

Ensuring First Nations children's access to equitable services through Jordan's Principle: The time to act is now

Vandna Sinha PhD¹, Sam Wong MD²

Jordan's Principle: Where a jurisdictional dispute arises between two government parties (provincial/territorial or federal) or between two departments or ministries of the same government, regarding payment for services for a Status Indian child which are otherwise available to other Canadian children, the government or ministry/department of first contact must pay for the services without delay or disruption. The paying government party can then refer the matter to jurisdictional dispute mechanisms. In this way, the needs of the child get met first while still allowing for the jurisdictional dispute to be resolved.

First Nations Child & Family
Caring Society of Canada (1)

Jordan's Principle is intended to ensure that First Nations children do not experience denials, delays or disruptions of services ordinarily available to other children due to jurisdictional disputes. It is a child-first principle named in honour of Jordan River Anderson, a young boy from Norway House Cree Nation in Manitoba. Jordan encountered tragic delays in services that would have allowed him to experience life outside of a hospital setting before his death (2). Jordan's Principle is a response to complex service funding and delivery systems that treat First Nations children differently from other children in Canada.

Responsibility for services to First Nations children is often shared by federal, provincial/territorial and First Nations governments. In contrast, funding and delivery of services to most other children in Canada typically falls under provincial/territorial jurisdiction (3). As a result, First Nations children face unique challenges in accessing services. The many health-related examples include: an absence of key preventive, diagnostic, rehabilitative and respite services in reserve communities; limitations in on-reserve access to outpatient and in-home services; inability of off-reserve First Nations families to access provincial benefits extended to other families; and limitations to supports for on-reserve families requiring medical travel or transportation (4).

Because of service gaps and disparities, First Nations children may face different standards of service than other children, require higher-intensity interventions by health and social service systems, and even be placed at higher risk for institutional care (4). In fact, a recent study examining paediatric inpatient stays >6 months showed that 88% of the children displaced from their family homes because of medical issues were Aboriginal. These children had health needs that could not be met in the existing home/health care environment (5). When First Nations children do not have timely access to the services ordinarily available to other children, their human, constitutional and treaty rights are violated. Jordan's Principle is an essential mechanism for protecting these rights.

Jordan's Principle was unanimously endorsed by the House of Commons in 2007 (6) and is formally supported by thousands of stakeholders and observers (7). The federal government has led an effort to develop a system for identifying and addressing Jordan's Principle cases. However, there is growing recognition that this governmental response does not reflect the vision of Jordan's Principle advanced by First Nations and endorsed by the House of Commons. Reviews by the Canadian Paediatric Society (8) and UNICEF Canada (9) highlighted shortcomings in the governmental response to Jordan's Principle. The Assembly of First Nations passed a consensus resolution condemning the narrow operational definition of Jordan's Principle adopted by the federal government (10), and the federal government itself has acknowledged widespread discontent with its response to Jordan's Principle (11). A 2013 Federal Court ruling criticized the narrow operationalization of the principle, offering a precedent-setting standard: Jordan's Principle should be implemented in a way that ensures First Nations children receive services in accordance with normative provincial/territorial practices that are in compliance with legislated standards (12). Development and implementation of a governmental response reflecting the vision of Jordan's Principle advanced by First Nations and endorsed by the House of Commons are among the remedies requested by the complainants in *First Nations Child and Family Caring Society of Canada and the Assembly of First Nations v. Attorney General of Canada* (13). A Canadian Human Rights Tribunal decision in this case is expected in Spring 2015.

A February 2015 report systematically described the shortcomings of the current governmental response to Jordan's Principle (14), showing that:

- The federal government has systematically narrowed eligibility for Jordan's Principle. The current governmental response applies only to Status/Status-eligible First Nations children who have been professionally diagnosed with multiple disabilities and require services from multiple service providers. It applies only to disputes between federal and provincial/territorial governments, although disputes between two federal government departments also occur in cases involving services for First Nations children. Furthermore, the federal government has argued that it does not apply to child welfare services.
- The current governmental response to Jordan's Principle systematically introduces delays in and uncertainty over the delivery of services to First Nations children. It requires a lengthy case conferencing process and formal declaration of a payment dispute, by both federal and provincial/territorial governments, for a Jordan's Principle case to be declared. There

¹School of Social Work, McGill University, Montreal, Quebec; ²University of Alberta, Edmonton, Alberta

Correspondence: Dr Vandna Sinha, 3506 University Street, Montreal, Quebec H3A 2A7. Telephone 514-398-5032, email vandna.sinha@mcgill.ca

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is no recourse for families if governments simply fail to declare that a dispute exists.

- Neither First Nations families, nor their service providers, have received information about how Jordan's Principle processes work or who to contact to initiate these processes.
- First Nations have been excluded from negotiation, implementation, and oversight of Jordan's Principle agreement and processes.
- There are currently no measures to ensure clear documentation of, widespread education about or independent oversight of Jordan's Principle policies and procedures.
- The current governmental response does nothing to prevent the emergence of Jordan's Principle cases.
- First Nations families, communities and service providers are taking extraordinary measures to ensure First Nations children's access to services. Examples include: family relocation; paying out-of-pocket or fundraising; and negotiating discounts with drug/equipment manufacturers.

Based on the evidence in the report, the Canadian Paediatric Society, the Assembly of First Nations and UNICEF Canada have called on federal, provincial and territorial governments to work with First Nations to:

- Develop and implement a governmental response consistent with the vision of Jordan's Principle advanced by First Nations and endorsed by the House of Commons.
- Systematically identify and address the jurisdictional ambiguities and underfunding that give rise to each Jordan's Principle case.

Health professionals have important roles to play in the development and implementation of a response to Jordan's Principle that protects the human, constitutional and treaty rights of First Nations by ensuring their access to services ordinarily available to other children. There is an urgent need for education on Jordan's Principle. Health care organizations and professional collectives/societies can incorporate information about Jordan's Principle in their websites, in conference presentations and in continuing medical education events. Medical schools can include education on Jordan's Principle in their curricula. Even in the absence of a governmental response, which effectively addresses jurisdictional disputes, all health professionals should be familiar with Jordan's Principle. Paediatricians, family physicians and other health professionals working primarily with children must learn to keep Jordan's Principle in mind whenever dealing with First Nations patients. By doing so, they will become more aware of the need for Jordan's Principle and of the challenges that First Nations families face in accessing care for their children.

Enhanced awareness about the need for Jordan's Principle must lead to increased advocacy. Health care organizations and professional collectives/societies can incorporate calls for true implementation of Jordan's Principle into formal policy statements, and introduce these calls into discussions of policy/program design. They can also draw on research and professional knowledge to specify the concrete steps that must be taken to implement the principle. In this way, they can move beyond advocating for Jordan's Principle as an abstract vision, and help to systematically structure progress toward realizing the vision.

Health professionals must also play an active role in implementing Jordan's Principle. Provision of equitable services for First Nations children depends on paediatricians, family physicians and other health professionals working with children to systematically identify cases involving jurisdictional disputes and efficiently link

them to Jordan's Principle processes. They will need easily accessible information about the services available to non-First Nations children and training on how to systematically compare these with the services available to First Nations children. They will also need to know how to initiate Jordan's Principle processes and who to contact for support in facilitating these processes. Thus, health care organizations and professional societies/collectives must complement general efforts, to ensure members know what Jordan's Principle is, with more specific efforts to ensure that members know how to make Jordan's Principle work. They must collectively and systematically work toward the development of databases/guidebooks that enable health care professionals to identify differences in the standards of care for First Nations and other children. They must develop and disseminate step-by-step instructions for facilitating Jordan's Principle cases, and they must establish strong partnerships with First Nations and other social service organizations that can support families through the Jordan's Principle process. The House of Commons motion on Jordan's Principle was passed in 2007, but governments still have not prioritized equitable services for First Nations children and taken these basic steps toward implementation. We can no longer wait for governments to develop the tools, networks and educational initiatives needed to ensure the success of Jordan's Principle; health care organizations and professional collectives/societies must start implementing these measures immediately.

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Commentary

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