

**JORDAN'S PRINCIPLE:  
FROM CHILD-FIRST TO  
ADMINISTRATIVE RESPONSE**

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CRCF Seminar  
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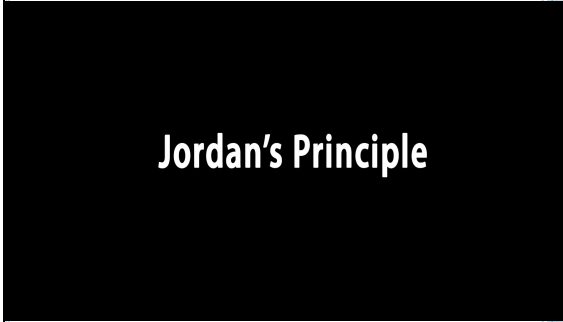
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JORDAN RIVER ANDERSON (1999-2005)



**Jordan's Principle**

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JURISDICTIONAL DISPUTES

- Increased possibility for jurisdictional disputes for First Nations children
  - Indian Act – federal government has fiduciary responsibility for on-reserve services
  - Constitution Act - Provinces/territories have primary responsibility for setting standards, defining scope of services
- Violations of international, national and provincial law and agreements
  - Failure to protect the 'best interest of the child'
  - Discriminatory treatment of on-reserve children



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JORDAN'S PRINCIPLE

- Child-first principle to ensure that First Nations children do not experience denial, delays or disruption of services due to jurisdictional disputes
- Implementation
  - Development of a Child-First Principle
  - Governmental Response Legislative
    - Administrative
  - Legal Appeal – *PLBC & M. Beadle v. Canada*

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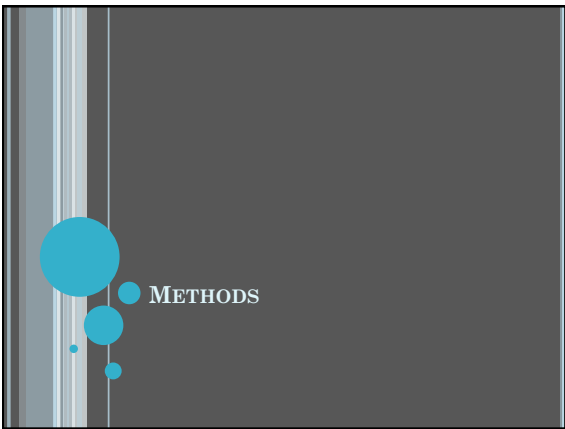
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METHODS

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ANALYTIC METHODS

- Academic literature review
- Descriptive content analysis of:
  - Legislation
  - Legal documents
  - Publicly available policy documents
  - AANDC communication/documents obtained through access to information requests
- Validation of analysis through triangulation
  - Across documents
  - With advisory committee knowledge/understanding

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PARTICIPATORY METHODS

- Collaboration between research team and Advisory Committee:
  - Assembly of First Nations
  - UNICEF Canada
  - Canadian Pediatrics Society
  - Canadian Pediatrics Health Centre
- Iterative collaborative process
  - Throughout research cycle
- Documentation of Jordan's Principle implementation:
  - Trust building
  - Capacity building
  - Foundation for additional research



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DEVELOPMENT OF A CHILD-FIRST PRINCIPLE

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WEN:DE REPORT (2005)

- Survey of 12 First Nations child welfare agencies
- 393 jurisdictional disputes in one year
- Disputes between:
  - Two federal departments
  - Two provincial departments
  - Federal and provincial governments
  - First Nations agencies and provincial governments
- Variation in number/type of disputes across agencies

(Blackstock, Prakash, Loxley, & Wien, 2005; Loxley et al., 2005)



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### WHAT IS JORDAN'S PRINCIPLE?

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

(First Nations Child and Family Caring Society, 2011)

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### SUPPORT FOR JORDAN'S PRINCIPLE

- o Over 7,000 individuals/organizations:
  - Canadian Medical Association Journal
  - Assembly of First Nations
  - Canadian Paediatric Society
  - UNICEF Canada
  - Canadian Nurses Association
  - Canadian Association of Paediatric Health Centres
  - Unanimous support from Canadian House of Commons

(Blackstock, 2008; First Nations Child & Family Caring Society of Canada, n.d.)



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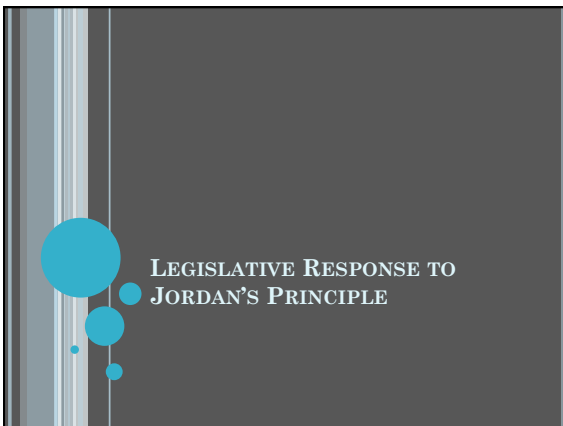
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MEMBER'S MOTION 296 (2007)

- "In the opinion of the House, the government should immediately adopt a child first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children." (Private Members' Business M-296)
  - Passed unanimously
- "When a problem arises in a community regarding a child, we **must ensure that the necessary services are provided and only afterwards should we worry about who will foot the bill.** Thus, the first government or department to receive a bill for services is responsible for paying, without disruption or delay. That government or department can then **submit the matter for review to an independent organization, once the appropriate care has been given, in order to have the bill paid.** I support this motion, and so does the government."
  - Steven Blaney (CPC), during consideration of Motion 296

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FIRST NATIONS CHILDREN'S HEALTH PROTECTION ACT, BILL C-249 (2008)

- "Where the Government of Canada has an obligation to pay for health care services that have been provided to a First Nations child whose ordinary residence is on a reserve, **payment for those services shall be made within 30 days by the department that is first presented with a claim for payment in respect of those services**
  - The minister of department that fails to do so will, within 30 days of becoming aware of the failure, make a **report to both houses of parliament detailing the reasons for the failure**
  - If the department normally responsible for payment does not make reimbursement within 30 days, **the matter will be settled by a person, appointed by the Minister of Indian Affairs and Northern Development, to settle such disputes"**
- Did not proceed beyond first reading in the House of Commons

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PROVINCIAL EFFORTS TO LEGISLATE JORDAN'S PRINCIPLE

- Yukon: Motion 700 (2006)
  - Introduced, not passed
  - Would have mandated territory to investigate payment mechanisms to cover equitable services for First Nations children
- Manitoba: Bill 203/233 (2008)
  - Introduced twice times, not passed
  - Bill would have affirmed right of all children to receive best available services in timely manner
- New Brunswick: Motion 68 (2010)
  - Endorsed
  - Mandates government to develop an agreement on application of Jordan's Principle

(Bourassa, 2010)

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FEDERAL DEFINITION OF A JORDAN'S PRINCIPLE CASE

- o Focuses on:
  - A First Nations child who
    - o is a registered First Nation or eligible to be registered as a status Indian;
    - o is ordinarily resident on-reserve;
    - o has been assessed by authorized health or social professionals as having multiple disabilities requiring multiple service providers;
  - Normative standards of care
    - o programs, services and benefits provided to children with similar needs and who live in a similar geographic location
  - A jurisdictional funding dispute between the federal and provincial governments
  - Continuity of care
    - o The current service provider that is caring for the child will continue to pay for necessary services until there is a resolution

(Aboriginal Affairs and Northern Development Canada, n.d.)

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ADMINISTRATIVE RESPONSE TO JORDAN'S PRINCIPLE

- o Process to recognize a Jordan's Principle case:
  - "Case management will occur first at the local level"
  - A jurisdictional dispute exists if the "case is brought to the attention of a focal point"
  - Focal points "help navigate cases within the existing range of health and social service based on the normative standards of care provided to children off-reserve in similar geographic locations"
- o "Case conferencing" occurred on a number of "Jordan's Principle-related" cases; information about their resolution is not public
- o Names/contact information for focal points not accessible
  - AFN suggests that First Nations in many regions did not know who focal points were

(quotations from Indian Affairs and Northern Development, 2010)

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### SUMMARY OF AGREEMENTS IN PLACE

JURISDICTIONS WITH AGREEMENTS	JURISDICTIONS THAT WANT AGREEMENTS	JURISDICTIONS INDICATING EXISTING PROCESSES ARE SUFFICIENT	NO INFORMATION FOUND ON AGREEMENTS
Manitoba (2008) Bipartite	Alberta	Newfoundland & Labrador	Northwest Territories
Saskatchewan (2009) Tripartite	Ontario	Nova Scotia (tripartite agreement with Mi'kmaw FCS)	Nunavut
British Columbia (2010), Bipartite		Prince Edward Island	Yukon
New Brunswick (2010), Tripartite		Quebec	

(Government of British Columbia & Government of Canada, 2011; Government of Canada & Government of Nova Scotia, 2010; Government of Canada, 2010)

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### ASSESSMENT OF IMPLEMENTATION BY NGOs

- o UNICEF: "missing elements" in implementation contribute to "confusion among stakeholders"
- o Canadian Paediatric Society rated implementation of bilateral/trilateral agreements in all jurisdictions

CANADIAN PAEDIATRIC SOCIETY RATINGS CATEGORIES	
Excellent	Province/territory has adopted and implemented a child-first principle to resolve jurisdictional disputes
Good	Province/territory has a dispute resolution process with a child-first principle for resolving jurisdictional disputes
Fair	Province/territory has adopted a child-first principle to resolve jurisdictional disputes, but has not yet developed or implemented specific strategy
Poor	Province/territory has not adopted a child-first principle

(UNICEF, 2012; Canadian Paediatric Society, 2012)

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### CANADIAN PAEDIATRIC SOCIETY (2012) ASSESSMENT

Province/Territory	2009	2011
Alberta	Poor	Poor
British Columbia	Fair	Fair
Manitoba	Fair	Fair
New Brunswick	Poor	Poor
Newfoundland & Labrador	Poor	Poor
Northwest Territories	Poor	Poor
Nova Scotia	Good	Good
Nunavut	Poor	Poor
Ontario	Fair	Fair
Prince Edward Island	Poor	Poor
Quebec	Poor	Poor
Saskatchewan	Fair	Fair
Yukon	Poor	Poor

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**TIMELINE OF FEDERAL ADMINISTRATIVE RESPONSE TO JORDAN'S PRINCIPLE**

- 2007** – Member's Motion Passed in House of Commons
- 2007** – Federal Budget: \$11m interim funding for Jordan's Principle cases
- 2008** – Bilateral agreement talks between Manitoba and Federal government
- 2010** – Tripartite agreement talks in New Brunswick
- 2010** – Federal government: no Jordan's Principle cases have been identified
- 2011** – Federal, Jordan's Principle implementation team nominated for award
- 2011** – Federal government: no Jordan's Principle cases have been identified
- 2012** – Jordan's Principle fund eliminated one year before sunset

(Government of Canada & Government of Nova Scotia, 2010; Government of Canada, 2010; Government of Canada, 2012)

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**LEGAL APPEAL**  
 Pictou Landing Band Council (PLBC) & Maurina Beadle v. Canada, 2013

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**PICTOU LANDING BAND COUNCIL (PLBC) & MAURINA BEADLE V. CANADA**

- Maurina Beadle sought in home support to care for her son
- PLBC covered the costs, nearly 80% of their total in home care services budget (\$8,200/month)
- Director of PLBC Health Centre requested case conferencing on this issue, felt JP was invoked
- Two case conferences between AANDC/Nova Scotia found:
  - \$2,200 is the normative standard for in-home care
  - Institutional out-of-home care is the only alternative

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PLBC & BEADLE V. CANADA

- PLBC informed AANDC of the *Nova Scotia (Community Services) vs. Boudreau* (2011) ruling
  - Enforced a legislative clause which allowed in-home care funds > \$2,200 in exceptional circumstances
- AANDC focal point determined there was no jurisdictional dispute
  - Province and Federal jurisdictions in agreement
- PLBC filed a case against Canada in 2011 invoking Jordan's Principle and the *Charter of Rights and Freedoms* (1982)

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IN FAVOUR OF PLBC & BEADLE (2013)

- Jordan's Principle applies
  - PLBC delivered services in accordance with provincial legislative standards, the federal government refused to pay
- Appointment of focal points = federal "implementation"
  - Government incurred responsibility to live up to Jordan's Principle
- Jordan's Principle is not to be read narrowly and the absence of a monetary dispute is not determinative when "officials of both levels of government maintain an erroneous position . . . and both then assert there is no jurisdictional dispute."
- Normative standards of care should reflect official legislation and standards, not de facto practice

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CANADA APPEALS (2013)

- Canada asserts that Justice Mandamin erred in his:
  - interpretation and application of Jordan's Principle
  - assessment of the Jordan's Principle focal point's decision
  - The remedy granted to respondents
- The grounds for appeal also include:
  - Such further and other grounds as counsel may advise and this Honourable Court may permit

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IT NARROWS THE POPULATION ELIGIBLE FOR CHILD-FIRST PROTECTIONS

- The Federal Government's response to Jordan's Principle focuses on:
  - A First Nations child who has status or is status eligible;
  - Is ordinarily a resident on-reserve;
  - Has been found, by health and social service professionals, to have **multiple disabilities requiring services from multiple providers;**

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IT NARROWS THE TYPES OF JURISDICTIONAL DISPUTES ADDRESSED

- Considers only cases in which:
  - there is "dispute between federal and provincial governments";
  - there is a "formal payment dispute,"
    - Determined by an AANDC focal point after case conferencing has occurred.
    - May also require approval by Minister of Aboriginal Affairs
- Disregards within-government disputes between departments
- Introduces the potential for provincial-federal collusion

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IT SUBVERTS THE INTENT OF A CHILD-FIRST PRINCIPLE

- Requires multiple stages of assessment and conferencing *before* Jordan's Principle is activated
  - The child must be assessed by multiple service providers,
  - The case must be brought to an AANDC focal point,
  - An assessment of unequal services, **based on comparison normative standards of care** provided to similar children in a similar geographic location, must occur
  - Case conferencing must occur at the local level, and either:
    - a formal payment dispute must be declared, or,
    - legal recourse must be pursued.



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IT POTENTIALLY CREATES FINANCIAL BURDENS FOR FIRST NATIONS

- For children already receiving services, "The current service provider . . . will continue to pay for necessary services until there is a resolution"
  - Who will pay in cases involving requests for service?
- Federal government - repayment of Jordan's Principle expenses doesn't apply to First Nations block funding
  - *Beadle & PLBC v. Canada*
- No federal funds designated for Jordan's Principle



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IT HAS EXCLUDED/EXCLUDES FIRST NATIONS

- From agreement negotiation/development processes
  - Bilateral vs. trilateral agreements
  - Resolutions passed by AFN & BCAFN in expressing discontent with the federal process
- From the focal point process
  - AFN request for involvement rejected
- From dispute resolution processes
  - Saskatchewan as outlier
- Justifications for First Nations inclusion
  - Obligations under national/international agreements
  - Sovereignty
  - Greater access to/comfort with process for First Nations families



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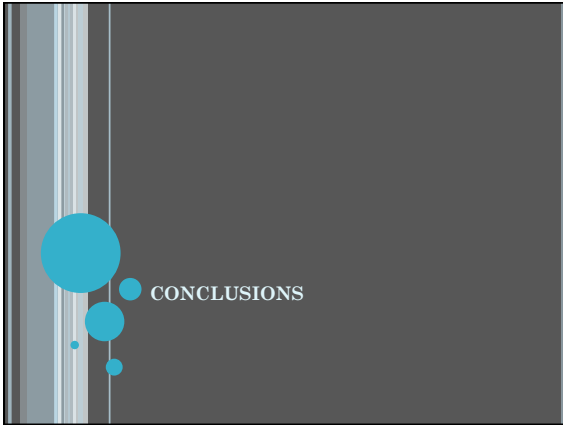
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CONCLUSIONS

- The federal narrative that there are “no Jordan’s Principle cases in Canada” obscures the details of their administrative response to Jordan’s Principle
- This response does not:
  - Reflect the spirit of Jordan’s Principle
  - Ensure compliance with international/national/provincial obligations
- Needed – an administrative response which
  - Facilitates the best clinical response
  - Facilitates compliance with international/national/provincial law and agreements
  - Involves First Nations as true partners

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