File No. CI-20-01-28403
CI-20-01-28360

THE KING'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF:	An Application under section 50 of *The Human Rights Code*, C.C.S.M. c. H175;
AND IN THE MATTER OF:	An Application under *The Court of Queen's Bench Act*, C.C.S.M., c. C280; and under section 68 of *The Court of Queen's Bench Rules*, M.R. 533/88;
AND IN THE MATTER OF:	A Complaint by Harriet Sumner-Pruden and Alfred "Dewey" Pruden against The Government of Manitoba alleging contravention of section 13 of *The Human Rights Code*; and
AND IN THE MATTER OF:	A decision of an Adjudicator designated under subsection 32(1) of *The Human Rights Code*, issued August 17, 2020.

BETWEEN

The Government of Manitoba

Applicant

- and -

The Manitoba Human Rights Commission, Harriet Sumner-Pruden and Alfred "Dewey" Pruden

Respondents

- and -

First Nations Child and Family Caring Society of Canada and First Nations Health and Social Secretariat of Manitoba

Interveners

BRIEF OF THE INTERVENER
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

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BRIEF OF THE INTERVENER FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

A. LIST OF DOCUMENTS

1. Notice of Application filed September 15, 2020 (CI-20-01-28403)

2. Notice of Application filed September 15, 2020 (CI-20-01-28360)

3. Application Record, Tab 35, *Wen:De – We are Coming to the Light of Day* (March 2005)

4. Application Record, Tab 61, *Manitoba/Canada Joint Committee on the Implementation of Jordan's Principle Terms of Reference* (September 15, 2008)

B. LIST OF AUTHORITIES

Jurisprudence

1. *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada,* 2021 FC 969
2. *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65
3. *Canadian Western Bank v Alberta*, 2007 SCC 22
4. *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12
5. *First Nations Child and Family Caring Society of Canada et al v Canada (Attorney General)*, 2016 CHRT 2
6. *First Nations Child and Family Caring Society of Canada et al v Canada (Attorney General)*, 2016 CHRT 10
7. *First Nations Child and Family Caring Society of Canada et al v Canada (Attorney General)*, 2016 CHRT 16
8. *First Nations Child and Family Caring Society of Canada et al. v. Canada (Attorney General),* 2017 CHRT 14
9. *First Nations Child and Family Caring Society of Canada et al. v. Canada (Attorney General),* 2017 CHRT 35
10. *First Nations Child and Family Caring Society of Canada et al. v. Canada (Attorney General),* 2019 CHRT 7
11. *First Nations Child and Family Caring Society of Canada et al. v. Canada (Attorney General),* 2020 CHRT 20
12. *First Nations Child and Family Caring Society of Canada et al. v. Canada (Attorney General),* 2020 CHRT 36
13. *Grassy Narrows First Nation v Ontario (Natural Resources)*, 2014 SCC 48
14. *Law v Canada (Minister of Employment and immigration)*, [1999] 1 SCR 497
15. *Malone v Canada* (Attorney General), 2021 FC 127
16. *Pictou Landing Band Council v Canada (Attorney General)*, 2013 FC 342
17. *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

18. *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44

Legislation

19. *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24

20. *Spirit Bear Day Act*, SM 2021, c 57

Other Sources

21. *House of Commons Debates*, 39th Parl., 1st Sess., Vol 141, No 157

22. *House of Commons Debates*, 39th Parl., 2nd Sess, Vol 142, No 12, October 31, 2007

23. *House of Commons Debates*, 42nd Parl, 1st Sess, Vol 148, No 102 (1 November 2016)

24. *House of Commons Debates*, 42nd Parl, 1st Sess, Vol 148, No 99 (27 October 2016)

25. House of Commons, *Journals*, 39th Parl, 2nd Sess, No 36, December 12, 2007

26. Manitoba, Legislative Assembly, *Debates and Proceedings* (*Hansard*), 41st Leg, 1st Sess, No 50 (26 October 2016)

27. Manitoba, Legislative Assembly, *Order Paper and Notice Paper*, 41st Leg, 1st Sess, No 50 (26 October 2016)

28. Naiomi Walqwan Metallic, "A Human Right to Self-Government over First Nations Child and Family Services and Beyond: Implications of the Caring Society Case" (2018) JL & Soc Pol'y 28 [*Metallic 2018*]

C. LIST OF POINTS TO BE ARGUED AND ARGUMENT

I. Overview

1. Jordan's Principle is a simple and consequential concept: that First Nations children should receive the services that they need, when they need them, regardless of the level of government from which the service is sought. It reflects the fundamental Canadian constitutional values of federalism and the protection of minorities. It is a vehicle for ensuring that First Nations children's constitutional and *quasi*-constitutional human rights are upheld throughout Canada. It applies equally to federal and provincial human rights proceedings.

2. The events giving rise to the clear articulation of Jordan's Principle involved Jordan River Anderson, a young First Nations boy who never had the chance to live outside the hospital, despite his doctors saying he was able to, because the Government of Canada and Government of Manitoba could not agree on who should pay for the cost of his in-home care. Jordan languished in hospital for over two years waiting for the governments to sort out the payment issue before tragically dying at the age of 5. Jordan's family and his community vowed that this should never happen again. The House of Commons unanimously endorsed Jordan's Principle in 2007. Many provincial legislative assemblies followed this example, including Manitoba; however, the definitions of Jordan's Principle employed were often limited in scope and effect.

3. Jordan's Principle has also been recognized by the Federal Court and the Court of Appeal of Quebec and is the subject of clear and uncontested Canadian Human Rights Tribunal ("CHRT") orders that have led to the approval of over two million services for First Nations children since 2016.

4. More than fifteen years after it was first endorsed by the House of Commons, Jordan's Principle is a substantive equality rule that applies both to the delivery of services to First Nations children and to disputes within and between federal and provincial/territorial governments regarding who is responsible for those services. As a result, disputes related to the needs of First Nations children, like the dispute that underlies the present application for judicial review, can no longer be resolved based on technical arguments related to jurisdiction. The needs of First Nations children are the primary and paramount consideration and are to be met before jurisdictional considerations are sorted out by respective governments.

II. Origin and Recognition of Jordan's Principle

5. Jordan's Principle was named in honour of a young First Nations boy from Manitoba. Jordan River Anderson, of Norway House Cree Nation, was born in 1999 with complex genetic disorders. In order to receive necessary medical care not readily available in his community, his family had to surrender him into provincial care. Doctors said he could go into a medically specialized foster home near the hospital, but due to provincial and federal jurisdictional dodging over who should bear the cost, Jordan spent years waiting in the hospital for governments to fund his care. Jordan passed away in 2005. Neither Canada, nor Manitoba had stepped up to provide the funding for the specialized care he needed to leave the hospital.[1]

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[1] *First Nations Child and Family Caring Society of Canada et al v Canada (Attorney General)*, 2016 CHRT 2 at para 352 [2016 CHRT 2]; *House of Commons Debates*, 39th Parl., 2nd Sess, Vol 142, No 12, October 31, 2007, at p 642 (J Crowder) [HOC Debates – Oct 31, 2007).

6. Following Jordan's death, Jordan's family, Norway House, the Assembly of Manitoba Chiefs, the Assembly of First Nations, and the Caring Society pushed hard for the recognition of Jordan's Principle. Indeed, in these early years, over 400 organizations signed on to endorse Jordan's Principle.[2]

7. In 2007, Jean Crowder who was the New Democratic Party Member of Parliament for Nanaimo-Cowichan, tabled Motion 296, in support of Jordan's Principle.[3] The goal of the motion was to end discrimination against First Nations children[4] and the motion was unanimously adopted by the House of Commons on December 12, 2007.[5]

8. In speaking about Jordan's case, Ms. Crowder emphasized: "there are numerous cases across the country where First Nations children are actively being discriminated against because neither the federal nor the provincial government, and there is a variety of provincial governments, put children first [emphasis added]."[6]

9. In 2008, the Government of Canada and the Government of Manitoba reached an agreement to implement Jordan's Principle, though this agreement was specifically aimed at First Nations children with multiple disabilities.[7]

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[2] HOC Debates – Oct 31, 2007 at p 642 (J Crowder)
[3] The motion was first introduced on May 18, 2007, see *House of Commons Debates*, 39th Parl., 1st Sess., Vol 141, No 157 at p 9772 (J Crowder). Due to the prorogation of Parliament in September 2007, debate resumed on October 31, 2007. Motion No 296 was finally adopted on December 12, 2007, see: House of Commons, *Journals*, 39th Parl, 2nd Sess, No 36, December 12, 2007, pp 307-309 (Division No 27) [HOC Journals – Dec 12, 2007].
[4] HOC Debates – Oct 31, 2007 p 642 (J Crowder HOC Journals – Dec 12, 2007 at pp 307-309 (Division No 27).
[5] HOC Journals – Dec 12, 2007 at pp 307-309.
[6] HOC Debates – Oct 31, 2007 at p 642 (J Crowder); HOC Journals – Dec 12, 2007 at pp 307-309 (Division No 27).
[7] Application Record, Tab 61, *Manitoba/Canada Joint Committee on the Implementation of Jordan's Principle Terms of Reference* (September 15, 2008).

10. By 2009, two federal departments, Aboriginal Affairs and Northern Development Canada (as it then was) and Health Canada, reached a memorandum of understanding regarding Jordan's Principle and allocated $11,000,000 to resolve disputes between the departments.[8]

11. In 2013, the Federal Court confirmed, in the *Pictou Landing* case, that Jordan's Principle is legally binding.[9] The Court determined that while Jordan's Principle's unanimous adoption by the House of Commons in 2007 was not binding on the executive branch, government measures had been taken towards its implementation, requiring the government to fulfill its obligations pursuant to Jordan's Principle.[10] The Court's judgment in *Pictou Landing* reaffirmed that "Jordan's Principle's aims to prevent First Nations children from being denied prompt access to services because of jurisdictional disputes between different levels of government."[11]

12. In 2015, the Truth and Reconciliation Commission of Canada released its 94 Calls to Action. The third Call to Action specifically called on all levels of government in Canada to fully implement Jordan's Principle.[12]

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[8] 2016 CHRT 2 at paras 354-357.
[9] *Pictou Landing Band Council v Canada (Attorney General)*, 2013 FC 342 at paras 17-18, 81-87, 106-111 [*Pictou Landing*].
[10] *Pictou Landing* at paras 113, 120.
[11] *Pictou Landing* at para 17.
[12] Brandeis Brief, Tab 1, Truth and Reconciliation Commission of Canada, *Calls to Action* (2015) at 1. See also *First Nations Child and Family Caring Society of Canada et al v Canada (Attorney General)*, 2020 CHRT 20 at para 146. The Truth and Reconciliation Commission's Call to Action would be echoed in 2019 by two other commissions of inquiry, the National Inquiry Into Murdered and Missing Indigenous Women and Girls Call for Justice 12.10 (Brandeis Brief, Tab 2, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Calls for Justice* at p 195) and Viens Commission Call for Action 105 (Brandeis Brief, Tab 3, Quebec, Public Inquiry

13. In 2016, the CHRT found that the federal government's approach to implementing Jordan's Principle was discriminatory, contrary to the *Canadian Human Rights Act*, RSC 1985, c H-6 ("*CHRA*"). Through further proceedings on remedies, the CHRT made a series of orders (described further below) articulating non-discriminatory standards for implementing Jordan's Principle. As a result of the continuing implementation of these standards, the federal government has approved over two million services for First Nations children since July 2016.

14. The broad approach to Jordan's Principle was reaffirmed by further judicial decisions in 2021 and 2022. In *Malone v Canada (Attorney General)*, the Federal Court provided the following summary of the law:

> Jordan's Principle requires the government or department of first contact to evaluate the individual needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child.[13]

15. In 2022, the Court of Appeal of Quebec held in *Reference to the Court of Appeal of Quebec in relation with the Act respecting First Nations, Inuit and Métis children, youth and families* that Jordan's Principle, "which has been adopted by the governments of Canada and several provinces, confirms that a rigid interpretation of provincial and federal jurisdictions is largely outdated–in this area as in others–and must give way to the interests of Aboriginal children and families."[14]

Commission on relations between Indigenous Peoples and certain public services in Quebec, *Final Report* at pp 395-396 and 482).

[13] *Malone v Canada* (Attorney General), 2021 FC 127 at para 8 [*Malone v Canada*].

[14] *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 at para

16. As the substantial development in the law over the time period in question demonstrates, Jordan's Principle is a substantive human rights principle. From the perspective of judicial review for reasonableness, Jordan's Principle's requirement that the substantive equality needs of First Nations children be at the forefront was a key element of the legal constraints on what the Adjudicator could reasonably decide,[15] such that it is an important principle for the Court to bear in mind on this application for judicial review.

III. Jordan's Principle must be interpreted purposively and in line with principles of substantive equality

17. The need to interpret Jordan's Principle purposively and in line with principles of substantive equality is informed by a devastatingly long and colonial history of jurisdictional neglect, and by wilful and reckless discrimination by federal, provincial, and territorial governments towards First Nations children, youth, and families.

18. Analyzing substantive equality requires "taking into account the full social, political and legal context of the claim."[16] The full social, political, and legal context for Indigenous communities involves a history of treatment as *the other*, including geographic, social, legal, and political segregation from all dimensions of Canadian Society.

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558 [*Renvoi à la Cour d'appel du Québec*] (cited to the Court of Appeal's unofficial English translation).

[15] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 111-114.

[16] *Law v Canada (Minister of Employment and immigration)*, [1999] 1 SCR 497 at para 30, see also 2016 CHRT 2 at para 402.

19. As the Court of Appeal of Quebec recognized in the *Reference re the Act respecting First Nations, Inuit and Métis children, youth and families*, "[t]oo often, [Indigenous] children have been the victims of squabbles between the two levels of government, which have taken turns refusing to intervene to ensure their safety and well-being on the pretext that they do not have the jurisdiction or financial responsibility to do so."[17] This jurisdictional neglect has serious adverse consequences for First Nations communities, families and children, subjecting them to what the Supreme Court of Canada has described as "a jurisdictional wasteland with significant and obvious disadvantaging consequences."[18]

A. Jordan's Principle is informed by a long history of jurisdictional neglect by federal and provincial governments towards First Nations children, youth and their families

20. Since before the inception of the colonial Canadian state, First Nations, Inuit and Métis children have been targeted by assimilationist policies that incentivized their removal from their families and communities, and jurisdictional neglect.

21. Canada founded and funded the Indian Residential School System, creating the legal basis for it to operate for over a century.[19] The Parliament of Canada authorized the forced removal and placement of Indigenous children into the Indian Residential School System. Namely, in the 1890s Canada enacted regulations pursuant to the *Indian Act* that authorizing the removal of any child between the age of 6 and 16 who

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[17] *Renvoi à la Cour d'appel du Québec* at para 558 (cited to the Court of Appeal's unofficial English translation).
[18] *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 at para 14.
[19] For a description of the harms of the Residential School system, see 2016 CHRT 2 at paras 405-427 [*Caring Society*].

was “not being properly cared for or educated” and whose parent was deemed “unfit or unwilling to provide for the child’s education.”[20]

22. In the late 1940s, a Special Joint Committee of the Senate and House of Commons examined the Indian Act.[21] Provinces were implored to support service delivery to First Nations communities to fill gaps resulting from disruptions to traditional patterns of community care. The federal government reaffirmed this call by exercising its discretionary power confirmed by s 91(24) of the *Constitution Act, 1867*, to include s 87 of the *Indian Act* in 1951 (now s. 88), incorporating by reference provincial legislation of general application to apply to “Indians” on-reserve. Canada’s reliance on provincial legislation has been characterized as an attempt to unilaterally delegate responsibility over social programs, including child and family services, to the provinces.[22]

23. By 1979, the federal cabinet had enacted its Indian Health Policy, “recogniz[ing] the circumstances under which many Indian communities exist, which have placed Indian people [First Nations] at a grave disadvantage compared to most other Canadians in terms of health, as in other ways.”[23] Twenty years before Jordan was born, the Indian Health Policy recognized that the Canadian health system:

> is one of specialized and interrelated elements, which may be the responsibility of federal, provincial, or municipal governments, Indian bands, or the private sector. But these divisions are superficial in light of the health system as a whole. The most significant federal roles in this interdependent

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[20] Brandeis Brief, Tab 4, Excerpt from 1894 *Regulations Relating to the Education of Indian Children*, made by Order-in-Council dated November 10, 1894 at s 9.
[21] 2016 CHRT 2 at para 48; *Renvoi à la Cour d'appel du Québec* at para 92.
[22] Naiomi Walqwan Metallic, “A Human Right to Self-Government over First Nations Child and Family Services and Beyond: Implications of the Caring Society Case” (2018) JL & Soc Pol'y 28 at 9-10.
[23] Brandeis Brief Tab 5, Canada, Health and Welfare Canada, *Indian Health Policy* (Ottawa: 1979) at p 1 [*Indian Health Policy*].

> system are in public health activities on reserves, health promotion, and the detection and mitigation of hazards to health in the environment. The most significant provincial and private roles are in the diagnosis and treatment of acute and chronic disease and in the rehabilitation of the sick.[24]

24. In the early 2000s, the First Nations Child and Family Services Joint National Policy Review ("NPR") and the three *Wen:De* Reports were published to review the FNCFS Program.[25] The NPR was done in collaboration between Canada and the Assembly of First Nations ("AFN") and made 17 recommendations to address the dysfunctional funding formula for FNCFS Agencies (providing child and family services on-reserve) and outlined the impacts of this funding on First Nations children and families.[26] Among these recommendations, the NPR called for clarification of jurisdiction, resourcing and responsibility for programming among federal and provincial/territorial governments.[27]

25. Deriving from the NPR, the Joint National Policy Review National Advisory Committee ("NAC") was formed and included officials from the federal government, the AFN and FNCFS Agencies.[28] Its mandate was to review the NPR recommendations and adapt the funding formula accordingly.[29] Subsequently, three reports were commissioned in order to provide a basis for changes to the FNCFS Program and its associated funding directive.[30]

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[24] Brandeis Brief, Tab 5, *Indian Health Policy* at p 2.
[25] 2016 CHRT 2 at para 149.
[26] 2016 CHRT 2 at paras 150-151, 153-154.
[27] Application Record, Tab 35, *Wen:De We are Coming to the Light of Day,* March 2005 at p 105 [*Wen:De*].
[28] 2016 CHRT 2 at para 155.
[29] 2016 CHRT 2 at para 155.
[30] 2016 CHRT 2 at para 155.

26. The first report, *Bridging Econometrics and First Nations Child and Family Service Agency Funding: Phase One Report, a summary of research needed to explore three funding models for First Nations child welfare agencies* identified three new funding options for FNCFS Agencies.[31]

27. The second report, *Wen:De We Are Coming to the Light of Day*, published in 2005, provided an in-depth analysis of the options identified in the first report based on case study data and a series of special studies. This report is the first published mention of "Jordan's Principle". The third report, *Wen:De The Journey Continues* was also published in 2005, and proposed a funding approach based on the findings of the previous reports and economic modelling.[32]

28. *Wen:De We Are Coming to the Light of Day* recommended: "that a child first principle be adopted whereby the government (provincial or federal) who first receives a request for payment of services for a First Nations child will pay without disruption or delay […] then has the option of referring the matter to a jurisdictional dispute resolution process."[33] It emphasized that the proposed jurisdictional dispute resolution processes were meant to address disputes between Canada, provinces, and agencies.[34] They recommended that Jordan's Principle be immediately implemented.[35]

29. *Wen:De We Are Coming to the Light of Day* found that First Nations children continued to be significantly impacted by jurisdictional disputes.[36] The report found that

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[31] 2016 CHRT 2 at para 156.
[32] 2016 CHRT 2 at paras 160, 170.
[33] Application Record, Tab 35, *Wen:De* at p 17 [*Wen:De*].
[34] Application Record, Tab 35, *Wen:De* at p 17.
[35] 2016 CHRT 2 at para 183.
[36] Application Record, Tab 35, *Wen:De* at p 16.

the case law at the time did not inform federal and provincial roles and responsibilities in regard to jurisdictional gaps for First Nations children.[37] The report emphasized that governments put the needs of First Nations children aside until their jurisdictional disputes are resolved, resulting in withholding essential services from children.[38]

30. The research in *Wen:De We Are Coming to the Light of Day* covered 393 jurisdictional disputes in the year prior to the report's publication.[39] It found that, in most cases, the disputes arose internally between different federal or provincial departments, and externally between provincial and federal governments. The most problematic jurisdictional dispute cases raised by the report included children with complicated health and/or educational needs, and children waiting on reimbursement for services.[40]

31. In 2007, the Caring Society, along with the AFN, filed a complaint to the Canadian Human Rights Commission ("Commission") alleging that Canada was providing inequitable funding for First Nations child welfare services on-reserve and had failed to implement Jordan's Principle, both of which were contrary to the *CHRA*'s prohibition against discrimination on the basis of race and national ethnic origin.[41]

32. The complaint included an extensive evidentiary basis, including the NPR and Wen:De series of reports, underscoring that jurisdictional disputes between governments have devastating impacts and result in the denial and delay of service

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[37] Application Record, Tab 35, *Wen:De* at p 16.
[38] Application Record, Tab 35, *Wen:De* at p 17.
[39] 2016 CHRT 2 at para 362.
[40] Application Record, Tab 35, *Wen:De* at p 17.
[41] 2016 CHRT 2 at paras, 6, 12 and 21.

delivery to First Nations children.[42] The complainants outlined Jordan's Principle as a solution to resolving jurisdictional disputes in a manner that puts children's needs first.

33. On January 26, 2016, after nine years of litigation, the CHRT ruled in favour of First Nations children and their families, substantiating the complaint and ordering Canada to immediately cease its discriminatory conduct, including Canada's narrow definition and inadequate implementation of Jordan's Principle which was resulting in service gaps, delays, and denials for First Nations children.[43] Canada was ordered to immediately implement Jordan's Principle's full scope and meaning.[44]

34. Three months after its initial decision, the CHRT issued its first remedial order (2016 CHRT 10) reemphasizing Canada's obligations pursuant to Jordan's Principle:

> The Panel orders INAC to immediately consider Jordan's Principle as including all jurisdictional disputes (this includes disputes between federal government departments) and involving all First Nations children (not only those children with multiple disabilities). Pursuant to the purpose and intent of Jordan's Principle, the government organization that is first contacted should pay for the service without the need for policy review or case conferencing before funding is provided [emphasis added].[45]

35. Subsequently in 2016 CHRT 16, the CHRT directed Canada to apply Jordan's Principle to children living on- and off-reserve,[46] and to provide additional information as to how it was complying with the CHRT's orders. Specifically, Canada was asked to provide information on what steps they had taken to implement the "government of first

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[42] 2016 CHRT 2 at paras 17, 149 and 155-185.
[43] 2016 CHRT 2 at paras 456, 458 and 466.
[44] 2016 CHRT 2 at para 481.
[45] *First Nations Child and Family Caring Society of Canada et al v Canada (Attorney General)*, 2016 CHRT 10 at para 33 [2016 CHRT 10].
[46] *First Nations Child and Family Caring Society of Canada et al v Canada (Attorney General)*, 2010 CHRT 16 at paras 117-118 and 160(A)(7) [2016 CHRT 16].

contact" provision in Jordan's Principle.[47] The CHRT also sought clarification as to how Canada would "ensure that First Nations and FNCFS Agencies are part of the consultation process with the provinces/territories, and in other elements of the implementation of Jordan's Principle."[48]

36. Canada responded to the CHRT, confirming that Jordan's Principle "aims to ensure that anytime a need for a publicly funded health, education or social care service or support for a First Nations child is identified, it will be met. Any jurisdictional issues that might arise will be dealt with after ensuring the need is met."[49]

37. However, the CHRT found that Canada's initial approach to implementing its orders regarding Jordan's Principle fell short of what was required under the *CHRA*. In particular, Canada had imposed limits on its implementation of Jordan's Principle by limiting eligibility to First Nations children with disabilities or short-term conditions that affected daily activities of living.[50] The CHRT also found that Canada had unduly limited its implementation of Jordan's Principle by emphasizing the provincial normative standard of care when considering what products, supports or services to fund.[51]

38. The CHRT ordered Canada to reform its implementation of Jordan's Principle by expanding it to include all First Nations children, and not just those with disabilities or short-term conditions affecting daily activities of living.[52] In addition to making orders related to processing times for Jordan's Principle and setting parameters for Canada's

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[47] 2016 CHRT 16 at para 112.
[48] 2016 CHRT 16 at para 112.
[49] 2017 CHRT 14 at para 13.
[50] 2017 CHRT 14 at paras 46-67.
[51] 2017 CHRT 14 at paras 52-75.
[52] 2017 CHRT 14 at para 135(1)(B)(i).

administration of Jordan's Principle requests,[53] the CHRT also emphasized the importance of looking past normative standards of care to ascertain the real needs of First Nations children, finding that:

> [t]he normative standard of care should be used to establish the minimal level of service only. To 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.[54]

39. Following technical amendments to the CHRT's order made on consent in November 2017,[55] the following definition has governed Canada's implementation of Jordan's Principle for the last five years, in which time more than two million services have been approved for First Nations children[56]:

1. Definition of Jordan's Principle

A. **As of the date of this ruling**, Canada shall cease relying upon and perpetuating definitions of Jordan's Principle that are not in compliance with the Panel's orders in 2016 CHRT 2, 2016 CHRT 10, 2016 CHRT 16 and in this ruling.

B. **As of the date of this ruling**, Canada's definition and application of Jordan's Principle shall be based on the following key principles:

i. Jordan's Principle is a child-first principle that applies equally to all First Nations children, whether resident on or off reserve. It is not limited to First Nations children with disabilities, or those with discrete short-term issues creating critical needs for health and social supports or affecting their activities of daily living.

ii. Jordan's Principle addresses the needs of First Nations children by ensuring there are no gaps in government services to them. It can address, for example, but is not limited to, gaps in such services as mental health, special

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[53] 2017 CHRT 14 at para 135(B)(2).
[54] 2017 CHRT 14 at para 69.
[55] 2017 CHRT 35.
[56] Brandeis Brief, Tab 6, Indigenous Services Canada Jordan's Principle website as at December 14, 2022.

education, dental, physical therapy, speech therapy, medical equipment and physiotherapy.

iii. When a government service, including a service assessment, is available to all other children, the government department of first contact will pay for the service to a First Nations child, without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. 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 requestor'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 in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available. After the recommended service is approved and funding is provided, the government department of first contact can seek reimbursement from another department/government;

iv. 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 department of first contact will still evaluate the individual needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child. Where such services are to be provided, the government department of first contact will pay for the provision of the services to the First Nations child, without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. Clinical case conferencing may be undertaken only for the purpose described in paragraph 135(1)(B)(iii). Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available. After the recommended service is provided, the government department of first contact can seek reimbursement from another department/government.

v. While Jordan's Principle can apply to jurisdictional disputes between governments (i.e., between federal, provincial or territorial governments) and to jurisdictional disputes between departments within the same government, a dispute amongst government departments or between governments is not a necessary requirement for the application of Jordan's Principle.

40. Other elements of the CHRT's order address more technical requirements related to implementation,[57] and later rulings addressed concerns surrounding whether eligibility for consideration under Jordan's Principle was limited to First Nations children with status under the *Indian Act*.[58]

41. The CHRT later clarified that Jordan's Principle applies to First Nations children with *Indian Act* status, First Nations children who are recognized by their Nation for the purposes of receiving Jordan's Principle services, and First Nations children who do not have *Indian Act* status, but who do have one parent with *Indian Act* status under subsection 6(2) of the *Indian Act*.[59]

B. Jordan's Principle is a legal principle and obligation which binds both federal and provincial governments

42. In 2020 CHRT 20, the CHRT described Jordan's Principle at paragraph 89, as:

> …a human rights principle grounded in substantive equality. […] Jordan's Principle is meant to meet Canada's positive domestic and international obligations towards First Nations children under the CHRA, the Charter, the Convention on the Rights of the Child and the UNDRIP to name a few. […] it is the most expeditious mechanism currently in place to start eliminating discrimination found in this case and experienced by First Nations children while the National Program is being reformed. […] Substantive equality is both a right and a remedy in this case: a right that is owed to First Nations

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[57] 2017 CHRT 14 at para 135(B)(2).
[58] *First Nations Child and Family Caring Society of Canada et al v Canada (Attorney General)*, 2019 CHRT 7 and *First Nations Child and Family Caring Society of Canada et al v Canada (Attorney General)*, 2020 CHRT 20 and 2020 CHRT 36 [2020 CHRT 20 and 2020 CHRT 36], both of which were affirmed in *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada et al*, 2021 FC 969.
[59] 2020 CHRT 20 and 2020 CHRT 36, affirmed in 2021 FC 969.

> children as a constant and a sustainable remedy to address the discrimination and prevent its reoccurrence.[60]

43. In 2021, the Court of Appeal of Quebec, in *Reference to the Court of Appeal of Quebec in relation with the Act respecting First Nations, Inuit and Métis children, youth and families*, agreed with the CHRT's "service-first, dispute-second" characterization of Jordan's Principle.[61] This reaffirmation that the government of first-contact pays for the service recognizes that both federal and provincial/territorial governments are bound by Jordan's Principle.

44. The Quebec Court of Appeal emphasized the need for cooperation between federal and provincial governments in matters related to First Nations children and families. It stated that, flowing from the constitutional principle of the Honour of the Crown, "[c]ooperation between the federal and provincial governments in recognizing and implementing Aboriginal rights is necessary to ensure the harmonious exercise of these rights."[62] Specifically, the Court of Appeal reiterated this through what had already confirmed by the Supreme Court of Canada: "the concrete issues regarding Aboriginal children and families do not fall solely under the jurisdiction of one level of government to the exclusion of the other".[63]

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[60] 2020 CHRT 20 at para 89. See also *Malone v Canada* at para 8.
[61] *Renvoi à la Cour d'appel du Québec* at para 169; see also 2016 CHRT 2 at para 351.
[62] *Renvoi à la Cour d'appel du Québec* at para 559.
[63] *Renvoi à la Cour d'appel du Québec* at para 561. See also: *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44 at paras 101-106 and *Grassy Narrows First Nation v Ontario (Natural Resources)*, 2014 SCC 48 at paras 36-37 and 50.

IV. Canada's role in the provision of services does not absolve the provinces of their responsibilities

A. The implementation of Jordan's Principle and importance of cooperation and coordination by all levels of government to the well-being of First Nations children and youth

45. In considering the application of Jordan's Principle regarding the decision under review, this Court should bear in mind the history of jurisdictional neglect and inadequate implementation of Jordan's Principle that has led to the long history of discrimination in the provision of services to First Nations children, youth, and families. This jurisdictional neglect forms a causal connection between federal/provincial/territorial policy choices (or lack thereof) and heightened needs for First Nations children, youth and families.

46. A purposive interpretation of Jordan's Principle requires that both federal and provincial governments implement a child-first approach. Jordan's Principle, as a human rights principle, emphasizes that the federal and provincial governments are jointly responsible for providing substantively equal services to First Nations children. This is consistent with the overlapping nature of the federal government's jurisdiction over such services pursuant to s. 91(24) of the *Constitution Act, 1867*, and the provincial government's jurisdiction under ss. 92(7), (13) and (16) of the *Constitution Act, 1867*.

47. Legislators in Ottawa and Winnipeg have recognized this overlapping jurisdiction.

48. Over the course of October and November 2016, the House of Commons debated a motion calling on the government to comply with the CHRT's 2016 orders regarding ending discrimination against First Nations children in on-reserve child and

family services, and to fully implement Jordan's Principle.[64] That motion was adopted unanimously on November 1, 2016.

49. During this debate, Linda Duncan, Member of Parliament for Edmonton Strathcona, recalled the House's earlier endorsement of Jordan's Principle, stating:

> Everybody in this place in 2007 committed that all medical services would be delivered to aboriginal children and that they would not be left in the quandary where a young aboriginal child, Jordan, died while the federal and provincial governments argued over who was responsible for paying for his services. The decision was, whoever has the first contact with the child, delivers the service and they worry later about who pays. That decision by the House is consistent with Canadian children's human rights, their constitutional rights, and their treaty rights.[65]

50. In the same time period, on October 26, 2016, a similar motion fueled debate in the Legislative Assembly of Manitoba. Akin to the motion in the House of Commons, this motion called on the Legislative Assembly of Manitoba to condemn the federal government's inaction in equitably funding social services for First Nations peoples.[66]

51. Wab Kinew, Member for Fort Rouge, who presented the motion, spoke before the Assembly, stating that "various levels of government should provide services that are reasonably comparable across First Nations, [and] provincial-federal jurisdictional boundaries should be interpreted broadly."[67]

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[64] *House of Commons Debates*, 42nd Parl, 1st Sess, Vol 148, No 102 (1 November 2016) at 6421.
[65] *House of Commons Debates*, 42nd Parl, 1st Sess, Vol 148, No 99 (27 October 2016) at 6198 (Linda Duncan).
[66] Manitoba, Legislative Assembly, *Order Paper and Notice Paper*, 41st Leg, 1st Sess, No 50 (26 October 2016) at 3: "That the Legislative Assembly of Manitoba condemn the Federal Government's inaction in equitably funding social services for First Nations people." The motion was adopted without opposition, see: Manitoba, Legislative Assembly, *Debates and Proceedings* (*Hansard*), 41st Leg, 1st Sess, No 50 (26 October 2016) at 2431 [Manitoba Debates – 26 Oct 2016].
[67] Manitoba Debates – 26 Oct 2016 at 2409 (Wab Kinew).

52. Rick Wowchuk, Member for Swan River stated:

> […] we were proud to support Jordan's Principle […]. The government with the initial contact pays for the services without delay. […] that, to me, is common sense.
>
> […] It just does not make sense to me, how we can be living in today's world and have our children—and, in particular, in this case, our indigenous children, in Jordan's case—having to suffer and having to go through this while governments decide who's going to pay for it. Shameful, Mr. Deputy Speaker, totally shameful.[68]

53. Jeff Wharton, Member for Gimli, built on the idea of interjurisdictional cooperation by stating in the Assembly that "the federal government has a responsibility to work together with the provinces and with indigenous people to ensure that adequate levels of funding for social services are in place".[69]

54. In 2021, the Legislature enacted the *Spirit Bear Day Act*, S.M. 2021, c. 57, proclaiming that, annually in the province of Manitoba, May 10th would be known as Spirit Bear Day. The preamble of the Act, which was assented to on May 20, 2021, states:

> WHEREAS Jordan River Anderson, a First Nations child who had complex medical needs, lived his entire life in a hospital because the government of Manitoba and the government of Canada could not agree on which jurisdiction was responsible for his in-home health care costs;
>
> AND WHEREAS Jordan River Anderson's tragic death led to the development of Jordan's Principle, a policy intended to prevent First Nations children from being denied prompt and equal access to government services because of jurisdictional disputes between different levels of government;
>
> AND WHEREAS the proper implementation of Jordan's Principle has been found to uphold the human rights of First Nations children;[…];[70]

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[68] Manitoba Debates – 26 Oct 2016 at 2414-2415 (Rick Wowchuk).
[69] Manitoba Debates – 26 Oct 2016 at 2415 (Jeff Wharton).
[70] *Spirit Bear Day Act*, SM 2021, c 57.

55. Similarly, the federal *Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c. 24 notes in its preamble Parliament's affirmation of "the need […] to address the needs of Indigenous children and to help ensure that there are no gaps in services that are provided in relation to them, whether they reside on a reserve or not".[71]

B. Proper interpretation of the constitutional division of power includes recognition of the concurrent powers and shared responsibility of the federal and provincial governments for Jordan's Principle

56. In its January 2016 Decision on the Merits, the CHRT applied the Supreme Court of Canada's interpretation of the division of legislative powers between federal and provincial/territorial governments in *Canadian Western Bank v. Alberta*. It highlighted that the fundamental objectives of federalism are "to reconcile unity with diversity, promote democratic participation by reserving meaningful powers to the local or regional level and to foster co-operation among governments and legislatures for the common good."[72]

57. The CHRT elaborated on this point by referring to the "living tree" doctrine evoked in *Canadian Western Bank*: "the interpretation of these powers and of how they interrelate must evolve and must be tailored to the changing political and cultural realities of Canadian society."[73]

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[71] *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24.
[72] 2016 CHRT 2 at para 79 citing *Canadian Western Bank v Alberta*, 2007 SCC 22 at para 22 [*Canadian Western Bank*].
[73] 2016 CHRT 2 at para 80, citing *Canadian Western Bank* at para 23.

58. The CHRT further highlighted that the Supreme Court of Canada has clearly indicated that the doctrine of inter-jurisdictional immunity is to be interpreted narrowly in order to avoid the creation of jurisdictional or legal voids.[74] It called attention to the Court's underlining the importance of co-operation between governments to ensure that federalism remains flexible.[75]

59. One of Canada's main arguments over the course of the CHRT case was that the federal government only provided funding to provinces to deliver First Nations child and family services, which did not constitute the delivery of services. The CHRT stated that the federal government:

> Instead of legislating in the area of child welfare on First Nations reserves, pursuant to Parliament's exclusive legislative authority over "Indians, and lands reserved for Indians" by virtue of section 91(24) of the Constitution Act, 1867, the federal government took a programing and funding approach to the issue. It provided for the application of provincial child welfare legislation and standards for First Nations on reserves through the enactment of section 88 of the Indian Act. However, this delegation and programing/funding approach does not diminish AANDC's constitutional responsibilities.[76]

60. The CHRT concluded that Canada:

> …should not be allowed to evade its responsibilities to First Nations children and families residing on reserve by delegating the implementation of child and family services to FNCFS Agencies or the provinces/territory. […] should not be allowed to escape the scrutiny of the CHRA because it does not directly deliver child and family services.[77]

61. The CHRT elaborated that because Canada exerts an important degree of influence over the delivery of services to First Nations children and families that they

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[74] 2016 CHRT 2 at para 81.
[75] 2016 CHRT 2 at para 81, citing *Central Western Bank* at para 42.
[76] 2016 CHRT 2 at para 83.
[77] 2016 CHRT 2 at para 84.

have broad remedial powers over the discrepancies in service provision.[78] The purpose of this analysis and determination was to conclude that Canada "has a 'Shared Responsibility for Child Welfare' with the FNCFS Agencies and the provinces/territory".[79]

62. The purpose of the CHRT decision was to not allow the federal government to shirk its responsibilities towards First Nations children and families by passing the buck to the provincial governments. Nor did it contemplate allowing the provincial governments to do the same in regard to their obligations espoused in Jordan's Principle. As demonstrated by the history of Jordan's Principle's development, federal and provincial governments routinely use division of powers arguments to avoid accountability for paying for substantively equal public services for First Nations children, resulting in immediate and devastating effects on children. Jordan's Principle is the legal antidote to this discriminatory conduct by demanding government cooperation in the name of substantive equality.

63. Jordan's Principle's requiring governments to act when called upon, rather than resorting to jurisdictional arguments, is a key part of its effectiveness. Indeed, provincial disengagement or inaction with respect to services for First Nations children is not the product of rigid interpretations of federal jurisdiction over "Indians." Rather, provinces have been disengaged because of the costs and a disturbing lack of political will in the face of the harms to First Nations peoples. Extensive concurrence in jurisdiction has led the federal and provincial governments to interjurisdictional neglect, in which both

[78] 2016 CHRT 2 at para 85.
[79] 2016 CHRT 2 at para 66.

federal and provincial/territorial governments largely defer to the other in lieu of taking meaningful action to protect the rights of Indigenous children, families, and communities. Avoidance of interjurisdictional neglect should be a hallmark of reasonableness in administrative decisions impacting First Nations children.

V. CONCLUSION

64. From its inception, the true nature and essence of Jordan's Principle has remained the same: no child should have to wait for a service they need while governments decide who will pay the bill. The government who is first contacted has the responsibility to meet the child's real needs until the dispute is resolved. This important human rights principle formed part of the legal constraints facing the Adjudicator. As such, it should form part of this Court's determination of whether the Adjudicator's decision was reasonable.

65. This view has not only been affirmed by the CHRT, the Federal Court, the Quebec Court of Appeal, and the House of Commons, it has been directly interpreted as such by the Manitoba Legislative Assembly in its motion condemning federal delay in complying with the CHRT's orders.

66. Jordan's Principle is a systemic remedy to systemic discrimination arising from federal and provincial/territorial interjurisdictional neglect and a fundamental failure to ensure the best interests of First Nations children.

67. Applying the full scope and meaning of Jordan's Principle would ensure that Manitoba's words and actions do not remain empty rhetoric or simple gestures of

performative action. Manitoba has a legal, constitutional, and moral obligation to do right by First Nations children and their families.

All of which is respectfully submitted this 28th day of December, 2022.

[Original signed by Joseph Rucci for David Taylor]

David P. Taylor
Counsel for the Caring Society

D. BRANDEIS BRIEF MATERIAL

1. Truth and Reconciliation Commission, *Calls to Action* (2015) (excerpt)

2. National Inquiry into Missing and Murdered Indigenous Women and Girls, *Calls for Justice* (2019) (excerpt)

3. Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Quebec, *Final Report* (2019) (excerpt)

4. 1894 *Regulations Relating to the Education of Indian Children*, published as Appendix IV to Canada, Royal Canadian Mounted Police, *The Role of the Royal Canadian Mounted Police During the Residential School System* (2011) (excerpt)

5. Canada, Health and Welfare Canada, *Indian Health Policy* (1979)

6. Indigenous Services Canada Jordan's Principle website (December 14, 2022)

Truth and Reconciliation
Commission of Canada

Truth and Reconciliation Commission of Canada: Calls to Action

Calls to Action

In order to redress the legacy of residential schools and advance the process of Canadian reconciliation, the Truth and Reconciliation Commission makes the following calls to action.

Legacy

Child welfare

1. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:
    i. Monitoring and assessing neglect investigations.
    ii. Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.
    iii. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the history and impacts of residential schools.
    iv. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.
    v. Requiring that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.
2. We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.
3. We call upon all levels of government to fully implement Jordan's Principle.
4. We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:
    i. Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.
    ii. Require all child-welfare agencies and courts to take the residential school legacy into account in their decision making.
    iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.
5. We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.

Education

6. We call upon the Government of Canada to repeal Section 43 of the *Criminal Code of Canada*.
7. We call upon the federal government to develop with Aboriginal groups a joint strategy to eliminate

Calls for Justice

As the evidence demonstrates, human rights and Indigenous rights abuses and violations committed and condoned by the Canadian state represent genocide against Indigenous women, girls, and 2SLGBTQQIA people. These abuses and violations have resulted in the denial of safety, security, and human dignity. They are the root causes of the violence against Indigenous women, girls, and 2SLGBTQQIA people that generate and maintain a world within which Indigenous women, girls, and 2SLGBTQQIA people are forced to confront violence on a daily basis, and where perpetrators act with impunity.

The steps to end and redress this genocide must be no less monumental than the combination of systems and actions that has worked to maintain colonial violence for generations. A permanent commitment to ending the genocide requires addressing the four pathways explored within this report, namely:

- historical, multigenerational, and intergenerational trauma;
- social and economic marginalization;
- maintaining the status quo and institutional lack of will; and
- ignoring the agency and expertise of Indigenous women, girls, and 2SLGBTQQIA people.

11.2 We call upon all educational service providers to develop and implement awareness and education programs for Indigenous children and youth on the issue of grooming for exploitation and sexual exploitation.

Calls for Social Workers and Those Implicated in Child Welfare:

12.1 We call upon all federal, provincial, and territorial governments to recognize Indigenous self-determination and inherent jurisdiction over child welfare. Indigenous governments and leaders have a positive obligation to assert jurisdiction in this area. We further assert that it is the responsibility of Indigenous governments to take a role in intervening, advocating, and supporting their members impacted by the child welfare system, even when not exercising jurisdiction to provide services through Indigenous agencies.

12.2 We call upon on all governments, including Indigenous governments, to transform current child welfare systems fundamentally so that Indigenous communities have control over the design and delivery of services for their families and children. These services must be adequately funded and resourced to ensure better support for families and communities to keep children in their family homes.

12.3 We call upon all governments and Indigenous organizations to develop and apply a definition of "best interests of the child" based on distinct Indigenous perspectives, world views, needs, and priorities, including the perspective of Indigenous children and youth. The primary focus and objective of all child and family services agencies must be upholding and protecting the rights of the child through ensuring the health and well-being of children, their families, and communities, and family unification and reunification.

12.4 We call upon all governments to prohibit the apprehension of children on the basis of poverty and cultural bias. All governments must resolve issues of poverty, inadequate and substandard housing, and lack of financial support for families, and increase food security to ensure that Indigenous families can succeed.

12.5 We call upon all levels of government for financial supports and resources to be provided so that family or community members of children of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people are capable of caring for the children left behind. Further, all governments must ensure the availability and accessibility of specialized care, such as grief, loss, trauma, and other required services, for children left behind who are in care due to the murder or disappearance of their caregiver.

12.6 We call upon all governments and child welfare services to ensure that, in cases where apprehension is not avoidable, child welfare services prioritize and ensure that a family member or members, or a close community member, assumes care of Indigenous children. The caregivers should be eligible for financial supports equal to an amount that might otherwise be paid to a foster family, and will not have other government financial

support or benefits removed or reduced by virtue of receiving additional financial supports for the purpose of caring for the child. This is particularly the case for children who lose their mothers to violence or to institutionalization and are left behind, needing family and belonging to heal.

12.7 We call upon all governments to ensure the availability and accessibility of distinctions-based and culturally safe culture and language programs for Indigenous children in the care of child welfare.

12.8 We call upon provincial and territorial governments and child welfare services for an immediate end to the practice of targeting and apprehending infants (hospital alerts or birth alerts) from Indigenous mothers right after they give birth.

12.9 We call for the establishment of a Child and Youth Advocate in each jurisdiction with a specialized unit with the mandate of Indigenous children and youth. These units must be established within a period of one year of this report. We call upon the federal government to establish a National Child and Youth Commissioner who would also serve as a special measure to strengthen the framework of accountability for the rights of Indigenous children in Canada. This commissioner would act as a national counterpart to the child advocate offices that exist in nearly all provinces and territories.

12.10 We call upon the federal, provincial, and territorial governments to immediately adopt the Canadian Human Rights Tribunal 2017 CHRT 14 standards regarding the implementation of Jordan's Principle in relation to all First Nations (Status and non-Status), Métis, and Inuit children. We call on governments to modify funding formulas for the provision of services on a needs basis, and to prioritize family support, reunification, and prevention of harms. Funding levels must represent the principle of substantive equity.

12.11 We call upon all levels of government and child welfare services for a reform of laws and obligations with respect to youth "aging out" of the system, including ensuring a complete network of support from childhood into adulthood, based on capacity and needs, which includes opportunities for education, housing, and related supports. This includes the provision of free post-secondary education for all children in care in Canada.

12.12 We call upon all child and family services agencies to engage in recruitment efforts to hire and promote Indigenous staff, as well as to promote the intensive and ongoing training of social workers and child welfare staff in the following areas:

- history of the child welfare system in the oppression and genocide of Indigenous Peoples
- anti-racism and anti-bias training
- local culture and language training
- sexual exploitation and trafficking training to recognize signs and develop specialized responses

12.13 We call upon all governments and child welfare agencies to fully implement the Spirit Bear Plan.[7]

12.14 We call upon all child welfare agencies to establish more rigorous requirements for safety, harm-prevention, and needs-based services within group or care homes, as well as within foster situations, to prevent the recruitment of children in care into the sex industry. We also insist that governments provide appropriate care and services, over the long term, for children who have been exploited or trafficked while in care.

12.15 We call upon child welfare agencies and all governments to fully investigate deaths of Indigenous youth in care.

Calls for Extractive and Development Industries:

13.1 We call upon all resource-extraction and development industries to consider the safety and security of Indigenous women, girls, and 2SLGBTQQIA people, as well as their equitable benefit from development, at all stages of project planning, assessment, implementation, management, and monitoring.

13.2 We call upon all governments and bodies mandated to evaluate, approve, and/or monitor development projects to complete gender-based socio-economic impact assessments on all proposed projects as part of their decision making and ongoing monitoring of projects. Project proposals must include provisions and plans to mitigate risks and impacts identified in the impact assessments prior to being approved.

13.3 We call upon all parties involved in the negotiations of impact-benefit agreements related to resource-extraction and development projects to include provisions that address the impacts of projects on the safety and security of Indigenous women, girls, and 2SLGBTQQIA people. Provisions must also be included to ensure that Indigenous women and 2SLGBTQQIA people equitably benefit from the projects.

13.4 We call upon the federal, provincial, and territorial governments to fund further inquiries and studies in order to better understand the relationship between resource extraction and other development projects and violence against Indigenous women, girls, and 2SLGBTQQIA people. At a minimum, we support the call of Indigenous women and leaders for a public inquiry into the sexual violence and racism at hydroelectric projects in northern Manitoba.

13.5 We call upon resource-extraction and development industries and all governments and service providers to anticipate and recognize increased demand on social infrastructure because of development projects and resource extraction, and for mitigation measures to be identified as part of the planning and approval process. Social infrastructure must be expanded and service capacity built to meet the anticipated needs of the host communities in advance of the start of projects. This includes but is not limited to ensuring that policing, social services, and health services are adequately staffed and resourced.

Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress

Final report

Commission d'enquête sur les relations entre les Autochtones et certains services publics

Québec

concerns [...] cause the Québec government to refuse to give certain services to Indigenous people in their territory".[2696]

Several witnesses highlighted the major discrepancies between different types of communities (covered by an agreement, not covered by an agreement, settlement or reserve) in terms of the availability of, access to and quality of services. For example, according to Chief Mike McKenzie of Uashat mak Mani-Utenam:

> [T]he daily experience of First Nations who are not covered by an agreement is one of [...] funding gaps. The funding gaps result in gaps in services, which are assumed by the communities that are able to do so, the communities themselves. If not, the nature, scope, quantity and quality of services are directly impacted.[2697]

For example, the Innu of Pakua Shipu[2698], who live in a very isolated community, receive no federal funding for medical transportation, since it is reserved for communities not covered by agreements and Pakua Shipu is a settlement, not a recognized reserve. Being close to regional urban centres does not necessarily provide greater access. The case of the Anishnabek of Pikogan treated at the hospital of Amos and who do not benefit to the follow-up of the public health network when they return home, unlike the non-Indigenous people residing in the community, is an example of this. In this community only non-Indigenous patients can receive care from CLSC staff; Indigenous patients who live in the same location cannot, as Chief David Kistabish of Abitibiwinni First Nation told the Commission:

> The CLSC people refuse to go and provide home care in the town of Amos if the person comes from Pikogan. They're often referred, "oh, you're from Pikogan, go to your health centre, we're referring you there." Conversely, if there is someone from Amos or Québec City living with us, and there are some in Pikogan, the CLSCs are open to doing home visits for them. It's a double standard.[2699]

For Indigenous decision makers, the unequal power relationships and differentiated access to health services undermine Indigenous authority, governance and autonomy, hamper their own efforts and actions in the area of health, and eliminate all possibility of a complementary, harmonious relationship between Indigenous people and public services.[2700] I share their point of view.

In my opinion, the Jordan Principle[2701] evoked earlier is emblematic of the issues associated with a highly complex organization of services in Indigenous settings, as well as the jurisdictional barriers that impede deployment of an efficient service continuum that is receptive to the needs of the Indigenous population. According to Jessie Messier, NIHB program officer for FNQLHSSC, "the Jordan Principle must be seen as an opportunity for

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2696 Testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 197, lines 19–23.

2697 Testimony of Mike Mckenzie, stenographic notes taken May 23, 2018, p. 168, lines 3–13.

2698 *Présentation Conseil des Innus d'Unamen Shipu*, document P-339 (Commission).

2699 Testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 125, lines 9–18.

2700 Testimony of Richard Gray, stenographic notes taken September 21, 2017, p. 55, lines 9–18.

2701 The ins and outs of the Jordan Principle are set out in Chapter 5 of this report, pp. 174-175.

each of the actors involved to play an active role, to put safety nets around the First Nations children who are already in vulnerable situations".[2702]

All the provincial departments and institutions have to work together to apply all of the measures covered by the Jordan Principle. Cindy Blackstock, a McGill professor and Director General of the First Nations Child & Family Caring Society, testified that "the province of Québec owes a duty to all of these children, to ensure they're getting equitable treatment [and] if the feds aren't picking up their share, then Québec should step in there, and then do what we did: take the federal government to account".[2703]

But there is still a long way to go. Among the factors brought to my attention, I note, in particular, that the local service coordinators hired in 2017 to promote implementation of the Jordan Principle are not supported by strong guidance or specialized training on the administrative process.[2704]

Another limit raised is that the Jordan Principle only applies to children, leaving adults with specific needs to cope alone.

Accordingly, with a view to population-based responsibility, I recommend that the government:

CALL FOR ACTION No. 104

Initiate discussions with the federal government to extend the Jordan Principle to adults.

CALL FOR ACTION No. 105

Working with the federal government, develop an overall approach for applying the Jordan Principle, coupled with budget forecasts for all First Nations and Inuit.

10.4. A Human resources management issues

The witnesses at the hearing also reported human resources management issues that sap the provision of services to Indigenous people in the areas of physical health, social services and youth protection.

10.4.1 Employee turnover and service disruptions

Several witnesses told us how hard it is to recruit caregivers and professionals to work in isolated regions. Geographic location, remoteness of resources, shortage of staff and inadequate staff training are all factors that affect the delivery of the services. Far too few human resources recognized by professional orders are available to meet the needs. The

2702 Testimony of Jessie Messier, stenographic notes taken September 4, 2018, p. 205, lines 12–17.

2703 Testimony of Cindy Blackstock, stenographic notes taken September 4, 2018, p. 118, lines 5–10.

2704 Testimony of Arna Moar, stenographic notes taken September 26, 2018, p. 108, lines 16–21; testimony of Jessie Messier, stenographic notes taken September 4, 2018, p. 215–216, lines 20–1.

Health and social services

CALL FOR ACTION No. 74
Amend the *Act respecting health services and social services* and the *Act respecting health services and social services for Cree Native persons* to enshrine the concept of cultural safeguards in it, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 75
Encourage the health and social services network institutions to set up services and programs based on cultural safeguard principles developed for Indigenous peoples and in cooperation with them.

CALL FOR ACTION No. 76
Provide sustainable funding for services and programs based on cultural safeguard principles developed for Indigenous peoples.

CALL FOR ACTION No. 77
Take the necessary measures to make emergency medical transportation services by land or by air, depending on the circumstances, available as soon as possible and on an ongoing basis in all communities, despite constraints, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 78
Encourage the signing of agreements between public health and social services institutions and Indigenous authorities to guarantee spaces and a culturally safe service for aging Indigenous persons and their families.

CALL FOR ACTION No. 79
Financially support the establishment of long-term care services in communities covered by an agreement.

CALL FOR ACTION No. 80
Initiate tripartite negotiations with the federal government and Indigenous authorities to develop long-term care services in communities not covered by an agreement.

CALL FOR ACTION No. 81
Make the development of culturally appropriate spaces for Indigenous nations a priority in public health institutions, particularly in regions where there is a substantial Indigenous population.

CALL FOR ACTION No. 82
Initiate tripartite negotiations with the federal government and Indigenous authorities to establish a formal funding mechanism for returning to the communities at the end of life and for the development of palliative care in the communities.

CALL FOR ACTION No. 83
Develop priority diagnostic service corridors for Indigenous clients of all ages through tripartite negotiations with the federal government and Indigenous authorities.

CALL FOR ACTION No. 84
Financially support the development of culturally safe, family-centred respite services in communities covered by an agreement and in urban areas.

CALL FOR ACTION No. 85
Initiate tripartite negotiations with the federal government and Indigenous authorities to develop culturally safe, family-centred respite services in communities not covered by an agreement.

CALL FOR ACTION No. 86
Initiate tripartite negotiations with the federal government and Indigenous authorities to sustainably fund projects created by Indigenous nations, communities and organizations that seek to identify, reduce, prevent and eliminate sexual assault.

CALL FOR ACTION No. 87 – To Indigenous authorities
Raise awareness among the populations of indigenous communities about the nature of sexual assault and promote healthy and respectful sexuality education.

CALL FOR ACTION No. 88
Fund the development of a network of Indigenous women's shelters in communities covered by an agreement and in urban centres, working with Indigenous authorities.

CALL FOR ACTION No. 89
Initiate tripartite negotiations with the federal government and Indigenous authorities to develop Indigenous women's shelters in communities not covered by an agreement.

CALL FOR ACTION No. 90
Financially support the establishment of culturally safe addiction treatment centres and detoxification centres in urban areas and in communities covered by an agreement.

CALL FOR ACTION No. 91
Initiate tripartite negotiations with the federal government and Indigenous authorities to increase services for addiction prevention and treatment in Indigenous communities not covered by an agreement.

CALL FOR ACTION No. 92
Working with the federal government and Indigenous authorities, draw up less stringent admission rules at addiction treatment centres for off-reserve First Nations members and Inuit.

CALL FOR ACTION No. 93
Financially support the development of services for suicide prevention and mental health in communities covered by an agreement and in urban centres, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 94
Draw up a protocol for crisis management in communities covered by an agreement that involves both the public health network and the participation of appropriate Indigenous authorities.

CALL FOR ACTION No. 95
Initiate tripartite negotiations with the federal government and Indigenous authorities to increase services for suicide prevention and mental health in Indigenous communities not covered by an agreement.

CALL FOR ACTION No. 96
Encourage institutions in the health and social services network to set up services inspired by the Clinique Minowé model in urban settings, working with the Indigenous authorities and organizations in their territory.

CALL FOR ACTION No. 97
Provide recurrent, sustainable funding for services that draw on the Clinique Minowé model and are developed in urban settings for Indigenous peoples.

CALL FOR ACTION No. 98
Issue a directive to urban health and social service institutions to establish clear service corridors and communication protocols with Indigenous authorities in the communities.

CALL FOR ACTION No. 99
Provide sustainable funding for services to homeless Indigenous clienteles in urban areas.

CALL FOR ACTION No. 100
Fund the creation of a shelter specifically reserved for homeless Inuit clientele in Montréal.

CALL FOR ACTION No. 101
Initiate discussions with the federal government to dovetail the provincial prescription drug insurance plan with the Non-Insured Health Benefits program in order to offer the most comprehensive, equitable coverage for members of Indigenous communities.

CALL FOR ACTION No. 102
Encourage the professional orders involved (doctors and pharmacists) to give their members training about the federal Non-Insured Health Benefits program.

CALL FOR ACTION No. 103
Initiate a strategic planning session on non-urgent medical transportation that includes the federal government, health and social services network institutions and Indigenous authorities.

CALL FOR ACTION No. 104
Initiate discussions with the federal government to extend the Jordan Principle to adults.

CALL FOR ACTION No. 105
Working with the federal government, develop an overall approach for applying the Jordan Principle, coupled with budget forecasts for all First Nations and Inuit.

CALL FOR ACTION No. 106
Rapidly implement the recommendations of the Comité sur l'application du PL-21 in First Nations communities and Inuit villages.

CALL FOR ACTION No. 107
Follow up as quickly as possible on proposals to improve working conditions from the Nunavik Regional Board of Health and Social Services.

REGULATIONS

RELATING TO THE

EDUCATION

OF

INDIAN CHILDREN

OTTAWA
GOVERNMENT PRINTING BUREAU
1894

AT THE GOVERNMENT HOUSE AT OTTAWA.

MONDAY, 1ST DAY OF APRIL, 1895.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

His Excellency, in virtue of the powers conferred upon him by sections 137 and 138, which are added to the Indian Act by section eleven of chapter 32 of the Acts 57-58 Victoria, and by and with the advice of the Queen's Privy Council for Canada, is pleased to order that Section 12 of the Regulations established by the Order in Council of the 10th November, 1894, shall be and the same is hereby repealed, and the following section substituted therefor:—

"12. If any child in an industrial or boarding school should leave such school without permission of the Superintendent General, the Assistant Indian Commissioner, or of the Principal of the school, or should any child who has been allowed out fail to return at the stipulated time, an Indian Agent or Justice of the Peace shall, on information made to that effect by any officer

"of such school, issue a warrant authorizing "the person named therein to search for and "take such child back to and again place it "in the school in which it has been previ- "ously placed as aforesaid. But notwith- "standing anything in this section, it shall "be competent for any employee of the "Indian Department, or any constable, to "arrest without a warrant any child found in "the act of escaping from any industrial or "boarding school, and to convey such child "to the school from which it escaped.

JOHN J. McGEE.
Clerk of the Privy Council.

REGULATIONS

RELATING TO THE

EDUCATION

OF

INDIAN CHILDREN

OTTAWA
GOVERNMENT PRINTING BUREAU
1894

AT GOVERNMENT HOUSE, OTTAWA.

SATURDAY, 10TH NOVEMBER, 1894.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL
IN COUNCIL.

His Excellency, in virtue of the powers conferred upon him by sections 137 and 138, which are added to the Indian Act by section eleven of chapter 32 of the Acts 57-58 Victoria, and by and with the advice of the Queen's Privy Council for Canada, is pleased to make the following regulations :—

1. All Indian children between the ages of seven and sixteen shall attend a day school on the reserve on which they reside for the full term during which the school is open each year, unless excused for the reasons hereinafter mentioned.

2. Any person who receives into his house a child of any other person between the aforesaid ages, and which child is resident with him, or in his care or employment, shall be deemed thereby to be subject to the same duty with respect to the education of such child during such residence,

tion of such refusal or neglect, such parent, guardian or other person, shall be liable to a fine of not more than two dollars, or imprisonment for a period not exceeding ten days, or both.

8. For the purposes of section 138, which is added to the Indian Act by section 11 of chapter 32, 57-58 Victoria, the following schools are declared to be industrials schools :—Mount Elgin Institute, at Muncey ; Mohawk Institute, at Brantford ; Shingwauk and Wawanosh Homes, at Sault Ste. Marie ; Wikwemikong Industrial School, at Wikwemikong—all in the Province of Ontario : Brandon Industrial School, at Brandon ; St. Boniface Industrial School, at St. Boniface ; Rupert's Land Industrial School, at Middle Church ; Washakada Home, at Elkhorn —all in the Province of Manitoba : McDougall Orphanage, at Morley : Battleford Industrial School, at Battleford ; St. Joseph's Industrial School, at High River ; Regina Industrial School, at Regina ; Qu'Appelle Industrial School, at Qu'Appelle ; Red Deer Industrial School, at Red Deer ; St. Albert Industrial School, in the Edmonton Agency ; Emmanuel Training School, at Prince Albert—all in the North-west Territories ; Kuper Island Industrial School, at Kuper Island ; Kamloops Industrial School, at Kamloops ; Kootenay Industrial School, at Kootenay ; Alert Bay Industrial School, at Alert Bay ; Metlakahtla Industrial School, at Metlakahtla ; William's Lake Industrial School, at William's Lake ; Coqualeetza Home, at Chilliwack—all in the Province of British Columbia. And for the aforesaid purposes the following schools are declared to be boarding schools :—Portage la Prairie Boarding

School, at Portage la Prairie ; Pine Creek Boarding School, at Pine Creek ; Birtle Boarding School, at Birtle—all in the Province of Manitoba ; Onion Lake Boarding Schools, in the Onion Lake Agency ; Blackfoot Boarding Schools, on the Blackfoot Reserve ; Blood Boarding School, in the Blood Agency ; Crowstand Boarding School, in the Swan River Agency ; File Hills Boarding School, in the File Hills Agency ; Gordon's Boarding School, on George Gordon's Reserve, Touchwood Hills Agency ; Muscowequan's Boarding School, on Muscowequan's Reserve, in the Touchwood Hills Agency ; Lac la Biche Boarding School, in the Saddle Lake Agency ; Piegan Boarding School, on the Piegan Reserve ; Round Lake Boarding School, at Round Lake, in the Crooked Lakes Agency ; Sarcee Boarding School, on the Sarcee Reserve ; Stony Plain Boarding School, on Enoch la Potac's Reserve, in the Edmonton Agency : Duck Lake Boarding School, at Duck Lake—all in the North-west Territories ; Port Simpson Girl's Home, at Port Simpson ; All Hallows Boarding School, at Yale—both in the Province of British Columbia.

9. An Indian Agent or Justice of the Peace, on being satisfied that any Indian child between six and sixteen years of age is not being properly cared for or educated, and that the parent, guardian or other person having the charge or control of such child, is unfit or unwilling to provide for the child's education, may issue a warrant authorizing the person named therein to search for and take such child and place it in an industrial or boarding school, in which there may be a vacancy for such child, and a child so

placed in an industrial or boarding school may be retained until the age of eighteen years is reached ; but no child shall be committed to any industrial or boarding school before the parent, guardian or other person having the charge or control of such child, is notified orally, or in writing, by a Justice of the Peace, Indian Agent or truant officer, of the intention to commit the child, and four days shall be allowed to elapse between the giving of such notice and the committal of the child, except in the Province of Manitoba and the North-west Territories, where an Indian child may be committed by an Indian Agent or Justice of the Peace, as aforesaid, without notice.

10. If any such parent, guardian or other person who has been notified as aforesaid, objects within the aforesaid four days to the placing of the child in an industrial or boarding school, the Indian Agent, or Justice of the Peace, shall appoint a day for a formal inquiry into the case, and may take evidence under oath as to the manner in which the child is being cared for and educated ; and, if it be shown that adequate provision is being made or will be made for the child's care and education, the child shall be left in the custody of such parent, guardian or other person.

11. The share of annuity or interest money, or other band revenue, belonging to a child committed to an industrial or boarding school, may be retained by the Superintendent General of Indian Affairs, and may be expended by the Superintendent General for the maintenance and education of such child or funded for its benefit.

12. If any child placed under these regulations in an industrial or boarding school should leave such school without permission of the Superintendent General, the Assistant Indian Commissioner, or of the Principal of the School, or should any child who has been allowed out, fail to return at the stipulated time, any Indian Agent or Justice of the Peace shall, on information made to that effect by any officer of such school, issue a warrant authorizing the person named therein to search for and take such child back to the school in which it had been previously placed as aforesaid. But notwithstanding anything in this section it shall be competent for any employee of the Indian Department, or any constable, to arrest without a warrant any child found in the act of escaping from any industrial or boarding school, and to convey such child to the school from which it escaped.

13. Any person authorized by warrant under these regulations to search for and take any child to an industrial or boarding school may enter (if need be by force) any house, building or other place specified in the warrant, and may remove the child therefrom. (2.) The warrant may be addressed to any policeman or constable, or to any truant officer appointed under these regulations, or to the Principal of any industrial or boarding school, or to any employee of the Department of Indian Affairs.

14. Notwithstanding anything in these regulations contained, no Protestant child shall be placed in a Roman Catholic school, or in a school conducted under Roman Catholic aus-

pices ; and no Roman Catholic child shall be placed in a Protestant school, or in a school conducted under Protestant auspices.

15. The Superintendent General of Indian Affairs shall have the right, notwithstanding anything in these regulations contained, to return to the custody of its parent, guardian or other person having the charge or control thereof, any child placed in an industrial or boarding school under these regulations.

JOHN J. McGEE,
Clerk, Privy Council.

communiqué

1979-88
September 19, 1979

STATEMENT ON INDIAN HEALTH POLICY

OTTAWA - Health and Welfare Minister David Crombie today released the attached telegram which he sent to Mr. Noel Starblanket, President of the National Indian Brotherhood on the subject of the federal government's new policy on Indian health.

A copy of the policy statement is also attached.

- 30 -

Ref.: René Mercier
Tel.: (613) 995-8465

NOEL STARBLANKET
PRESIDENT
NATIONAL INDIAN BROTHERHOOD

PLEASE EXPRESS MY PERSONAL GREETINGS AND BEST WISHES TO THE NATIONAL INDIAN BROTHERHOOD 1979 GENERAL ASSEMBLY AND EXTEND MY SINCERE REGRETS THAT I AM UNABLE TO PARTICIPATE IN YOUR PROCEEDINGS.

LATE YESTERDAY THE CABINET APPROVED A NEW FEDERAL POLICY FOR INDIAN HEALTH THAT:

- WITHDRAWS GUIDELINES FOR UNINSURED HEALTH BENEFITS;
- ESTABLISHES PROFESSIONAL MEDICAL OR DENTAL JUDGEMENT TO FAIR AND COMPARABLE CANADIAN STANDARDS AS THE CRITERIA FOR HEALTH SERVICES DELIVERY;
- REAFFIRMS THE HISTORICAL ROLES OF THE FEDERAL GOVERNMENT AND THE PROVINCES IN THE PROVISION OF HEALTH SERVICES; AND
- PROMOTES CONSULTATION AND PARTICIPATION IN THE ADMINISTRATION AND DELIVERY OF HEALTH PROGRAMS.

A STATEMENT OF THE FEDERAL GOVERNMENT'S INDIAN HEALTH POLICY WILL BE RELEASED LATER TODAY. IN SUMMARY IT RECOGNIZES THE SPECIAL HEALTH NEEDS OF THE INDIAN PEOPLE AND STATES THAT THE POLICY IS BASED ON THE THREE PILLARS OF COMMUNITY DEVELOPMENT, THE TRADITIONAL RELATIONSHIP OF THE INDIAN PEOPLE TO THE FEDERAL GOVERNMENT, AND A SINGLE INTER-RELATED CANADIAN HEALTH SYSTEM CONSISTING OF FEDERAL, PROVINCIAL AND COMMUNITY-BASED ELEMENTS.

WITH RESPECT TO REGISTERED INDIANS RESIDING PERMANENTLY OFF-RESERVE, THE POLICY REITERATES THAT THEY SHOULD RECEIVE HEALTH SERVICES FROM THE PROVINCE OR MUNICIPALITY OF RESIDENCE, BUT IF SUCH SERVICES ARE DENIED, THE FEDERAL GOVERNMENT WILL ATTEMPT TO ENSURE THEIR PROVISION.

THE POLICY EMPHASIZES INCREASED PARTICIPATION OF INDIAN BANDS IN HEALTH CARE DELIVERY, WHERE SOUGHT BY CHIEF AND COUNCIL AND PROVIDES FOR CLOSE CONSULTATION AT BAND, PROVINCIAL AND NATIONAL LEVELS ON HEALTH PROGRAMS, FINANCES AND ALLOCATION OF RESOURCES.

THE POLICY STATEMENT RECOGNIZES AND SUPPORTS THE STUDIES OF HEALTH POLICY AND PRACTICE BEING UNDERTAKEN BY YOUR BROTHERHOOD AND SOME PROVINCIAL INDIAN ASSOCIATIONS AND COMMITS THE FEDERAL GOVERNMENT TO A FUNDAMENTAL REVIEW OF ISSUES INVOLVED IN INDIAN HEALTH WHEN INDIAN REPRESENTATIVES HAVE DEVELOPED THEIR POSITION. SUCH REVIEW COULD SUPERSEDE THIS POLICY.

I WOULD PERSONALLY HAVE WISHED TO CONSULT WITH YOU PRIOR TO THIS ANNOUNCEMENT BUT THE URGENT NEED TO INFORM YOUR ASSEMBLY OF THE FEDERAL GOVERNMENT'S DECISION REGRETFULLY MAKES THIS IMPOSSIBLE.

PLEASE CONVEY TO THE LEADERS OF THE INDIAN PEOPLE GATHERED AT YOUR GENERAL ASSEMBLY MY TRUST AND CONFIDENCE THAT THEY WILL VIEW THIS POLICY AS THE BEGINNING OF A NEW ERA IN CO-OPERATION BETWEEN THE FEDERAL GOVERNMENT AND INDIAN PEOPLE.

DAVID CROMBIE

GOVERNMENT OF CANADA

INDIAN HEALTH POLICY

The following statement represents current Federal Government practice and policy in the field of Indian health. It differs from the Indian Health Policy statement of November 1974 in that it emphasizes issues which the Federal Government considers to be of greatest significance in the immediate future. Studies relating to Indian health policy and practice are being undertaken by the National Indian Brotherhood and some provincial Indian associations, studies which National Health and Welfare supports. The Federal Government is committed to joining with Indian representatives in a fundamental review of issues involved in Indian health when Indian representatives have developed their position, and the policy emerging from that review could supersede this policy. As an indication of good faith, the Federal Government has withdrawn the Guidelines for the Provision of Uninsured Health Benefits to Indian and Inuit people of September 1978, which will be replaced by professional medical or dental judgement, or by other fair and comparable Canadian Standards.

The Federal Indian Health Policy is based on the special relationship of the Indian people to the Federal Government, a relationship which both the Indian people and the Government are committed to preserving. It recognizes the circumstances under which many Indian communities exist, which have placed Indian people at a grave disadvantage compared to most other Canadians in terms of health, as in other ways.

Policy for federal programs for Indian people, (of which the health policy is an aspect), flows from constitutional and statutory provisions, treaties and customary practice. It also flows from the commitment of Indian people to preserve and enhance their culture and traditions. It recognizes the intolerable conditions of poverty and community decline which affect many

Indians, and seeks a framework in which Indian communities can remedy these conditions. The Federal Government recognizes its legal and traditional responsibilities to Indians, and seeks to promote the ability of Indian communities to pursue their aspirations within the framework of Canadian institutions.

The Federal Government's Indian Health Policy reflects these features in its approach to programs for Indian people. The over-riding fact from which the policy stems is the intolerably low level of health of many Indian people, who exist under conditions rooted in poverty and community decline. The Federal Government realizes that only Indian communities themselves can change these root causes and that to do so will require the wholehearted support of the larger Canadian community.

Hence, the goal of Federal Indian Health Policy is to achieve an increasing level of health in Indian communities, generated and maintained by the Indian communities themselves.

This increasing level of health in Indian communities must be built on three pillars. The first, and most significant, is community development, both socio-economic development and cultural and spiritual development, to remove the conditions of poverty and apathy which prevent the members of the community from achieving a state of physical, mental and social well-being.

The second pillar is the traditional relationship of the Indian people to the Federal Government, in which the Federal Government serves as advocate of the interests of Indian communities to the larger Canadian society and its institutions, and promotes the capacity of Indian communities to achieve their aspirations. This relationship must be strengthened by opening up communication with the Indian people and by encouraging their greater involvement in the planning, budgetting and delivery of health programs.

The third pillar is the Canadian health system. This system is one of specialized and interrelated elements, which may be the responsibility of federal, provincial or municipal governments, Indian bands, or the private sector. But these divisions are superficial in the light of the health system as a whole. The most significant federal roles in this interdependent system are in public health activities on reserves, health promotion, and the detection and mitigation of hazards to health in the environment. The most significant provincial and private roles are in the diagnosis and treatment of acute and chronic disease and in the rehabilitation of the sick. Indian communities have a significant role to play in health promotion, and in the adaptation of health

services delivery to the specific needs of their community. Of course, this does not exhaust the many complexities of the system. The Federal Government is committed to maintaining an active role in the Canadian health system as it affects Indians. It is committed to encouraging provinces to maintain their role and to filling gaps in necessary diagnostic, treatment and rehabilitative services. It is committed to promoting the capacity of Indian communities to play an active, more positive role in the health system and in decisions affecting their health.

These three pillars of community development, the traditional relationship of the Indian people to the Federal Government, and the interrelated Canadian health system provide the means to end the tragedy of Indian ill-health in Canada.

et du Bien-être social
L'honorable David Crombie

communiqué

1979-88
le 19 septembre 1979

DÉCLARATION SUR LES SERVICES DE SANTÉ AUX INDIENS

OTTAWA - Le ministre de la Santé nationale et du Bien-être social, M. David Crombie, a rendu public aujourd'hui le télégramme qu'il a fait parvenir à M. Noël Starblanket, président de la Fraternité des Indiens du Canada, relativement à la nouvelle politique du gouvernement fédéral sur les services de santé aux Indiens.

Une copie de l'énoncé de la politique, de même que la version originale du télégramme à M. Starblanket sont jointes.

- 30 -

Réf.: René Mercier
Tél.: (613) 995-8465

GOUVERNEMENT DU CANADA

POLITIQUE POUR LES SERVICES DE SANTE AUX INDIENS

La déclaration suivante représente la démarche et la politique actuelles du gouvernement fédéral en ce qui a trait à la santé des Indiens. Elle diffère de l'énoncé de politique de novembre 1974 en ce sens qu'elle met en lumière les questions que le gouvernement fédéral considère les plus importantes dans l'avenir immédiat. La Fraternité des Indiens du Canada et certaines associations indiennes provinciales entreprennent présentement des études au sujet de la politique et de la démarche à l'égard de la santé des Indiens, études auxquelles Santé et Bien-être social Canada souscrit. Le gouvernement fédéral s'est engagé à effectuer, avec les mandataires indiens, une fois que ceux-ci auront élaboré leur position, un examen fondamental des questions qu'implique la santé de leur population; la politique qui émergera de cet examen pourra remplacer la politique actuelle. Pour montrer sa bonne foi, le gouvernment fédéral a retiré ses directives de septembre 1978 pour les prestations sanitaires non assurées aux Indiens et aux Inuit. Au lieu de ces directives, on s'appuiera sur le jugement de médecins et de dentistes, ainsi que sur d'autres normes canadiennes justes et comparables.

La politique fédérale pour les services de santé aux Indiens se fonde sur le rapport spécial qui existe entre le peuple indien et le gouvernment fédéral, rapport qu'on désire protéger autant d'un côté comme de l'autre. Cette politique tient compte des conditions dans lesquelles nombre de collectivités indiennes vivent, conditions qui désavantagent considérablement les Indiens, du point de vue de la santé entre autres, par rapport à la majorité des autres Canadiens.

La politique en matière de programmes fédéraux pour les Indiens, dont la politique sanitaire est un volet, découle de dispositions constitutionnelles et légales, de traités et de coutumes. Entre aussi en ligne de comte l'engagement du peuple indien à préserver et à mettre en valeur sa culture et ses traditions. On y reconnaît les conditions intolérables de pauvreté et de détérioration sociale qui accablent de nombreux Indiens, et on s'efforce de trouver un plan par lequel les collectivités indiennes pourraient les améliorer. Le gouvernement fédéral reconnaît ses responsabilités légales et traditionnelles à l'endroit des Indiens, et il cherche

à favoriser la capacité des collectivités indiennes de réaliser leurs aspirations en demeurant dans le cadre général des institutions canadiennes.

La politique fédérale pour les services de santé aux Indiens tient compte de ces points dans sa façon d'aborder les programmes visant la population indienne. Le facteur primordial, autour duquel toute cette politique se tient, c'est le niveau de santé vraiment trop bas, inadmissible, de nombre d'Indiens vivant dans des conditions de pauvreté et de détérioration sociale peu communes. Le gouvernement fédéral sait que seules les collectivités indiennes peuvent faire changer cet état de choses, et qu'elles auront besoin de l'appui entier du reste de la population canadienne pour réussir.

Donc, le but de la politique fédérale pour les services de santé aux Indiens vise à relever le niveau de santé des Indiens, et que cela soit accompli et maintenu grâce à l'action des collectivités indiennes elles-mêmes.

Ce relèvement du niveau de santé dans les villages indiens doit reposer sur trois principes: le premier, et aussi le plus important, est le développement communautaire - autant sur le plan socio-économique que culturel et spirituel - pour éliminer les conditions de pauvreté et d'apathie qui empêchent les membres de la collectivité d'atteindre un état de bien-être physique, mental et social.

Le deuxième principe est le rapport traditionnel entre le peuple indien et le gouvernement fédéral, rapport pour lequel celui-ci défend les intérêts des collectivités indiennes devant l'ensemble de la société canadienne et de ses institutions, et met en valeur la capacité de ces dernières de réaliser leurs aspirations. Il faut renforcer ce rapport en entamant la communication avec le peuple indien et en l'encourageant à une plus grande participation à la planification, à la préparation du budget et à l'application des programmes de santé.

Le troisième principe est le système de santé canadien. Ce système consiste en des éléments particularisés et interdépendants, qui peuvent relever des gouvernements fédéral et provinciaux ou d'administrations municipales, de bandes indiennes, ou du secteur privé. Mais ces divisions sont superficielles quand on considère le système de santé dans son ensemble. Les rôles fédéraux les plus importants dans ce système à composantes interdépendantes sont les activités d'hygiène publique dans les réserves, la promotion de la santé, et la détection et la réduction de risques sanitaires dans l'environnement. Par contre, les principaux rôles des provinces et du secteur public sont le diagnostic et le traitement de la

maladie aigüe ou chronique et la réadaptation du malade. Les collectivités indiennes ont un rôle de premier plan à jouer dans la promotion de la santé et l'adaptation des services de santé aux besoins précis de leur milieu. Evidemment, cela n'épuise pas les nombreuses complexités du système. Le gouvernement fédéral veut continuer de jouer un rôle actif dans le système de santé canadien là où les Indiens sont concernés; il veut encourager les provinces à maintenir leur rôle et à corriger les lacunes dans les services de diagnostic, de traitement et de réadaptation nécessaires; il veut développer la capacité des collectivités indiennes de jouer un rôle actif et plus déterminant dans le système de santé et les décisions ayant une incidence sur leur santé.

Ces trois principes, développement communautaire, lien traditionnel entre le peuple indien et le gouvernement fédéral, et interdépendance des éléments composant le système de santé canadien, sont à la base des moyens à prendre pour mettre fin au drame de la mauvaise santé des Indiens au Canada.

Jordan's Principle

Services

- Submit a request under Jordan's Principle
- Find a contact person in your region
- Download posters to print
- Public service announcements about Jordan's Principle

To find out who's covered under Jordan's Principle, visit Who is covered.

COVID-19: update

During the coronavirus pandemic, Jordan's Principle continues to help First Nations children living in Canada access the products, services and supports they need. This can include, for example, laptops, tablets or other e-learning tools, if they meet an identified health, education or social need. At this time, professionals may not be available to provide supporting documents normally required to complete a request. We will take this into account when we review your request. In some cases, we will accept emails from professionals or documents can be provided later in the process. To find out more, contact your regional focal point. For support and up-to-date information on COVID-19, speak with your First Nation's leadership or visit COVID-19 and Indigenous communities.

Available 24 hours, 7 days a week

- Jordan's Principle Call Centre: 1-855-JP-CHILD (1-855-572-4453)
- teletypewriter: 1-866-553-0554

On this page

Updates on Jordan's Principle

Jordan's Principle External Appeals Committee

From January to March 2021, Indigenous Services Canada (ISC) issued a call for proposals to seek services from professionals in the health, social and education fields to review appeals and issue recommendations as part of the new Jordan's Principle External Appeals Committee. The call is now closed. Thank you to all those who expressed an interest. ISC will communicate the results of the process to those who applied once the evaluation of the proposals is finished.

Other updates on Jordan's Principle

Under Jordan's Principle we are ensuring that First Nations children can access the products, services and supports they need, when they need them, while we work with First Nations partners, provinces and territories

to develop long-term approaches to help better address the unique needs of First Nations children.

On September 29, 2021, the federal court upheld orders by the Canadian Human Rights Tribunal regarding eligibility under Jordan's Principle and compensation. The Government of Canada did not appeal the orders about Jordan's Principle eligibility for products and services.

This means that First Nations families can continue to access Jordan's Principle under the same eligibility criteria that has been in place since November 25, 2020. To find out more, visit:

- Who is covered

To learn more about the latest federal court decision on child and family services and Jordan's Principle, or about other related decisions, consult:

- Timeline: Jordan's Principle and First Nations child and family services

Learn more about the agreements-in-principle related to the First Nations Child and Family Services program and Jordan's Principle:

- Long-term reform of First Nations Child and Family Services and long-term approach for Jordan's Principle

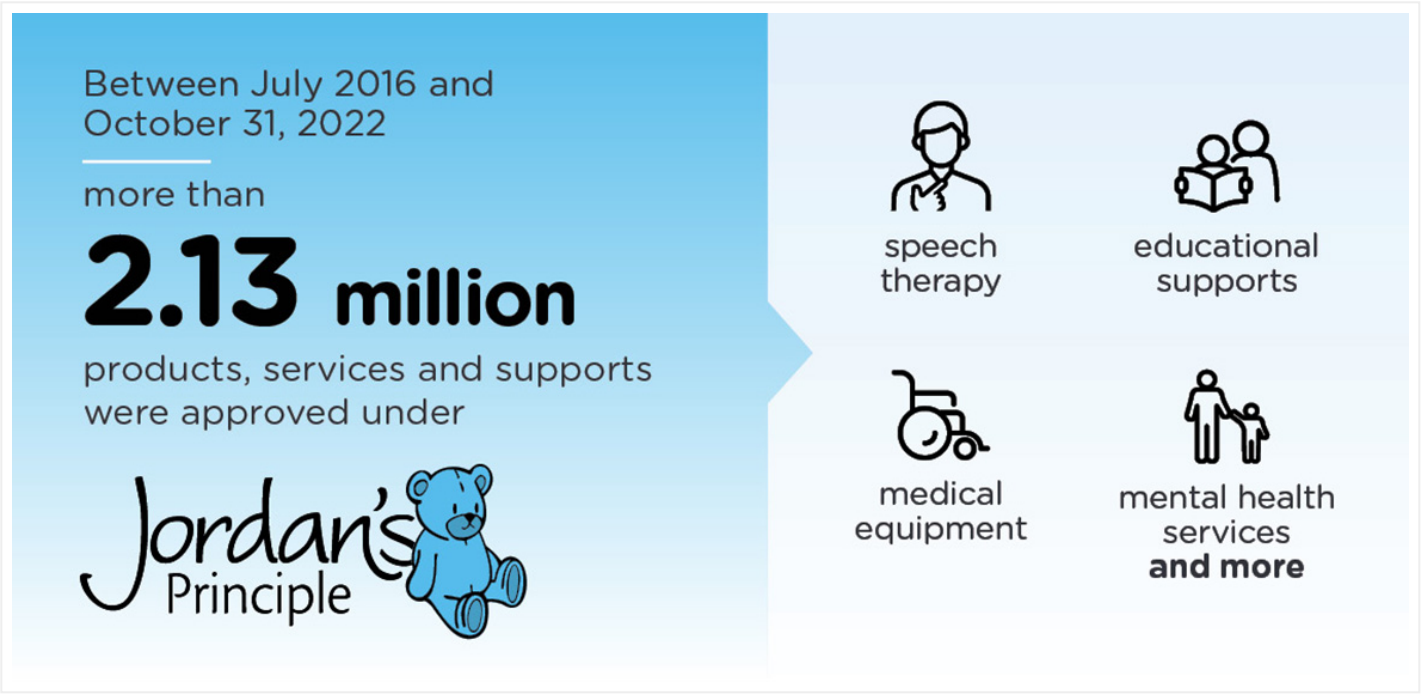
About Jordan's Principle

Jordan's Principle makes sure all First Nations children living in Canada can access the products, services and supports they need, when they need them. Funding can help with a wide range of health, social and educational needs, including the unique needs that First Nations Two-Spirit and LGBTQQIA children and youth and those with disabilities may have.

Jordan's Principle is named in memory of Jordan River Anderson. He was a young boy from Norway House Cree Nation in Manitoba.

Requests for Inuit children can be made through the Inuit Child First Initiative.

Helping First Nations children



▼ Text alternative: Helping First Nations children

Between July 2016 and October 31, 2022, more than 2.13 million products, services and supports were approved under Jordan's Principle. These included:

- speech therapy
- educational supports
- medical equipment
- mental health services
- and more

A legal rule

In 2016, the Canadian Human Rights Tribunal (CHRT) determined the Government of Canada's approach to services for First Nations children was discriminatory. One way we are addressing this is through a renewed approach to Jordan's Principle.

Since the ruling, the CHRT has issued a number of follow-up orders about Jordan's Principle. In May 2017, the CHRT ordered that the needs of each individual child must be considered, to ensure the following is taken into account under Jordan's Principle:

- substantive equality
- providing culturally appropriate services
- safeguarding the best interests of the child

This means giving extra help when it is needed so First Nations children have an equal chance to thrive.

What we are doing

We are supporting children who need help right away and are making long-term changes for the future, such as through reforming child and family services.

For the long-term, we are working to build better structures and funding models. These will make sure First Nations children living in Canada get the products, services and supports they need, when they need them. To do this, we are working closely with:

- provinces
- territories
- First Nations partners

- service organizations

Since 2016, the Government has committed $2.36 billion toward meeting the needs of First Nations children through Jordan's Principle.

Local service coordinators have been hired in communities across Canada. They can help families who:

- have questions about Jordan's Principle
- would like to submit a request for products, services or supports under Jordan's Principle

We fund these coordinators, who are staffed by:

- local tribal councils
- First Nations communities
- regional health authorities
- First Nations non-governmental organizations, etc (et cetera).

We also have staff across the country dedicated full-time to Jordan's Principle. They work closely with the local coordinators to make sure all requests are processed as quickly as possible.

Related links

- Honouring Jordan River Anderson
- CHRT definition of Jordan's Principle
- Video: Jordan's Principle: Making sure First Nations children can get the services they need
- Video: Jordan's Principle Youth Public Service Announcements (developed and made available by the First Nations Child & Family Caring Society of Canada)

- Jordan's Principle Handbook (developed and made available by the Assembly of First Nations)

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