



Information Sheet

Jordan's Principle

Summary of Orders from the Canadian Human Rights Tribunal

Case Reference: 2017 CHRT 14 (May 26, 2017 – revised March 26, 2018 to reflect amended orders) and 2019 CHRT 7 (February 21, 2019)

What is Jordan's Principle?

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

Jordan's Principle ensures that First Nations children can access all public services when they need them. Services need to be culturally based and take into full account the historical disadvantage that many First Nations children live with. The government of first contact pays for the service and resolves jurisdictional/payment disputes later.

Why is Jordan's Principle important?

Payment disputes within and between federal and provincial or territorial governments over services for First Nations children are not uncommon. First Nations children are frequently left waiting for services they desperately need, or are denied services that are available to other children. This includes, but is not limited to, services in education, health, early childhood services, recreation, and culture and language. Jordan's Principle calls on the government of first contact to pay for the services without delay and seek reimbursement later so the child is not tragically caught in the middle of government red tape.

What did the Tribunal say about Jordan's Principle?

The Canadian Human Rights Tribunal is a legal institution whose mandate is to adjudicate cases where there has been an alleged breach of the *Canadian Human Rights Act*. In 2016, the Tribunal found that the Canadian Government is racially discriminating against 165,000 First Nations children and their families for its failure to provide equitable services, including the proper implementation of Jordan's Principle. The Tribunal has issued a series of legally binding orders that Canada has an obligation to fulfill. Highlights of the orders are:

- apply Jordan's Principle to all First Nations children living on and off reserve;
- apply Jordan's Principle based on the needs of the child (not just limited to the normative standard of care);
- ensure that administrative procedures do not delay service provision;
- respond to most cases within 48 hours; and
- non-status First Nations children in urgent situations will be covered until the evidence has been heard regarding the definition of a First Nations.

To refer a Jordan's Principle case or find out more contact 1-855-JP-CHILD.

To learn more about Jordan's Principle visit www.jordansprinciple.ca



Non-Compliance Orders

In November 2016, the Caring Society, Assembly of First Nations, and interested parties (Chiefs of Ontario and Nishnawbe Aski Nation) filed motions stating that Canada has failed to comply with the Tribunal's decision (2016 CHRT 2) and remedial orders (2016 CHRT 10 and 2016 CHRT 16).

Three days of hearings on the non-compliance motions were held in March 2017. The Tribunal noted, "Canada has repeated its pattern of conduct and narrow focus with respect to Jordan's Principle" and released its third remedial non-compliance order on May 26, 2017 (2017 CHRT 14).

In June 2017, Canada filed an application for judicial review of 2017 CHRT 14. This application for judicial review was withdrawn after the parties reached an agreement based on the following principles:

- i. Services recommended by a clinical expert should be considered for approval, and not alternative services;
- ii. There is a legitimate role for *clinical* case conferencing (discussions with professionals who have relevant expertise and, if applicable, are already involved in the child's case). *Administrative* case conferencing (discussions within or between government departments) must not delay the receipt of services;
- iii. Canada must make service determinations in a timeline that is respectful of the child's best interest. This includes immediate action in cases where irreparable harm is reasonably foreseeable; and
- iv. Service delays arising due to lack of information regarding a First Nation's child's clinical needs should be tracked and reported on as part of the Tribunal reporting process.

Orders on Jordan's Principle

The Caring Society has created a summary of the non-compliance orders related to Jordan's Principle (2017 CHRT 14), which you can read below (edited for length). To read the full text of the order, visit www.fnwitness.ca

The definition of Jordan's Principle:

1. As of May 26, 2017, Canada shall cease using definitions of Jordan's Principle that do not comply with the Tribunal orders.
2. As of May 26, 2017, Canada will start using a definition based on the following principles:
 - i. Jordan's Principle applies equally to all First Nations children both on and off reserve and is not limited to First Nations children with disabilities, or short-term issues creating critical needs for health and social supports.
 - ii. Jordan's Principle applies to all government services and ensures that there are no gaps in government services to First Nations children.
 - iii. The government department of first contact will pay for the service to a First Nations child without engaging in administrative procedures before funding is provided. If necessary, 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. Where professionals are already involved in a First Nations child's case, Canada will only consult those professionals unless they cannot provide the requisite clinical information. Canada may consult with the family, First Nations community or service providers to fund services within the specified timeframes. After the service is approved



and funding is provided, the government of first contact can then seek reimbursement from another government.

- iv. In cases when a government service, including a service assessment, is not necessarily available to all other children, or is beyond the normative standard of care, the government of first contact will still evaluate the needs of the child to determine if the provision of services should be provided to ensure substantive equality, culturally appropriate services, and to safeguard the best interest of the child.
- v. A jurisdictional dispute between departments or between governments is not a necessary requirement for the application of Jordan's Principle.

- 3. Canada shall not use or distribute a definition of Jordan's Principle that is in any way contrary to the orders listed above.
- 4. By November 1, 2017, Canada shall review previous requests (dating from April 1, 2009) for funding, whether made pursuant to Jordan's Principle or otherwise.

Processing and tracking of Jordan's Principle cases:

- 5. By June 28, 2017, Canada shall modify its processes surrounding Jordan's Principle to reflect the following standards:
 - i. The government department of first contact will evaluate the individual needs of the child requesting services under Jordan's Principle or that could be considered a case under Jordan's Principle.
 - ii. The initial determination will be made within 48 hours of the initial contact for a service request with some exceptions:

a) In a situation where irremediable harm is reasonably foreseeable, Canada will make all reasonable efforts to provide immediate crisis intervention supports until an extended response can be developed and implemented. In all other urgent cases, the evaluation and determination of the request shall be made within 12 hours of the initial contact for a service request.

b) Where more information is reasonably necessary to the determination of a request, *clinical* case conferencing may be undertaken.

c) Once the necessary information has been obtained, a determination will be made within 12 hours for urgent cases, and 48 hours for non-urgent cases.

- iii. Canada shall cease imposing service delays due to administrative procedures before funding is provided.
- iv. If the request is granted, the government department of first contact shall pay for the service without engaging in administrative procedures before funding is provided.
- v. If the request is denied, the government department of first contact shall inform the applicant, in writing, of their right to appeal the decision and instructions on how to do this.

6. By June 28, 2017, Canada shall implement processes to ensure that all possible Jordan's Principle cases are identified and addressed.

7. By July 27, 2017, Canada shall develop internal systems to track the number of Jordan's Principle cases received and all aspects of the case (e.g., reason for application, service provided, time required to ask for and receive additional information, etc.).



8. By November 15, 2017, (and every 6 months thereafter) Canada shall provide a report and affidavit materials to the Tribunal in regards to the internal tracking system. This shall be revisited on May 25, 2018.

Publicizing the compliant definition and approach to Jordan's Principle:

9. By June 09, 2017, Canada shall post a clear link to information on Jordan's Principle.
10. By June 28, 2017, Canada shall post a bilingual (French and English) televised announcement on the Aboriginal Peoples Television Network about Jordan's Principle.
11. By June 09, 2017, Canada shall contact all stakeholders who received communications regarding Jordan's Principle (since January 26, 2016) and advise them in writing of the findings and orders in this ruling.
12. By July 27, 2017, Canada shall ensure agreements with third-party service providers to provide services under the Child First Initiative's Service Coordination Function reflect the full and proper definition of Jordan's Principle.
13. By July 27, 2017, Canada shall fund and consult with the Complainants, the Canadian Human Rights Commission, and the Interested Parties to develop training and public education materials relating to Jordan's Principle.

Retention of jurisdiction and reporting:

14. By November 15, 2017, Canada will serve and file a report and affidavit materials detailing its compliance with each of the above orders.

Definition of First Nations

On February 21, 2019 the Tribunal issued interim relief orders (2019 CHRT 7) for Jordan's Principle. The Tribunal states in its orders that non-status First Nations children in urgent situations will be covered under Jordan's Principle until the evidence has been heard regarding the definition of First Nations.

Tribunal Orders

2016 CHRT 2 (January 26, 2016)

https://fncaringsociety.com/sites/default/files/2016_chrt_2_access_0.pdf

2016 CHRT 10 (April 26, 2016)

https://fncaringsociety.com/sites/default/files/2016_chrt_10.pdf

2016 CHRT 16 (September 14, 2016)

<https://fncaringsociety.com/sites/default/files/2016%20CHRT%2016%20-%20September%202015.pdf>

2017 CHRT 14 (May 26, 2017)

https://fncaringsociety.com/sites/default/files/2017_chrt_14.pdf

2017 CHRT 35 (November 2, 2017)

https://fncaringsociety.com/sites/default/files/2017_chrt_35.html.pdf

2018 CHRT 4 (February 1, 2018)

https://fncaringsociety.com/sites/default/files/2018_chrt_4_1.pdf

2019 CHRT 1 (January 7, 2019)

https://fncaringsociety.com/sites/default/files/2019_chrt_1.pdf

2019 CHRT 7 (February 21, 2019)

https://fncaringsociety.com/sites/default/files/2019_chrt_7.pdf

For more information on the case go to

www.fnwitness.ca or contact info@fncaringsociety.com