

Annex A – Caring Society Markup of Canada’s definitions

Definitions¹

“Essential service” is a support, product or service that was:

- ~~requested from the federal government;~~
- necessary **to ensure substantive equality in the provision of services, products and/or supports to the child** for the safety and security of the child, the interruption of which would adversely impact the child’s ability to thrive, the child’s health, or the child’s personal safety.

In considering what is essential for each child, **the focus will remain on the principles of substantive equality (taking into account historical disadvantage, geographic circumstances, and the need for culturally appropriate services, products and/or supports)** and the best interests of the child ~~will be considered to ensure that the focus is on the individual child.~~

“Service gap” is a situation where a child ~~requested~~**needed** a service that

- ~~was not provided because of a dispute between jurisdictions or departments as to who should pay;~~
- ~~would normally have been publicly funded for any child in Canada~~**was necessary to ensure substantive equality in the provision of services, products and/or supports to the child;**
- was recommended by a professional with expertise directly related to the service **need;**

but the child’s **needs were not met** ~~did not receive the service~~ due to the federal government’s ~~narrow~~**discriminatory** definition of **and approach to** Jordan’s Principle.

For greater certainty, the ~~narrow~~**discriminatory** definitions **and approach** employed by the federal government demanded satisfaction of **all of** the following criteria during the following time periods:

- a) Between December 12, 2007 and July 4, 2016

¹ These definitions are intended to provide guidance for applying paragraphs 250 and 251 of the CHRT’s ruling on compensation, 2019 CHRT 39, which deal with compensating individuals under Jordan’s Principle.

- A child registered as an Indian per the *Indian Act* or eligible to be registered and resident on reserve;
 - Child with multiple disabilities requiring multiple service providers;
 - Limited to health and social services;
 - A jurisdictional dispute existed involving different levels of government (disputes between federal government departments and agencies were excluded);
 - The case must be confirmed to be a Jordan’s Principle case by both the federal and provincial Deputy Ministers); and
 - The service had to be consistent with normative standards
- b) Between July 5, 2016 and November 2, 2017
- A child registered as an Indian per the *Indian Act* or eligible to be registered and resident on reserve (July 5, 2016 to September 14, 2016);
 - The child had a disability or critical short- term illness (July 5, 2016 to May 26, 2017);
 - The service was limited to health and social services (July 5, 2016 to May 26, 2017).

“Unreasonable delay” ~~is informed by~~ will be presumed where a request was not determined within 12 hours for an urgent case, or 48 hours for other cases. Canada may rebut the presumption of unreasonable delay in any given case with reference to the following list of contextual factors, none of which is exclusively determinative:

- the nature of the product, support and/or service sought;
- the reason for the delay;
- the potential ~~of~~for the delay to adversely impact the child’s needs;
- whether the child’s need was addressed by a different service, product and/or support of equal or greater quality, duration and quantity, otherwise provided in a reasonable time;
- the normative ~~ranges~~standards for providing the ~~category or mode of~~ support, product and/or services across Canada by provinces and territories, that were in force at the time of the child’s need; and
- the timelines established on November 2, 2017 by the CHRT² for Canada to determine requests under Jordan’s Principle: 12 hours for urgent cases, 48 hours for other cases.

As part of the Guide, the parties will agree on a process for Canada to provide the Central Administrator with information on the factors noted above in order to rebut the presumption.

² See the decision of the CHRT in 2017 CHRT 35.

General Principles

1. For greater certainty, where a child was in palliative care with a terminal illness, and a professional with relevant expertise recommended a service, **support and/or product to safeguard the child's best interests** that was not provided through Jordan's Principle or another federal program, ~~delay resulting from administrative procedures or jurisdictional dispute~~ will be considered unreasonable.

2. Seeing as the principle of substantive equality involves consideration of a First Nations child's needs and circumstances in relation to cultural, linguistic, historical and geographic factors, Canada will provide the Central Administrator with access to the information its possession regarding the historical and socio-economic circumstances of First Nations communities. The Central Administrator will make use of the information to inform the determination of what was an "essential service", a "service gap" or "unreasonable delay".

3. Individual claims are required in all cases, even where more than one child in a community faced similar unmet needs due to the lack of access to the same or similar essential services.

[Only if a specific request is required to meet the definition of a "service gap"] Working together with Canada and the network of professionals with which ISC has relationships and relying on the evidence before the Tribunal (e.g. CHRC Tabs 78 and 302), the Central Administrator will compile a "service gap list" of communities for which specific requests for services, supports and/or products were made of Indian Northern Affairs Canada / Aboriginal Affairs and Northern Development Canada / Health Canada / Indigenous Services Canada