



Understanding Substantive Equality Information Sheet

Understanding Substantive Equality

Substantive equality means understanding that not everyone starts at the same place. Some First Nations children deal with challenges that many others do not. These challenges can include disadvantages because of Canada’s unfair treatment, poverty and living far away from services such as hospitals or schools, etc..

Substantive equality means making sure First Nations children achieve the same outcomes as other children in Canada. Substantive equality is about fairness, not just sameness.

This means the government must think about what is best for a child, their needs, and the reality of their surroundings. This means thinking about their culture, where they live and their financial situation. Sometimes, this means providing some children with extra or different supports to make up for the challenges they experience. By applying substantive equality, the government can make sure that all children have the chance to succeed.

The Difference Between Formal and Substantive Equality	
Formal Equality	Substantive Equality
Treating everyone the same, without thinking of their situation	Helping each person in a way that matches their own needs and struggles
Doesn't take people's different needs or situations into account	Understanding how things like unfair treatment, poverty, disability, age and where you live can affect people's lives
May look "fair" at first sight, but isn't always	Focused on fairness in real life and making sure everyone has what they need to succeed, even if these things are different than what others need
Result: Often more inequality	Result: Equality in opportunities to succeed

Canada’s Legal Obligations to Substantive Equality

In 2016, the Canadian Human Rights Tribunal said that a one-size-fits-all approach to meeting the needs of First Nations children doesn’t work. Under Jordan’s Principle, decisions must be based on each child’s specific needs, not just the usual standards or programs of the province or territory they live in. This is called the “normative standard.” With all Jordan’s Principle requests, Indigenous Services Canada (ISC) staff must assume that substantive equality will apply. This means that families do not need to provide “proof” that substantive equality applies in a request. The responsibility is on ISC to prove that substantive equality does not apply.

The Tribunal said that Canada must make sure that First Nations children receive government-funded services, supports and products that genuinely meet their needs. This means Canada has a legal responsibility to provide all First Nations children with products, supports and services that are:

- **Fair:** Designed to meet their unique needs and close the gap between them and other children.
- **Culturally appropriate:** Respectful of their cultures, languages, traditions and communities.
- **In the child’s best interests:** Making sure they are safe, well cared for and able to grow and develop in healthy ways.

Applying Substantive Equality

Applying substantive equality to Jordan’s Principle can mean respecting the five key values found in the *Touchstones of Hope*:

- (1) **Self-determination:** First Nations families and communities understand their children’s needs best. They should have a real voice in decisions about Jordan’s Principle and how it is put into action.
- (2) **Culture and Language** are key to the health and well-being of First Nations children. For support through

Jordan's Principle to really help, it must respect and include the child's culture and language in its approach.

- (3) **Holistic Approach:** A child's needs aren't just physical; they also include emotional, mental and cultural needs. Jordan's Principle needs to look at everything connected to a child. This means understanding that things like trauma passed down through generations can still affect a child today. It also means understanding that Canada's unfair treatment of First Nations can affect a child. Support should include the child's family, community and culture.
- (4) **Structural Interventions:** Jordan's Principle works to remove unfair systems created by racism and colonialism. It must push back against old systems that don't support First Nations children's real needs.
- (5) **Non-Discrimination:** Jordan's Principle must make sure that all First Nations children get the services they need, no matter where they live. It must stand up against unfair treatment and make sure every child has the same chance to get healthcare, education and other supports.