Without denial, delay or disruption: ensuring First Nations Children’s access to equitable services through Jordan’s Principle

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*Based on the work of the Jordan’s Principle Working Group
Jordan’s Principle is a child-first principle and provides that where a government service is available to all other children and a jurisdictional dispute arises between Canada and a province/territory, or between departments in the same government regarding services to a First Nations child, the government department of first contact pays for the service and can seek reimbursement from the other government/department after the child has received the service. It is meant to prevent First Nations children from being denied essential public services or experiencing delays in receiving them.

Canadian Human Rights Tribunal (CHRT, 2016, p 351)
Jordan’s Principle

- Jordan River Anderson (October 22, 1999–February 2, 2005)
  - Medical team approved hospital release when he was 2
  - Federal & provincial governments disagreed over payment for in-home service
  - Jordan passed away in hospital

- First Nations children susceptible to jurisdictional disputes
  - Federal, provincial/territorial & First Nations governments share responsibilities
  - Disputes between government departments also occur (e.g. INAC & FNIHB)
  - On-reserve funding/service gaps and disparities well documented

- Unanimous House of Commons resolution, 2007
First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Canada

- 2007 – Human Rights complaint filed
  - Charged discriminatory funding and management of on-reserve child welfare services
  - Failure to implement Jordan’s Principle also included

- January 2016 – CHRT decision
  - Federal government’s administration of on-reserve child welfare services is discriminatory
  - Affirms Jordan’s Principle and orders its implementation

- April 2016 – CHRT ruling
  - Orders implementation of JP within 2 weeks
Jordan’s Principle Working Group

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Assembly of First Nations

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Jurisdictional dispute over services for a First Nations child - ambiguity over responsibility for, or underfunding of, services

8-step process to declare a Jordan’s Principle case
Systematically narrows the cases eligible for child-first protections

Increased intensity intervention
Including institutional care

Lower quality of services
Fewer services in-home, less access to diagnostic & prevention services, service providers with lower credentials, etc.

Extraordinary efforts to access services
Family relocation, out of pocket payment, humanitarian efforts, etc

Jordan’s Principle designation pursued

Jordan’s Principle designation not pursued
A First Nation child needs services other children are entitled to but neither government will pay...

1. Does the case involve a jurisdictional dispute between a provincial and federal government?
2. Does the First Nation child live on reserve?
3. Have they been assessed and have been found to have multiple disabilities requiring services from multiple providers?

The services required by the First Nations child are not paid for by either government.

Resolution reached through case conferencing at the local level

Referral to focal point if not resolved at local level

Contact information for focal points not publicly available
- Required documents:
  - assessment from a health or social service professional
  - information on current proposed service plans
  - report of the issue/reason for referral to the focal point
  - summary of steps taken to resolve the issue
- Focal point makes decision
- No appeal process
There are currently no outstanding jurisdictional disputes involving Jordan’s Principle in Canada.

Statement issued by the office of INAC Minister (February 2015).

Counterpart Asst. deputy minister responds to request to enter into dispute process from primary asst. deputy minister. If accepted, Jordan’s Principle jurisdictional dispute is declared. Within a reasonable time frame.

Once a Jordan’s Principle dispute is declared, and the service is deemed by the province as a provincial/territorial normative standard, then the First Nation child finally receives services.

The services required by the First Nations child are not paid for by either government.
CHRT ruling & JWPG recommendations

- Jordan’s Principle must apply to all First Nations children (Caring Society, p 382).

- Jordan’s Principle is “relevant and often intertwined with the provision of child and family services to First Nations” (Caring Society, p 362). It must apply to all service domains.

- The Jordan’s Principle process must not include delays resulting from elements such as “a review of policy and programs, case conferencing and approval from the Assistant Deputy Minister, before interim funding is even provided” (Caring Society, p 379). It must prioritize the best interests of the child, by ensuring that services are delivered without delay or disruption.
CHRT ruling & JWPG recommendations

- Jordan’s Principle must apply to jurisdictional disputes, over services for a First Nations child, between federal and provincial governments and between departments of a single government (Caring Society, p 360).
  - Jurisdictional dispute not clearly defined.
  - Importance of this question demonstrated in PLBC v. Canada
- CHRT interpretation seemingly extends to:
  - areas of jurisdictional ambiguity, and
  - gaps and disparities between the services that the federal government funds/provides on reserve and what provinces generally fund/provide off-reserve.
Additional JWPG recommendations

- There must be clear and consistent standards and procedures for compensating all service providers, including First Nations providers, for the costs incurred during all Jordan’s Principle related processes.

- First Nations must be included as true partners in all stages of development and implementation of a response to Jordan’s Principle in every province/territory.

- Measures of accountability and transparency must be incorporated at the case level.
  - access, navigation, appeal.
Measures of accountability and transparency must be incorporated at the broader level of implementation, in order to ensure compliance with responsibilities to First Nations children under international, national, provincial/territorial, and First Nations law and agreements.

- Education, public reporting, independent oversight

Federal, provincial, and territorial governments must work with First Nations, without delay, in order to systematically identify and address the jurisdictional ambiguities and underfunding that give rise to each Jordan’s Principle case.

- How will this be done?
Implementation questions

- How should a Jordan’s Principle case be initiated?
- How will provincial comparability be assessed?
- How will costs incurred during Jordan’s Principle related processes be covered/reimbursed?
- How will Jordan’s Principle processes be monitored/evaluated?
- How will Jordan’s Principle policies and procedures be documented and disseminated?
- How will families/service providers learn about Jordan’s Principle processes?
- How will families/service providers appeal Jordan’s Principle decisions?
The full report of the Jordan’s Principle Working Group is available on the AFN website:  

For background information on Jordan’s Principle: 
http://www.jordansprinciple.ca

Thank you! 
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