

Concerns with ISC's Compliance with CHRT Orders on Jordan's Principle Updated April 2021



**First Nations Child & Family
Caring Society of Canada**

www.fncaringsociety.com



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Immediate Remedies

The Caring Society has identified the following remedies that ISC can immediately undertake to address often longstanding concerns identified in this document:

1. Communicate to Focal Points and all staff that the normative standard cannot be used as sole grounds to deny a request or decrease the terms of a previously approved request. Denial letters to families must not reference the normative standard as the sole reason for denial.
2. ISC consult the Privacy Commissioner for feedback on its procedure for data collection and the privacy rights of children and families. This includes feedback on the request form and GC Case Management System.
3. ISC work with the Caring Society to undertake training for all focal points to properly and proactively identify urgent cases. Forms should be updated to include a mandatory and obvious “yes” or “no” box in regards to whether the case is urgent.
4. Communicate to all regions ISC's commitment to capital costs, with reference to the terms provided by Dr. Valerie Gideon in her testimony before the Tribunal in May 2019.
5. ISC provide an update to the Caring Society on the Clinical Case Conferencing Strategy. The Caring Society provided feedback in May 2020.
6. In consideration of the risks associated with changes to living arrangements and service providers, ISC to seek authority to extend Jordan's Principle past the age of majority to prevent the destabilization of care during the COVID-19 pandemic.
7. ISC provide an update on the request forms, specifically committing that it is the responsibility of focal points and 24-hour Call Centre staff to complete the forms, not families.

1. Substantive Equality

- a. ISC's approach puts the onus of proving substantive equality on requesters. April through June 2020, members of the Jordan's Principle Oversight Committee (JPOC) and the Jordan's Principle Action Table (JPAT), were invited to provide feedback on ISC's request (intake) forms for individual and group requests. Along with many other points of feedback, including the length and inaccessibility of the forms, the Caring Society flagged that the forms require the requester to provide detailed information about how substantive equality applies. While the Caring Society and others were clear in their feedback of these forms, especially in relation to substantive equality, it has been a year and to our knowledge, the forms have not yet been completed.
- b. The Caring Society continues to stress that a substantive equality analysis does not need to be applied when: i) it is clear and obvious on the facts that substantive equality applies (e.g.: a former child in care struggling with mental health issues; a community that does not have potable water, etc.) or ii) there is a clear service need (e.g.: child needing medical equipment to breathe). The Caring Society maintains that it is ISC's responsibility to carry out a substantive equality analysis when required. The substantive equality lens needs to be applied at every stage of requests, from the time the requester contacts ISC until the end of the request when the child receives the service and it is paid for. For example, substantive equality (the economic circumstance of families) ought to be made a priority in the turnaround time for reimbursing families for out-of-pocket expenses.



The Caring Society was notified by a First Nation who placed requests for an in-community land-based education program and an off-reserve wrap-around after school program. The First Nation is a remote, northern community in British Columbia facing multigenerational trauma resulting from residential schools and erosion of culture/language due to resource extraction. The First Nation does not have a high school and all children in the community must relocate to an urban centre 400km away to complete Grades 10-12. The community is taking steps to ensure that youth have the opportunity to complete high school in the community and that youth who do relocate have the supports in place to ensure they are safe. Both requests were denied partly on the basis of substantive equality despite the evidence being clear and obvious that substantive equality does apply [see also 9(b) and 15(c)].

In August 2020, the Caring Society was contacted by a family whose child had been in a serious automobile collision in which the child sustained a complete spinal cord injury resulting in tetraplegia. The child's circle of care evaluated the family's home to determine what home modifications were required for the child to be able to safely, hygienically and comfortably. The request was placed to the Ontario region for "bare minimum" home modifications that would allow the child to live at home. The request was denied in April 2020 because the "request does not have sufficient information to determine that this product/service/support should be provided to ensure substantive equality" and "the supporting documentation provided with the request does not sufficiently link the requested product/service/support to the identified needs of the child." Instead, ISC funded the child to live in a hotel upon discharge from the hospital. It is unfathomable that ISC was not able to connect the needs of a child with a spinal cord injury to the need for home modifications. It is even more disconcerting that the solution was to fund the child to stay in a hotel in the midst the COVID-19 pandemic when those with spinal cord injuries are predisposed to respiratory issues. The Caring Society continues to work with this young person and their family with ongoing challenges with ISC [see also 2(e), 4(d), 6(b), 7(d) and 24(b)].

- c. The Caring Society continues to see a pattern of Focal Points asking parents for notes from professionals (e.g., family doctor, counsellor, etc.) to show that substantive equality applies. At the same time, Canada seems to disregard or not accept as legitimate, extensive explanations directly from parents and those same professionals on how substantive equality applies.

In August 2020, the Caring Society was contacted by a social worker in a Neo-natal Intensive Care Unit in BC. She was working with a single mother who had given birth to a baby who experienced significant brain injury during delivery and would require full care for the rest of life. The mother wanted to bring her baby home and the social worker was unclear how long the baby would survive. The request included respite costs for the grandmother to stay with her to assist as the mother also has toddler twins. The request also included a bus pass and rental costs so the mother could move the family to a larger space that was mould-free (their current apartment was so bad it was set for demolition). The request was denied as the region felt there were no grounds for substantive equality, despite the need being clear and obvious as well as numerous letters of support from treating professionals.

- d. There is evidence that ISC's failure to take steps to determine substantive equality has resulted in delayed determinations. Not assisting requesters in showing how substantive equality applies may also be a contributing factor for the requests that have not been determined.
- e. Despite Jordan's Principle being a substantive equality rule, data indicates that the majority of requests are for services and supports within the normative standard. In August 2020, ISC provided data that, among other things, indicated that in Fiscal Year 2019-2020, 67 percent of individual requests and 87 percent of group requests were within normative standard. In keeping with the best interests of children, ISC ought to be working proactively to address those requested items that are within normative standard so that families do not have to place a Jordan's Principle request for supports that all other children receive.



Possible Remedies:

- f. Given ISC's colonial practices and policies that have harmed and continue to cause harm to First Nations communities, Focal Points should begin with the assumption that substantive equality will apply in all cases. This means that the burden is on ISC to demonstrate why substantive equality does not apply.
- g. ISC needs to continue to ensure all staff working on the implementation of Jordan's Principle, including policy, finance and the staff at the national office, have a clear understanding of substantive equality through regular training and ongoing follow-up. This is especially important given the turnover rates on Regional Focal Point teams. ISC needs to provide guidance on when it is unnecessary to collect information on substantive equality, when to apply the substantive equality analysis, and to ensure that these policies are consistent across all provinces and territories.
- h. In cases where the request is denied on other grounds (i.e. not medically necessary), the Focal Point can then undertake a substantive equality analysis to determine whether the service should be provided on this basis – keeping in mind that the burden rests on ISC.
- i. It should also be clear that the burden to prove “substantive equality does not apply” rests with ISC. If, after a thorough analysis of the information provided, the Focal Point determines that substantive equality does not apply, it is the responsibility of ISC to demonstrate, clearly, the reasoning behind the decision.
- j. ISC needs to analyze information including family history, geographic location, etc. for substantive equality issues. Families may not flag or frame this information in terms of substantive equality and ISC needs to be alert to their own responsibility to interpret the material through a substantive equality lens. Further, if a request is denied, it is insufficient to rely on boiler plate language and any denial letters must have clear information and reasoning as to why the request is being denied so that a requester has sufficient information to appeal.

Progress to date:

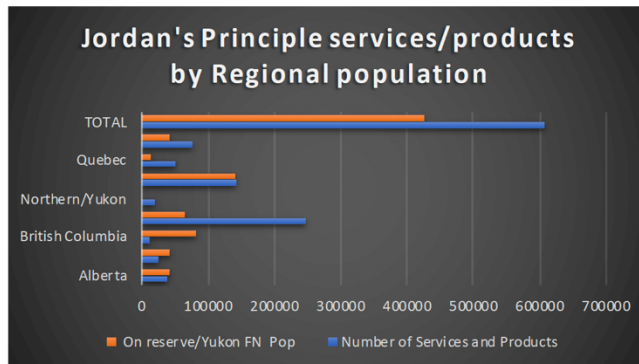
ISC created a document outlining substantive equality, including questions to assist Focal Points in applying a substantive equality lens. All Focal Points have this document which is part of the Standard Operating Procedures (“SOP’s”) and have attended training on the document in November 2018, June 2019 and November 2019. At the AFN’s March 2021 Jordan’s Principle Virtual Gathering, there was a session on Substantive Equality. We are unclear if a representative from each ISC region was required to attend that session and how the information was passed along to all ISC staff working on Jordan’s Principle requests.

Although there are clearer guidelines regarding substantive equality and its application, the Caring Society remains unclear as to whether or not Focal Points are actually applying this lens to requests, and/or have procedures in place to ensure all staff working on Jordan’s Principle, including new staff and those in finance and policy, are trained on substantive equality. Following a request through the CHRT for ISC’s numbers of approved requests, the Caring Society created a chart (see Table 1 below) with per capita calculations for approved Jordan’s Principle services/products by region. The numbers appear to be low for many regions. Ontario, for example, which is demographically similar to Manitoba, has 1 service/product per person versus Manitoba at 4. The Caring Society believes that the low per capita rates in some regions could be partly due to ISC’s misapplication of substantive equality. Canada has not shown reasonable evidence that the regions with low capita rates have fewer children in need. In response to the Caring Society’s table below, ISC did provide a presentation on the per capita rates at the September 2020 JPOC meeting.



Jordan's Principle services/ products per capita by region (May 31, 2020)

Region	Number of Services and Products	On reserve/Yukon FN Pop	Per Capita services/products
Alberta	37845	41804	0.9
Atlantic	24471	41837	0.58
British Columbia	11023	81326	0.135
Manitoba	246344	64510	3.88
Northern/Yukon	19276		
Ontario	142367	140608	1.01
Quebec	50208	13464	3.72
Saskatchewan	75557	41684	1.8
TOTAL	607091	425,233	1.42



(Table 1: Jordan's Principle Service/Products per capita by Region)

2. Best Interests

- a. We remain concerned that the best interests of children are not always being considered when Focal Points gather information from families and Service Coordinators on substantive equality and in making their decisions.
- b. As outlined in the SOP's, ISC has made a commitment to upholding the Touchstones of Hope principles including self-determination. Self-determination uplifts First Nations communities and families as the decision makers in deciding what is best for their children and families. Despite their stated commitment to Touchstones, ISC continues to question the capacity of First Nations families to determine their own best interests.



In May-June 2020, the Caring Society brought to ISC's attention difficulties a service provider was experiencing in BC. Staff from the Caring Society participated in a call with ISC Headquarters and the BC Region on June 3, 2020, and had further discussions with ISC Headquarters on September 25, 2020. ISC BC Region maintains that the service provider is not acting in the best interests of children. The service provider provided ISC documentation from two communities, the community health nurse, medical doctors and other health/education professionals indicating the service provider acts in an ethical manner that upholds the best interests of children. While the BC region has stated that the service provider is benefitting monetarily by recommending and providing the service and is therefore in a "conflict of interest", there has been no clear definition set forward on the parameters of "conflict of interest" in the CHRT rulings nor the SOP's. One of the community letters of support echoes what other communities have said and what the Caring Society has been flagging for ISC, that many communities are "located in a rural area with chronic shortages of service providers, mixed with poverty, and transportation challenges". This results in a situation where often the only professionals in a community to recommend the service are also the only ones available to provide the service. Professional colleges prohibit professionals from providing a service that a client does not require. On the balance, ISC must operate from the standpoint that service providers, like families and communities, operate in the best interests of the child. While professional colleges do have regulations prohibiting professionals from being in a conflict of interest, ISC must consider the reality of First Nations communities and the ways that existing institutions (i.e. community health centers) work to safeguard the best interests of the child [see also 2(j) and 8(c)].

In this case, the service provider contacted their professional college to ensure their compliance with professional regulations. The service provider indicated to the Caring Society that their professional college assured them that they are acting in accordance with their professional regulations.

- c. Further to the example in 2(b), the letters of support for the service provider indicated that the service provider had built relationships with the children, families and communities they have been serving since 2016, and are now considered a culturally safe service provider. One of the cornerstones of the Touchstones of Hope movement is building safe spaces to allow relationship building to occur. It can be challenging for communities to feel safe amidst mainstream service providers and this needs to be considered by ISC as an issue of substantive equality, especially given the lack of service providers in remote First Nations communities to begin with.
- d. Another example of how the the Touchstones of Hope apply to Jordan's Principle is in regards to a holistic approach. Applying a holistic approach means considering the best interests of the child in relation to the wellbeing of the entire family when reviewing Jordan's Principle cases. This is especially the case if there are multiple children in the family, the child has chronic needs (i.e. a diagnosis that is unlikely to change) and/or the child has complex needs (will reasonably require multiple supports, products or services).

As stated in 1(c), ISC denied a request for home modifications for a child with complex needs that would allow her to reside at home with her family. It is not clear how, if at all, ISC interpreted what was in the child's best interest, as the child was left to live in a hotel upon hospital discharge. Not only did this pose an increased risk of the child contracting COVID-19, it also meant shuttling back and forth from the hotel to the family home so that the child could maintain family life.



In October 2020, the family placed a request for an interim housing solution for the child and the siblings while the home was undergoing modifications which would displace the family. This interim housing solution was proposed as means of allowing the child, who was still residing at the hotel, to reside safely with family while work on the permanent residence was underway. The Ontario region engaged in administrative procedures by having at least two meetings to discuss the request rather than working proactively with the family and circle of care. The request from the family was for supports to winterize a trailer they already owned. It was suggested by ISC that tarps and straw would be sufficient in doing this. It was only when the Caring Society and the child's circle of care indicated to HQ that this was not in keeping with the best interests of all the children in the family did ON region take proactive steps to work with the family to support winterizing solutions that were both safe and hygienic.

ISC has consistently failed to consider the chronic and complex needs of this child. In November 2020, a further request for home modifications was submitted that would allow the child to visit and potentially stay at home sooner while the family waited for the entirety of the home modifications to be completed. The contractor indicated that this would allow the child to visit home at least 5 months sooner than if this particular home modification was not done. The family and circle of care had made several attempts to find an interim housing solution (i.e. accessible trailer) that would allow the child to live close to home in a manner that was consistent with COVID-19 public health protocols (i.e. limit contact to within the household). The request was denied as the "child is being provided with safe, temporary accessible lodging at hotel and home is being renovated in order to support her long-term accessibility needs." The decision demonstrates failure consider the best interests of the child in a meaningful sense. Health professionals involved in the child's circle of care indicated that COVID-19 reasonably poses harm to those with spinal cord injuries given their predisposition to respiratory issues and indicated that residing in a hotel increases risk of the child contacting COVID-19. Furthermore, the child, and the child's circle of care and family consistently indicated that the child feels unsafe and fearful for their wellbeing residing in a hotel. The child's circle of care noted a deterioration in the child's mental wellbeing which is associated with the child's isolation at the hotel.

When the Caring Society raised concerns with how ISC arrived at the conclusion of denial, ISC required a meeting with the child's circle of care to further understand the child's needs, despite the fact that the family and circle of care already furnished ISC with ample documentation and recommendations. At this meeting, ISC suggested that the child could forgo the hotel room in favour of residing in the one accessible room at the home in the midst of home modifications. When the child's circle of care indicated that the child would not have access to hygiene supports and would not have space to conduct the therapies at home, ISC suggested the child could make use of a local YMCA for hygiene purposes. Again, it is not clear how ISC considered the best interests of the child when engaging in administrative delays and making such suggestions [see also 1(c), 4(a), 6(a), 7(b) and 24(b)].

- e. Further, the Caring Society has concerns about ISC's practice of requiring families to renew or reapply for already approved services. The Caring Society has not been made aware of any maximum approval periods (including in the SOP's), however we have seen many instances where requesters are being asked to re-submit documentation for the same service even if the professional has recommended the service for longer or the professional does not recommend an end date. If a service or support is recommended by a professional for a year, for example, and ISC only approves 6 months of the request, the onus is on ISC to ensure that services are not delayed to the child for administrative reasons. It is taxing for families to have to provide all of the information again, especially if no information has changed and the child's needs have not changed.



This practice is particularly taxing on families of children with disabilities and special needs, including special health needs, who typically require multiple services over a long period of time. The requirement by ISC to “reapply” on a regular basis is inconsistent with the lived realities of children with disabilities and special needs and places an additional burden on families who are often stretched with caregiving responsibilities. ISC needs to consider how this practice may discriminate against children who do not have discrete or short-term needs.

In March 2021, the Caring Society was notified by a family in BC who had to “reapply” for Jordan’s Principle supports for their child’s speech language pathology. The family worked with a service coordinator to reapply beginning in December 2020 as it was indicated that “funding” would be finished by mid-February 2021. It was also indicated that a progress report and a quote for these supports would be required when making the request. In addition to the additional burdensome administrative procedures, this process to reapply was exasperated by the First Nations Health Authority (FNHA) no longer be providing the Jordan’s Principle service navigation function as of March 2021.

- f. The Caring Society position is that Canada’s decision to apply for judicial review of the CHRT decision on eligibility for Jordan’s Principle overrides the best interests of children, especially in life-altering cases (see also section 10).

Possible Remedies:

- g. ISC needs to develop and implement training for Focal Points on the best interests of the child (from an Indigenous perspective) and establish mechanisms to ensure that all decisions and processes used for Jordan’s Principle cases meet the best interests test.
- h. ISC needs to develop and train Focal Points on procedures for urgent/life-altering cases and clarify how these cases are identified as urgent and/or time sensitive. For example, even if the family or service coordinator does not specify the request as urgent, Focal Points must take the initiative to consider urgency and mark the request accordingly. Forms should be altered to require Focal Points (or Call Centre staff) to clearly mark the request as urgent or not urgent.
- i. All staff working on Jordan’s Principle must take Touchstones of Hope training.
- j. ISC must develop procedures that uphold the best interests of children and the realities of First Nations communities when determining if a service provider is in a “conflict of interest.” At the February 2021 JPOC meeting, ISC confirmed that when there is a direct link between the professional recommending the service and the professional conducting the service, the department will typically require a third-party support letter. As discussed above, this practice is inconsistent with the realities of many First Nations families requires immediate attention.
- k. ISC must not apply maximum approval periods to requested supports, particularly when the recommending professional does not indicate that there is an end date. Further, ISC must work proactively with families with children who do not have discrete, short term needs and who will require ongoing support to ensure that administrative procedures do not delay or disrupt receipt of service.

Progress to date:

The Caring Society provided training on the Touchstones of Hope in 2017 and in 2020, Dr. Blackstock proposed additional topics for training.



While ISC has established mechanisms for tracking urgent cases in its database, it is clear that gaps remain as the Caring Society continues to escalate urgent cases that have not been properly identified.

3. CHRT Time Frames

- a. The Caring Society remains concerned that CHRT time frames for determining requests are not being followed by many ISC regions. While ISC provides updated data at the JPOC meetings, it is clear that the data does not provide the full picture. For example, as ISC states in its data tables, the numbers do not reflect cases that are outstanding.
- b. The Caring Society also questions ISC's interpretation of the CHRT orders. 2017 CHRT 35 states: "The initial evaluation and a determination of requests by individuals shall be made within 48 hours of the **initial contact** for a service request [...] The initial evaluation and determination of requests for groups shall be made within one week of the **initial contact** for a service request" (2.A.ii.). The ruling goes on to say:

"For non-urgent cases in which this information cannot be obtained within the 48-hour time frame, representatives from the Government of Canada will work with the requester in order to obtain the needed information so that the determination can be made as close to the 48-hour time frame as possible. In any event, once representatives from the Government of Canada have obtained the necessary information, a determination will be made within 12 hours for urgent cases, and 48 hours for non-urgent cases"

The latter paragraph seems to have become the norm at ISC versus staying true to the CHRT's ruling. Feedback received from families and Service Coordinators indicates that there is often a gap between when the request is submitted and Focal Points follow-up to request additional information, and that ISC does not consider the clock to start until Focal Points are satisfied with in the information provided. This practice does not reflect with the spirit of the CHRT orders, in which 48-hour (or 12-hour for urgent cases) starts when the request is submitted [see also section 4.]

- c. In January and February 2021, the Caring Society carried out research conversations with Service Coordinators in the Atlantic for a project on Jordan's Principle and children with disabilities and special needs. Concerns about the turnaround time for requests were raised in every instance. Communities also reported being told that "ISC is only dealing with COVID related requests right now." Service Coordinators said that it was taking weeks to hear back about requests not related to COVID. Service Coordinators expressed concerns about having no recourse or options when timelines were not met, even in cases where families were waiting for months with no decision.

Service Coordinators provided information about a few cases still awaiting a decision. When the Caring Society followed up about these requests, HQ indicated that although the requests were outstanding, the timeline was not as long as indicated by Service Coordinators. One explanation for this could be that Service Coordinators interpret the timeframe as beginning when they submit a request and that ISC starts the clock when Focal Points determine they have all the necessary information. Unfortunately, the Caring Society has heard that there is often lag time between when the request is submitted and when Focal Points request further information. The burden of multiple information requests by ISC is felt by children who are left waiting for a needed service [see also section 4].



- d. In March 2021, a family contacted the Caring Society regarding the delays that were experiencing with their Jordan's Principle request. The request included medically necessary classroom fans for their child who experiences serious anaphylactic allergies. The request was placed in November 2020. Nothing was heard back from ISC other than a response indicating that there were delays due to COVID-19. It was not until March 2021 that the request was heard at HQ amounting to a delay of four months. This meant that the child went through nearly half the school year without the fans, which placed the child in great danger. The Caring Society does not know if ISC marked the request as urgent, even though the family and child's circle of care were clear of the reasonable harm that could come to the child if the fans were not provided [see also 7(a)].
- e. Concerns about ISC not respecting CHRT timelines were also raised by community members during presentations given by the Caring Society in February 2021 and March 2021.

Possible Remedies:

- f. The Caring Society has previously recommended a triaged approach in all regions to ensure that urgent individual and group requests are prioritized and that the remaining requests are processed in order to be compliant with the CHRT timeframes.
- g. In February 2021, Ontario region indicated that the team is working weekends to reduce the accumulation of requests. The Ontario region expressed that while this is not an ideal situation, it does demonstrate the dedication and commitment of the region. While the Caring Society does not doubt the dedication of individual Focal Points, it is not sufficient to overcome the serious, systemic issues that families face when accessing Jordan's Principle. The Caring Society provided recommendations to remedy the significant and longstanding delays in the Ontario region. Most of the recommendations relate to administrative practices that are in many cases not necessary and not in keeping with the CHRT orders, such as: multiple information requests and follow-up questions from Focal Points, over-riding professional treatment plans and requiring multiple letters of support/documentation, and requiring families to resubmit requests for the same supports when nothing in the child's context has changed. As of April 2021, the Ontario region has yet to respond to the recommendations [see also sections 4, 5 and 8].

Progress to date:

While some regions continue to have high success rates in staying within the CHRT timeframes, other regions continue to have challenges in meeting the needs of children and families in a timely way.

4. Information Requests

- a. The Caring Society continues to see issues with Focal Points not carefully reading submissions, invoices or not checking their files for questions they have relating to requests, which delays services to children and reimbursements.



In the case of the child with complex needs including home modifications, the family submitted a request for additional home modifications in February 2021. The request was for the removal of a cistern that was needed in order for previously approved home modifications to proceed. As part of these previous home modification requests, the child's circle of care included contractor drawings which showed that the only option was to remove the cistern. ISC Focal Points failed to include these drawings in the package that was sent to HQ for review and as a result the request was denied. It was only when the child's circle of care asked if the drawings were part of the request package that the Focal Points corrected the error. The request was re-evaluated and approved, but there were significant delays and it is concerning that ISC failed to carefully review the wealth of documentation and supporting letters that had been already furnished to the department [see also 1(c), 2(d), 6(a), 7(b) and 24(b)].

- b. Given the turnover rates of the Focal Point teams and the expansion of Focal Point teams, the Caring Society stresses the importance of continuation of care and ensuring information is passed on in a timely manner.
- c. We still see that some Focal Points are not asking for all relevant information at one time. The lack of complete information requests and delays between information requests mean that the child's needs are not being responded to within the CHRT timeframes.
- d. There have been concerns from requesters and service coordinators that Focal Points are asking for invasive information from families, including in-depth information regarding their personal and/or financial situations as well as a child's diagnoses which is not always needed [see also 8(c)]. The Caring Society's review of the Jordan's Principle request forms flagged many questions/requests for information that seem to go beyond the scope of the CHRT, beyond what seems reasonable to be asking from families and children and brings privacy concerns to the forefront [see also section 6].
- e. The Caring Society has continued to highlight the importance of ensuring forms are clear, simple, and accessible to a broad range of literacy levels.
- f. We reiterate the importance of ensuring that new Focal Points have training on how to use the GC Case Management system¹ and other internal processes as soon as they start and that existing staff have ongoing support in using the system.

In October 2021, the Caring Society was contacted by a family who had placed an orthodontic request for their child about a year earlier and had not heard back with a determination despite following up with the Call Centre multiple times. It later came to light that a determination had been reached in March 2021, but either due to a GC Case Management system glitch or some other oversight the determination was never communicated to the family. While this determination was reached far outside CHRT-compliant timeframes [see also section 3], it was exasperated by this "systems glitch."

Possible Remedies:

- g. Focal Points need to carefully read all material submitted to them and only ask for additional information if it is required to determine the case.
- h. Requests for information from Focal Points should be made at one time and not staggered so as to avoid time delays. Focal Points must review all the information on file before requesting any additional information to ensure all questions are sent at once.

¹ Also referred to as Synergy in Action (SIA) in previous version of this document.



- i. In those cases where there have been multiple approved requests, Focal Points need to carefully read previously furnished documentation and collate information without continuing to ask families to re-supply information.
- j. ISC needs to take measures to ensure its information gathering is absolutely necessary to make a determination of the “requesters’ needs” and does not amount to an administrative procedure that delays services to children. More specifically, ISC must comply with 2017 CHRT 35 (amended orders):
 - i. [3]b.ii. “Where clinical case conferencing is reasonably necessary to understand a First Nation’s child’s clinical needs, and where professionals with relevant expertise are already involved in the First Nations child’s case, those are the professionals that must be consulted.” (p. 2)
 - ii. [135]B.iii. “... 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 requester’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 (p. 5-6)
 - iii. 2.A.iii. “Canada shall cease imposing service delays due to administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided.” (p.8)
- k. Focal Points should be required to fill out paperwork for individuals submitting requests as well as provide support to groups when filling out paperwork unless otherwise specified by the individual or group, particularly given the uneven literacy levels, and access to computers as well as reliable internet among applicants.
- l. It must be clearly articulated to Focal Points that they cannot unilaterally decide what information is relevant and/or valid. As an example, it came to the Caring Society’s attention in May 2020 that ISC changed its referral policy for physiotherapy and occupational therapy. Previously, referrals were accepted for these services from special education teachers (learner support teachers) for children with high needs. ISC changed the policy requiring referral for therapy from a doctor or nurse practitioner. This has led to delays in medical treatment as many of the children live in remote communities with limited access to doctors or nurse practitioners. Families then have to find transportation to see a family doctor. In a lot of cases, families have to see a doctor who is outside the child’s circle of care as many do not have access to a consistent family doctor. Family doctors often see the child for an acute condition (because many children have complex needs) and sometimes assess the most urgent and pressing issue. While doctors assess children’s development and may refer the child for therapy, they do not have as frequent contact as special education teachers. Special education teachers have frequent and consistent contact with the child and are also trained to assess children’s development. The past protocol of allowing special education teachers to make referrals ensured children were assessed quickly, allowing immediate medical treatment. The Caring Society continues to hear from schools, families and professionals in BC, AB and SK indicating that they are required to submit diagnoses and/or referrals from “third-party” professionals.



- m. All ISC forms, operating manuals and communications must be clear and written in plain language. Not only will this be accessible by everyone accessing Jordan's Principle, but it will support Focal Points in understanding how to move away from using government language. Plain language documents will support Focal Points in using language that is accessible to everyone. In addition, provisions must be made in order to support First Nations community members whose first language is not English.
- n. Focal Points need to understand that some families making requests will be unfamiliar with administrative and/or bureaucratic processes and paperwork and, as such, will require assistance. Due to ISC's colonial legacy, some families do not trust government processes. Direct work with families requires a different approach than Focal Points may be used to if they are most accustomed to lateral exchange with government colleagues/inter-office communication.

Progress to date:

We appreciate the efforts that ISC has been making to implement the GC Case Management system which aims to collect and store information data relating to Jordan's Principle requests (see also section 6). We encourage ISC to ensure that all ISC employees are properly and adequately trained on how to use GC Case in an efficient and timely way to ensure there are no delays in services for children and families due to administrative delays.

5. Referrals to Headquarters

- a. As continuously stated at JPOC, and as acknowledged by ISC, referrals to national office must be forwarded by regions in a timely way so as to ensure CHRT compliant resolution of cases once requests have been sent for review.
- b. It is unclear whether Focal Points forward the entire package of information to Headquarters on referral, or only the information they feel is relevant to the case. In curating the information sent to Headquarters, focal points may exclude relevant details and/or substantive equality information.
- c. The Caring Society is of the understanding that requests for orthodontic services are automatically sent to the national office. Unfortunately, the ISC policy on "non-medical" orthodontic requests is unclear. The Caring Society is aware of numerous cases in which national office has denied orthodontic requests even when supported by a letter from a professional and clear evidence of substantive equality.

We have heard reports of Focal Points using the possibility of "referral to headquarters" as means of encouraging Service Coordinators/families to accept a lesser level of service or more "cost effective" product. For example, we were told about a case in which a Service Coordinator requested renewal of a special education teacher for a child (service that was already approved). The Focal Point said they could not approve the renewal but could approve an education assistant (a position with a lower salary). If the Service Coordinator wanted to push for the special education teacher, it would be sent to the national office – implying that if the request was sent to the national office, it would probably be denied, so it would be better to accept the education assistant. Other responses Service Coordinators have heard from national include "I can't give you the service you requested for this family, but I can give you this one instead" and "This service is very expensive, can you find something cheaper?"

Costing exercises such as these demonstrate an ongoing colonial tactic where First Nations families and communities are told that it is better to get something than nothing, and points to the continuation of the "old mindset" at ISC, in that the department continues to bargain down needed services and supports.



- d. Related to this, it would appear that ISC is creating arbitrarily standards/caps for requests. For example, Service Coordinators in the Atlantic have been told that National has determined \$600 to be the standard for iPads or laptops. If the requested laptop needed costs \$700, the request will be denied. No information or rationale has been given for the \$600 cap. The standards are unclear and we have been told that ISC will not provide a list or concrete response when asked about where these standards are coming from or how they are being determined.

Possible Remedies:

- e. Although there are now clearer criteria in place for the types of referrals to national office, the CHRT timelines must be followed.
- f. ISC must immediately communicate to all Focal Points and other staff working on Jordan's Principle that imposing a cap on products or services is a violation of the CHRT orders. Determinations must be made on the basis of substantive equality, the best interests of the child, must be needs-based, and account for distinct community circumstances.
- g. As part of the referral process, regions should take proactive steps to determine substantive equality, best interests of the child and cultural appropriateness as per the CHRT orders. The Caring Society continues to see Focal Points failing to understand substantive equality, recommending cases for denial, and escalating to national office. The responsibility to show substantive equality lies with ISC. Focal Points should start with the assumption that substantive equality applies and review the information provided through this lens. If, after a thorough and proper analysis, the Focal Point determines substantive equality does not apply, then they must show why and the reason must be stated in the denial letter so that the requester has adequate information for appeal [see also 1(f) and 2(e)].
- h. If a request is escalated to the national office, Focal Points must provide the full package of information provided by the requester, not only the information that supports the Focal Points recommendation [see also 4(a)].
- i. We encourage continued systematic tracking of reasons why decisions cannot be made at the region including regular identification and solutions to any systemic barriers to CHRT compliance.

Progress to date:

The Caring Society has received differing reports on ISC's short and long-term plans to improve compliance rates for cases referred to national office. At the February 2020 JPOC meeting, it was said that increased ISC staffing is required to ensure that ISC can comply with CHRT timeframes. At the March 12, 2020 meeting however, it was indicated that it is more expedient in terms of self-determination for First Nations to retain control of Jordan's Principle and that it is for this reason that ISC is not looking at increased staffing at a long-term solution. In order to ensure the best interest of First Nations children in receiving services through Jordan's Principle, ISC must ensure that there is adequate staffing in regions and the national office until First Nations communities are in a position (and want to) take over implementation of Jordan's Principle children. It is important that this staffing is done in tandem with other remedies found within this document [see also sections 3, 4 and 8].



The Caring Society continues to stress the importance of ensuring that the priority is services for First Nations children and not what is in the best interest of the government (i.e. the government prefers not to hire more staff, even while acknowledging that more staff are required). As seen in section 2, all staff working on Jordan's Principle, from finance to regional executives must be trained on the CHRT orders including the CHRT timelines and best interests of the child. Further, the Caring Society continues to raise that there must be a long-term solution to bring ISC into compliance with the CHRT timeframes.

6. Privacy Concerns and Data Collection

- a. The Caring Society continues to iterate concerns about the privacy of information provided by families, specifically: 1) what specific policies and procedures are in place to ensure compliance with federal and provincial privacy laws, 2) whether the information being collected is actually needed to determine the request.
- b. In some provinces/territories, it is against the law for non-authorized persons to have access to private information. This is also a matter of dignity and respect. ISC has previously shared that it is following the *Privacy Act* and other internal guidelines, but processes for protecting information appear to vary by region and the actual implementation of the *Act* and guidelines remains unclear [see also 4(d)].
- c. The Caring Society has concerns about the information ISC gathers through its request forms. It is important to distinguish between the information absolutely needed to determine requests through Jordan's Principle versus information collected for data. When ISC sent its current request forms for review in April 2020, the Caring Society indicated concerns that information ISC was collecting was outside of what is needed to make a determination. The Caring Society has not received feedback on the privacy concerns.

In the request for the child with complex needs outlined in 1(c), the request package included extensive medical notes from a nurse practitioner and physician, discharge papers, an occupational therapist assessment, hospital reports, and letters from an occupational therapist, nurse practitioner and physician outlining the required home modifications to ensure the child's safety and hygiene and recommending a home assessment. In the Caring Society's view, the wealth of documents that ISC required shows how invasive the process can be. Furthermore, it is concerning that this detailed and comprehensive package was considered inadequate in supporting an approval on the basis of it being medically necessary, to ensure substantive equality and to safeguard the best interests of the child [see also 1(c), 2(d), 4(a), 7(d) and 24(b)].

- d. In addition, while the GC Case Management system is a positive step toward ensuring continuity of services for children, the Caring Society has ongoing concerns around the data collected and how it is stored and used. There are historical and ongoing issues with data collection and First Nations communities. How does ISC plan to respect OCAP (ownership, control, access, and possession) principles with this data collection?

Possible Remedies:

- e. Whereas ISC relies on internal privacy controls, ISC must consult the Privacy Commissioner for feedback on its procedure for data collection and the privacy rights of children and families rather than solely relying on its internal process.



- f. ISC must publicly share its exact procedures for protecting the privacy rights of children and families in Jordan's Principle cases including ensuring that identifying information is not shared with ISC personnel who are not directly charged with the determination of Jordan's Principle cases. These same procedures must continue to be shared with CCCW and JPOC. Stating that ISC is bound by the *Privacy Act* and other internal guidelines is not sufficient; ISC must detail the processes and procedures that are in place to implement these obligations.
- g. While all Government departments, including ISC, are bound by many privacy laws, the Caring Society is of the understanding that it is the responsibility of the regions to ensure proper handover of personal information. All Focal Points and other ISC staff charged with receiving and determining Jordan's Principle cases must be trained in the GC Case system adequately and in a timely manner and be held accountable for ensuring privacy rights are respected. All regions need to have mechanisms in place to ensure that privacy standards are maintained.
- h. ISC Focal Points must be trained on CHRT orders and in determining what documentation is reasonably necessary to determine a case.

Progress to date:

The Caring Society is still unclear as to whether there are national standardized training programs and mechanisms in place to ensure privacy is maintained for families and groups accessing services under Jordan's Principle.

Given concerns raised previously by the Caring Society around the need for plain language documents, a review of ISC's privacy statement may be needed to ensure the wording is clear and accessible.

7. Lack of a Procedure for Identifying and Responding to Urgent Cases

- a. The Caring Society has ongoing concerns around the process for identifying and responding to urgent cases. Specifically, what processes exist at every level ISC to adequately identify urgent cases and is there an effective monitoring system to ensure that cases are classified as urgent or non-urgent properly?

In October 2020, ISC national office sent the Caring Society the call volume as well as breakdown of types of requests (urgent v. non-urgent, general inquiries v. service request, etc.) from the Jordan's Principle 24/7 Call Centre. It was alarming to see that from February 1, 2018 to October 18, 2020, only 44 requests out of 8,251 were classified as urgent. The extremely small proportion of cases classified as urgent suggests that requests are not being identified and triaged properly.

In March 2021 the Caring Society was contacted by a family who was experiencing a 4-month delay in an urgent and time-sensitive request for required supports for a child with anaphylactic allergies. While it was clear and obvious that this request ought to have been classified as urgent given the reasonable harm that could come to the child if supports were not extended, the delay demonstrates that ISC did not make this connection or failed to effectively monitor the request [see also 3(d)].



- b. In addition to concerns about the Call Centre, some Focal Points are not classifying cases based on urgency either. According to the request forms that ISC sent for review in April 2020, there is not a section on the form to identify an urgent case. An updated request form seen by the Caring Society in November 2020 has the urgent classification section buried on third page of the form. While Focal Points still have a responsibility to identify cases as urgent, the fact that Focal Points are not classifying and identifying urgent cases in a standard and accessible way points to significant systemic gap in both tracking and meeting the needs of children.

For the home modifications for the child with complex needs [1(f)], ISC failed to treat the request in an urgent manner. It is unclear if the child's circle of care flagged the case as urgent, but Focal Points ought to have reasonably concluded that the child was facing irrevocable harm upon discharge from the health facility given her home was inaccessible and unsuitable for her needs. In addition, Focal Points ought to have come to the reasonable conclusion that, given the COVID-19 pandemic, the child needed be at home for safety as per public health protocols and the recommendations of her circle of care. Per 2017 CHRT 35, "in urgent cases where irremediable harm is reasonably foreseeable, immediate action should be taken to put crisis intervention supports in place until an extended response can be developed and implemented" ([3]c.ii.). Focal Points ought to have worked with the child's circle of care to ensure the child was in a safe home until the required home modifications were completed. Instead, the child was placed in a hotel indefinitely (to the best of our knowledge), in the midst of the COVID-19 pandemic and the request was denied [see also, 1(c), 2(d), 4(a), 6(a) and 24(b)].

- c. The Caring Society continues to reiterate its concerns about urgent (and all) cases involving post-majority youth. When urgent requests are denied due to age, what mechanisms exist to ensure young people are connected with other ISC services in a way that responds to the nature of the situation, i.e., the possibility of irrevocable harm? This is especially concerning in cases involving mental health needs and suicidal ideation.

Possible Remedies:

- d. ISC must continue to ensure that both Call Centre staff and Focal Points screen all cases to determine and record whether they meet the criteria for urgent cases (i.e.: any reasonable belief that irrevocable harm may come to a child, time sensitive in nature). Forms should be updated to include a mandatory and obvious "yes" or "no" box in regards to whether the case is urgent. ISC had been engaged with JPOC and JPAT to update the request forms to include a section to indicate the urgency of the request, however has yet to provide an updated request form that includes the section in a manner that is clear and obvious.
- e. Where there is doubt, Focal Points and 24-hour line staffers should default to the urgent classification.
- f. Although ISC has developed a mechanism for tracking urgent cases, it is clear that there remains inconsistencies in how urgent cases are identified and determined. Focal Points must be trained to properly and proactively identify urgent cases.
- g. Until an independent body is put in place for appeals, all appeals sent to the national office should be reviewed and 'triaged' to assess for urgency and time-sensitivity.
- h. Urgent cases involving post-majority youth should be covered by Jordan's Principle until a clear mechanism for collaborating with other government departments in a timely way is established.
- i. While ISC has agreed to extend post-majority supports to youth aging out of care during the COVID-19 pandemic, to our knowledge this support is not being extended to post-majority youth within Jordan's Principle. It is unclear why ISC believes that this provision is in the best interests of youth in CFS care, but not those receiving help through Jordan's Principle.



As one example, the Caring Society was made aware of a young person requiring 24/7 out-of-home care who was set to age out last year (2020). Service Coordinators asked ISC to extend the CFS policy to Jordan's Principle, so that the young person would continue to receive funding. ISC refused, offered no transition plan, and was fully prepared to see the youth evicted at the height of the pandemic. Thankfully the province stepped in and agreed to fund the youth at the same level [see also section 19 on the need for post-majority supports].

At the time of writing, the Caring Society was awaiting ISC's response to another young person with special needs set to age out of Jordan's Principle during the pandemic and requiring further support.

Progress to date:

ISC provides members of JPOC and the CCCW with regular updates on the numbers of urgent cases by province and territory they receive as well as the timeline for processing requests for those cases. ISC has also changed policy so that requests are time stamped in order to ensure requests are processed within the CHRT time frames.

Once a case is sent to the national office for review and determination, ISC has a triage process in place for urgent cases however it is clear that ISC HQ is struggling with the amount of cases coming in as seen by the poor compliance rates shared at JPOC. ISC has acknowledged that the current process is not working and that there is room for improvement. The Caring Society believes that ISC needs to take immediate steps (including fast tracking hiring processes) to ensure there is adequate staffing for cases sent to the national office.

8. Questioning and Over-riding Professional Treatment Plans

- a. We continue to see situations where the recommendations of licensed professionals are questioned or over-ruled by ISC even on appeal, even if the service or support is deemed necessary as part of a child's safety or treatment plan. The Caring Society has serious concerns about ISC staff positioning themselves as having the expertise to override or question professional recommendations.
- b. The practice of over-riding professional recommendations appears to be particularly acute with requests for orthodontic services for substantive equality reasons. In the course of conversations with Service Coordinators in the Atlantic for a project on Jordan's Principle and children with disabilities and special needs, the Caring Society learned of a young person whose family had requested dental work to help combat her depression and severe social anxiety (fueled in part by negative feelings about her appearance). A letter from a registered psychologist was attached to support the request.

The request was denied. When the Service Coordinator assisting the family contacted ISC for information about what could be done to strengthen the request for appeal, ISC gave the example of a child in Ontario who attempted to die by suicide because of their teeth; in that instance, the rationale of mental health was accepted by ISC.

The Service Coordinator explained to the Caring Society that were other children who met with the same psychotherapist about their feelings about their appearance/teeth. However, once the first case was denied (based on the argument of poor self-esteem), families chose not to move forward with applications as they believed they would also be denied, since their children were suffering from similar self-esteem issues.



Despite the above, Atlantic Focal Points continue to send the following advice to Service Coordinators regarding dental requests: "If there are any other supporting documents you can provide, it would greatly strengthen this request. Particularly, if the child has been experiencing any mental health issues that may be affecting her overall well-being that might relate to her need for orthodontics (bullying, lack of self-confidence, etc.). If there's a professional who can provide some support around that, it will help a lot."

In February 2021, Julien Castonguay, A/Executive Director, Jordan's Principle and Inuit Child First Initiative responded to concerns raised by the Caring Society: "There is a lack of consistency in how this information [about orthodontic requests] is communicated to Requestors, and the inference that substantive equality needs to rise to the level of the risk of suicidality in order for an approval is inaccurate. Headquarters will be providing Regional staff with language to utilize when speaking about documentation required. This will avoid unfortunate and incorrect statements and assist with national consistency." The Caring Society followed-up to inquire as to what sort of documentation is required to support a substantive equality request for orthodontic care. To date, no response has been received.

- c. As stated in 1(c), there seems to be a theme of Focal Points delaying Jordan's Principle services for reasons of requiring additional or "better" proof of need. The Caring Society believes this amounts to an administrative delay. Where more information is reasonably necessary to understanding a child's clinical needs, ISC can engage in clinical case conferencing with the licensed professionals already involved in the child's circle of care [see 4(h) for amended 2017 CHRT 35 Orders].

On a call with ISC Headquarters and ISC BC region on June 3, 2020, the BC region expressed that they required licensed professionals to include a diagnosis in order for children to receive the requested services. The Caring Society pointed out that if a treating professional recommends a treatment plan, the role of the Focal Point is to approve or deny the service, not to ask for invasive information pertaining to the child's diagnosis. Per section 6, the Caring Society also has privacy concerns regarding this practice.

- d. At the February 2021 JPOC, ISC indicated that it requires a third-party support letter to support a request when the professional who is recommending the service is also providing the service. Many families live in remote or isolated communities which makes it difficult for families to acquire a third-party support letter. While ISC indicated that it does consider remoteness when it considers asking a family for a third-party letter, it is not clear to the Caring Society if this "consideration" means that letters are not required of families living in remote locations, or how this requirement of additional letters is implemented in ways that do not disrupt or delay service provision to children. A substantive equality lens is required needed in considering families' access to professionals. Further, this process does not consider that professional college bylaws prohibit professionals recommending or conducting services for clients that do not need it. It is unclear to the extent to which ISC has received guidance from professional colleges on this process [see also 2(k) and 4(l)].

In January 2021, the Caring Society was contacted by a family who was experiencing difficulties with Jordan's Principle after placing a request for orthodontic supports. The request was placed in December 2020 and the family did not hear back from ISC for nearly a month. When the family did hear back, it was to indicate that ISC required a "third-party letter of support from a professional within the child's circle of care who can speak to the child's unmet need for orthodontic treatments." ISC also requested the family submit a statement explaining any substantive equality considerations, like financial hardship, as orthodontic treatment is above the normative standard of care. Although the family included the orthodontics treatment plan in the request, the department required a third-party letter as it felt that the orthodontist was going to "benefit." It was only when a family support worker submitted a letter indicating the treatment plan was required and that the family experienced financial hardship did ISC approve the request. The family experienced delays in receiving a determination and also had to engage in administrative procedures in order to meet ISC's administrative requirements.



- e. Further, if ISC has evidence that a service provider is not working toward the best interest of a child or, in a worst-case scenario, causing harm to children, ISC has a responsibility to contact the professional/licensure body and/or the relevant authority. Professional/licensure bodies and relevant authorities have the mandate to conduct site visits and to assess whether or not a service provider is doing what it should be doing in providing safe, high-quality services to children.
- f. We have noticed an increasing pattern whereby ISC denies requests, even on appeal, stating that there are no professional assessments or documentation that links the requested service or support to the child's needs. In most of these cases, the parent or requester has, in fact, provided one or multiple professional letters that meet ISC's policies. When requesters ask what is wrong with the documents provided or what would constitute sufficient documents, there is often no response. These requesters want to provide the necessary information, but they are receiving little or no guidance. Failing to answer families' questions so they can respond with the needed information is an administrative delay and violates the Tribunal's orders. As per 5(h), Focal Points must submit the entire package of information to the national office when they recommend a denial for service.

In September 2020, the Caring Society was contacted by a Service Navigator in ON who was working with a family in submitting a requested for urgently needed home repairs. The request included several pieces of documentation linking the requested items to the needs of the children, including from health and mental health professionals in the family's circle of care. The request was denied on the basis that it "does not ensure substantive equality" and "the supporting documentation provided with the request does not sufficiently link the requested product/service/support to the identified needs of the child." The Service Navigator made multiple attempts to connect with ISC to determine what would constitute sufficient documentation. It was only when the Service Navigator contacted the Caring Society with their concerns and the Caring Society connected with ISC did a Focal Point reach out to the Service Navigator.

- g. The Tribunal has ordered ISC to consider whether a request is being made to ensure culturally relevant service provision. The Caring Society values traditional knowledge, especially in assisting young people with things like mental health. Communities are in the best position to determine how and what this looks like, including costs to support traditional ceremonies. If a denial is given by the Department for traditional ceremonies, the Caring Society would like to know how the decision is made for denials.
- h. The Caring Society continues to flag concerns with BC region's policy of wanting children receiving therapy (i.e. physiotherapy, occupational therapy) to be reassessed every 3 – 6 months in order to verify that the children need continued therapy. Most families have difficulty accessing transportation to get to medical appointments and/or have no consistent family doctor. This creates another barrier for the child to receive the care they need [see also 2(e)].

Possible Remedies:

- i. In cases where the family has submitted a letter from a licensed professional, ISC must clearly indicate why it is asking for further documentation and/or why the letter is insufficient. To ensure that the request is not delayed, ISC should continue to review/process the request on the assumption that further documentation is forthcoming; a final decision can be made pending receipt of the requested information. ISC must also demonstrate an understanding that requiring further documentation may not be feasible for families due to remoteness and/or financial considerations. It is well documented that remote communities do not have access to professionals on a regular basis or at all. Further, many provinces/territories have a fee associated with a doctor's note.



- j. Where more information is reasonably necessary to understand a child's clinical needs and such an action is in the best interests of the child, then ISC must undertake a clinical case conferencing process in which professionals who are already involved with the child's circle of care are consulted.
- k. Focal points and other ISC policy/program staff should not have the authority to over-rule professional recommendations. This authority should be limited to a qualified professional(s) credentialed in the same area, who is prepared to provide a second opinion, can identify that such action is in the best interests of the child and only after a clinical case conferencing process has been completed. There must also be assurances that their assessment of the request will not result in delays for services for the child. In addition, the requester must be notified beforehand that a second opinion is being sought and ISC must articulate clearly why a second opinion is being sought.
- l. While the following example dates back to 2019, we believe it clearly illustrates the importance of respecting the recommendations of qualified professionals already involved in the case, as per the CHRTs order. ISC's requirement of further "proof" in this case led to a significant administrative delay. In July 2019, the Caring Society was notified by a navigator that a request placed for a dental procedure was delayed. The request for a complex dental procedure with anesthesia was submitted on July 9 with a treatment plan from the treating dentist recommending the anesthesia as the procedure was complex. The dentist noted that using anaesthesia meant that the child needs to only undergo one procedure, whereas using other sedation would require her to undergo multiple procedures. Furthermore, the family and medical professional indicated the anaesthesia is the best option due to the child's anxiety about the dental procedure. The request was initially denied as there was no letter from a professional explaining the need for anesthesia. It was indicated that there are "risks associated with general anesthesia, especially for children and for this reason, it is important to have information coming from a health professional explaining why it is necessary." It is unclear if the Focal Point had any qualifications to require this information, nor why the treatment plan from the treating dentist was not sufficient. The request was eventually approved on appeal when a letter from an RN explaining how the child was not cooperative with the dental treatment and the child's anxiety "justified" the need for anaesthesia. Consistent with 8(c), this suggests that cases beyond the normative standard are being flagged as needing additional "proof" of need, even when the treatment plan or request is clearly supported by qualified professionals. Furthermore, it is concerning that ISC did not recognize that the family was in the best place to determine the best interests of their child in this case.
- m. In accordance with the CHRT orders, ISC must consider whether the request is being made, in whole or part, to ensure culturally appropriate service provision for the child or children.
- n. If ISC denies a case because of insufficient documentation, they must clearly articulate what would constitute sufficient and reasonable documentation so that parents are in a position to make an informed appeal.
- o. ISC must develop a process outlining when it is necessary to contact a professional's licensure body when there is evidence that that professional is causing harm to children. ISC must also clarify next steps if the licensure body finds ISC's concerns to be unfounded.

Progress to date:

As of the time of this document, the Caring Society continues to see instances where ISC rejects or questions the validity of recommendations or treatment plans outlined by a professional and/or asks for further documentation from other professionals who are outside of the child's circle of care. The Caring Society also continues to see cases being denied for reasons to do with a lack of documentation linking the request support to the child's needs.



ISC and AFN made a commitment at the February 2020 JPOC meeting to continue working on developing a process for clinical case conferencing. The Caring Society maintains that creating the policy on clinical case conferencing needs to be made priority. The Caring Society provided feedback on the latest rendition of a Clinical Case Conferencing Strategy in May 2020 but has yet to receive a response from ISC nor has an update been provided on the strategy.

9. Service “Gap” and “Normative Standard” Rationales for Refusal

- a. In the last iteration of this concerns document, the Caring Society had expressed that we were pleased to see a decrease in the number of denials related to service gaps or the normative standard. While concerns about service gaps as a reason for denial seem to have been largely addressed, we continue to see denials on the basis of “normative standard” or “service not available to all children” in conjunction with failure to properly assess substantive equality (see also section 1). We maintain that it is ISC’s responsibility to take all necessary steps to ensure that substantive equality has been properly assessed for requests (see also sections 1 and 4).

As outlined in 1(b), the Caring Society was notified by a First Nation who placed requests for an in-community land-based education program and an off-reserve after school program. The First Nation is a remote, northern community in British Columbia and does not have a high school. All children in the community must relocate to an urban centre 400km away to complete Grades 10-12. Both requests were denied partly on the basis that “support not available to all children.” It is concerning that the requests were denied partly on this basis considering this support is not ordinarily available to other children because other children in the province have the opportunity to attend high school in their home community [see also 15(c)]. The Caring Society is uncertain how and why substantive equality would not apply to this request.

In March 2021, the Caring Society was notified of a case involving respite services for family of seven children. Three of the children have special needs and mom is a single parent. Funding for respite services through Jordan’s Principle had been cut by almost 50% with no warning and no explanation other than the service was above the normative standard. Documentation provided by the family showed clear evidence of substantive equality considerations (such lack of other services on reserve, making respite one of the only sources of support) and, in fact, the needs of the family have only increased in the last year. At the time of writing, the family had submitted an appeal to have the level of respite returned to the previously approved level.

- b. The Caring Society has been made aware that, in many instances, ISC will deny requests as above the normative standard, but will not provide information on what they consider the normative standard to be or disclose the source of their information. If ISC references the normative standard in its determination, it must provide a clear statement on what it considers the normative standard to be and provide a link to the source of the information.
- c. The Caring Society has also seen many denials on the grounds of insufficient documentation to determine that the product/service/support would ensure substantive equality. Per section 1, Focal Points have the responsibility to prove “substantive equality does not apply.” ISC is also responsible for ensuring follow-up on cases where the requester did not provide this information. We agree that there are situations out of the control of ISC (i.e., if the requester does not follow up) however there are situations where information can be obtained with follow up, direct work with the requester, and leveraging the support of a Service Navigator and other people in the requester’s circle of care, where feasible.



Possible Remedies:

- d. ISC must immediately communicate to Focal Points and all other relevant staff that a “gap” in services is not a CHRT compliant reason for denial.
- e. ISC must immediately communicate to Focal Points and all other relevant staff that requests cannot be determined or denied based on the normative standard. As per the CHRT, the normative standards represents the *minimum standard only*. Cases where the request aligns with the normative standard should be approved immediately, without question; requests above the normative standard must be determined in keeping with substantive equality, the best interests and needs of the child, and in a manner that accounts for distinct community circumstances.
- f. If ISC finds it necessary to make reference to the normative standard in a particular province or territory, they must state clearly the source of their information and provide a specific link/reference so the information is clear and available to all parties.
- g. ISC must immediately communicate to all Focal Points and all other relevant staff the CHRT compliant requirements for assessing cases.
- h. ISC must review all cases, including those denied on appeal, where the “gap” and “normative standard” reasons have been given and reassess those claims based on CHRT requirements.

Progress to date:

As noted, our concerns in this area have shifted to reflect a growing number of cases referred to the national office for being beyond the normative standard or denied due to lack of documentation about substantive equality as per section 1. We are also unclear as to how the best interests of the child are being considered in decision making as per section 2.

10. Exclusion on the Basis of First Nations Eligibility Criteria

- a. On February 21, 2019, the CHRT ruled (2019 CHRT 7), that urgent, life-threatening cases involving non-status First Nations children recognized by their First Nation must be funded through Jordan’s Principle.
- b. On July 17, 2020, the CHRT ruled (2020 CHRT 20) that First Nations children who will become eligible for *Indian Act* registration/status under S-3 must immediately be considered eligible for services through Jordan’s Principle. Two other categories of First Nations children would be eligible in the future following a further order from the CHRT:
 - i. First Nations children without *Indian Act* status who are recognized by their respective First Nations; and
 - ii. First Nations children who do not have *Indian Act* status and who are not eligible for *Indian Act* status, but have a parent/guardian with, or who is eligible for, *Indian Act* status.
- c. On November 25, 2020, the CHRT (2020 CHRT 36) issued a ruling confirming four categories of eligibility for Jordan’s Principle. These categories ensure that First Nations children living off-reserve without *Indian Act* status but who are recognized by their Nations can access Jordan’s Principle. First Nations children meeting any one of the following criteria are eligible for consideration under Jordan’s Principle:



1. A child resident on or off reserve who is registered or eligible to be registered under the *Indian Act*, as amended from time to time;
 2. A child resident on or off reserve who has one parent/guardian who is registered or eligible to be registered under the *Indian Act*;
 3. A child resident on or off reserve who is recognized by their Nation for the purposes of Jordan's Principle; or
 4. The child is ordinarily resident on reserve.
- d. It is important that ISC communicates the following key points from the 2020 CHRT 36 ruling:
1. First Nations recognize children for the purposes of Jordan's Principle only. This recognition does not extend past Jordan's Principle.
 2. Jordan's Principle is not a fixed budget program—it is a legal obligation of the Government of Canada, meaning as more children are eligible the funding pot expands. This means that recognizing a child for the purposes of Jordan's Principle does not mean another child gets less.
 3. There is funding in the Tribunal order to assist First Nations in setting up a process for recognizing children who do not have status and are not eligible for status if the First Nation does not already have such a system.
 4. In urgent cases where children are likely to experience irremediable harm if they do not get the help they need, Canada will try to contact the First Nation to determine recognition but if unable to reach the First Nation, the child will get the services needed to remedy the immediate risk.
- e. In the previous iteration of this document, the Caring Society had expressed concerns around ISC's approach to prenatal² care programs and the considerations this poses for determining cases. See section 19.

Updates:

As per 10(c), ISC must continue to follow-up with families whose children were previously denied services.

On December 22, 2020, Canada filed a judicial review of 2020 CHRT 20 and 2020 CHRT 36. Both orders remain in place while the judicial review is underway.

11. Group Requests

- a. The Caring Society continues to raise concerns regarding group requests, including: that the process for the assessment of group requests seems very uneven across the regions; delayed determinations; incomplete and staggered requests for information by Focal Points; and consultation by Focal Points with other government departments to assess the legitimacy of the request, rather than assessing the request according to Jordan's Principle CHRT-compliant standards.

² In context of this document, the term "prenatal" also refers to perinatal care and the gestational period before birth.



In March 2021, the Caring Society was notified by a service provider located in Saskatchewan who was working with a number of northern and remote First Nations to reapply to provide supports to children, including pediatrician, physiotherapy, occupational therapy and speech language pathology. The service provider attempted many times since January 2021 to comply with ISC's process and provide the "required" information. However, the service provider felt that the "goal posts" were constantly being moved as they worked to provide the required information. Indeed, the service provider had at least two meetings with ISC to determine what ISC required, but did not receive a straight answer until the service provider indicated they had contacted the Caring Society for guidance. Eventually, ISC indicated that it required a referral and summary for each individual child detailing their needs.

- b. More recently, the Caring Society has been made aware that the process for group requests has become similar to the standard government process for proposals, requiring a level of work and detail that is beyond the operational capacity of many First Nations agencies and organizations. We have heard that some Service Coordinators have stopped considering group requests altogether, for these reasons.
- c. We have also heard concerns about ISC's policy of funding group requests on a per child basis. Per capita funding for group requests requires that Service Coordinators (or others submitting a request) provide an estimate of the number of children who will take part. However, the reality is that children move in and out of programs, some children may leave the program and new ones will join. Service Coordinators have expressed concerns about the ramifications if the numbers in the group request end up being different from the make-up of the actual program. For example, what if the request was to run a program for 40 children and only 32 end up taking part? Conversely, because funding is based on the predicated number of children, the only way to ensure that funding is sufficient is the cap the service/program. This means that if interest or need is high, children may be turned away or denied access, which violates the spirit of Jordan's Principle.

Closely related to these concerns are questions about responsibility for ensuring that the roll-out of funded programming or services matches the terms of the group request. For example, if the request was submitted on behalf of a community agency, who is responsible for tracking the kids and meeting the outcomes stated in the request? Is it the Service Coordinator agency or the agency providing the service? Service Coordinators appear to have concerns about repercussions if ISC perceives the group requests is not managed "properly".

- d. Child and Family Service Agencies are entitled to apply for services, including through group requests, through Jordan's Principle. As the Child and Family Services Program falls under ISC and ISC is bound by the Tribunal orders, the Caring Society believes that if a request is made by an agency, ISC must provide the agency with the necessary information to apply for services through Jordan's Principle. In the June 2020 concerns document, the Caring Society provided the following example:

In May 2020, we received an email from an organization in Atlantic region with concerns about accessing Jordan's Principle funding. When they tried to submit a request through Jordan's Principle, most of the products/services were denied and the organization was told to utilize their prevention dollars under the child & family services program. This is contrary to the spirit of Jordan's Principle as well as the CHRT orders.

- e. In May 2020, the Caring Society reviewed the current request forms being used by ISC. The group request form included evaluation mechanisms. It is unclear how these evaluation mechanisms are funded and why they are required when there is already a requirement for a professional to link the requested service to a need. Reporting requirements pose a barrier to many communities who may not have the capacity to fulfill this, especially without capacity funding, and speaks to the concerns raised above about group requests becoming a standard proposal process.



- f. In March 2021, it came to the Caring Society's attention that ISC had engaged in multiple information requests with an organization run by several First Nations in Alberta when they submitted a group request for speech language supports. Among the information requests, ISC required the organization to provide detailed information of each individual child who would receive services, including their diagnoses. This requirement was in opposition to the professionals involved who specifically indicated that diagnosing children when they simply needed support could pose a long-term issue for the child and was not in their best interest [see also section 1 and 8]. This example speaks to inconsistencies in decision making across the country, as Service Coordinators in other regions have indicated that an estimate of the number of children who will be served through a group request is sufficient to support the request. Furthermore, requiring communities to submit detailed information for each individual child raises serious privacy issues, as detailed in section 6.

Possible Remedies:

- g. ISC must clearly communicate with Focal Points and others involved in Jordan's Principle cases that Jordan's Principle is not a last resort measure and it is not a fixed-budget program but a legal principle. Additional training should be provided to ensure this point is clearly communicated and understood by all Focal Points.
- h. Focal Points are required to encourage group requests through Jordan's Principle, especially when they see a gap in service or a need not being met.
- i. ISC must commit to revising the process for group requests (request forms) in a way that is expedient and that reflects the reality of communities, including removing any burdensome reporting requirements from the forms.
- j. ISC must determine mechanisms for funding group requests that do not rely on a strict per capita approach. Given privacy considerations, group requests should be based on general information about the population requiring services and should not require detailed information about specific children. Under no circumstance should ISC communicate that a formal diagnosis is required to receive services.
- k. Reiterate to Focal Points and others involved in Jordan's Principle that the CHRT timelines are legally binding.
- l. There needs to be more transparency on the process for appeals of group requests.
- m. There is a need for capital costs to allow for the provision of services per group requests (see also 16).
- n. Once a request is submitted, Focal Points must make a determination and not ask for the request to be submitted in a different way.

Progress to date:

The Caring Society and other members of JPOC/JPAT provided comments on both group and individual request forms in June 2020. The Caring Society has not received feedback on provided comments nor word on when the updated group request forms will be made available.



12. Service Coordinators and Navigators

- a. The Caring Society continues to stress the importance of ensuring that Service Coordinators/Navigators have adequate knowledge of the CHRT orders and are supported to assist and to advocate for families and children; support includes adequate and consistent funding from ISC. Support for Service Coordinators/Navigators also needs to include liability protection and provisions of professional training, audits, and access to mental health support. The Caring Society also stresses the importance of uninterrupted funding for service coordinator/navigator positions and organizations during the fiscal year transition.
- b. We have been told that turnover in Service Coordinators is high in some areas due to high workloads (caseloads) and concerns over job stability as contracts are often limited to the fiscal year. Service Coordinators report that colleagues will often transfer laterally to other positions within the organization/agency that are considered "more stable" with long-term funding. Nova Scotia organizations have had turnover in Service Coordinators as often as every 3-4 months. In other situations, First Nations agencies/organizations find themselves having to cash manage to cover Service Coordinator salaries when confirmation of funding from ISC is delayed. In terms of caseloads, we heard from one Service Coordination agency that they currently have a caseload of 660 requests and four Service Coordinators; they qualified for only one Service Coordinator because the federal government was basing Service Coordinators on population (per capita). This approach is problematic as population size is not a reflection of need and does not take into account substantive equality.

Furthermore, our understanding is that ISC provides funding for case management only, with no funding for managers or policy development. Given that Service Coordinators are working with private health related information, funding for policy development and implementation in the in the areas of privacy obligations and data collection is crucial.

- c. There have been numerous instances where staff in the regions or the national office have communicated decisions to families but not to the Service Coordinators/Navigators they had been working with. Families choose to work with Service coordinators/Navigators to help with the Jordan's Principle process so Focal Points cannot circumvent families' wishes and exclude them from further communications. In keeping with section 2, Focal Points and the national office must respect the self-determination of families who have chosen to work with Service Coordinators/Navigators as well as the self-determination of First Nations communities to provide assistance to their community members for services through Jordan's Principle through service Coordinators/Navigators.
- d. Conversely, we are also concerned about the burden felt by Service Coordinators in terms being tasked with assisting families, but at the same time having no power over whether the request is approved, and no recourse for ISC employees or regions when decisions are delayed or when requests are denied with little to no information explaining the reasons for the denial. Service Coordinators lose credibility with families when they cannot explain why the service has been denied or what information families can provide to appeal successfully.



- e. In addition, we are concerned about the burden felt by Service Coordinators in terms of responding to misinformation about Jordan's Principle. One of the most common rumors heard by Service Coordinators in the Atlantic is that Jordan's Principle is "ending." They reported a pattern of communities/organizations not wanting to partner to provide services due to the perception that Jordan's Principle funding is unreliable. "You don't have permanent funding," and "We don't want to partner with you to start up a program for kids, only to risk having it taken away from them when funding ends" were cited as common responses. While Service Coordinators respond by saying that Jordan's Principle is a legal rule and cannot be cut, organizations and communities see Canada filing for judicial review of CHRT decisions and do not believe the government's commitment is permanent or reliable.
- f. The Caring Society has become aware of individuals and organizations who purport to act as advocates for families accessing Jordan's Principle. In March 2020, we became aware of one such organization attempting to bypass the health and education protocols of one First Nation and work directly with families, despite formerly working for that First Nation and no longer having the support of that First Nation. Not only is this against the self-determination of the First Nation, but it is also against the best interests of children (see section 2). Further, this organization seems to also be attempting to be a national voice addressing barriers to accessing services through Jordan's Principle without any approval from the CCCW, JPOC, CHRT, or Jordan River Anderson's family (that we know of). The Caring Society flagged this organization for ISC in the spring of 2020 and they said they would follow-up. As of April 2021, this organization is still up and running.
- g. By March 31, 2021, the First Nations Health Authority (FNHA) in British Columbia will no longer be providing the Jordan's Principle service navigation function. Numerous families have reached out to the Caring Society to indicate that this transition is exasperating the difficulties they are already experiencing with Jordan's Principle.

ISC indicated that as of March 2021, 39 agreements have been initiated to place Service Coordinators in local communities. ISC has also implemented a BC Jordan's Principle Service Coordination HUB which will act as a province-wide resource for service coordinators, providing ongoing training, tools and a community of practice. While these steps are encouraging, the Caring Society is concerned about the impacts the transition will have on First Nations communities and families given previous challenges we have seen with ISC and expediency. Furthermore, it remains to be seen if these steps will be sufficient to address the low per capita rate in BC. It is also unclear how or if ISC has ensured that new BC Service Coordinators have adequate knowledge of the CHRT orders [see also 12(a)]. ISC is still responsible for CHRT compliance and ought not "downgrade" that responsibility to the community level.

Possible Remedies:

- h. ISC must continue to approve additional staff where heavy workloads are reported to ensure that children and families receive timely and quality service on Jordan's Principle cases per the CHRT orders. ISC has the legal obligation to ensure children's access to Jordan's Principle is met and that includes providing adequate and sustained support for Service Coordination bodies.
- i. ISC must give greater attention to its national communications strategy to combat misinformation and rumors about Jordan's Principle. On evidence that ISC is ready to move forward with robust communications strategy, the Caring Society can provide guidance on misinformation that we believe needs to be challenged.
- j. ISC must commit to responding to questions and concerns raised by Service Coordinators within the CHRT timeframes. When requests are denied, ISC must provide detailed information about the reasons for the denial so that Service Coordinators can assist families in submitting a proper appeal.
- k. An Ombudsperson function for Jordan's Principle is required as a matter of priority.



- i. While ISC has taken the lead on addressing the situation outlined in 12(c), there needs to be longer term solutions to ensure that families and communities are not taken advantage of by individuals and organizations claiming to be advocates.

Progress to date:

As of the writing of this document, the Caring Society continues to wait for an update from ISC on the organization outlined in 12(f).

ISC has engaged Naomi Metallic, Hadley Friedman and Shelby Thomas to undertake the process of researching, conducting interviews, etc. to make recommendations on the best way forward for the Ombudsperson function.

13. Inconsistent Decisions and Handling of Cases

- a. The Caring Society continues to have concerns about inconsistencies across the provinces/territories in working on cases, working with requesters, and delivering decisions. There continues to be inconsistencies within regions in terms of requests being approved within the region or escalated to HQ when the content of the request is the same.
- b. We continue to notice a pattern where decisions are not being given to requesters in a CHRT-compliant timeframe. In December 2020, it came to the Caring Society's attention that the Ontario region is engaging in an administrative procedure consisting of sending "notification of the denial decision" ahead of sending out an "official denial letter." The notification does not contain denial reasons which leaves many families confused. Particularly when a denial is issued on appeal, it also leaves families in a position of having to decide whether to submit a judicial review within the 30-day timeframe without understanding the reasons for denial.
- c. Further, as seen in 12(e), we know there is misleading and incorrect information from some Focal Points in regions. For example, in March 2021, the Caring Society was contacted by a family in Saskatchewan who had contacted Jordan's Principle in Summer 2020 to place a request for home modifications but were told that it was not eligible [see also 16(c)].
- d. As seen in section 1, the Caring Society is seeing inconsistent approval data across provinces/territories. Following a request through the CHRT for ISC's number of approved requests, the Caring Society created a chart (see Table 1 in section 1) with per capita calculations for approved Jordan's Principle services/products by region. The number appear to be low for many regions. The British Columbia region is at the lowest in the country with 0.1 products/services per child. Meanwhile, the Ontario region, which is demographically similar to the Manitoba region, is at 1 product/service per child versus Manitoba at 4 product/service per child. Canada has not shown reasonable evidence that these regions have fewer children in need. Instead, this data suggests inconsistencies across regions in decisions and handling cases.
- e. Conversations with Atlantic Service Coordinators between November 2020 and February 2021 for research conducted by the Caring Society found inconsistencies in decision making by ISC to be an area of concern across this region. Concerns were raised by about inconsistent decision making between focal points within the same province, between provinces, and between decision makers at the national level. Inconsistencies are compounded by the absence of clear information in ISC denial letters to families about why the request was refused. Service Coordinators lose credibility with families because they cannot explain why the service has been denied or what information families can provide to appeal successfully.



Possible Remedies:

- f. Continue to train Focal Points and ISC staff at all levels on the CHRT orders, including that the orders are not recommendations but legally binding orders.
- g. Ensure that the SOP's are in line with feedback from parties to the CHRT. Continue to update and train Focal Points and staff at all levels on the SOP's to ensure children access Jordan's Principle in a similar way across the country pursuant to the CHRT.
- h. Although normative standard differs per province/territory, there must be consistency across the country to ensure that the substantive equality lens is used for all requests.
- i. As per 13(c), an advance notification of denial is inconsistent with the spirit of the Tribunal's orders and confusing and discouraging for families/requesters. Particularly with instances of denial on appeal, families have a right to fully understand reasons for denial and have a right to submit an application for judicial review. ISC must be clear about reasons for denial right away without engaging in administrative procedures and without relying on boiler plate language.

Progress to date:

Although many children are now receiving services as result of the CHRT orders, the Caring Society continues to see room for improvement in terms of consistencies across all Focal Point teams and others working on Jordan's Principle. Given ISC's discriminatory policies and practices, it is especially important to ensure that First Nations children, families and communities are given the best treatment in service delivery. This means treating families with dignity and respect, and in a manner that is accessible and is culturally relevant.

On a call with the national office in September 2020 and in a follow-up email in October 2020, the Caring Society recommended that ISC perform random audits of denied requests and requests that did not meet the CHRT time frames for determination for a particular Focal Point region. ISC indicated that they would be making this a priority. The Caring Society recommends this process be implemented in all regions to ensure consistency and oversight. As of April 2021, the Caring Society is not aware of progress, if any, regarding quality assurance of denied requests.

14. Coordination with Other Government Departments and Gaps in NIHB Funding

- a. The Caring Society continues to raise concerns about gaps in federal programs and funding for First Nations, particularly NIHB, as a factor contributing to the number of Jordan's Principle requests. Families and communities may need to go through Jordan's Principle to access services because the NIHB program remains discriminatory (does not fund the range of services and supports available through the provinces and territories). NIHB response times are also slow, the process is burdensome and as such does not meet the needs of children in a timely or needs-based way, even when the service is covered. Given the long-standing issues raised by First Nations about the NIHB program failing to meet the needs of First Nations children, the Caring Society has concerns about how NIHB policies are being used to inform Jordan's Principle decisions. We are uncertain as to whether NIHB staff trained on the CHRT orders and, as such, whether their guidance/recommendations to Focal Points properly align with the principles on which Jordan's Principle decisions must be based: of substantive equality, best interests of the child, distinct community circumstances, and the needs of the child.



For example, in a call between the Caring Society and ISC on April 7, 2021, the acting Executive Director of Jordan's Principle discussed how NIHB policies on dental care and orthodontics are being used to inform the development Jordan's Principle policies in this area. As per the CHRT orders, the Caring Society maintains that policy development and decision making through Jordan's Principle must be based **substantive equality**, the **best interests of the child**, be **needs-based**, and **account for distinct community circumstances**. Requests that demonstrate these principles must be approved. Reference to NIHB policy is unnecessary to determine Jordan's Principle requests. The delay in developing policies and procedures regarding dental requests amounts to an administrative delay detrimental to the well-being of First Nations children and is contrary to the Tribunal's orders.

- b. While ISC funds a wide variety of community-based programs that may apply to a request, Jordan's Principle Focal Points have a responsibility to provide services to First Nations children and families without delays. Per 2017 CHRT 35, if a service or product is available through another ISC program, the requested service should first be covered under Jordan's Principle and costs recovered after.
- c. As described in 1(e) the Caring Society was notified by a First Nation in June 2020 that they were experiencing delays in hearing the determination for an in-community land-based education program. The Caring Society escalated the concerns and were told that the region is exploring "other funding options for this request." Although the national office indicated that inquiries into other funding options would not affect the timeframe for determination, the request was already delayed by three weeks. The request was eventually denied and ISC indicated that options were available through a provincial program [see also 9(b)]. The Caring Society is on record as disagreeing with this decision.
- d. Conversely, if the decision has been made to deny supports through Jordan's Principle, we note that Focal Points should be liaising immediately with other ISC departments (as well as the Province/Territory and First Nations agencies) to find out what services are available for families. The Caring Society has also suggested that Focal Points be provided with a quick reference document outlining what ISC services/programs other departments have available [see also 15(i)].
- e. ISC needs to ensure that all Service Coordinators and Navigators are adequately supported in assisting children and families in making requests through Jordan's Principle. Service coordinators and navigators often juggle extremely large caseloads, and it is unreasonable for them to have to connect families with community or off-reserve resources rather than submitting requests through Jordan's Principle. For example, the Caring Society has been made aware of one agency in the Atlantic having a caseload of 660 Jordan's Principle requests and with funding for four Service Coordinators. The Caring Society acknowledges that Focal Points are also dealing with high caseloads, however, responsibility for implementing the Tribunal's orders lies at the federal level. It is ISC's responsibility to ensure human resources are sufficient at both the federal and community levels to ensure the proper implementation of Jordan's Principle.

Possible Remedies:

- f. ISC must set a hard deadline for developing a policy on dental and orthodontic requests through Jordan's Principle. ISC must demonstrate how the policy is based on substantive equality, the best interests of the child, is needs-based, and accounts for distinct community circumstances.
- g. ISC national office to provide Focal Points with direction on when it is appropriate to liaise with broader ISC staff and to remind staff that NIHB processes and standards must not be used to assess or determine requests – this applies to both individual requests and group requests, including the timeframes for rendering a decision.



- h. Reiterate to Focal Points that administrative conferencing, such as meetings with government departments, must not delay the timely resolution of cases as per CHRT timelines.
- i. Clearly articulate and train Focal Points on their responsibilities in terms of coordinating with other programs or departments to ensure services when the request is denied under Jordan's Principle.
- j. Focal Points have lists of common services (i.e., respite, mental health supports) based on province/territory and where families can access them whether it be from other departments or through the Province or a First Nations agency. Reiterate that this list is only to be used in cases where the request has been denied, after a proper assessment on the basis of substantive equality, the best interests of the child, distinct community circumstances and the needs of the child.
- k. The federal government must commit to the Spirit Bear Plan to end inequalities in public services for First Nations children, youth, and families. The Caring Society maintains that the large volume of Jordan's Principle requests is directly related to the ongoing barriers and discrimination embedded in all other federal services for First Nations children. Families need to access services through Jordan's Principle because the programs like NIHB are burdensome and fail to meet the real needs for First Nations children. Other community-based requests, such as requests for recreation programs, infrastructure, etc., are also likely directed to Jordan's Principle because of a broader, government-wide failure to properly fund these services. Requests to Jordan's Principle will remain high unless the government commits to full and proper implementation of the Spirit Bear Plan and until all ISC departments adopt the principles of substantive equality, and best interests of the child, as outlined by the CHRT.

Progress to date:

As of April 2021, the Caring Society is unaware of any current progress that has been made with regard to ISC addressing gaps in NIHB funding and coordination with other government departments.

15. Cultural Shifts

- a. The Caring Society maintains that many of the concerns outlined in this document, such as requests for further information, consultation with other departments, etc., appear tied to a culture of restraint and, perhaps, the fear of "mistakenly" approving a case. In some offices, the culture of restraint seems to outweigh the principle of substantive equality or the best interests of the child.
- b. The Caring Society believes cultural shifts need to happen at both the individual and systemic levels and that staff need to undergo training on an ongoing basis to ensure that they are delivering services in ways that are respectful and that preserve the dignity and respect of the requesters. Cultural shifts will not occur via a one-time training session. This is particularly the case given the high turnover/movement and growth amongst Focal Points; staff who took part in the early training sessions on the CHRT orders have likely moved on to new positions.
- c. Cultural shifts also need to happen at all levels and in all teams of ISC in order to ensure that employees are comfortable being in their roles as public servants and assisting the public. While we understand that loyalty to the ISC is important, the most important role of a public servant is to assist the public. Given the long history of discrimination and inequity for First Nations peoples, it is essential that those working in ISC build trust with those they are working with and for.



It is clear that this shift has not yet happened in all regions. In October 2020, the Caring Society received the following email: "Jordan's Principle staff have made it impossible to work with them. I therefore do not champion their cause and question the integrity of the organization". While we understand that it may be challenging at times to assist requesters, ISC has a responsibility to train its employees adequately to help parents and others who often face additional hardship. All ISC employees must act with kindness, understanding and empathy [see also 16(d)].

- d. Given that Caring Society continues to hear, on a regular basis, about requests being denied based on the normative standard or insufficient information, it appears that many Focal Points continue to struggle with the meaning of substantive equality, including what structural barriers look like for families including living in hardship, caring for a child with a lifelong disability, living in a community with contamination, among other situations. This also relates to section 18 where requesters are expected to pay for services upfront even though many First Nations families and communities are living in poverty. Again, this points to the need for ongoing training.
- e. In addition, larger systemic issues within ISC itself need to be addressed so that the ISC teams working to support First Nations families and children feel safe and supported. In April 2021, the APTN released an article revealing a toxic working environment for ISC staff. Like many others, the Caring Society has heard concerning reports of an environment that does not support staff who raise concerns with the handling of Jordan's Principle requests or the experience of families who access Jordan's Principle.

Possible Remedies:

- f. ISC national office to send a message to all staff stating that ISC is committed to the best interests of the child and substantive equality that ISC would prefer staff to "err" on the side of the child by approving cases, rather than erroneously denying them. ISC national office to reiterate that staff will not be penalized for erring on the side of substantive equality and the best interests of the child. This would help address any anxiety staff may feel about the decision-making process in regards to Jordan's Principle requests.
- g. The Caring Society recommends ongoing mandatory training about the CHRT orders and issues like structural barriers so that Focal Point teams have a better understanding of differing worldviews and experiences. This training must emphasize that Jordan's Principle is a legal obligation resulting from decades of harms and discrimination against children. Such training may be needed to address any feeling or perception on the part of ISC staff that products and services provided by Jordan's Principle are "benefits", when they are properly understood as rights.

Progress to date:

ISC has begun to pilot training for staff on five topics identified by the CCCW as necessary for public servants working on Indigenous issues. The first module, "Adverse Childhood Experiences & Historical Trauma" was piloted in February 2021. This initial test pilot will assist in determining the effectiveness of the online delivery. A member of Caring Society staff participated in the training and reports that it was well-done.

The Caring Society is not aware of the timeline for broader rollout of the piloted module or the other four modules/topics identified by the CCCW.



16. Capital Costs

- a. ISC's authorities divide capital requests into two categories: minor capital and major capital. Anything below \$5,000 is considered minor capital, and anything over is major capital.
- b. We continue to push for coverage of major capital costs to ensure adequate space for the provision of services for group requests. Even if a group is granted funding to provide a service through Jordan's Principle, there is sometimes no adequate building or place from which to provide the service.
- c. The Caring Society continues to hear from families and service coordinators/navigators that they are told by focal points that even minor capital costs are not "eligible" under Jordan's Principle.

In March 2021, the Caring Society was contacted by a family in Saskatchewan who was having difficulties accessing Jordan's Principle supports for minor capital costs, including home accessibility modifications. The home was not wheelchair accessible and the child's mother had to carry the child in and out of the home. The family had contacted Jordan's Principle in Summer 2020 to place a request but were told that home modifications were not eligible [see also 13(c)].

- d. As of February 2021, the experience of Service Coordinators in the Atlantic is that capital requests "can be done" but require a lot of back and forth. The process was described as "not easy" with "a lot of hoops to jump through." Appeals are often required.
- e. The Caring Society has heard reports of ISC requiring First Nations communities (bands) to split or cover the cost of some home modifications. This practice is inconsistent with the spirit of Jordan's Principle.

Possible Remedies:

- f. The policy of limiting capital requests to those that "directly related to the needs of children" (see below, under "Progress to date") is inconsistent with the lived reality of many First Nations communities in which services are limited by lack of infrastructure. ISC must make provisions to expand support for major capital costs under Jordan's Principle.
- g. According to ISC's FNCFCs program terms and conditions, as of August 2020 there are funds available for agency capital projects including new builds. It is not clear how ISC determined that agency funding is in the best interests of children in FNCFCs care, but not those children receiving supports through Jordan's Principle.
- h. The Caring Society requests further information about why and in what circumstances ISC would require the First Nation (band) to split the cost of the request and/or why ISC would deny the request on the grounds that the cost should be covered by the First Nation. The Caring Society is unclear on ISC's reasoning in this regard.
- i. ISC must immediately communicate to all regions its commitment to capital costs and remind regions that discouraging families to request an item due to its "ineligibility" is a denial.



Progress to date:

In addition, in her cross-examination before the Tribunal in May 2019, Dr. Valerie Gideon confirmed that Jordan's Principle authorities allow for capital expenditures over \$5,000 to make capital improvements associated with a child's specific needs related to their direct living environment. Requests must directly address the needs of the child(ren). New builds or even infrastructure modification not directly related to the needs of children (i.e. expanding a health centre was the example given in transcripts), is not something ISC has the authority to do. Dr. Gideon indicated in the same transcript that there is no cap on major capital requests.

Further work is still needed to inform Focal Points, Service Coordinators, and family/community members that capital costs are covered under Jordan's Principle. In the Caring Society's experience, this information is still not widely known.

17. Payment

- a. The Caring Society continues to receive numerous reports/calls from families, Service Coordinators/Navigators and groups experiencing significant delays in payment for services and products. ISC has committed to processing invoices within 15 business days of receiving invoices. However, it seems this may be an on-paper commitment only. Previously the Caring Society had flagged Ontario, British Columbia, Alberta and Atlantic as having a clear backlog of invoices and a lack of staff to process invoices, resulting in delays. ISC has a responsibility to ensure timely payments, especially in light of COVID-19.
- b. Payment delays cause significant stress for many families living in situations in hardship as well as for those delivering services. While a 15-business day turnaround may seem fast in standard government terms, ISC payment timelines, even when working on schedule, do not support the lived realities of some families. The Caring Society is also cognizant that not all regions adhere to the 15- business days for payment. As recently as November 2020, a service provider in ON had still been waiting for reimbursement for costs from September 2020.
- c. The Caring Society remains mindful that it is extremely challenging for families to retain services providers, like respite workers, and almost impossible to keep the service if payments are delayed. While services are not technically delayed, payment delays and complaints from unpaid merchants and service providers cause families significant stress and frustration. In too many cases, families are losing service providers or are forced to pay providers out of pocket, which is often a huge financial burden.
- d. We remain concerned about ISC's record keeping in regard to payment timelines/compliance being skewed. In our dealings with the financial department, it would seem that finance personnel "turn on the clock" when they receive all relevant information from Focal Points, or when they themselves have time to start working on payment. As such, the "clock" does not actually start when families submit their information; invoices and payment information may well be sitting in the Focal Point's (or finance person's) inbox for weeks before attention is given to the file. There have been instances of Focal Points or Finance not promptly notifying families when documents do not meet ISC financial standards, resulting in further delays on an already delayed system. Even in cases when invoices have been missed by Focal Points or ISC personnel, finance personnel insist there is no way to expedite the process.



- e. The Caring Society continues to receive reports that the ISC procedure of requiring families and communities to pay for the approved services/products in advance is a barrier. In keeping with substantive equality, many families and communities do not have the capital to support this and may be a barrier to the family/community fulfilling the request.
- f. There is no process for families to complain about payment delays.

Possible Remedies:

- g. ISC must ensure adequate staffing to process payments in keeping with the 15-business day commitment.
- h. ISC must implement policies that ensure the payment “clock” starts with the date the invoice is submitted, and not when finance personnel begin working on the file. This policy is needed to ensure accurate tracking of payment timelines.
- i. ISC needs to establish a mechanism for advanced payment that recognizes financial hardship as an issue that many families struggle with. Alternatively, ISC needs to assume responsibility for establishing and coordinating direct billing (at present, it seems that families who cannot wait for reimbursement are expected to navigate this option on their own). At a minimum, Focal Points must help families find appropriate options in keeping with substantive equality that will support direct billing or advance pay.
- j. Consistent with section 15, ISC staff working on Jordan’s Principle require training on the realities of financial hardship, in order to increase sensitivity to family concerns to payment delays. A reimbursement of a few hundred dollars might seem a small amount to some, especially to those with secure jobs and salaries and/or who are used to processing payment for big ticket items, but for others, this amount may be the difference between “making it” or not.
- k. Steps should be taken to ensure email addresses are shorter and user-friendly; this includes the Jordan’s Principle Finance email (sac.principedejordanfinance-on-financejordanprinciple.isc@ISC.ca) which is inaccessible (and even had a typo in previous versions of this document).

Progress to date:

The Caring Society has been flagging payment delays in the Ontario region for at least two years. It is still not clear whether ISC has taken extraordinary measures to ensure that children and families are supported. We believe that extraordinary measures should have already been put in place given ISC has known about this issue and cannot seem to overcome roadblocks with regard to payment.

At February 2020 JPOC, ISC confirmed that they are in the process of submitting a request to Treasury Board for acquisition cards for Focal Points. The Caring Society followed up with this process on 25 August 2020. ISC agreed with the Caring Society’s conclusion that work on this matter was just beginning in August 2020 despite ISC assuring JPOC that work was underway in February 2020. ISC indicated in its August 2020 Acquisition Cards Workplan that the process will take the department into February 2021. It was unclear to the Caring Society if families will begin to receive payment assistance through departmental acquisition cards beginning in February 2021. At the February 2021 JPOC, ISC indicated that the process had been delayed due to a change in the government’s provider. ISC has not indicated when acquisition cards will be in operation.

At the February 2021 JPOC, ISC indicated that some regions have determined that they will not require acquisition cards. It is not clear how the regions determined this.



ISC also confirmed that there is a process by which reimbursements can be expedited for families experiencing financial hardship. Although this is a band aid solution to a problem that requires a long-term solution and it seems to be up to families to trigger this process, this might be something that needs to be implemented across all regions until such time that ISC can manage to process reimbursements in a timely manner.

Some First Nations Navigators in Ontario now have agreements in place that allow them to reimburse families or pay for services directly once a request has been approved by ISC national office.

18. Maternal Health and Prenatal Care

In previous versions of this document, the Caring Society raised the following concerns:

- a. On January 12, 2019, Leila Gillis confirmed by email that the current definition of child under Jordan's Principle is birth to age of majority. The Caring Society disagrees with the exclusion of maternal and prenatal services.
- b. Whereas ISC has framed the issue as being about the "definition of a child" the Caring Society still sees prenatal services as a matter of maternal health. The Caring Society has expressed concerns about federal child welfare legislation—which is a non-voluntary service—having jurisdiction prenatally without conversations with all First Nations, First Nations child welfare experts, and First Nations women's organizations. However, requests under Jordan's Principle are voluntary by nature, meaning it is families themselves who are asking for help and support. The demarcation between voluntary and involuntary service provision is critical. Requests made under Jordan's Principle are much different from the involuntary context of child welfare where caution needs to be exercised in regard to prenatal intervention.
- c. Given the voluntary nature of Jordan's Principle and the significant evidence regarding the benefits of maternal and prenatal care, the Caring Society supports individual and group requests for maternal and prenatal services under Jordan's Principle. In terms of group requests, we support requests for services where there is demonstrated need (i.e., waitlists for midwifery services or lack of culturally based services) and where participation in such services/programs is voluntary.
- d. In her correspondence of January 12, 2019, confirming the exclusion of maternal and prenatal services, Leila Gillis stated that Focal Points are expected to work with expectant mothers to access the requested services (i.e., the Focal Point could connect with the Maternal Child Health Program for support). As such, it would seem that ISC is already providing maternal and prenatal services on a voluntary basis. As such, extending this support to Jordan's Principle is not outside the scope of ISC's current mandate.
- e. The Caring Society has also received inquiries regarding non-First Nation mothers of unborn First Nation children requiring prenatal services.

Case Example: Midwifery

- f. As ISC knows, the Caring Society supported the Tsuut'ina Health Centre (Alberta) in their application for midwifery services under Jordan's Principle. The Nation approached Jordan's Principle Focal Points after being repeatedly bounced between Alberta Health Services (AHS) and the First Nations Inuit Health Branch, indicating an ongoing jurisdictional issue between levels of government in terms of responsibility for services. Tsuut'ina started the request process in June 2018. The request was ultimately denied in August 2018. The proposal for midwifery was denied based on "no gap in service" and "no medical basis upon review." The rationale was later changed to "no gap in services" and "no evidence to support substantive equality."



- g. In December 2018, Tsuut'ina was advised by ISC that there are no federal funds available for midwifery under Jordan's Principle or through any other federal department. Tsuut'ina subsequently contacted Alberta Health Services to explore funding options, as per ISC's advice, but in January 2019 were advised that provincial funds are scarce with no immediate solutions or ideas to meet the funding gap.
- h. We are aware that ISC has offered to fund/partner with the Tsuut'ina Health Centre to develop a model for midwifery in Indigenous communities. The Caring Society questions the utility of this offer, as there is no indication that the development of such model would translate into funding or the ability to actually implement it.

Case Example – High-risk Pregnancy:

- i. Also in January 2019, we were advised of a case where a pregnant mother with multiple children was on bed rest due to age and it being a high-risk pregnancy. She was not able to do housework or lift objects – yet still needed to care for her other 2 children. She needed assistance with housekeeping chores to assure that her child could come to full-term.
- j. As stated in 19(d), ISC has advised that in such cases, Focal Points are expected to work with the expectant mother to access the requested services through the Maternal Child Health Program. Given that the Caring Society was contacted for assistance in regard to the above case, it seems as though Focal Points are not meeting this expectation [also consistent with section 14]. In this instance, it seemed clear that the mother's short-term medical condition made it difficult for her to care for her children or meet their needs fully. The Caring Society is aware of cases where in-home family support has been funded to ensure the safety and well-being of children when parents need mental health support; the same standard should apply to medical issues for expectant mothers.

Case example – Car Seats:

- k. Infants leaving the hospital are required to leave in car seats – go home to beds or cradles, have clothing and diapers – and have other baby equipment as required for all children. For First Nations parents with financial constraints, there may be barriers in provision of these items, resulting in prolonged stays at the hospital and undue stress on mothers/parents.
- l. In her correspondence of January 12, 2019, Leila Gillis stated that car seats are beyond the normative standard, but in the best interest of the child. She indicated that regions should be considering this and looking at requests from a substantive equality perspective on a case-by-case basis.
- m. The Caring Society has concerns about the “case by case” approach for approval of car seats and other necessities. First, we are concerned that such requests are being automatically redirected or denied, due to the “birth to age of majority” rule. As stated above, there is no indication that Focal Points are actually working with expectant mothers to access the requested services. Second, babies cannot be discharged from hospital without a car seat and keeping babies in the hospital unnecessarily is not in the best interest of the child. The time for filing and processing a Jordan's Principle case and getting the seat paid for after birth is long. Requiring families to wait until birth to apply for help leaves babies in the hospital unnecessarily and causes hardship on the mothers/parents.

Possible Remedies:

- n. In regard to the case example of car seats, the Caring Society recommends ensuring that an advance payment or pre-authorization of the purchase be readily available for expectant mothers/parents. See section 17 for more on advance payment and pre-authorization.



Progress to Date

As of April 2021, the Caring Society is unaware of any current progress that has been made with regard to maternal health and prenatal care.

19. Post-majority services

- a. The Caring Society has serious concerns regarding the lack of post-majority services available through Jordan's Principle. This concern has also been raised by First Nations partners at a number of JPOC meetings.
- b. The process for supporting the needs of post-majority youth through Jordan's Principle is unclear. As recently as March 2020, we received a notification from a parent that we had been assisting previously, whose son requires respite and medical care. There had been a commitment from the Manitoba region to cover the services until age 21. ISC has rescinded that decision when the family had to make the difficult decision to move out of the community and into an urban setting in Alberta (which is close to their community) as the travel was becoming too much for the family. The Focal Point assisting in the case claimed to have 'bridged the gap' however the recommendation was for a service that the requester's son did not even qualify for. That post-majority support was approved by one region and denied by another points to inconsistencies between regions and the need for evidence-based direction from the national office.
- c. Research conducted by the Caring Society with Service Coordinators in the Atlantic for a resource guide on Jordan's Principle and children with disabilities and special needs found post-majority support to be a major area of concern across the region. In many cases, it appears to be the provinces stepping up to continue services when young people "age out" of Jordan's Principle. In general, however, such commitments are informal and made on a case-by-case basis—provincial support is by no means guaranteed. Service Coordinators receive no funding (have no capacity) to follow-up with young people who have "aged out" of Jordan's Principle. Service Coordinators work hard to ensure that, at a minimum, a short-term solution is in place to meet the needs of the young person but have no capacity to follow-up to ensure that a long-term plan is in place.
- d. Without access to Jordan's Principle, young people requiring post-majority services are expected to pay for services and be successful even though they are impacted by colonial policies, substantive equality issues, lack of supports, and for the last year, a global pandemic.

Possible Remedies:

- e. The academic and community-based literature on child welfare offers numerous examples and recommendations as to how programs can be amended to provide post-majority support. The Caring Society calls on ISC to apply these evidence-informed-solutions to Jordan's Principle and implement a meaningful strategy for post-majority support.
- f. In the interim, Focal Points meaningfully assist families/youth and organizations to access funding through other ISC programs or through the province for post-majority services.
- g. ISC FNCFS has committed to extending the aging out of care provision during the COVID-19 pandemic. While this offers a small step in the right direction, the Caring Society reiterates that post-majority services need to be sustained regardless of a pandemic.



Despite the above commitment regarding FNCFS, ISC has not similarly extended this provision to Jordan's Principle. It is not clear how ISC determined that post-majority supports are in the best interests of children in FNCFS care, but not those children aging out of Jordan's Principle supports.

Regarding the disconnect between the extension of support for the FNCFS program but not for Jordan's Principle, a Service Coordinator in the Atlantic gave the example of a young person requiring 24/7 out-of-home care who was set to age out last year. The Service Coordinator asked ISC to extend the CFS policy to Jordan's Principle, so that the young person would continue to receive funding and not need to move during the pandemic. ISC refused, offered no transition plan, and was fully prepared to see the youth evicted at the height of the pandemic. Thankfully the province stepped in and agreed to fund the youth at the same level.

Progress to Date

As of April 2021, the Caring Society is unaware of any current progress that has been made with regard to post-majority services.

20. Jordan's Principle 24-hour Call Centre

- a. The Caring Society had previously received numerous complaints about the 24-hour Jordan's Principle Call Centre being busy or that there was no answer. It was indicated in previous iterations of this document that a call audit conducted by the Caring Society in July 2019 made clear that not all regions had consistent practices, especially in ensuring that children and families were supported after hours.
- b. The Caring Society maintains that Call Centre staff should be trained on and authorized to approve urgent cases, at least on weekends and holidays in the case that on-call Focal Points are not available to approve a request within the 12-hour or 48-hour CHRT timelines. As outlined in 7(a), ISC provided data from February 1, 2018 to October 18, 2020 showing that the Call Centre marked only 44 requests out of 8,251 as urgent. The Caring Society believes that there were likely more cases that were urgent given the disadvantage and challenges that many First Nations face.
- c. The Caring Society stresses the importance of Call Centre staff being trained on the CHRT orders and ISC's legal obligations with regards to compliance.

At the February 2021 JPOC, concerns were heard about the Call Centre's practice of referring families to the ISC Jordan's Principle website for information on how to apply rather than simply intaking the request. It was indicated that this was mostly occurring after hours. At the same time, concerns were raised that the Call Centre was informing callers that only families can place a request to Jordan's Principle and service providers are not eligible to place a request on behalf a family.

Possible Remedies:

- d. It is absolutely imperative that the 24-hour line is adequately staffed at all times and that calls are returned as soon as possible to ensure compliance with the CHRT timelines.
- e. Call Centre staff should receive ongoing "refresher" training on the CHRT orders to ensure they are fully versed in the CHRT orders and ISC's legal obligations.



- f. In Valerie Gideon's affidavit dated April 15, 2019, it is stated that the incoming calls will be recorded. No timeline for this was provided.
- g. With proper training, Call Centre staff should be given authority to approve urgent cases on weekends and holidays especially since some urgent cases cannot wait for the assistance of Focal Points.
- h. Until staff who are currently assigned to the Call Centre have the proper training and authority to approve cases, another staff person with the proper authority should be available 24/7 to approve urgent cases coming into the Call Centre.

Progress to Date

ISC national office has a staff member on-call for weekends. Although this is a positive step, it is important that a long-term solution be met as it is not sustainable for a handful of staff to be on-call for 10 or more weekends of the year.

21. Retroactive

- a. In 2016 CHRT 2, the CHRT found that ISC's definition of Jordan's Principle was discriminatory as it limited who could apply.
- b. In previous iterations of this document, the Caring Society indicated concerns over whether there was a national standard with regard to retroactive. While a national standard has been included in the SOP, it is unclear if it is being consistently applied across regions.
- c. The Caring Society believes retroactive should also be extended to those who did not apply to Jordan's Principle – whether they did not know about it or did not think they would qualify. This is further supported by the Tribunal's 2020 CHRT 15 ruling regarding compensation for First Nations children and families. The ruling outlined that children/families would be eligible to apply for compensation as outlined in 2019 CHRT 39 even if they did not make a request through Jordan's Principle. The Tribunal found that the government's definition and implementation of Jordan's Principle was discriminatory. The definition was so narrow that children did not qualify for services (which prevented people from even trying to apply) and information on how to apply for Jordan's Principle was not made public by the government.

Possible remedies

- d. With the CHRT's rulings in mind, the Caring Society believes that retroactive requests should also cover requests for services dating back to 2007 (when Jordan's Principle was passed by the House of Commons) that were not submitted due to the ISC's limited definition but would have qualified under the proper implementation of Jordan's Principle.
- e. The Caring Society has maintained from the outset that limiting retroactive reimbursement to requests that were denied or only partially approved is under-inclusive, as some families may not have applied (or did not even know they *could* apply) due to the restrictive nature of the definition and implementation.



- f. 2017 CHRT 35 states: “Canada shall review previous requests for funding that were denied, whether *made pursuant to Jordan’s Principle or otherwise*, dated from April 1st, 2009, to ensure compliance with the above principles” [*emphasis added*] ([135]1. D.). This wording indicates that denials by NIHB should qualify; if ISC had been properly implementing Jordan’s Principle at that time, NIHB should have been either referring families on to Jordan’s Principle, or been paying for the service/product/support and sought reimbursement through Jordan’s Principle after the fact.

Progress to Date

A section about retroactive funding was added to the 18 October 2019 Jordan’s Principle Standard Operating Procedures version.

22. Policy and Oversight

- a. Since the CHRT’s first ruling (2016 CHRT 2), and following subsequent orders as well as the protocol with ISC, the Caring Society has been reviewing communication and policy materials related to Jordan’s Principle. While we appreciate the opportunity to review the materials these documents often required significant amounts of editing and corrections to ensure clarity and compliance with the CHRT orders. In our view, the vast majority of the edits we submit ought to have been addressed by ISC before circulating the documents for review by the Caring Society and other Parties. The Caring Society has repeatedly urged ISC to ensure it properly edits and reviews its materials for CHRT compliance before sending to review. Nevertheless, documents continue to be provided that require extensive editing. The overall poor quality of the documents and the corresponding need for extensive revisions suggests an urgent need for ISC to strengthen its own policy capacity and ensure all employees fully understand the CHRT’s orders.
- b. Most recently, the Caring Society has noticed an increase in the number of sub-committees outside JPOC, JPAT and CCCW being created by ISC to discuss issues relating to policy and oversight of Jordan’s Principle. While the Caring Society wholly supports community feedback, the Caring Society does not believe that ISC is being effective in these processes. These processes do not consider the limited capacity of many communities who may not have the resources or time to meaningfully participate.
- c. There is a need for an independent/non-political, national oversight body to function in an ombudsperson role to help requesters and to provide feedback to ISC on Jordan’s Principle policies. There is also a want for provincial/territorial oversight bodies in addition to the national role.
- d. In February 2020, given our limited capacity, the Caring Society attempted to step back from its role in assisting requesters who encounter difficulties with Jordan’s Principle. However, given that ISC has not provided any interim solutions to support requesters who encounter difficulties, the Caring Society continues to provide limited assistance, particularly in urgent situations.

Possible remedies

- e. ISC must have more staff capacity to assist with Jordan’s Principle, not only in terms of working on requests, but also in policy and finance. All staff must ensure that policies and practices are working for the best interests of families and communities (and in ways that families and communities choose) and not the best interests of government. ISC’s implementation of Jordan’s Principle must reflect substantive equality, the CHRT orders as well as concerns of Parties and members of CCCW and JPOC.



- f. ISC, in consultation with the CCCW, must develop and implement an independent ombudsperson function immediately to receive and respond to concerns about ISC's implementation of the CHRT orders.

Progress to Date

As the Caring Society understands, the Ombudsperson function does not require federal legislation and can be set up with an Order in Council.

As of the writing of this document, work on the Ombudsperson function is currently underway.

23. COVID-19 Delays and Concerns

- a. As we have seen with the COVID-19 pandemic, extraordinary measures can be taken to ensure all people in Canada are supported through these difficult times; these same extraordinary measures need to be extended to vulnerable First Nations children and families. In May 2020, a Service Coordinator contacted the Caring Society with concerns about respite payments for almost 70 families they had been working with. The families ordinarily relied on places like schools, libraries and band offices where staff would ordinarily email or send the documents to ISC. Because these supports were closed, the Service Coordinator had to assemble and send all of the packages to ISC so families could receive payment. When the Caring Society asked if provisions could be made to waive the invoice submission, ISC indicated nothing could be done. Many of the families who require respite receive it because they have a child or children requiring additional assistance, not because they are trying to get financial gain from the situation. This type of mindset relates to the need for cultural shifts and building back the trust of First Nations communities [see also section 15].
- b. In addition to extraordinary measures, the Caring Society stresses the importance of common-sense measures and more flexibility from ISC during these challenging times. In October 2020, the Caring Society was contacted by a mother in BC whose young child (grade 2) had been bullied to the point where the child was suicidal and was referred for horse therapy. The therapy switched to an online platform (same therapist, no horse) given the mandatory social distancing measures. The ISC region would not pay for the therapy sessions that did not involve the horse. While the Caring Society understands the need to reimburse based on what is approved, ISC ought to have, at a bare minimum, reached out to the requester before denying payment for needed therapy services.
- c. In keeping with substantive equality and best interests of the child, ISC must consider COVID-19 concerns when determining requests. ISC must especially consider the ways that COVID-19 will inordinately impact children who are immunocompromised and/or the challenges that COVID-19 will pose to families and communities who are already struggling with well-documented chronic deficits in federally-funded services.

ISC failed to consider the inordinate impact that COVID-19 would have on a child with complex needs when the child's family and circle of care made a request for home modifications that would allow the child to live at home safely. It is concerning that ISC did not consider that COVID-19 could reasonably pose harm to those with spinal cord injuries given their predisposition to respiratory issues. ISC denied the request for home modifications and instead funded the child to stay in a hotel. It was only when the Caring Society interceded was the request re-evaluated and approved. As of April 2021, the child is still staying in a hotel while home modifications are underway. To the Caring Society's knowledge, there has been no initiative taken on the part of ISC to ensure the child is in a safe place [see also 1(c), 2(d), 4(a), 6(a) and 7(b)].



- d. At the same time, as we are now more than a year into the pandemic, ISC cannot rely on challenges related to COVID-19 as justification for administrative delays. Service Coordinators in the Atlantic report being told by ISC that Canada is only dealing with COVID related requests right now. If the request is not related to COVID, Service Coordinators are waiting weeks to hear back. While certainly the Caring Society is sensitive the pressures of COVID, delays of weeks or months in determining requests are simply not reasonable. Failing to take extraordinary measures to meet the administrative demands associated with COVID-19 indicates that Canada continues to prioritize internal considerations over the needs of children.

Possible Remedies

- e. If anything, the COVID-19 pandemic has highlighted the need for greater flexibility in the ways that ISC is implementing Jordan's Principle. ISC must comply with both the letter *and* the spirit of the CHRT orders by working to red tape for families and ensuring that they receive services and payments on time.

Progress to Date

ISC had provided COVID-19 updates to JPOC and AFN to JPAT in March 2020 however we have not received further updates from ISC regarding continued support or extraordinary measures for services through Jordan's Principle.