external forms of accountability (e.g., mechanisms within the department versus those arms-length and independent from it),¹⁴⁸ our recommendations focus on external mechanisms. Currently, there are no external non-judicial accountability mechanisms that apply to the work of ISC and CIRNAC.¹⁴⁹ While external accountability mechanisms, such as Ombud and Child Advocate offices exist within the provinces, it does not appear that most of these bodies see themselves as having a role in holding provincial authorities accountable for adequate services delivery to Indigenous children and families.

Our focus on external mechanisms are not intended to discourage Canada, particularly the staff of ISC, from developing internal mechanisms for accountability, such as staff training, internal audits, dispute resolution mechanisms, reporting, etc. ISC is already engaging in some of these activities, and it should continue to do so. Further actions that ISC could be taking include:

- Creating a Code of Ethics and Network Panel as a framework for funding community-based youth organizations that would inform the disbursements of any funds that implicate Indigenous youth, and the co-development of the Indigenous Youth Voice Government of Canada Fund;¹⁵⁰
- Putting in place internal human rights champions who are responsible for engaging with service coordinators and Indigenous children, families and communities to review and evaluate ISC processes, including standing operating procedures and policies, and advocate for changes to ensure compliance with principles of substantive equality to those with the authority to make changes;
- Review all Jordan's Principle requests, including those with inadequate documentation, to identify where ISC can reduce demands for documentation to a minimal data set, particularly for services commonly approved or falling within the "normative standard of care." This may result in greater efficiency for ISC, and possibly lead to two streams of

¹⁴⁸ Kent Roach, "Models of Civilian Police Review: The Objectives and Mechanisms of Legal and Political Regulation of the Police," (2012) 61 *Crim Law Q* 29 at 71.

¹⁴⁹ Our research uncovered reference to an Ombudsman at the Department of Indian Affairs and Northern Development at some point, but no longer appears to exist. It was an internal body with only the softest type of ombuds powers: see Ombudsman for the Department of National Defense and the Canadian Armed Forces "The Way Forward – Action Plan for the Office of the Ombudsman" Jan 20, 1999, at p 21).

¹⁵⁰ Assembly of Seven Generations *supra* note 7 at 6.

claims (i.e. simple or complex; at or above normative standard of care), with documentation and process requirements that are proportional to the type of claim.¹⁵¹

- Reverse the onus of who has to establish how the requested service meets the standard of substantive equality, by requiring ISC staff to identify and give written reasons as to where and why they believe a specific request does not fall within that standard, prior to claimants ever being asked to explain how their request falls within this. This still addresses the issue but takes the burden off individual claimants and acknowledges it is ISC's responsibility to deliver services that meet the standard, not individuals to argue for their own substantive equality to ISC.
- Create and use confidential release forms, that, with the consent of Indigenous children and families, give their third party representatives access to information in order to advocate and support clarification, claims and/or appeals.
- Fund the advocates or lawyers who are supporting the ad hoc advocacy work of the Caring Society in the interim.

It is important to note that these actions do not replace the mechanisms we are proposing in this report. Nonetheless, they could and should be implemented in the interim while these mechanisms are being established. The long history of interjurisdictional wrangling and neglect by both Canada and the provinces leading to pervasive underfunding of services to Indigenous children and families, as well as continued resistance by Canada to implement the Tribunal's orders in the last six years, all make it clear to us that arms-length, external accountability mechanisms are necessary.

b) Legislated mechanisms, not simply created by the executive

To ensure the independence of these external accountability mechanisms, which is crucial for the same reasons as noted in the preceding section, we believe that these mechanisms must be legislated by Parliament and not simply be created by the executive.¹⁵² Many of the external accountability mechanisms of the federal government tend to be created by the executive (the Governor in Council through orders in Council or through regulation). This can severely hamper the independence and powers of the accountability body. For example, the National Defence and Canadian Armed Forces Ombudsman, created by the executive, has been critiqued in several reports for having serious problems with its independence, ability to ensure confidentiality, ability to serve its constituents, operate effectively and fulfill its mandate.¹⁵³

¹⁵¹ See also Sinha et al, *supra* note 92 at 42, who make several thoughtful recommendations for short-term reform to improve the Jordan's Principle request process.

¹⁵² See Reif, *supra* note 3 at 344.

¹⁵³ Ombudsman for the Department of National Defense and the Canadian Armed Forces "The Way Forward – Action Plan for the Office of the Ombudsman" Jan 20, 1999, at 6, 11; André Martin, Ombudsman, "Overhauling Oversight: Ombudsman White Paper, March 30th, 2005, at 1, 13, 33; National Defence and Canadian Forces "The Case for a Permanent and Independent Ombudsman Office: The Defence Community Deserves No Less", March 2017 Report to the Minister of National Defence, at 8, 9, 10, 14, 15, 17, 18.

In our conversation with Professor Reif, an expert on human rights accountability mechanisms, she stressed that for effective independence from the government of the day, legislatures, and not executives, ought to be the ones to create accountability bodies, appoint their leadership, oversee the bodies' functions, and be the government entity receiving reports from the body.¹⁵⁴ Reif noted this has been a challenge for the federal government, pointing out that even the Canadian Human Rights Commission is not entirely independent from government, since its Executive Director is appointed by the Governor in Council. We agree with the Caring Society that it would be important for the selection of the leaders of our proposed accountability mechanisms to be arms-length from the executive. There are precedents of how this can work.¹⁵⁵

As will be seen further below, we believe the three interconnected mechanisms we propose could be legislated within the same statute.

c) Mechanism with specific mandates relating to Indigenous children and families

There have been recent calls for the creation of accountability mechanisms on Indigenous issues that could potentially serve as accountability mechanisms to address the accountability needs identified in this report. However, we believe that the unparalleled gravity and longevity of the ongoing substantive equality and statutory human rights violations of Indigenous children and families requires the creation of mechanisms with specific mandates in relation to Indigenous children and families.¹⁵⁶

The 2015 Report of the Truth and Reconciliation Commission recommended the creation of a National Council for Reconciliation to monitor, evaluate and report annually on Canada's progress on reconciliation, including implementation of the calls to action.¹⁵⁷ In Budget 2019, Canada announced \$126.5 million in fiscal year 2020 to 2021 to establish a National Council for Reconciliation and endow it with initial operating capital.¹⁵⁸ Despite the TRC containing five calls to action on child welfare, our concern would be that the focus of the Nation Council on

¹⁵⁴ See also Reif, *supra* note 3 at 179, 182, and 748.

¹⁵⁵ See for example, ss. 2(1)-(3) of Alberta's *Child and Youth Advocate Act*, *supra* note 141, which requires the executive to appoint the Child and Youth Advocate based on the recommendation of the Legislative Assembly. Parliament's selection could, in turn, be based on recommendations from Indigenous organizations, or possibly even elections for the role. An interesting model is the bylaws of the former Court Challenges Program, where members of the funding selection committee were elected by organizations representing equality-seeking advocacy groups and had to identify as a member of a group protected under section 15 of the *Charter*.

¹⁵⁶ See Reif, *supra* note 3 at 77, where Reif highlights the benefits of specific mandates to seriously prioritize addressing concerns for discrete vulnerable populations.

¹⁵⁷ TRC, *supra* note 65 at 215-219. In making this recommendation, the TRC noted Canada's poor record of accountability, and reconciliation, observing that Canada has long ignored its obligations and has breached and failed in its duty to do the work needed to revitalize its relationship with Indigenous peoples. However, the monitoring would go beyond the federal government and include all levels and sectors of Canadian society.

¹⁵⁸ CIRNAC website, "National Council for Reconciliation" under tab, "What's happening?" online: <https://www.rcaanc-cirnac.gc.ca/eng/1524503926054/1557514163015>.

Reconciliation would likely be too diffuse to provide the necessary attention to the accountability needs identified in Part 2. Further, it's not clear what kind of investigation, recommendation or enforcement powers, if any, a National Council would have, thus it likely would lack sufficient powers to be effective in the circumstances.

The 2019 Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls called for the creation of both a National Child and Youth Commissioner to strengthen the framework of accountability for the rights of Indigenous children in Canada, as well as National Indigenous and Human Rights Ombudsperson and a National Indigenous and Human Rights Tribunal.¹⁵⁹ The proposed scope and jurisdiction of these mechanisms by the National Inquiry was broad, suggesting these mechanisms could be designed to possess effective powers to hold governments accountable in the area of child welfare, Jordan's Principle and services for Indigenous children and families. Canada's June 2021 MMIWG National Action Plan has partly taken up this recommendation, identifying the creation of "an oversight body which represents the interests of families, survivors, and Indigenous communities by investigating and addressing mal-administration or a violation of rights" as a short-term priority that it will begin to implement.¹⁶⁰ This scope, however, appears focused on the interests of the families and communities of missing and murdered Indigenous women and girls. It therefore would not be sufficient to address the accountability needs identified in Part 2.

In June 2020, Senator Rosemary Moodie introduced Bill S-217, *An Act to establish the Office of Commissioner for Children and Youth in Canada* (which died on the order paper when the election was called in the summer of 2021).¹⁶¹ The bill proposed the creation of an independent Commissioner to serve children and youth in Canada to promote, monitor and report on Canada's implementation of its obligation to advance the rights of children and youth, focusing on the best interests of the child. The bill was criticized by the Caring Society and other Indigenous advocates, as well as some First Nation Senators, for not being sufficiently focused on the needs of Indigenous children.¹⁶² The bill provided, but did not mandate, the creation of an Assistant Commissioner on First Nations, Inuit and Metis children and youth matters. It also did not contemplate the Commissioner having any oversight and enforcement over legislation like C92 and *DISA*, or implementation by Canada of Jordan's Principle or substantive equality.

A report from the Assembly of Seven Generations also concluded that Bill S-217 did not meet Indigenous youth needs around accountability. The report suggests that Indigenous youth and children seemed to be an afterthought in the Bill. Other concerns raised include Bill S-217 providing the Commissioner insufficient powers to hold governments accountable. The Assembly of Seven Generations' report indicated that Indigenous youth want to have ongoing

¹⁵⁹ MMIWG Final Report, *supra* note 73 Executive Summary, 2019, Call for Justice 12.9 and 1.7.

¹⁶⁰ Government of Canada, *2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ People National Action Plan: Ending Violence Against Indigenous Women, Girls, and 2SLGBTQQIA+ People*, June 3, 2021, at 28-29.

¹⁶¹ Canada, Bill S-217, *An Act to establish the Office of the Commissioner for Children and Youth in Canada*, 1st Sess, 43rd Parl, 2020, cl ss 17-18 (first reading 16 June 2020) [Bill S-217].

¹⁶² First Nations Caring Society, "Briefing Note: Bill S-217", June 2020. Senator Brian Christmas was particularly outspoken about his concerns about the bill.

conversations about accountability: regional conversations and to establish an ongoing network to share best practices and critical discussions on the topic of accountability.¹⁶³ On this point, the literature is clear that effective accountability mechanisms geared at children should be child and youth-informed.¹⁶⁴

We agree with the Assembly of Seven Generations' report that, to address the long and ongoing history of discrimination faced by Indigenous children and families in Canada, effective accountability mechanisms have to be specifically focused on them. While there may be a need for a federal children's commission focused on the needs of other children (and our recommendations are not intended to dissuade Canada from taking other action on this front), no other group of children have been so detrimentally affected by Canada's exercise of jurisdiction over them. The context justifies an Indigenous-specific national child and family commissioner (or advocate).

d) Mechanisms with powers over all Indigenous children

We believe that effective accountability mechanisms must be focused on all Indigenous children and families, including First Nations (status and non-status), as well as Métis, and Inuit. While the FNCFS Program and the *Caring Society* decision focused on First Nations children (e.g., with Indian status) on reserve, we do not think the accountability needs discussed in this report are limited to status First Nations children and families on reserve.

The exclusion of non-status, Metis and Inuit children from the FNCFS program is a by-product of the same jurisdictional wrangling and discrimination that has preoccupied the federal and provincial governments for over 70 years. Canada did not discriminate between groups when it came to residential schools: Inuit and Metis children were forced to attend along with First Nations children.¹⁶⁵ However, after World War 2, Canada only begrudgingly accepted to provide services on reserves after much public pressure, and then provided inadequate services to First Nations.¹⁶⁶ Similarly, the provinces only begrudgingly provided services to Metis, non-status and off-reserve First Nations because Canada refused to, and were often similarly as neglectful as Canada in the delivery of services to these groups.¹⁶⁷ Due to a ruling from the

¹⁶³ Assembly of Seven Generations, *supra* note 7.

¹⁶⁴ See Bendo *supra* note 33 at 6, 50, 64, 65, 93, 103 and 104; Ombudsman New South Wales "Youth Participation Information Sheet", at 2 and 3, notes the importance of youth participation at different levels and times; *Report of the United Nations High Commissioner for Human Rights on Access to justice for children*, OHCHR, 25th sess, Supp No 35, UN Doc A/25/35 (16 December 2013) at p. 4, 9, 12, 14-16 [OHCHR: Access to justice for children]; and Assembly of Seven Generations, *ibid* at p. 6-9, 26, 27, 31 notably, recognizing Indigenous youth participation as a fundamental right.

¹⁶⁵ See TRC, *Canada's Residential Schools: The Inuit and Northern Experience* (2015), and *Canada's Residential Schools: The Métis Experience* (2016).

¹⁶⁶ See Metallic 2019, *supra* note 67 at 8-11.

¹⁶⁷ Sumner-Pruden, *supra* note 122 and Malone, *supra* note 126 are both recent examples of this. See Constance MacIntosh, "Indigenous Mental Health: Imagining a Future Where Action Follows Obligations and Promises," (2017) 54 Alta LR 589; Josée Lavoie, "Medicare and the Care of First Nations, Métis and Inuit", (2018) 13 Health Economics, Policy and Law 280; UNICEF, "Aboriginal Children's Health: Leaving No Child Behind," (2009) online:

Supreme Court of Canada, the federal government was eventually forced to provide services to the Inuit, and then chose to do without a legislative framework and inadequately.¹⁶⁸

In our view, only recommending accountability mechanisms for status First Nations children and families on reserve would be akin to reproducing the same jurisdictional neglect by Canada and the provinces that has been harming Indigenous children and families for decades. The Assembly of Seven Generations also acknowledged problems with the exclusion of Métis children from Jordan's Principle and Inuit Children First Initiative services.¹⁶⁹ Furthermore, decisions of the Supreme Court of Canada have now clearly confirmed that the federal jurisdiction over "Indians" includes First Nations, both status and non-status, Metis and Inuit peoples.¹⁷⁰ Due to ongoing discrimination through the second-generation cut-off rule in the *Indian Act*, since 1985, more and more First Nations are without status.¹⁷¹ Recently Canada seems to have accepted its jurisdiction in relation to all three groups: *DISA* recognizes ISC's jurisdiction in relation to all three groups, and C92 extends the protections in the act to all Indigenous peoples.¹⁷² Further, even the Tribunal in *Caring Society* has extended the protection of Jordan's Principle beyond status First Nations children living on reserve.¹⁷³ For all these reasons, we strongly feel that accountability should be extended to all Indigenous children and families.

We feel such an inclusive approach is necessary to ensure Indigenous children do not fall through jurisdictional cracks in the future. There are precedents in situations involving the human rights complaints of a subgroup of a larger equity-seeking group, where human rights tribunals have issued broader, more inclusive remedies to the larger equity-seeking group in order to effectively prevent future discrimination. For example, in the case of discrimination on the basis of mobility rights in accessing voting stations, the Canadian Human Rights Tribunal ordered the respondent, Elections Canada, to engage in greater consultation with voters with disabilities and disability groups (not just those with mobility disabilities) in order to prevent similar discriminatory practices in the future.¹⁷⁴ In another case involving discrimination on the basis of a person identifying as pangender for not having the ability to properly self-identify their gender on the provincial birth certificates, a Manitoba human rights panel ordered the government to revise its criteria for changing sex designation to include recognition of non-binary sex designations (not just for pangender peoples only).¹⁷⁵ Such an inclusive approach would prevent similar complaints of discrimination from other categories of non-binary persons in the future.

https://www.unicef.ca/sites/default/files/imce_uploads/DISCOVER/OUR%20WORK/ADVOCACY/DOMESTIC/POLICY%20ADVOCACY/DOCS/Leaving%20no%20child%20behind%2009.pdf

¹⁶⁸ See *Reference as to whether "Indians" includes in s. 91 (24) of the B.N.A. Act includes Eskimo inhabitants of the Province of Quebec*, [1939] SCR 104.

¹⁶⁹ Assembly of Seven Generations, *supra* note 7 at 15, graphic image.

¹⁷⁰ *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12.

¹⁷¹ Stewart Clatworthy, *The Changing Demography of First Nations Populations: Impacts of the 1985 Indian Act Amendment to the Rules Governing Indian Registration*. Winnipeg: Four Directions Project Consultants, 2007.

¹⁷² *Department of Indigenous Services Act*, SC 2019, c 29, s 336 at s 2; and *An Act respecting First Nations, Inuit and Métis children, youth and families*, *supra* note 98 s 2.

¹⁷³ See 2019 CHRT 7 (interim) and 2020 CHRT 36.

¹⁷⁴ *Hughes v. Elections Canada*, 2010 CHRT 4 at paras 79-80.

¹⁷⁵ *T.A. v Manitoba (Justice)*, 2019 MBHR 12 at para 71.

Inclusive is different from pan-Indigenous. Instead of treating all Indigenous peoples identically, as a pan-Indigenous approach seeks to do, an inclusive approach, while recognizing all Indigenous peoples are worthy of human rights protection, acknowledges there can be differences between different sub-groups that need to be accommodated. An inclusive approach does not prevent a distinctions-based approach when necessary or appropriate. For example, distinctions based on unique needs and the diverse legal traditions among Indigenous peoples may be appropriate to achieve equitable outcomes.

e) Mechanisms that bypass jurisdictional wrangling

Further developing a theme from the last section, we believe that effective accountability in the circumstances must challenge the conventional jurisdictional boundaries the federal and provincial governments have set for themselves. These are the same jurisdictional boundaries that have facilitated decades of neglect of the needs of Indigenous children and families.

In other words, we do not think it will be effective if the jurisdiction of a federal accountability body over Indigenous children and families is solely focused on the conduct of federal authorities, leaving the conduct of provincial authorities in relation to Indigenous children and families to provincial accountability bodies. This will stymie robust oversight, allowing the needs of some Indigenous children and families to fall through the cracks as they have for decades. They need to be addressed together, since it is the combined force of neglect, denials and delays from both the federal and provincial governments that is continuing to harm Indigenous children and families. The fact is that various federal and provincial actors operate within the complex matrix of essential service delivery and child welfare enforcement that affect the well-being of Indigenous children and families. Trying to separate out issues to be dealt with by different federal and provincial accountability mechanisms will only result in delays and denials of services that harm Indigenous children and families.

This issue can be illustrated by the example of an Indigenous child seeking to challenge a denial of the same service by both Canada and their home province as violating their right to substantive equality and Jordan's Principle. Under current law, it would be impossible for the child to bring a discrimination complaint against Canada and the province in the same forum. She would have to bring a complaint against Canada to the Canadian Human Rights Commission, and bring another complaint against the province to her provincial human rights commission.¹⁷⁶ She would face the same issue if she sought to judicially review the decisions of Canada and the province; Canada would have to be sued in Federal Court and the province sued in her provincial superior court.¹⁷⁷ These scenarios present risks of inconsistent legal

¹⁷⁶ This is because the jurisdiction of these tribunals is generally limited to the actions of the enacting government. However, it is possible for Canada to create a tribunal with jurisdiction over both federal and provincial action as we discuss below.

¹⁷⁷ Judicial review against Canada must be instituted in the Federal Court: *Federal Courts Act*, RSC 1985, c F-7, s 18. See also *Mousseau v. Canada (Attorney General)* (1993), 126 NSR (2d) 33 (NSCA), *Nolan v. Canada (Attorney General)* (1998), 155 DLR (4th) 728, and *Ochapowace Indian Band No. 71 v. Canada*, (1999) 167 Sask. R. 167

rulings, increased chances of appeals, delays and increased costs.¹⁷⁸ All of which is not in keeping with the spirit of Jordan's Principle that jurisdictional wrangling should not delay timely access to services by Indigenous children. As one of the pro bono lawyers for the Caring Society aptly put it: "Currently in Canada, there is a Jordan Principle problem with trying to vindicate Jordan's Principle."¹⁷⁹ Such a result is unacceptable in light of the long history of discrimination, delay and denial faced by Indigenous children and families. It is also unnecessary.

Under its jurisdiction under s. 91(24) of the *Constitution Act, 1982*, the federal government has the power to legislate in relation to Indigenous peoples in areas that would otherwise be regarded as areas of provincial jurisdiction. Such legislation can have incidental impacts on provinces.¹⁸⁰ Even legislative provisions that on their face encroach on provincial powers can be upheld so long as they are necessary to the effective functioning of the legislation.¹⁸¹ This is all to say that Canada can pass legislation that would give an accountability body the power to investigate as well as make binding orders in relation to provincial authorities' actions in relation to Indigenous children and families. Historically, Canada has been reluctant to use its legislative powers to provide protection to Indigenous peoples from the provinces.¹⁸² However, such action is in keeping with Canada's fiduciary and treaty obligations to Indigenous peoples, the Honour of the Crown and reconciliation.¹⁸³ With C92, however, Canada turned a page on that history by passing a federal law that has incidental impacts on the provincial powers over child welfare by legislating minimum standards. The Quebec Court of Appeal had no difficulty in concluding that this was within Canada's constitutional jurisdiction to legislate in relation to Indigenous people.¹⁸⁴ Canada did so because it recognized that the crisis of overrepresentation of Indigenous children in state care required such action.¹⁸⁵ The same reasoning applies in the

¹⁷⁸ The only time the child could get a definitive ruling where both the federal government and a province are joined to the matter is if the different cases simultaneously worked their way all the way to the Supreme Court of Canada and were joined there.

¹⁷⁹ Naomi Metallic conversation with David Taylor, June 16, 2020.

¹⁸⁰ *Canadian Western Bank v Alberta*, 2007 SCC 22 at para 28; *British Columbia v Imperial Tobacco Canada Ltd.*, 2005 SCC 49 at para 28; *R v Morgentaler*, [1993] 3 SCR 463 at p 486.

¹⁸¹ *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 SCR 641.

¹⁸² See John Borrows, "Legislation and Indigenous Self-Determination in Canada and the United States" in Patrick Macklem & Douglas Sanderson, eds, *From Recognition to Reconciliation: Essays on Constitutional Entrenchment of Aboriginal and Treaty Rights* (Toronto: University of Toronto Press, 2016) 474.

¹⁸³ Borrows, *ibid*; see also Grammond, *supra* note 121.

¹⁸⁴ QCCA C92 Reference, *supra* note 100 at paras 313-355. The matter is now being appealed to the Supreme Court of Canada.

¹⁸⁵ See preamble of C92; see also Attorney General of Canada's Brief in Reference to the Court of Appeal of Quebec in Relation to An Act Respecting First Nations, Inuit and Métis Children, Youth and Families (500-09-0287151-196), dated April 1, 2021 at para. 47.

case of passing effective accountability mechanisms in the circumstances, and this is supported in legal scholarship.¹⁸⁶ There is also precedent for this internationally.¹⁸⁷

f) Recommendations for Specific Accountability Mechanisms

We have identified 3 specific accountability mechanisms which could stand alone, but would most effectively safeguard the needs of Indigenous children and families if all 3 were enacted as interconnected mechanisms.

Based on the accountability needs identified in Part 2, and the principles we outlined above, we have identified three mechanisms that we believe will effectively address the government conduct that has contributed to the overrepresentation of Indigenous children in state care for decades. We believe that all 3 are necessary to achieve true accountability. Any of these three mechanisms, individually, could stand alone and would serve to provide greater protection of the rights of Indigenous children and families from the discrimination found in the *Caring Society* case by improving government accountability. However, none are sufficient, on their own, to address all of the identified accountability needs. Therefore, combining all three mechanisms would be the most effective way of preventing discrimination from continuing or re-emerging in the future.

First, we identify the mechanism and the accountability needs each would address. Following this, we explain our rationales for each mechanism, why we ruled out some other options, and what should be included in these mechanisms.

Note that we are not attempting to be exhaustive in setting out details for the mechanisms we propose. We believe there are several details about the proposed Advocate's Office and Tribunal, such as composition, qualifications, terms, staff, etc., that ought to be determined in future discussions and collaboration with Indigenous groups, including Indigenous children and youth, the Caring Society and the pro bono lawyers who have been supporting them. That said, when it comes to appointment criteria and the selection process, we agree with comments received from the Caring Society that it should be a priority for staff of these bodies to be diverse, knowledgeable about human rights and Indigenous child welfare issues, selected in a way that ensures their independence from the government, and for such details to be set out in the enabling legislation.¹⁸⁸

¹⁸⁶ Patrick Macklem has also argued that the federal government has the jurisdiction under s91(24) to establish an independent accountability body with the power to implicate provincial interests: see Patrick Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto: University of Toronto Press, 2001) at 272-273; as see Borrows, *supra* note 182 and Grammond, *supra* note 121.

¹⁸⁷ See for example Reif, *supra* note 3 at 755, who discusses the prospect of national accountability bodies with jurisdiction over subnational governments and gives examples, such as Peru's *Defensoría del Pueblo* (at 588) and Namibia's Ombudsman (at 669).

¹⁸⁸ See, for example, *Human Rights Code*, RSO 1990, c H.19, ss. 27(3) and (4) on mandated composition requirements.

Our mandate did not include drafting of the enabling legislation for these mechanisms, though we have given some ideas for precedent clauses in what follows. These are based on our review of different child advocates and human rights commissions laws in the country. However, we suggest that in the actual development of the enabling legislation, further expert advice be sought to recommend specific statutory language.

Accountability Mechanism 1:

National Indigenous Child and Family Advocate
Need #1: Oversight of Canada's implementation of Jordan's Principle
Need #2: Oversight of Canada's long-term reform of child welfare, including C92 implementation
Need #3: Oversight Canada's implementation of substantive equality in relation to all services impacting on Indigenous Children and Families
Need #4: Oversight of Federal-Provincial cooperation in servicing Indigenous Children and Families
Need #5: Ongoing education for federal and provincial government actors involved in child welfare services
Need #6: Oversight of provincial governments implementation of substantive equality in relation to all services impacting on Indigenous Children and Families
Need #7: Oversight of child provincial welfare agencies, including their implementation of C92

Accountability Mechanism 2:

National Indigenous Child and Family Tribunal
Need #8: Enforce orders against Canada for non-compliance with Jordan's Principle, substantive equality and other relevant laws and international requirements (C-92, DISA, UNDRIP, CRC, etc)
Need #9: Enforce orders against provinces for non-compliance with Jordan's Principle, substantive equality against provinces and relevant laws and international requirements (C-92, UNDRIP, CRC, etc)

Accountability Mechanism 3:

National Legal Services for Indigenous Children and Families

Need #10: Formal advocacy for Indigenous children, families and communities for government services and in child welfare matters

(1) A National Indigenous Child and Family Advocate

The body that we feel would be most effective at addressing accountability needs #1-7 is a national Indigenous child and family advocate. Effectively, this would be based on the ombuds model of a child and youth advocate office, but also with specific jurisdiction to oversee governments' delivery of services to Indigenous children and families in accordance with Jordan's Principle, their right to substantive equality in statutory human rights instruments and other relevant laws and international requirements (C-92, DISA, UNDRIP, CRC, etc). This is because of the dual need for such a body to take a child and family centered approach on the one hand, and to also apply a substantive equality lens informed by both domestic and international human rights principles. The Advocate would also oversee governments' implementation of child welfare legislation and policy in relation to Indigenous children and families.

In discussions with ISC and the Caring Society early on in this project, the specific model of an ombudsperson was of interest. However, as we got further into our research, we reached the conclusion that the 'classic' ombuds model of it would not have the tools and powers necessary to address the accountability needs we have identified in this report. Most classic ombuds offices in Canada focus mainly on the function of a government's administrative systems and procedures, and generally do not consider matters from a human rights lens, which is imperative in the circumstances. Furthermore, most ombuds in Canada also have limited powers to make systemic inquiries, and they generally do not have a mandate for education. Nor do they generally have requirements to take a child-centered approach. The federal government has a number of specific ombuds, some are created pursuant to executive power. These have received critiques for lacking sufficient independence from the government and powers to make effective change.¹⁸⁹ In the circumstances, we do not think a classic ombuds is a sufficiently robust model, and this is why we recommend a child advocate (a form of a thematic ombuds).

In an earlier draft, we had called this mechanism a 'commission' as opposed to an 'advocate.' There is no magic in the name. As we note in our 'Primer on Accountability Mechanisms,' the concepts are largely synonymous, however, advocates usually have a more active role in defending the rights of children and youth than commissions/thematic ombuds offices might, given that children's rights are at stake. 'Advocate' more clearly also distinguishes this office from a human rights commission with a role in screening complaints, which, based on feedback we received from the Caring Society, is a concern about using 'commission.' We had always

¹⁸⁹ See our earlier note 153.

intended that this mechanism would be involved in 'soft advocacy' by assisting Indigenous children and families resolve individual complaints through informal and confidential means. Children advocate office's are typically staffed with trained social workers or other helping professionals who can intervene on children and youth' behalf within the system and help navigate processes.

Below, we set out the functions and powers we believe the Advocate should have in order to be effective.

Mandate

The mandate of the Advocate ought to reflect accountability needs #1-7, and it should specifically identify the assessment standards upon which the Advocate would scrutinize the conduct of governments. For both the federal and provincial governments this would include Jordan's Principle and substantive equality (protected under each government's human rights legislation and the *Charter*), C-92 and international instruments such as *United Nations Declaration on the Rights of Indigenous Peoples*, the *Conventions with Rights of the Child*, and the *Convention of Rights of Persons with Disabilities*. On top of this, ISC's conduct should also be assessed for compliance with its enabling statute, *DISA*. Language in the enabling legislation should convey that these instruments set the minimum standards that government decision-makers are expected to comply with in all circumstances. The mandates in PEI and Ontario's 2007 Child and Youth Advocate law provide a robust mandate for their advocate and this could be drawn upon for inspiration.¹⁹⁰

Consistent with various human rights statutes, the mandate should also explicitly mention the Advocate's role to protect Indigenous children and families' right to substantive equality and statutory human rights, particularly in the delivery of government services. The protected grounds from discrimination should include all those listed in the *Canadian Human Rights Act*, but it will also be important particularize Indigenous origin (which is not mentioned in the *CHRA* but is viewed as included within 'ethnicity'), as well as the various subsets of Indigenous characteristics that government distinctions have often been based upon, such as being non-status, living off-reserve, being Inuit, being Metis, etc., in order to ensure that any actions based on such distinctions suggests *prima facie* discrimination.

Jurisdiction

As we have said before, when it comes to jurisdiction, the Advocate ought to be able to oversee not just the actions of the federal government, but also provincial governments in the delivery of services to Indigenous children and families, as well as oversee the actions of child welfare agencies. This would include FNCFS Agencies, as well as other agencies dedicated to providing services to Indigenous groups (Métis, Inuit and off-reserve First Nations), all of whom currently exercise jurisdiction delegated from the provinces. Our interest in overseeing

¹⁹⁰ See *Child and Youth Advocate Act*, RSPEI *supra* note 141 s 12; and *Provincial Advocate for Children and Youth Act*, 2007, SO 2007, c 9 s 16 [Ontario Advocate].

delegated Indigenous child welfare agencies lies mainly in the fact that such investigations will likely reveal problems with federal and provincial legal or funding frameworks that need to be addressed.

The question of whether the Advocate should oversee the child welfare systems of self-governing Indigenous Governing Bodies as these grow under C92 is more challenging. Of course, accountability of self-governing Indigenous groups is important, but accountability models should not be unilaterally imposed on Indigenous governing bodies. Moreover, the history reviewed in Part 1 reveals that the need for accountability at this time arises from the actions and inactions by federal and provincial governments, not Indigenous governing bodies. For this reason, we do not think the jurisdiction of the Advocate should automatically include jurisdiction over Indigenous governing bodies that become self-governing over child and family services. Recognizing the right to self-determination, an Indigenous governing body should be given the choice to opt-in to the accountability framework offered by the Advocate¹⁹¹, or be left to develop its own.

On the question of the wisdom of duplicating some of the functions carried out by existing accountability bodies, as addressed in Part 1, we know that many provincial governments continue to refuse many services to Indigenous peoples despite Jordan's Principle, and that many actors within provincial child welfare systems are not aware of, and not adhering to the minimum standards in C92. It does not seem that the majority of provincial child advocates, ombuds or human rights commissions are holding provincial authorities sufficiently accountable when it comes to their obligations to Indigenous children and families. The Canadian Human Rights Commission is not mandated to focus on Indigenous child and family issues, nor to take a child-centered approach that employs 'soft advocacy'--that is, working with governments to resolve individual complaints through informal and confidential means.¹⁹² Moreover, as noted in section 3(e) above, both the federal human rights commission and provincial accountability bodies lack the jurisdiction to consider complaints that involve both federal and provincial refusals of a service at once.

There is precedent in the non-Indigenous context for the creation of a federal accountability body that may duplicate some of the functions of an existing provincial accountability body, and

¹⁹¹ See Reif, *supra* note 3 at 14; *Ombudsman Act*, RSY 2002, c. 163, s 11(5).

¹⁹² On this, see Blackstock, *supra* note 75 at 297-298. See also the Summary Report of the 2013 and 2014 Aboriginal Women's Roundtable, "Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice for Indigenous Women and Girls," which highlights the challenges and barriers experienced by Indigenous peoples in accessing the CHRC, at 23, 27, 28, 31, 32, 34, 35, 36. There were recommendations made by Indigenous groups, after the repeal of s. 67 of the *Canadian Human Rights Act* to strengthen the legislative mandate of the CHRC in relation to Indigenous peoples, but this did not happen: see 2011 Report to Parliament - On The Readiness of First Nations Communities And Organizations To Comply With The *Canadian Human Rights Act*, Appendix C - Report of the Congress of Aboriginal Peoples. Further, the Commission's focus on Indigenous issues has waxed and waned over time. After repeal of s. 67 of the *CHRA*, the Commission had a National Aboriginal Initiative focused on Indigenous issues, however, this branch of the Commission was cut for budgetary reasons around 2015.

the Supreme Court had no issue with the prospect of these bodies operating concurrently.¹⁹³ Further, the legislation could be drafted such that, if another accountability body is effectively responding to a matter, the Advocate may decline to exercise jurisdiction.¹⁹⁴ The Advocate could also be mandated to provide outreach, education and coordination with provincial ombuds, child advocate and human rights commission to assist in their attempts to address matters relating to Indigenous children and families.

Types of investigation

All child advocates, ombuds and human rights commissions have the power to investigate individual complaints relating to their areas of jurisdiction. There is clearly a need for this in the context of the services provided by Canada and provinces to Indigenous children and families. We could also foresee individual complaints including group or community complaints, especially in relation to funding issues relating to both Jordan's Principle, as well as funding under C92. Jurisdiction over group complaints is made explicit in some accountability legislation, and we recommend similarly in the proposed Advocate legislation.¹⁹⁵ It would be best if the law clarified that groups can include Indigenous collectives, such as communities, Bands, tribal councils, and organizations.

Many accountability bodies also have the power to initiate own-motion investigations into matters, and we recommend this for the proposed Advocate. We also recommend that the statute provide clear language that the Advocate has the power to undertake systemic investigations, including the powers to carry out studies and research in support of systemic inquiries, as in the case of some existing statutes.¹⁹⁶ Related to systemic inquiries, a power to carry out studies and research on any relevant question under the advocate's jurisdiction, such as found in Quebec's child advocate laws, is important to specify.¹⁹⁷ The power to engage any persons having technical or specialized knowledge of any matter relating to the work of the Advocate's Officer to advise and assist the Advocate, such as found in the *Official Languages Act*, would further assist the proposed Advocate in making systemic inquiries.¹⁹⁸

¹⁹³ *Multiple Access Ltd. v. McCutcheon*, [1982] 2 SCR 161, involving a federal and Ontario's securities regulatory. The Court held that duplication of legislative regimes in areas of concurrent jurisdiction (double aspect) was acceptable, so long as there was no conflict or 'incompatibility' between the statutes, and this would be conceived of narrowly. In true cases of incompatibility, however, the federal legislation would be paramount.

¹⁹⁴ This could be modeled on the provision on s 41(1)(a) and (b) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [CHRA], which give discretion to the Commission to decline dealing with a complain if the complainant has not exhausted other grievance procedure otherwise reasonably available, or the complaint is one that could be more appropriate dealt through another procedure.

¹⁹⁵ See, for example, *Charter of Human Rights and Freedoms*, CQLR, c C-12, s 74; and Saskatchewan's *Advocate for Children and Youth Act*, SS 2012, c A-5.4, s 14(2)(b).

¹⁹⁶ See *Saskatchewan Human Rights Code*, 2018, SS 2018, c S-24.2, s 24(h); Ontario Advocate, *supra* note 190 at s 16(1)(p); and *Child and Youth Advocate Act*, *supra* note 141 s 12(1).

¹⁹⁷ See *Youth Protection Act*, CQLR c P-34.1 s 23(f).

¹⁹⁸ *Official Languages Act*, RSC 1985, c 31 (4th Supp), s 52.

Investigative powers

The Advocate should have robust investigative powers to collect necessary information to effectively respond to the different types of complaints (individual, group, own-motion and systemic). In particular, we recommend that the Advocate have investigative powers similar to those of human rights commissions, including powers to make oral or written inquiries, demand the production of documents or records, and search any premises after applying for a warrant, and apply for enforcement of orders.¹⁹⁹ The investigative powers in Senator Moodie's proposed Bill S-217 would have given the proposed Commission all the powers of a commissioner appointed under Part II of the *Inquiries Act*, which covers most of the investigative powers above, so this may be a precedent worth considering.²⁰⁰

In terms of collection of data and systemic oversight of Canada's implementation of Jordan's Principle and CHRT's order to reform FNCFS, we agree with the Caring Society that it would be important to specify in the enabling legislation some types of data that it would be mandatory for the Advocate to collect and analyze. For example, this might include:

- Jordan's Principle decision-makers approval and denial rates, as well as number of requests deemed 'submitted with insufficient information'.
- Jordan's Principle decision-makers turn-around times.
- Jordan's Principle request by regions/communities.
- Disaggregated data by sub-group of Jordan's Principle requests by age, gender, disability as well as service/product/program types.²⁰¹
- Identify gaps in services being addressed through Jordan's Principle.
- identify subgroups that are underrepresented in Jordan's Principle requests.
- The amount of funding being provided per capita through Jordan's Principle, and the variation in funding levels across provinces/territories and remote/rural/urban communities.
- Jordan's Principle appeal approval and denial rates.
- Jordan's Principle appeal turn-around times.
- Disaggregated data of complaints brought to the Advocate and Tribunal.

Further mandatory areas of data collection could be identified in discussions and collaboration with Indigenous groups, lawyers and experts in the area. Note that such a mandatory list should not preclude the Advocate from collecting other data they view as important to fulfilling their mandate, or to investigate specific complaints, and the legislation should also be clear on that.

¹⁹⁹ CHRA, *supra* note 197 at s 43; *Human Rights Act*, RSPEI 1988, c H-12, s 23-24.

²⁰⁰ Bill S-217, *supra* note 161.

²⁰¹ As recommended by Sinha et al., *supra* note 92 at 41, "The data needed is not simply the broad category of services being funded, such as "vision," but a specific description that supports examination of the existing policy framework, e.g., "second pair of glasses within a year, not covered by Non Insured Health Benefits (NIHB)."

We also agree with the Caring Society that, for the purposes of systemic oversight, there is value in listing issues or events that would create an obligation on provincial and federal government departments to report to the Advocate that would in turn trigger mandatory investigations by the Advocate. While this list is not exhaustive, examples of potential areas that could trigger investigations include:

- Jordan's Principle decision-makers with low approval rates.
- Jordan's Principle decision-makers with slow turnaround times.
- Jordan's Principle regions/communities with high and low request rates.
- Situations where there are a large number of requests from members of groups or for a specific service.

Such a list would benefit from further discussions and collaboration with Indigenous groups, lawyers and experts in the area.

Like with the powers of provincial child advocates, the Advocate should also be mandated to meet with children and youth and ensure their voices are heard in the investigation process. Helpful provisions to this effect are included in Newfoundland's *Child and Youth Advocate Act*, which calls for the Advocate to meet with children and youth and ensure their participation in decisions regarding services.²⁰²

We see real value-added in the model of a Child Advocate for engaging in 'soft advocacy' on behalf of Indigenous children and families. Advocate Offices employ trained social workers or other helping professionals who can intervene with government departments and agencies on behalf on children and youth and attempt to informally resolve their complaints. Thus, investigations should take place confidentially, as they do with child advocates and federal legislated ombuds,²⁰³ in order to foster greater cooperation by government parties.²⁰⁴ Confidentiality supports professionalism and diligence as it creates better access to information and gains the respect of senior government officials, which leads to opportunities for quick resolutions.²⁰⁵ Further, confidentiality strengthens accessibility to the public,²⁰⁶ independence,²⁰⁷ trust, and confidence as well as protects from fears of reprisal.²⁰⁸ The provisions in the (now repealed) Ontario *Provincial Advocate for Children and Youth Act* on confidentiality and privacy are a useful precedent to look to. However, this does not prevent public reporting by the Advocate, which we believe will be a crucial function of the Advocate in some cases, as we

²⁰² Newfoundland and Labrador's *Child and Youth Advocate Act*, SNL 2001, c C-12.01, s 15(1)(d)-(f).

²⁰³ *Official Languages Act*, *supra* note 198 at ss 60, 71, and 72; *Corrections and Conditional Release Act*, SC 1982, c 20, s 182.

²⁰⁴ Canadian Audit and Accountability Foundation "Establishing a First Nations Auditor General Research Paper" November 2017, 24.

²⁰⁵ Marshall & Reif *supra* note 19 at 219-220.

²⁰⁶ Greene *supra* note 24 at 21; National Aboriginal Initiative "Honouring the Strength of Our Sisters", *supra* note 192 at 38.

²⁰⁷ Canadian Audit and Accountability Foundation *supra* note 204 at 24.

²⁰⁸ "The Case for a Permanent and Independent Ombudsman Office...", *supra* note 153 at 34-35.

discuss below. In the Ontario legislation, for example, the individual's information can only be disclosed in a public report with consent, or otherwise anonymized.²⁰⁹

The proposed Advocate may require tools to encourage reporting of concerns by public servants and others and discourage any form of retaliation. The *Official Languages Act* contains a provision allowing the Commissioner to make a report to the Treasury Board of any belief of an individual being threatened, intimidated or discriminated against for making a complaint or giving evidence or assisting in an investigation under the Act.²¹⁰ The *Canadian Human Rights Act* also prohibits any form of retaliation and treats it as a form of discrimination that can be subject to a compensation order by the Canadian Human Rights Tribunal.²¹¹ We believe that these sorts of protection against discrimination must be included in legislation for the proposed Advocate.²¹²

Remedial powers

Commissions and child advocates do not typically possess remedial powers to make enforcement orders against government actors. By not giving these bodies enforcement powers, this allows them to instead investigate and seek to provide advice and recommendations to the government. The rationale is this will make government actors more amenable to cooperating and working with these bodies. We agree this should be the main function of the Advocate, however, as noted earlier in discussion of Need #8, this is why we are also recommending the creation of a Tribunal that can adjudicate matters when persuasion and advice are ineffective, as discussed further below.

The objective of the Advocate in cases of individual and group complaints should be to facilitate resolution, and like human rights commission and other child advocates, through informal and confidential means. Such methods for resolving disputes should draw on Indigenous laws and dispute resolution processes where possible. If complaints cannot be resolved internally, individuals or groups are free to pursue other modes of resolutions, including going to the proposed new Tribunal (or to existing methods for dispute resolution). We do not intend the Advocate's Office to 'gate-keep' individuals' or groups' access to the Tribunal or other forums. Typically, accessing options of dispute resolution through ombuds-functions does not prevent people from accessing other forums, and we do not intend to limit peoples' options with this mechanism. It is our hope that an individual or group might start with the Advocate to seek informal resolution or, at the least, obtain information to navigate their options, and possibly be connected with legal support if necessary (we explain this further below with our third mechanism, National Legal Services for Indigenous Children and Families). In other words, we

²⁰⁹ Ontario Advocate, *supra* note 190 at ss 19-20.

²¹⁰ *Official Languages Act*, *supra* note 198 at s 62(2).

²¹¹ CHRA, *supra* note 194 at ss 4, 14.1 and 53.

²¹² Also see Samantha Feinstein et al "Are whistleblowing laws working? A global study of whistleblower protection litigation" which offers insight on whistleblower protections to safeguard against retaliation to ensure whistleblowers become essential players in fighting against government abuse of power at 13 - 19, 21 - 23, 25, 27, 65, 68-71.

see the Advocate as providing a “one stop shop” that can support Indigenous children, youth and their families in navigating the different accountability mechanisms that exist. Essential, we envision the Advocate receiving complaints and, based on its knowledge and experience, quickly assessing whether a complaint could be handled based on its relationships with the government actors (through ‘soft advocacy’) or, if the complaint is more complex or beyond their soft advocacy abilities, connecting the complainant with legal counsel to advise them on their options, including going to the Tribunal. The Advocate as a ‘one stop shop’ can help coordinate and ensure complaints are handled efficiently, as well as ensure that the Tribunal is not overwhelmed with complaints that could be more quickly handled through the soft advocacy.

The proposed Advocate would also have similar powers to provincial child advocates to make recommendations to the government. For example, Saskatchewan’s child advocate can make recommendations on any matter concerning services provided to a child or group of children by the government, as well as on “any matter relating to the interests and well-being of children or youths who receive services from [the government].”²¹³ While such wide-discretion to make orders is important, it would be helpful for the enabling legislation to list examples of the types of recommendations the Advocate can make. For example,

- When data or investigations reveal bias in policies, process or staff members, recommendations for training or other corrective measures.
- Recommendations for government actors to take proactive measures, such as steps to ensure that Indigenous children and families are aware of their rights.
- Recommend policy or process changes to address systemic gaps or inequities, for example, driving a high level of Jordan’s Principle requests.
- Recommend a comprehensive solution to avoid the case-by-case or a “projectification” approach to Jordan’s Principle.

Such a list would not be intended to limit what the Advocate can recommend, but to allow Advocate staff, as well as government staff subject to Advocate oversight, to appreciate the Advocate’s role and powers.

Further, if an investigation under the Advocate’s jurisdiction reveals wrongdoing by a government actor (e.g., acting contrary to law, unreasonably, unjustly or based on a mistake of law or fact), we believe it would be important for the enabling legislation to specify, like in Saskatchewan, that the Advocate must report to the wrongdoing to the responsible minister or government service provider and may make recommendations that the Advocate considers appropriate.²¹⁴ The Advocate can also request the government entity who received the recommendation to provide notice within a specified time of the steps that it has taken to or propose action to give effect to the recommendation. If, within a reasonable time of the recommendation, no action is taken that seems to the Advocate to be adequate or appropriate, the Advocate may submit a report of the matter to the Cabinet, as well as mention the report in its annual report to the Legislative Assembly.²¹⁵ A very similar approach is found in Nunavut’s

²¹³ Saskatchewan’s *Advocate for Children and Youth Act*, *supra* note 195 at ss 14(2)(d) and (3)(b).

²¹⁴ *Ibid* at s 28.

²¹⁵ *Ibid* at s 29.

Children and Youth Act, except that a report shall also “include a description of the application, use or incorporation of Inuit culture and Inuit societal values in relation to the conduct of the review.”²¹⁶ The federal Official Language Commissioner also has impressive escalation powers where its recommendations are not acted upon. If, after a reasonable time, the federal institution concerned has not acted on its recommendation, the Commissioner may transmit its report to Cabinet, following which, if no adequate and reasonable response is forthcoming in a reasonable time, the Commissioner may report to Parliament.²¹⁷ If no action is taken, the Commissioner can apply to Federal Court for remedy in relation to a complaint under the *Official Languages Act* with consent of the complainant.²¹⁸ We believe it would be important for the Advocate to have similar escalation powers up to Parliament, as well as to take issues to the proposed new Tribunal.

Beyond reports on specific complaints, human rights commissions and child advocates will normally have annual reporting requirements to the legislative branch on their activities for the year.²¹⁹ However, they are also empowered to make other or special reports commenting on any matter within the scope of its powers that they deem appropriate.²²⁰ Finally, in addition to referring complaints to the federal court, the Official Language Commissioner also has the power to seek leave to intervene in any adjudicative proceedings relating to the status or use of English or French.²²¹ We believe these would all be important powers in the toolbox of the Advocate we are proposing.

Education

Human rights commissions and child advocates typically have specified powers to educate the public. Nova Scotia's human rights legislation calls on its commission to “develop a program of public information and education in the field of human rights.” Alberta's child advocate law empowers its advocate to “promote the rights, interests, and well-being of children through public education.”²²²

We believe that the proposed Advocate should have a significant mandate to promote human rights, particularly the right to substantive equality and Jordan's Principle, of Indigenous children and families, as well as their interests and well-being. We also believe the Advocate should more specifically have a mandate to educate both federal and provincial civil servants in these areas, as well as those other professionals who play a role in child welfare matters (judges, legal aid lawyers, etc.), including their obligation in relation to C92. The Advocate could also

²¹⁶ *Consolidation of Representative for Children and Youth Act*, *supra* note 141 s 33(2) and see ss 33-34.

²¹⁷ *Official Languages Act*, *supra* note 198 at ss 63-65.

²¹⁸ *Ibid* at s 78(1)(a).

²¹⁹ CHRA, *supra* note 194 at s 44(3); see also Ontario Advocate, *supra* note 190 at s 21(1).

²²⁰ CHRA, *ibid* at s 44(2); Ontario Advocate, *ibid* at 21(5); see also *Official Languages Act*, *supra* note 198 at s 67.

²²¹ *Official Languages Act*, *ibid* at s 78(3).

²²² Alberta's *Child and Youth Advocate Act*, *supra* note 141 ; see also Saskatchewan's *The Advocate for Children and Youth Act*, *supra* note 195 at s 14(2)(a); and Manitoba's *The Advocate for Children and Youth Act*, *supra* note 141 at s 12.

play a 'knowledge mobilization' role in terms of ensuring that standards and practices are consistently applied/understood throughout the various jurisdiction and country, and act as a resource for Indigenous nations and communities to facilitate learning from each other.

Other important provisions

Senator Moodie's proposed Bill S-217 included provisions in the mandate of the Commissioner to promote the collective rights of Indigenous peoples, encourage maintenance of connections to culture, families, lands, waters, language, songs and stories, as well as encourage the implementation of Indigenous laws.²²³ It would be worthwhile to emulate such provisions in legislation for the Advocate we are proposing. However, any Indigenous Process designed for accountability purposes needs to recognize the diverse legal traditions among Indigenous Nations.

The Yukon *Child and Youth Advocate Act* includes provisions stipulating that the Advocate should have knowledge of First Nations culture, traditions and beliefs, as well as knowledge about child and youth development and disabilities affecting children and youth.²²⁴ A similar provision can be found regarding the Advocate's knowledge of Inuit culture in Nunavut's Act.²²⁵ Alberta's child advocate legislation requires the child advocate to maintain a roster of Indigenous, Métis, and Inuit advisors.²²⁶

(2) A National Indigenous Child and Family Tribunal

The Advocate we propose above will provide badly needed oversight over the federal and provincial governments and play an essential role in safeguarding the rights of Indigenous children and families. However, as important as it is, given that government intransigence on services for Indigenous children and families is an ongoing problem, the Advocate will be ineffective if its recommendations on individual and systemic discrimination are only ever advisory without the possibility of being enforced through binding orders on governments.

In the choice between escalation by the Advocate to courts (which is the option in the case of the Official Languages Commissioner²²⁷) versus specialized tribunal, in the circumstances, we believe a specialized tribunal with the ability to have more informal procedures and rules around evidence, as well as more robust remedial powers, is preferable. Courts in Canada do not have the power to consider substantive equality and statutory human rights violations.²²⁸ At best, they can consider violation of s. 15 of the *Charter* against government authorities in the context of a judicial review. In judicial review, the conduct of governments is most often assessed on the basis of reasonableness in accordance with the government authorities' statutory

²²³ Bill S-217, *supra* note 161 at s 11(1)(o)-(q).

²²⁴ Newfoundland and Labrador's *Child and Youth Advocate Act*, *supra* note 202 at ss 4(5).

²²⁵ Nunavut's *Consolidation of Representative for Children and Youth Act*, *supra* note 141 at s 6(1)(a).

²²⁶ Alberta's *Child and Youth Advocate Act*, *supra* note 141 at s 9.4.

²²⁷ *Official Languages Act*, *supra* note 198 at s 78(1).

²²⁸ See *Seneca College v. Bhaduria*, [1981] 2 SCR 181; and *Honda Canada Inc. v. Keays*, 2008 SCC 39.

objectives.²²⁹ The nature of these proceedings often results in significant deference shown to governments. Further, the lack of legislative frameworks in the context of services to Indigenous peoples can further up the level of deference courts will show the government.²³⁰ For all these reasons, we believe the creation of a specialized tribunal is important and would be the optimal venue to hear matters relating to Indigenous children and families. As noted earlier, however, we do not intend to limit individual or group complainants to the Tribunal and think they should be able to choose between it and existing forums. Below, we suggest ways to improve access to justice in existing forums. Given the long history of non-existent or ineffective options, we believe Indigenous children and families would benefit from more avenues for vindicating their rights to substantive equality, not less.

The Tribunal's jurisdiction would be in relation to the same laws falling within the Advocate's mandate. While we generally recommend a Tribunal that is focused on Indigenous Child and Family issues, there has been recommendations and ongoing advocacy for a broader National Indigenous and Human Rights Tribunal that can adjudicate the gamut of disputes between Indigenous peoples and governments based on their Aboriginal rights and human rights, including all those rights protected under the *United Nations Declaration on the Rights of Indigenous Peoples*.²³¹ While we feel strongly that the proposed Advocate should be focused specifically on Indigenous children and family issues, we are less concerned about the complaints from the Advocate going to a Tribunal with broader jurisdiction, so long as the Tribunal is focused only on Indigenous matters, can bind both the provinces and governments, and has a sufficiently flexible process and robust remedies. Further, it is likely that a Tribunal that can provide broad remedies in *all* areas of the Crown-Indigenous relationship will avoid any potential jurisdictional gaps.²³²

In section 3(e), we explained our reasoning for why using the Canadian Human Rights Tribunal would not be an effective forum to adjudicate the issue we have identified in this report, since it cannot hear matters that simultaneously involve the provinces. We also think that the legislation creating the Tribunal (potentially the same legislation creating the Advocate) should impose a greater emphasis on ensuring those who adjudicate matters at the Tribunal have expertise in the discrimination issues faced by Indigenous children and families. In general, the qualifications of adjudicators of the Tribunal, terms of office, and further details about the

²²⁹ See *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

²³⁰ See Promislow & Metallic, *supra* note 6 at 104-108; see also Yellowhead Institute, "Looking for Cash Back in the Courts" (2021), *supra* note 6.

²³¹ MMIWG Final Report, *supra* note 73, Executive Summary, Call for Justice 1.7; see also Inuit Tapiriit Kanatami Position Paper – Establishing an Indigenous Human Rights Commission through Federal UN Declaration Legislation (2021).

²³² In *Canada (AG) v First Nations Caring Society of Canada et al*, 2021 FC 969, at paras 241-258, Flavel J. underscored the importance of general and broad remedial jurisdiction in order to remedy past and prevent future discrimination in relation to First Nations children and families. Linda Reif also emphasizes the importance of accountability mechanisms having broad jurisdiction due to the multifaceted and interrelated nature of matters, particularly as it relates to human rights: see *v supra* note 3 at 27, 77, 149, 251- 252 and 755.

Tribunal ought to be determined in discussion and cooperation with Indigenous groups, including Indigenous children and youth, as mentioned earlier.

As for the powers of the Tribunal, in general, we recommend similar procedural and remedial rules as those of the Canadian Human Rights Tribunal, perhaps with some adaptation to further facilitate effective resolution of complaints in the circumstances, including the powers to order costs against governments.²³³ To ensure that the substantive equality rights of Indigenous children and families are vindicated, we believe it would be important for the Tribunal's power to grant the remedial orders be mandatory where discrimination is established.²³⁴ Further, given the importance that supervisory jurisdiction has played in the *Caring Society* case, the power of the Tribunal to exercise this remedy ought to be made explicit. We also agree with the suggestion of the Caring Society that it would be important for the Tribunal to have the power to grant interim orders and make summary decisions in situations where there is a clear human rights violation, or in urgent circumstances.²³⁵ The ability to incorporate Indigenous laws and legal procedures into the process should be made explicit. It would also be desirable to design child-informed and child-friendly procedures.²³⁶

Further advice on the design of such a Tribunal ought to be sought from those parties and other lawyers who have been involved in the *Caring Society* case. The Tribunal should also be designed to lessen the grounds upon which its decision can be reviewed.

Finally, we strongly recommend that this new Tribunal not be included within the schedule of federal administrative tribunals falling under the *Administrative Tribunals and Support Services of Canada Act*, SC 2014, c 20, s 36 (ATSSCA). The management of facilities and support services for federal tribunals under the jurisdiction of the Administrative Tribunals Support Services of Canada has been criticized as compromising the independence of federal tribunals, particularly those involving Indigenous issues.²³⁷ Because the need for independence from the federal government is crucial for the mechanisms proposed in this report, the proposed Tribunal should not be included in the ATSSCA.

²³³ See Blackstock, *supra* note 75 at 299-300 on the need for reform in this area, as well as other further details of access to justice problems within the current CHRT process.

²³⁴ For an example of this language, see s. 37(2) of the *Human Rights Code*, RSBC 1996, c 210

²³⁵ Further suggestions made by the Caring Society for consideration include a one-way cost regime as is the case in American civil rights legislation. This might be especially important given the Supreme Court of Canada's decision in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, that powers to award costs should be made explicit for human rights tribunals.

²³⁶ See OHCHR: Access to justice for children, *supra* note 164, for standards and good practices for children's access to justice; Commissioner for Children and Young People Western Australia "National Principles for Child Safe Organizations WA: Guidelines, November 2019; Australian Government National Office for Child Safety prepared by the New South Wales Ombudsman's Office "Complaint Handling Guide: Upholding the rights of children and young people" 2019; New South Wales Office of the Advocate for Children and Young People "NSW Strategic Plan for Children and Young People – Consultation Results Report" May 2016, and Assembly of Seven Generations, *supra* note 7.

²³⁷ See letter, "Independence of Specific Claims Tribunal", to Ministers McKay and Valcourt from the Canadian Bar Association, February 8, 2015.

(3) National Legal Services for Indigenous Children and Families

In addition to the Advocate and Tribunal described above, as long as federal and provincial governments have power and control over services for Indigenous children and families, and particularly as long as processes to access essential services remain individualized, there will be a continued need for advocacy and legal services. Indigenous children and families require access to knowledgeable advocates and lawyers who can support them in their attempts to access substantive equality in services from the federal and provincial governments, and in their interactions with child welfare systems. The power imbalance between individual children and families and the state makes advocacy essential for upholding the right to substantive equality and statutory human rights. These are complex areas that are challenging even for well-connected lawyers to navigate, as the story of Carolyn Buffalo-Jackson illustrates.²³⁸ The specialized advocacy and support the Caring Society's staff and network of pro bono lawyers can provide in a limited number of cases is clearly needed but needs to be regularized and government funded on a national scale.

ISC funds Jordan Principle service coordinators from First Nations organizations to help children and families navigate the Jordan's Principle process. This is some recognition that Indigenous families and children need particular support in accessing services from the federal government. These positions are a good start because they help families navigate the process, but they are not able to provide deeper advocacy and legal support, which is essential.

As discussed in relation to accountability need #10, Indigenous children and their families experience significant barriers in accessing existing avenues to hold governments for violations of their rights to services, and the Caring Society and their pro bono lawyers have been assisting them informally on a shoe-string budget. There is a need for state-funded legal and advocacy support to be provided to Indigenous children and families to address the discrimination and breaches of the *Canadian Human Rights Act* found by the Canadian Human Rights Tribunal and prevent further discriminatory practices in the future as well as realize their rights to substantive equality and statutory human rights under human rights law, C92, *DISA* and international human rights instruments. This should include funding supports to navigate the different avenues for recourse, to filling forms, letter writings and speaking on their behalf, to pursuing ombuds, child advocate, human rights challenges (before the federal or provincial human rights commission, or the new Tribunal we are proposing) or judicial review in the courts.

The Supreme Court of Canada has held that parents living in poverty who face the prospect of losing their children in child protection proceedings have a right to state-funding for legal counsel.²³⁹ This is because the stress, stigma and disruption of family life caused by the prospect of having the state take one's child engages a parent's right to security under s 7 of the *Charter* and also violates the parent's right to fair hearing if they do not have the opportunity to present their case effectively. Three judges also said that because single mother's are

²³⁸ See "Buffalo v Canada – My Family's Fight for the Right for Noah to ride a bus to school," *supra* note 119.

²³⁹ *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 SCR 46.

disproportionately impacted by child welfare proceedings, this also engaged equality protections that informed a finding of a *Charter* violation.

Arguing from analogy, we can argue that lack of effective representation in procedures (Jordan's Principle requests) that may eventually result in child apprehension (and the link between denial of services and child apprehensions in the First Nations context has been established by the *Caring Society* case) violates s 7 of the *Charter*. Further, the MMIWG National Inquiry Report also suggested that interjurisdictional neglect, delays and denials of services constituted a s 7 *Charter* violation.²⁴⁰ On top of this, there is a s. 15 equality rights dimension here given the Indigeneity of the claimants. In our view, there is a strong *Charter* case for effective legal representation in Jordan Principle matters.

With respect to child welfare hearings, provincial legal aid plans in Canada can represent parents in provincial child welfare matters, however, applying for legal aid and qualifying based on an increasingly narrow income and other criteria, creates another barrier for many families. Legal aid providers may not have the specialized knowledge necessary for adequate representation, or the case may simply not meet the criteria set for legal aid (i.e. in some provinces, legal aid can only act for a parent after apprehension of a child, so a Jordan's Principle appeal for medical equipment or in-home support won't meet the threshold for representation). In addition, Indigenous care providers and communities now have rights to participate in child welfare hearings under C92,²⁴¹ and, to our knowledge, they are likely not covered under legal aid plans. However, without legal representation, they are likely not able to participate meaningfully in these proceedings. Again, based on the above-noted Supreme Court decision, there is a strong *Charter* argument for state-funded representation. Furthermore, as noted earlier, the guarantees of substantive equality in the exercise of the rights of children, their family members and communities in C92 suggest a positive obligation on governments to fund legal representation. Where there is some overlap with provincial Legal Aid, as noted earlier, duplication of provincial mechanisms is not a barrier and there are ways for bodies with similar functions to cooperate with each other.

This could take different forms. Ontario has the Office of the Children's Lawyer that is an independent law office that operates out of the Ministry of the Attorney General.²⁴² While such a model has promise, in the circumstances, we believe legal services situated outside government would be preferable. The Caring Society also recommended the Ontario Human Rights Legal Support Center or Ontario Specialty clinics as potential structures to look at to inspire the governance of this service.

²⁴⁰ MMIWG Final Report, *supra* note 73 at 567.

²⁴¹ *An Act respecting First Nations, Inuit and Métis children, youth and families*, *supra* note 98 at ss 12-13.

²⁴² Ontario Government, Office of the Children's Lawyer, online: <https://www.ontario.ca/page/office-childrens-lawyer>

A model we find particularly promising is the Legal Representation for Child and Youth (LRCY) branch of Alberta's Office of the Child and Youth Advocate (OCYA).²⁴³ Like other child advocate offices, the advocate office is precluded from acting as legal counsel in their role.²⁴⁴ In general, this avoids blurring lines between the investigative and persuasive functions of advocates²⁴⁵ and adversarial advocacy. To avoid this blurring, but also equip children and youth with needed legal supports, Alberta's *Child and Youth Advocate Act* also gives the advocate the power to appoint lawyers to represent children with respect to a variety of legal matters that affect children in the province.²⁴⁶ Based on this, the OCYA created the LRCY. The LRCY does not provide legal advice *directly*, but instead receives referrals from young people, caseworkers, courts, parents, foster parents, other caregivers and concerned individuals, appoints lawyers from a roster, sets and monitors service standards for lawyers, and pays lawyers for services provided.²⁴⁷ For lawyers to be considered for membership on the LRCY roster they must, be lawyers in the province in good standing, have practiced in Alberta in the area of Family Law/Child Protection for a minimum of five years, be willing to be bound by LRCY's expectations and services standards, and submit a completed application and any additional information requested by the LRCY Manager.²⁴⁸

We believe a similar dual model to the Advocates and the LRCY, coordinated from the proposed Advocate, would be effective for several reasons. First, we expect the proposed Advocate would become highly visible to Indigenous peoples, therefore having the Advocate be a 'one-stop-shop' for information, complaints, and legal referrals increases accessibility. Second, the referrals branch of the Advocate will benefit from the knowledge and expertise of staff at the Advocate and this should inform the development of representation expectations and standards of the Advocate, as well as development of the lawyers' roster. Third, by building this into the infrastructure of the proposed Advocate, this does not rely on uncoordinated provincial legal aid offices nor requires separate legislation for the creation of a new national legal aid entity. Building and maintaining a national roster of lawyers would create much needed capacity and expertise for effective advocacy in these complex, under-served legal areas. Finally, the Advocate could collect national data on common themes and regional differences in legal

²⁴³ Office of the Child and Youth Advocate Alberta website, "About Legal Representation for Children and Youth," online: <https://www.ocya.alberta.ca/adult/what-we-do/legal-representation-lrcy/about-lrcy/>

²⁴⁴ Alberta's *Child and Youth Advocate Act*, *supra* note 141 at 9(2)(c) and 11.

²⁴⁵ The persuasive function is cooperative and flexible, which fosters consensus decision-making that works to modify thinking and behaviour leading to long-term and widespread change, see Reif, *supra* note 3 at 24, 25, 26; and Chartrand, *supra* note 5 at p. 17, 18, 24, 25. This function is often accompanied by an investigative function that allows for a thorough investigation, consideration of all perspectives and analysis of all the issues that ultimately enables a more informed and reasoned approach to recommendations and decisions, see Reif, *supra* note 3 at p. 25, 49, 50. The inclusion of an adversarial function could significantly affect the strengths of these other functions.

²⁴⁶ See Alberta's *Child and Youth Advocate Act*, *supra* note 141 at s 9(2)(c) and *Child and Youth Advocate Regulation*, Alta Reg 53/2012, s 1.1(1).

²⁴⁷ See "About Legal Representation for Children and Youth," *supra* note 243.

²⁴⁸ Office of the Child and Youth Advocate Alberta website, "How To Get On The Roster," online: <https://www.ocya.alberta.ca/adult/what-we-do/legal-representation-lrcy/how-to-get-on-the-roster/>

cases, which would in turn help identify inadvertent barriers, helpful solutions, educational needs and potential subjects for systemic policy reforms.

Recommendations

It is our conclusion that the history of overrepresentation of Indigenous children in state care, particularly the role of interjurisdictional wrangling between the federal and provincial governments over essential services to Indigenous children and families, which continues up to the present (see Part 1), creates accountability needs (see Part 2) which necessitate significant action to be taken by the government of Canada in order to create meaningful and effective accountability.

Primary Recommendation:

We recommend three mechanisms external to the government of Canada to ensure true accountability. We believe all three of these mechanisms must:

- Be set out in federal legislation and not simply created by the executive, in order to ensure independence from government and the greatest degree of oversight and accountability. Further, the three interconnected mechanisms we proposed could be addressed in one statute.
- Be specific to the interest and rights of Indigenous children and families (and not wrapped into a broader mechanism).
- Apply to all Indigenous children and families, not just First Nations on reserve (e.g., non-status First Nations, off-reserve, Métis and Inuit). Such an inclusive approach prevents repeating exclusions of the past. Instead of treating all Indigenous peoples identically, as a pan-Indigenous approach seeks to do, an inclusive approach, while recognizing all Indigenous peoples are worthy of human rights protection, acknowledges there can be differences between different sub-groups that need to be accommodated.
- Apply to conduct of both federal and provincial governments, which Canada has the constitutional jurisdiction to legislate pursuant to s 91(24) of the *Constitution Act, 1982*.

The three mechanisms are:

1. A **National Indigenous Children and Families Advocate**, which would be based on the thematic ombuds model of a child and youth advocate office, but also with specific jurisdiction to oversee governments' delivery of services to Indigenous children and families in accordance with Jordan's Principle, their right to substantive equality in statutory human rights instruments and other relevant laws and international requirements (C-92, DISA, UNDRIP, CRC, etc), as well as implementation of child welfare legislation and policy. To be effective this Advocate should:
 - a. Have oversight over:
 - i. Canada's implementation of Jordan's Principle;

- ii. Canada's long-term reform of child welfare, including C92 implementation;
 - iii. Canada's implementation of substantive equality in relation to all services impacting on Indigenous Children and Families;
 - iv. Federal-Provincial cooperation in servicing Indigenous Children and Families;
 - v. Education for federal and provincial government actors involved in child welfare services;
 - vi. Provincial governments' implementation of substantive equality in relation to all services impacting on Indigenous Children and Families; and
 - vii. Child provincial welfare agencies, including their implementation of C92 (not including self-governing Indigenous Governing Bodies except with their consent).
- b. Assess governments' obligations in relation to Jordan's Principle and substantive equality (protected under each government's human rights legislation and the *Charter*), C-92 and international instruments such as United Nations Declaration on the Rights of Indigenous Peoples, the Conventions with Rights of the Child, and the Convention of Rights of Persons with Disabilities.
 - c. Scrutinizes governments' distinctions-based approach in relation to the need for equitable services on the grounds of the various subcategories of Indigeneity governments have relied on in the past to make distinctions (non-status, off-reserve, Metis, Inuit, etc.) as *prima facie* discrimination.
 - d. Have the power to investigate individual, group and community complaints, as well as institute own-motion investigations, including into systemic issues.
 - e. Have robust investigative powers to collect and compel necessary information from government parties to effectively respond to the different types of complaints as well as to be able to effectively conduct systemic oversight.
 - f. Conduct research and hire experts in conducting systemic inquiries.
 - g. Be mandated to meet with children and youth and ensure their voices are heard in the work of the Advocate's Office.
 - h. Attempt to facilitate resolution of complaints through informal and confidential means. Such methods for resolving disputes should draw on Indigenous laws and the dispute resolution processes where possible. This would not prevent reporting and recommendations.
 - i. Providing a "one stop shop" that can support Indigenous children, youth and their families in navigating the different accountability mechanisms that exist. This is not intended to limit peoples' options for resolving complaints through other mechanisms. It is our hope that an individual or group might start with the Advocate to seek informal resolution or, at the least, obtain information to navigate their options, and possibly be connected with legal support if necessary

(we explain this further below with our third mechanism, National Legal Services for Indigenous Children and Families).

- j. Have the power to make recommendations to governments, and to escalate these recommendations to higher levels (up to and including the Tribunal) if recommendations are not reasonably acted upon.
- k. Report annually to Parliament on its activities, as well as make special reports commenting on any matter within the scope of its powers that it deems appropriate.
- l. Intervene in any adjudicative proceedings relating to the jurisdiction of the Advocate.
- m. Educate the public and federal and provincial civil servants, and those involved in child welfare matters, about the right to substantive equality and Jordan's Principle, of Indigenous children and families, as well as their rights within child welfare matters, including under C92.
- n. Play a 'knowledge mobilization' role in terms of ensuring that standards and practices are consistently applied/understood throughout the various jurisdiction and country, and act as a resource for Indigenous nations and communities to facilitate learning from each other.
- o. Promote connections to culture, families, lands, waters, language, songs and stories, as well as encourage the implementation of Indigenous laws in the work of the Advocate.

Beyond these requirements, further details about the Advocate (composition, qualifications, terms, staff, etc.) ought to be determined in discussion and cooperation with Indigenous groups, including Indigenous children and youth, the Caring Society and the pro bono lawyers who have been supporting it. We further suggest that, in the actual development of the enabling legislation, further expert advice be sought to recommend specific statutory language.

2. **A National Indigenous Child and Family Tribunal** with the power to hear complaints (individual, group, community or systemic). To be effective, the Tribunal should:

- a. Have the power to issue binding orders against both the federal and provincial governments and their public servants and agencies.
- b. Have the powers to craft its own procedures and rules of evidence that are more flexible than the courts, including child-informed and child-friendly procedures, and the incorporation of Indigenous law and legal procedures into the process.
- c. Be mandated to issue remedial orders where discrimination is established.
- d. Have extensive remedial powers, including powers to grant interim orders and make summary decisions, as well as the power to exercise supervisory jurisdiction made explicit.

- e. Be composed of adjudicators with expertise in the discrimination issues faced by Indigenous children and families.

Beyond these requirements, further details about the Tribunal (composition, qualifications, terms, staff, etc.) ought to be determined in discussion and cooperation with Indigenous groups, including Indigenous children and youth, including parties and lawyers that have been involved in the Caring Society case.

The creation of a Tribunal with a focus on Indigenous child and family issues is critical to support the work of the proposed Advocate. Should Canada eventually implement recommendations from the MMWIG National Inquiry and others to create a National Indigenous and Human Rights Tribunal, we think this body could equally support the work of the Advocate, so long as the Tribunal is focused only on Indigenous matters, can bind both the provinces and governments, and has a sufficiently flexible process and robust remedies. However, until such time as a National Indigenous and Human Rights Tribunal, there needs to be a National Indigenous Child and Family Tribunal.

Finally, to ensure the utmost independence from the federal government, the proposed Tribunal should not be included within the schedule of federal administrative tribunals falling under the *Administrative Tribunals and Support Services of Canada Act*, SC 2014, c 20, s 36

3. **National Legal Services for Indigenous Children and Families** to provide Indigenous children and families with state-funded access to knowledgeable lawyers who can support them in their attempts to access substantive equality in services from the federal and provincial governments, and in their interactions with child welfare systems. The power imbalance between individual children and families and the state makes advocacy essential for upholding substantive equality and human rights. To be effective, these services should:
 - a. Include funding support from filling forms, letter writings and speaking on their behalf, to pursuing existing Ombuds, Child Advocate, human rights processes (before the federal or provincial human rights commission, or the new Tribunal we are proposing) or judicial review in the courts.
 - b. Take the form of a legal referral service housed in the proposed Advocate (similar to the Legal Representation for Child and Youth branch of Alberta's Office of the Child and Youth Advocate). This includes:
 - i. The Advocate's Office has the power to refer children and families to lawyers and appoint lawyers to represent them to access substantive equality in services from the federal and provincial governments, and in their interactions with child welfare systems.
 - ii. The lawyers appointed would be from a roster maintained by the Advocate. To get on the roster, lawyers would have to meet standards

and expectations set by Advocate (e.g., practice experience, years at the bar of a province, knowledge of Indigenous communities, etc.).

Additional Recommendations:

We believe all three mechanisms we have outlined can and should be legislated within one federal statute.

This federal statute, and the details of these 3 mechanisms should be co-developed in partnership with the AFN, the Caring Society and the Assembly of Seven Generations, and with broad and robust consultation with Indigenous children, youth and families, knowledge holders across all regions of Canada.

In the interim, and in addition to this external mechanism, as discussed in more detail above in Part 3(a), we recommend the following internal steps that ISC could take immediately to address some of the ongoing issues:

- Continue and increase activities such as staff training, internal audits, dispute resolution mechanisms and reporting,
- Create a Code of Ethics and Network Panel²⁴⁹ as a framework for funding community-based youth organizations,
- Put in place internal human rights champions who are responsible for engaging with service coordinators and Indigenous children, families and communities to review and evaluate ISC processes, and advocate for changes to ensure compliance with principles of substantive equality;
- Review all Jordan's Principle requests, including those with inadequate documentation, to identify where ISC can reduce demands for documentation to a minimal data set, particularly for services commonly approved or falling within the "normative standard of care."
- Reverse the onus of who has to establish how the requested service meets the standard of substantive equality, by requiring ISC staff to identify and give written reasons as to where and why they believe a specific request does not fall within that standard, prior to claimants ever being asked to explain how their request falls within this.
- Create and use confidential release forms, that, with the consent of Indigenous children and families, give their third party representatives access to information in order to advocate and support clarification, claims and/or appeals; and
- Fund the advocates or lawyers who are supporting the ad hoc advocacy work of the Caring Society in the interim.

²⁴⁹ See Assembly of Seven Generations, *supra* note 7 at 6, 7, 26.

Finally, to be clear that we are not proposing the 3 accountability mechanisms we have outlined to be exclusive mechanisms. We do not intend that once developed, Indigenous children, families and communities would be precluded from accessing the existing (albeit imperfect) infrastructure that we seek to supplement. Given the history of systemic discrimination against Indigenous children and families discussed in Part 1, we feel strongly that Indigenous children and families should have more avenues for vindicating their rights to substantive equality, not less. Accordingly, along with our recommendations above, we encourage Canada, in the enabling legislation to create the mechanisms below, to include the following provisions in order improve access to existing mechanisms:

- A provision giving courts hearing matters touching on Jordan's Principle or the substantive equality rights of Indigenous children and families, the ability to address such discrimination. For example, section 46.1 of the *Ontario Human Rights Code* contains such a provision.²⁵⁰
- Even leaving aside the jurisdictional issues in judicially reviewing Jordan's Principle claims in Part 3(e) above, there remain several challenges for Indigenous children and families to bring successful judicial review proceedings in the courts. One challenge is lack of clear legislated reference standards courts can use to review governments' interactions with Indigenous children.²⁵¹ While *DISA* and C92 now provide reference standards to applicable to some decision-makers, given the gravity of discrimination against First Nations' children in *Caring Society v. Canada*, a more universal standard, applicable to all decision-makers may be called for. This could be effectuated through a clause in the proposed legislation stating: "The best interests of the child must be the paramount consideration in all decisions impacting Indigenous children. The unique cultural, historical, and geographic strengths, needs and circumstances must be considered as part of the best interests of the child."
- To avoid closing any legal doors for potential complainants, including to existing human rights commission and tribunals, it would be important to include a specific provision to neutralize provisions commonly found in human rights statutes requiring the complainants to exhaust alternative grievances or review procedures reasonably available.²⁵² This provision could read as follows "Nothing in this Act shall be construed so as to abrogate or derogate from the rights provided for under the *Canadian Human Rights Act*, any provincial human rights statute or provincial child advocate or ombuds state." A similar provision appears in the *Canada Labour Code*.²⁵³

²⁵⁰ *Human Rights Code*, RSO 1990, c H.19, s. 46.1.

²⁵¹ See Promislow & Metallic, *supra* note 6 at 101-108; see also Naiomi Metallic, "Deference and legal frameworks not designed by, for or with us," Paul Daly - Administrative Law Matters, February 27, 2018.

²⁵² For example, s. 41(1)(a) of CHRA, *supra* note 194, states: "...the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that (a) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;..."

²⁵³ *Canada Labour Code*, RSC 1985, c L-2 at s. 123.1

Conclusion

In identifying the accountability problems to be addressed by an accountability mechanism for this report, we have looked thoroughly at the context of a “one of the worst possible cases” of racial discrimination, that has deeply and irrevocably harmed multiple generations of Indigenous children and families. We have also reviewed features of effective accountability mechanisms that can contribute to the imperative work of bringing an end to these ongoing harms.

There has been progress, and genuine work toward internal, policy and even legislative reform. However, there is much work to be done and many of the reforms that Canada has unilaterally implemented have been inadequate to stymy ongoing substantive equality and statutory human rights violations. The vast majority of meaningful reforms to date have occurred since the Tribunal issued its 2016 Main Decision and retained supervisory jurisdiction.

There will come a day, when the Tribunal will relinquish jurisdiction over the case. Given the very long history of systemic discrimination against Indigenous people by the government in Canada, particularly in the area of service delivery, it will be important to have alternative accountability mechanisms in place. We have set out 3 that, together, we believe will practically address the accountability problems that have facilitated one of the worst possible cases of racial discrimination in Canadian history for over half a century. There are also internal steps ISC can take in the interim, and in addition, to external legislated accountability mechanisms.

The Assembly of Seven Generations report clearly emphasized that “Indigenous youth and children deserve accountability and responsibility from the federal government, as well as all levels of government.” As Cindy Blackstock says, once we know better, we need to *do* better. We hope and believe a new and better chapter has begun and can be created for present and future generations. Accountability is an essential aspect of this. Indigenous children, youth and families deserve nothing less.

Court File No.: A-270-25

FEDERAL COURT OF APPEAL

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

AND

JOANNE POWLESS

Respondent

**WRITTEN REPRESENTATIONS OF THE PROPOSED INTERVENER,
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA**

OVERVIEW

1. The First Nations Child and Family Caring Society of Canada (“**Caring Society**”) seeks leave to intervene in this Appeal. The Caring Society will make useful and helpful submissions for the Court’s consideration regarding the nature and scope of Jordan’s Principle and will be directly affected by the Appeal, which raises matters of public interest and importance to our human rights jurisprudence. In particular, the Caring Society will make arguments about the systemic implications of the Appellant’s arguments and requested relief and will not seek to introduce evidence or question the factual determinations made in this proceeding. The Caring Society’s arguments will be different from those anticipated from the Appellant and Respondent, in a manner that will assist this Honourable Court in determining this Appeal. It is in the public interest, the interests of justice and consistent with reconciliation to grant the Caring Society leave to intervene in this Appeal.

2. The Caring Society is aware of the urgency of this Appeal and will not delay the proceedings. If leave is granted, it will file its memorandum of fact and law on any date as ordered by this Honourable Court.

PART 1 – STATEMENT OF FACTS

a. ABOUT THE CARING SOCIETY

3. Founded in 1998, the Caring Society is a national non-profit organization committed to research, training, networking, policy, and public education to promote the well-being of First Nations children, youth, and families, including those living on reserve.¹ As a national organization, the Caring Society’s role is to provide quality resources for First Nations communities to draw upon and to assist in developing community-focused solutions for children, youth and families.²

4. The Caring Society has been at the forefront of advocating for the full implementation of Jordan’s Principle since its inception. The Caring Society was present at the House of Commons to witness the unanimous adoption of a Private Members Bill in support of Jordan’s Principle in 2007 and has worked closely with Jordan’s Family since that time. It has since consistently and persistently advocated directly to the federal government regarding its implementation.³ The Caring Society has made substantial positive and effective efforts to ensure that Canada fully implements Jordan’s Principle in accordance with the spirit and intent of the Canadian Human Rights Tribunal (the “**Tribunal**”) Jordan’s Principle orders, through collaborative processes and litigation.

5. In 2007, the Caring Society and the Assembly of First Nations (“**AFN**”) brought a complaint to the Tribunal alleging that Canada was discriminating against First Nations children and their families with respect to its discriminatory conduct of child and family services for First Nations children and families and Canada’s failure to implement Jordan’s Principle (the “**Complaint**”).⁴ The Tribunal substantiated the

¹ Affidavit of Cindy Blackstock, affirmed on September 5, 2025, para 9 [Blackstock Affidavit], Motion Record of the First Nations Child and Family Caring Society of Canada [CS MR], p. 8.

² Blackstock Affidavit, para 9, CS MR p. 8.

³ Blackstock Affidavit, para 15, CS MR p. 9.

⁴ Blackstock Affidavit, para 39-40, CS MR p. 40.

Complaint in 2016 and retains jurisdiction over what it described as wilful and reckless discrimination of the “worst-case scenario”⁵ and of the “worst kind”.⁶ In addition to its multiple rulings regarding child and family services, the Tribunal has made numerous orders and provided extensive reasons on the nature, scope, implementation and adjudication process of Jordan’s Principle, including but not limited to: 2016 CHRT 2, 2016 CHRT 10, 2016 CHRT 16, 2017 CHRT 14, 2017 CHRT 35, 2019 CHRT 7, 2020 CHRT 20, 2020 CHRT 36 and 2025 CHRT 6.

6. While Canada sought judicial review of 2017 CHRT 14 and 2020 CHRT 20, both of those decisions were ultimately upheld: the parties resolved 2017 CHRT 14 with the clarification order of 2017 CHRT 35, while 2020 CHRT 20 was determined to be reasonable by the Federal Court in 2021 FC 969.⁷ Canada initially sought judicial review of 2025 CHRT 6 but later discontinued that judicial review application.⁸ Moreover, the Tribunal has likened its orders that Canada cease and desist its discriminatory practices to a permanent “injunction-like” order against Canada, leaving little room to revisit Canada’s obligations under Jordan’s Principle.⁹

7. In addition to its active participation in the Complaint, the Caring Society has actively engaged with the federal government regarding its implementation of Jordan’s Principle. The Caring Society developed a process for tracking Canada’s non-compliance with the Tribunal’s Jordan’s Principle orders, leading to the development and implementation of the Back-to-Basics approach, used by those within government to determine Jordan’s Principle requests in line with the Tribunal’s orders. The Caring Society also worked with Canada to develop the Jordan’s Principle Workplan, which was appended to the Agreement-in-Principle on the Long-Term Reform of the First Nations Child and Family Services Program and Jordan’s Principle (“AIP”) in 2021.¹⁰ However, as a result of Canada’s failure to implement the Jordan’s Principle Workplan

⁵ 2019 CHRT 39 at [para 234](#).

⁶ 2021 CHRT 6 at [para 76](#).

⁷ *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, [2021 FC 969](#).

⁸ Blackstock Affidavit, para 46, CS MR p.22.

⁹ 2025 CHRT 6, at [para 602](#).

¹⁰ Blackstock Affidavit, para 18, CS MR p. 10.

and its general non-compliance with the Tribunal's Jordan's Principle orders, the Caring Society brought a motion for non-compliance in 2023, resulting in the latest decisions of the Tribunal in 2025 CHRT 6, which, among other things, affirmed Canada's ongoing legal obligation to apply a substantive equality lens to Jordan's Principle requests.¹¹

8. The Caring Society forms part of the Jordan's Principle Operations Committee ("JPOC"), whose mandate it was to, among other tasks, provide operational guidance on the implementation of Jordan's Principle, inform the long-term development of Jordan's Principle, provide guidance on key policy and operational issues, and review progress updates.¹²

9. The Caring Society has also intervened in multiple individual cases to ensure children with critical needs were able to access Jordan's Principle services, products and supports.¹³ Specifically, the Caring Society has directly supported Jordan's Principle service coordinators, Jordan's Principle navigators, and individual families who have contacted the Caring Society, expressing hardship in accessing Jordan's Principle.¹⁴ When children are facing the most urgent of circumstances such as end of life care, or are at risk of immediate harm, the Caring Society has used its limited funds to meet the needs of children when Canada has not complied with the Tribunal's orders.¹⁵

10. Beyond Jordan's Principle, the Caring Society is internationally respected for its work to promote children's rights and reconciliation. For example, the Caring Society: (1) partners with International and Canadian universities on various research and public education projects;¹⁶ (2) engages in reconciliation based educational programs, with a particular focus on children and youth participation;¹⁷ (3) creates and

¹¹ 2025 CHRT 6 at [para 400](#).

¹² Blackstock Affidavit, para 19, CS MR pp.10-11.

¹³ Blackstock Affidavit, para 15, CS MR pp. 9.

¹⁴ Blackstock Affidavit, para 20, CS MR p.10.

¹⁵ Blackstock Affidavit, para 24, CS MR p. 12-14.

¹⁶ Blackstock Affidavit, para 25, CS MR p.14.

¹⁷ Blackstock Affidavit, para 26, CS MR p.14.

delivers training programs that pertain to First Nations children, youth and families, such as the Touchstones of Hope program, which has been adopted by other countries and recognized as a framework of best practices by the Truth and Reconciliation Commission;¹⁸ (4) conducts numerous public educational events and lectures in Canada and around the world;¹⁹ and (5) is engaged in extensive work at the international level to further the protections for First Nations children, youth and families through international law and institutions as well as educational activities.²⁰

11. The Caring Society also advocates to promote the rights of First Nations children, youth, and families before governmental entities as well as in judicial and administrative proceedings, including in numerous interventions and claims brought by the Caring Society itself.²¹

B. OVERVIEW OF FACTS AND DECISION UNDER APPEAL

12. The facts in this case are not in dispute. The Respondent and her grandchildren are members of Oneida First Nation of the Thames Settlement in Southwold, Ontario. The grandchildren have been diagnosed with asthma, which manifests in daytime and nighttime coughing, missed days of school, exercise intolerance and frequent nosebleeds.²²

13. The family's home is infested with mould, which exacerbates the grandchildren's asthma. The Respondent requested mould remediation from Indigenous Services Canada ("ISC") under Jordan's Principle in June 2022, which was denied in January 2024. The Respondent appealed the denial and subsequently filed an application for judicial review. That application was discontinued when the parties agreed that ISC would reconsider the request.²³

¹⁸ Blackstock Affidavit, para 28, CS MR p.15.

¹⁹ Blackstock Affidavit, para 29, CS MR p. 15.

²⁰ Blackstock Affidavit, para 32, CS MR pp.15-16.

²¹ Blackstock Affidavit, paras 36, 39-40 and 45-46, CS MR pp. 16-19, 20, 21-22.

²² *Powless v Attorney General of Canada*, [2025 FC 1227](#) at [paras 7-10](#) ["**Decision Under Appeal**"]

²³ Decision Under Appeal, at [paras 16, 19-20](#).

14. In September 2024, ISC again denied the request, concluding that Jordan’s Principle does not apply to mould remediation, as it is not an existing government service. In November 2024, the Respondent appealed the denial, which was ultimately dismissed on November 28, 2024 by ISC’s Senior Assistant Deputy Minister (the “**Final Denial**”).²⁴ In its decision on this judicial review application, the Federal Court set out relevant portions of the Final Denial, including the following:

Your Jordan’s Principle request seeks funding for mould remediation for your on-reserve home to address the health needs of your grandchildren, who live with you. Jordan’s Principle serves to ensure that First Nations children have equal access to government services like other children across Canada. Indigenous Services Canada (ISC) is not aware of an existing government service available to the general public that currently provides funding to Canadians for the purposes of mould remediation. As there is no existing government service, you have not been denied access to either a service within the meaning of section 5 of the Canadian Human Rights Act (CHRA) or benefit within the meaning of section 15(1) of the Canadian Charter of Rights and Freedoms (Charter). Therefore, Jordan’s Principle does not apply in the circumstances of this case.

[...]

ISC has identified a government program that was specifically designed to improve the health and safety of on reserve housing. The Government of Canada invests in the Canada Mortgage and Housing Corporation’s (CMHC) On-Reserve Residential Rehabilitation Assistance Program (RRAP).

ISC sees this program as a special program for the purposes of the CHRA (as described in section 16(1) or an ameliorative program for the purposes of the Charter (as described in section 15(2)). Special or ameliorative programs are specifically designed by governments to combat discrimination by helping members of a disadvantaged group in particular ways.

Jordan’s Principle is concerned with enabling First Nations children in gain substantively equal access to existing government services that are available to the general public. It is not intended to provide access to or change the scope of special or ameliorative programs.²⁵

²⁴ Decision Under Appeal, at [paras 21-22](#), and [27](#).

²⁵ Decision Under Appeal, at [para 29](#).

15. The Respondent commenced a judicial review, arguing that the Final Denial was unreasonable. The judicial review was granted by the Honourable Justice McDonald on July 10, 2025 (the “**Decision Under Appeal**”). The Decision Under Appeal determined that the Final Denial was unreasonable, based on a fulsome understanding of Jordan’s Principle, including the following considerations:

- ISC failed to assess the request through a substantive equality lens and the health and best interests of the grandchildren, as Jordan’s Principle requires;
- Reliance on monetary considerations is unreasonable, as the quantum of the request is irrelevant to a Jordan’s Principle request;
- ISC’s focus on comparable services (such as the RRAP) ignores the core principle of substantive equality and a reasonable application of Jordan’s Principle, which requires consideration of historical disadvantage and the best interests of the child; and
- Whether another program exists is not relevant if that program is inaccessible or inadequate when addressing the health needs of the grandchildren. ISC failed to fully engage with the grandchildren’s health conditions or assess whether their needs could be met under Jordan’s Principle.

16. On or about August 11, 2025, the Attorney General of Canada commenced this appeal.

C. ISSUES RAISED BY THE ATTORNEY GENERAL OF CANADA

17. The Notice of Appeal sets out three general grounds of Canada’s appeal: (i) the Federal Court erred in determining that an assessment of the health and best interests of the children as well as historical disadvantage is required, regardless of whether a comparable service exists to the general public; (ii) the Federal Court erred in fact and law by concluding that ISC’s focus on the On-Reserve Residential Rehabilitation Assistance Program (“**RRAP**”) as an ameliorative program was unreasonable; and (iii) the Federal Court erred in fact and law by concluding that ISC unreasonably assessed

the Jordan's Principle request as a housing remediation request, without adequate consideration of the children's health and wellbeing.

18. In essence, the Appellant is attempting to narrow and undermine existing Jordan's Principle orders by attacking the very parameters and key principles set down by the Tribunal. As explained in more detail below, the Caring Society proposes to make two principal submissions that will differ from those of the Appellant and Respondent in relation to the grounds raised by the Appellant.

PART II – POINTS IN ISSUE

19. The issues on this motion are whether the Caring Society ought to be granted leave to intervene in this Appeal and, if so, on what terms.

PART III – STATEMENT OF SUBMISSIONS

20. The Caring Society submits that it should be granted leave to intervene. Under Rule 109 of the *Federal Courts Rules*,²⁶ this Court has the power to grant leave to intervene to a proposed intervenor. The test for intervention has evolved since the decision in *Benson & Hedges Inc. v Canada (Attorney General)*,²⁷ incorporating many of the *Rothman, Benson & Hedges* factors in a flexible manner and focusing on three fundamental questions:²⁸

- a. Will the proposed intervenor make different and useful submissions and offer insights and perspectives that will further the Court's determination of the issues raised on the Appeal?
- b. Does the proposed intervenor have a genuine interest in the Appeal, such that the Court can be assured that the proposed intervenor has the necessary knowledge, skills and resources and will dedicate themselves to the Appeal?

²⁶ *Federal Courts Rules*, [SOR/98-106](#).

²⁷ *Rothmans, Benson & Hedges Inc. v Canada (Attorney General)*, [\[1990\] 1 FC 90](#).

²⁸ *Sport Maska Inc. v Bauer Hockey Corp.*, 2016 FCA 44, [paras 41-43](#); *Gordillo v Canada (Attorney General)*, 2020 FCA 198, at [para 9](#); *Le-Vel Brands, LLC v Canada (Attorney General)*, 2023 FCA 66, at [paras 12](#) and [19](#); *Canada v DAC Investment Holdings Inc.*, 2025 FCA 37, at [paras 6-7](#).

c. Is it in the interests of justice that the intervention be permitted?

A. THE CARING SOCIETY’S SUBMISSIONS WILL BE HELPFUL AND USEFUL

21. If granted leave to intervene, the Caring Society will not seek to expand the issues raised by the Appellant or introduce evidence into the record. The evidence adduced on this motion is solely in support of the relief sought to intervene. Instead, the Caring Society will be directly responding to the issues set out in the Appellant’s Notice of Appeal and any issues it may raise in its anticipated memorandum of fact and law.

22. Canada’s legal obligation to fully implement Jordan’s Principle aims to protect and promote the substantive equality rights of First Nations children so they can access the health, education and social products, services and supports they need, when they need them—free of discrimination. The Caring Society is in a unique position of advocating for and working with the Tribunal’s Jordan’s Principle orders since 2016 on a national scale. In addition to providing useful information on the “colour of the context” vis-à-vis the historical disadvantage and contemporary realities of First Nations children accessing Jordan’s Principle, the Caring Society can assist the Court in interpreting the full purpose, nature and scope of Jordan’s Principle and the potential systemic ramifications of the matters under appeal.

23. To this end, the Caring Society will make the two central arguments to assist the Court in determining this Appeal. First, the Caring Society will argue that a normative standard does not apply and the lack of a comparable government service for non-First Nations children is not determinative of a Jordan’s Principle request. Second, the Caring Society will argue that attempting to disqualify a Jordan’s Principle request on the basis of the existence of an ameliorative program violates the fundamental requirements of Jordan’s Principle and is not in keeping with the substantive equality rights of First Nations children.

24. On the first issue of normative standard and the lack of a comparable government service for non-First Nations children, it appears that the Appellant is attempting to circumvent the standard of substantive equality and erase the foundational substantive equality principle of Jordan's Principle. Indeed, Canada's approach may ultimately erode the unchallenged legal parameters set down by the Tribunal in its Jordan's Principle reasons and orders, which must be read together.²⁹

25. Crucially, the Tribunal has reasoned that the "normative standard of care should be used to establish the minimal level of service only" and that "[t]o ensure substantive equality and the provision of culturally appropriate services, the needs of each individual child must be considered and evaluated, including taking into account any needs that stem from historical disadvantage and the lack of on-reserve and/or surrounding services."³⁰ Moreover, the Tribunal has held that "the normative standard may also fail to identify gaps in services to First Nations children, regardless of whether a particular service is offered to other Canadian children."³¹

26. To the extent that the Appellant is suggesting that substantive equality for First Nations children can be achieved through the application of a normative standard or that Jordan's Principle does not apply if and when a comparable services does not exist for other non-First Nations children, the Appellant misunderstands and misinterprets the nature and scope of Jordan's Principle, as well as the foundation of substantive equality. As the Tribunal has made clear throughout its numerous Jordan's Principle decisions, Jordan's Principle addresses children's needs and are to be assessed in consideration of those needs and the best interests of children, to ensure substantive equality and culturally relevant service provision.

27. In its implementation of Jordan's Principle, Canada has a positive obligation to consider the intergenerational effects of its colonial practices and the removal of First Nations children from their families, communities, and knowledge systems.³² Non-

²⁹ 2025 CHRT 6 at [para 356](#).

³⁰ 2017 CHRT 14 at [para 69](#).

³¹ 2017 CHRT 14 at [para 71](#).

³² 2020 CHRT 20, at [para 89](#).

First Nations children have not experienced the same systemic hardships, discrimination, racism or intergenerational trauma associated with colonialism including residential schools, the Sixties Scoop and the Millennial Scoop. For this reason, a formal equality approach does not apply to Jordan's Principle, and a normative standard cannot be determinative to a Jordan's Principle request. Indeed Canada's reliance on a normative standard in lieu of substantive equality has been repeatedly rejected by the Tribunal.³³

28. Similarly, the lack of a comparable service for non-First Nations children is not germane to the determination of a Jordan's Principle request, as such an approach fails to reflect the principles and guidance of a substantive equality analysis.³⁴ The children in this case have unique experiences and historical realities as First Nations children that are not shared with non-First Nations children by virtue of their heritage and culture. These realities require Canada to go beyond formal equality as expressed in its normative standard argument.

29. The Caring Society will make focused submissions challenging Canada's improper and unreasonable reliance on formal equality in Jordan's Principle by demonstrating Canada's longstanding legal obligation to focus on the child's needs, substantive equality rights, and best interests, in ways that respect their distinct culture and community circumstances.

30. On its second submission, the Caring Society will argue that the identification of an alternative government program, classified by the government as ameliorative (in this case the RRAP) is not a principle basis to deny a Jordan's Principle request,

³³ See 2017 CHRT 14 at paras [69](#) and [75](#); 2017 CHRT 35 at para [10](#); 2019 CHRT 11 at para [10](#); 2019 CHRT 7 at paras [13 -14](#); 2020 CHRT 15 at para [120](#); 2020 CHRT 20 at paras [89](#), [99](#), [238](#), [239](#), [242](#), [248](#) and [282](#); 2020 CHRT 36 at paras [14](#) and [29](#); 2021 CHRT 41 at para [262](#); 2022 CHRT 8 at paras [3](#) and [25](#); 2022 CHRT 41 at para [3](#); 2023 CHRT 44 at para [17](#); 2024 CHRT 95 at para [2](#); and 2025 CHRT 6 at paras [41](#) and [61-64](#).

³⁴ *Cully v. Canada (Attorney General)*, 2025 FC 1132 [Cully] at [paras 51](#) and [85](#).

particularly when it is clear on the record that such a program cannot meet the children's health needs.

31. In 2016 CHRT 2, the Tribunal identified the need for Canada to close the gaps in federal programs offering services to First Nations children, as the evidence was clear that there was a detrimental lack of coordination between federal program and evidence that many federal programs did not meet the needs of First Nations children.³⁵ Providing direct funding for services, products and supports through Jordan's Principle is only one of the remedies ordered by the Tribunal; indeed, the Tribunal has taken a multi-pronged approach that requires Canada to fill gaps and coordinate its services for First Nations children in keeping with substantive equality.³⁶ Canada's failure to complete its tasks as ordered by the Tribunal must not be rewarded by narrowing its legal obligations to children who have borne the weight of Canada's discriminatory conduct.

32. Importantly, in its submissions during the non-compliance motion giving rise to 2025 CHRT 6, Canada acknowledged that it cannot refer requestors to existing programs, such as Non-Insured Health Benefits, on-reserve income assistance or education programming. Canada argued that being unable to redirect requestors to existing programs exacerbated the backlog in determining Jordan's Principle requests.³⁷

33. In response to the concerns raised by Canada, the Tribunal affirmed that it "directed an analysis of the gaps in an effort to close them and the need for proper coordination amongst the federal programs since the evidence demonstrated the lack of coordination and the existence of gaps."³⁸ The Tribunal emphasized that:

Without sufficient evidence that Canada has in fact done or has completed a thorough evaluation of federal programs that are intended to respond to First Nations children's real needs and gaps in services, the

³⁵ 2016 CHRT 2 at [paras 183, 354-382](#) and [481](#).

³⁶ 2025 CHRT 6 at [para 368](#).

³⁷ 2025 CHRT 6, at [paras 93](#) and [357](#).

³⁸ 2025 CHRT 6 at [para 368](#).

same questions and findings from the Merit Decision remain. Only a proper and complete evaluation that analyzes all federal programs offered to First Nations children and clearly identifies gaps or overlaps will establish this. This evaluation would be in the best interest of First Nations children and families and would also be responsive in the assessment of Jordan's effectiveness and costs.

[...]

In this case, a few programs were found to have unreasonably denied services to First Nations children and this forms part of the evidence supporting the Tribunal's orders. The Tribunal agrees there may be other responsive federal programs for some of the Jordan's Principle requests. However, the Tribunal, considering the previous findings in this case, some referenced above, is not convinced that they are easily accessed and that there are no barriers in terms of eligibility.

[...]

With the above in mind, the Tribunal is cautious when told by Canada that other federal programs may address the needs of First Nations children instead of Jordan's Principle. The Tribunal is not saying this is not the case. Rather the Tribunal is saying that if this is the case, ISC should demonstrate how they arrived at this conclusion and that the systemic discrimination found has ceased and is not reoccurring. When answering this question, the high number of approved Jordan's Principle requests demonstrates the magnitude of the needs but not necessarily how those needs would be addressed by other programs, especially since many examples in the evidence over the years demonstrated the opposite.

Canada was made aware of the above over the years and has not demonstrated that it has fully complied. Canada now raises this very issue in support of its cross-motion seeking further orders. This prompts the Tribunal to have further questions and make orders for a detailed report including a plan, specific targets, deadlines for implementation, and the dates when the implementation targets have to be met, to ensure that any orders made to refer requestors to other federal programs are in the best interest of First Nations children.³⁹

34. The Tribunal has been clear that safeguards need to be put in place to ensure that children do not experience gaps, delays, denial and interdepartmental disputes should Canada intend to refer requestors to other federal services.⁴⁰ Those safeguards

³⁹ 2025 CHRT 6 at [para 383](#), [385](#), [396-397](#).

⁴⁰ 2025 CHRT 6 at [para 398](#).

do not yet exist and therefore reliance on alternative programs is not yet permitted under the Tribunal's orders.

35. Although the Appellant does not appear to be mirroring its argument before the Tribunal, it is attempting to achieve the same goal via its ameliorative program argument, suggesting Jordan's Principle cannot "provide access to or change the scope of" programs it views as "ameliorative".⁴¹ The emphasis on RRAP as an ameliorative program is no different – the First Nations children in this case and First Nations children more generally will be discriminated against because of Canada's failure to properly apply a substantive equality lens. Indeed, it is concerning that Canada appears to be invoking the *Charter of Rights and Freedoms* (the "**Charter**")⁴² in order to undermine the substantive equality rights of First Nations children - rights that have been repeatedly affirmed by the Tribunal and Federal Court.

36. To this end, the Caring Society will make specific submissions on the need to focus the analysis on the specific needs of the child while ensuring that the Appellant does not invoke section 16(1) of the *Canadian Human Rights Act* ("**CHRA**")⁴³ or section 15(2) of the *Charter* to circumvent the profound and essential orders of the Tribunal in an attempt to erode Canada's legal obligations to First Nations children under Jordan's Principle.

B. THE CARING SOCIETY HAS A GENUINE INTEREST IN THE APPEAL

37. The Caring Society's genuine interest in the Appeal is identifiable on several levels: (1) as a longstanding advocate of Jordan's Principle; (2) as a national non-profit organization committed to promoting the well-being of First Nations children; (3) as a co-complainants in the Complaint; and (4) as one of the main actors in ensuring Canada's compliance with the Tribunal's orders on Jordan's Principle.

⁴¹ Decision Under Appeal at [para 29](#).

⁴² *The Constitution Act*, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Charter*].

⁴³ Canadian Human Rights Act, RSC 1985, c H-6 [*CHRA*].

38. The Caring Society is also honoured to work closely with Jordan River Anderson's family to ensure the substantive equality principle named in his memory is honoured and that no other children suffer from Canada's discriminatory conduct.⁴⁴

39. As a co-complainant in the Complaint and as a party who, on multiple occasions, has litigated to ensure the spirit and intent of the Tribunal's orders are adhered to with respect to Jordan's Principle, the Caring Society has a significant and genuine interest in this Appeal. The ongoing and consistent work undertaken by the Caring Society will be profoundly impacted as will the children at the centre of this case and those that will come behind them.

40. The Caring Society has been very active and committed to ensuring First Nations children can fully enjoy the remedies flowing from the Complaint and has intervened in multiple related proceedings before this Honourable Court, the Federal Court, the Canadian Human Rights Tribunal, the Supreme Court, the Quebec Court of Appeal and the Court of King's Bench of Manitoba.⁴⁵

41. Given its genuine interest in the Appeal, the Caring Society will dedicate the necessary knowledge, experience, skills, and resources to assist the Court to the best of its abilities.⁴⁶

C. THE INTERESTS OF JUSTICE ARE BETTER SERVED BY ALLOWING THE CARING SOCIETY TO INTERVENE

42. It is in the interests of justice to grant the Caring Society leave to intervene in this Appeal. This is for the following reasons:

- a. The ramifications of this decision are not just limited to the present Appeal. This Court's decision will affect First Nations children, youth, and families who receive services and supports through Jordan's Principle. This Court

⁴⁴ Blackstock Affidavit at paras 11 and 12, CS MR pp. 8-9.

⁴⁵ Blackstock Affidavit at para 36 CS MR pp. 17-19.

⁴⁶ This factor that was identified in *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2021 FCA 13 at [para 6](#) [*Canadian Council for Refugees*]. See also *Thibodeau c. Canada (Services publics et Approvisionnement)*, 2025 CAF 148 at [para 15](#).

should hear from organizations who have directly been involved in the shaping and upholding of the program. The issues involved in this Appeal impact not only First Nations children, but those who require the support of Jordan's Principle and may be in a position of systemic vulnerability due to their service needs and Canada's historical discrimination in the provision of services to First Nations children. In short, this Appeal has "assumed such a public, important and complex dimension that the Court needs to be exposed to perspective beyond those offered by the" present parties;⁴⁷

- b. The Caring Society has a genuine interest in this Appeal, and it will provide different and useful submissions than those provided by the Appellant;
- c. The Caring Society has experience in litigation under the *CHRA* in the context of First Nations children, youth and families and is best positioned to provide submissions to the Court that reflect this experience; and
- d. The Caring Society's submissions will not prejudice any of the parties to the Appeal. The Appellant and the Respondent have yet to file their Memoranda of Fact and Law, and the Caring Society will not raise any new issues or expand the evidentiary record. The Caring Society's intervention will not affect the progression or the schedule of the proceedings and granting it leave would be consistent with the objective found in Rule 3 of securing the "just, most expeditious and least expensive outcome of every proceeding."⁴⁸ The Caring Society is aware of the urgency of this Appeal and the compressed timelines for the filing of the parties' Memoranda of Fact and Law. The Caring Society will file its memorandum of fact and law on any date as ordered by the Court.

PART IV – STATEMENT OF THE ORDER SOUGHT

43. The Caring Society asks that it be granted leave to intervene in this Appeal on the following terms:

⁴⁷ This factor was outlined in *Canadian Council for Refugees* at [para 9](#).

⁴⁸ This factor was outlined in *Canadian Council for Refugees* at [para 9](#).

- a. The Caring Society may file a memorandum of fact and law of no more than 20 pages, or such other lengths as this Court may direct;
 - b. The Caring Society may make oral submissions at the hearing of this Appeal not exceeding 30 minutes, or such other duration as this Court may direct;
 - c. The Caring Society shall accept the record as adduced by the parties and shall not file any additional evidence;
 - d. The Caring Society may participate in any future case conferences that pertain to this Appeal;
 - e. Any documents served on any party in this Appeal must also be served on the Caring Society;
 - f. The style of cause for this Appeal be amended to add the First Nations Child and Family Caring Society of Canada as an intervener; and
 - g. The Caring Society may not seek costs or have costs awarded against it on the Appeal.
44. The Caring Society does not seek costs and asks that no costs be awarded against it on this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of September 2025.



September 5, 2025

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PART V – LIST OF AUTHORITIES

Statutes and Regulations

1. *Canadian Human Rights Act*, [RSC 1985, c H-6](#)
2. *Federal Courts Rules*, [SOR/98-106](#)
3. *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), [1982, c 11](#)

Case Law

1. *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, [2021 FC 969](#).
2. *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, [2021 FCA 13](#)
3. *Canada v DAC Investment Holdings Inc.*, [2025 FCA 37](#)
4. *Cully v. Canada (Attorney General)*, [2025 FC 1132](#)
5. *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, [2016 CHRT 2](#)
6. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2017 CHRT 14](#)
7. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2017 CHRT 35](#)
8. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2019 CHRT 7](#)
9. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2019 CHRT 11](#)
10. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2020 CHRT 15](#)

11. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2020 CHRT 20](#)
12. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2020 CHRT 36](#)
13. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2021 CHRT 6](#)
14. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2021 CHRT 41](#)
15. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2022 CHRT 8](#)
16. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2022 CHRT 41](#)
17. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2023 CHRT 44](#)
18. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2024 CHRT 95](#)
19. *First Nations Child & Family Caring Society of Canada and Assembly of First Nations v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2025 CHRT 6](#)
20. *Gordillo v Canada (Attorney General)*, [2020 FCA 198](#)
21. *Le-Vel Brands, LLC v Canada (Attorney General)*, [2023 FCA 66](#)
22. *Powless v Attorney General of Canada*, [2025 FC 1227](#)
23. *Rothmans, Benson & Hedges Inc. v Canada (Attorney General)*, [1990] 1 FC 74
24. *Sport Maska Inc. v Bauer Hockey Corp.*, [2016 FCA 44](#)
25. *Thibodeau c. Canada (Services publics et Approvisionnement)*, [2025 CAF 148](#)