

A photograph of a forest of white-barked trees, likely aspens, with vibrant yellow autumn foliage. The trees are tall and slender, with white bark and dark knots. The leaves are bright yellow, creating a dense canopy. The background is a soft, out-of-focus blue, suggesting a sky or a body of water. The overall scene is serene and natural.

Self determination and substantive equality (equity) in public service

Realizing complex goals through the implementation of Jordan's Principle

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Faculty/Presenter Disclosure

- In the past 24 months, Vandna Sinha had no relevant financial relationships with the manufacturer(s) of commercial services discussed in this CME activity
- I do not intend to discuss an unapproved/investigative use of a commercial product/device in my presentation.
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Jordan River Anderson (1995-2005)

From Norway House Cree Nation in Manitoba

Born with complex genetic disorder & severe developmental delay

Required hospitalization for first 2 years of life

Hospital team first recommended discharge in 2001

Provincial and federal government disagreed about payment for home care

Including both high and low-cost supports

Governments argued for more than two years

Jordan passed away in hospital

What is Jordan's Principle?

A principle to ensure First Nations children have timely access to needed services

Parallel program for Inuit children - Inuit Child First Initiative

A legal obligation mandated by the Canadian Human Rights Tribunal

The funding mechanism for:

New systems of services for First Nations children

Service coordination and case management for First Nations children/families

Services to address unmet needs for individual First Nations children

Intended to ensure First Nations children access to services that:

Meet their needs and best interests

Address gaps and disparities in existing services

Are culturally appropriate

Ensure equality of outcomes

May require services that exceed normative standards

Must not compound historical disadvantage

Enable First Nations children/families to stay in their home communities

Prevent CFS intervention and out-of-home care

Jordan's Principle is growing and changing

Eligibility, Funding, Structure of services, Requirements for funding requests

Jordan's
Principle
originated
(2005)

Canadian
Human Rights
Tribunal (CHRT)
ruling (2016)

3-year initial funding
+ annual renewal
(2016-2020)

6 year budget allocation
(2021-2027)

Ongoing CHRT rulings (2017-2022)

Jordan's Principle 2023

WHO IS ELIGIBLE?

All First Nations children:

- Under the age of majority

- Living on or off-reserve

- Regardless of ability or disability

- Have status, or a parent/guardian who has or is eligible for status

- Recognized by their Nations

- Living off reserve, who lost connection to a First Nation due to colonial policies

First Nations children in need of services & supports, including:

- Health, social, cultural, or education services

WHAT HAS BEEN ACHIEVED?

Availability of services that were never available before

- Positive impacts on children's and families' lives

Expansion of Jordan's Principle - includes larger range of children & services

- Mental health/wellness particularly noted

Steps towards self determination

- Consideration and integration of culture in service provision

Some breaking down of silos

A decade of Jordan's Principle research

Jordan's
Principle
Working group
(2012-2016)

On Reserve
Services:
Jordan's
Principle in
Pinaymootang
(2015-17)

First Nations
Health
Consortium:
Service
Coordination in
Alberta
(2016-19)

Kee Tas Kee
Now Tribal
Council
Children's
Resources
(2019-20)

Implementation
of Jordan's
Principle in
Manitoba
(2018-2022)

Partnerships with First Nations and First Nations organizations

Assembly of First Nations, Pinaymootang First Nation, First Nations Health Consortium, Kee Tas Kee Now Tribal Council, Assembly of Manitoba Chiefs

Interdisciplinary approaches

Social work, public/community health, law, social policy, education, human & social development

Intersectoral collaborations and perspectives

University of Colorado, Boulder; McGill University, University of Manitoba, University of Calgary, University of Victoria, UNICEF, Canadian Paediatric Society, Health, Education, CFS, Mental wellness, Allied Health

Equity (Substantive Equality)

Legal principle that is the “animating norm” “at the heart” of Canadian equality rights

Requires transformation of

- The concrete conditions of inequality

- The structures that reproduce inequality

Involves

- Equal access

- Equal opportunity

- Provision of services/benefits to meet group needs & circumstances

CHRC - government action discriminatory if it: “widens the gap between First Nations and the rest of Canadian society”

Charter 15(1) - every individual “is equal before and under the law and has the right to the equal protection and equal benefit of the law, without discrimination.”

CHRA 5 - prohibits discrimination “in the provision of goods, services, facilities or accommodation customarily available to the general public”

CRC 2(1), 6, 30:

- Non-discrimination

- Right to optimal physical/emotional/social development

- Services that allow Indigenous children enjoyment of their “own culture” and use of their “own language.”

Self determination

Political, economic, territorial independence, and self-reliance

United Nations Declaration on the Right of Indigenous Peoples (Canada ratified 2021)

Article 3 - Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4 - Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions

An Act respecting First Nations, Inuit and Métis children, youth and families (S.C. 2019, c. 24)

Whereas Parliament affirms the right to self-determination of Indigenous peoples, including the inherent right of self-government, which includes jurisdiction in relation to child and family services

Whereas Parliament affirms the need ... to address the needs of Indigenous children and to help ensure that there are no gaps in the services that are provided in relation to them, whether they reside on a reserve or not

Variation across regions

	Region A	Region B
Nation and Tribal Council	Each Nation develops group funding requests independently or with Tribal Council. Regional organization offers some support for Nations preparing group requests	Each Nation funded for a case manager and adapted van, respite care, and lan-based programming. Tribal Councils funded for Service Coordinators who provide training, support and coordination
Off-Reserve	Regional organization supports families in navigating and accessing services.	Regional organizations and Tribal Councils support families in navigating and accessing services
Region	Regional organization supports First Nation families in the region in navigating services	Allied and mental health services available through centralized service providers

Variation across regions

	Region A	Region B
A systemic approach	In 2019-20, 93% of services/products funded through group requests	In 2019-20, 99% of services/products funded through group requests
Responsibility for decision making	Decisions on both group and individual requests made by federal government, at regional level, unless escalated	Decisions on a wide range of individual requests made by service coordinators and off-reserve case managers.
Trajectory of cases across process	21% of group requests & 48% of individual requests submitted in 2019-20 approved within the fiscal year.	57% of group requests & 62% of individual requests submitted in 2019-20 approved within the fiscal year.
Funding	\$85 million in 2019-20, Over 500% increase since 2017-18	\$125 million in 2019-20, Over 100% increase since 2017-18
Services/product	~40,000 products/services in 2019-20.	~200,000 products/services in 2019-20

Variation across Nations

	Nation A	Nation B
Geography	Northern, remote, fly in only	Rural, >½ day from service center 1 hr from hospital
Underlying infrastructure and context	Severe housing shortage and housing quality problems, lack of access to clean water, suicide crisis.	Housing shortage & quality issues, partially mitigated by available housing in nearby communities
Services (Not Jordan's Principle)	Nursing station, school (supported by regional organization, CFS, primary dental.	Established health centre with on-site physician, mental health worker, nurses, pharmacist. School part First Nations school system.
Human resources & networks	Limited access to trained labor force, high turn over, fly-in staff.	Good access to trained labor force from service center & surrounding communities. Long term health & education directors have good working relationships & provide stability across staff turnover.

Variation across Nations

	Nation A	Nation B
Case manager role & responsibilities	Shifting expectations to address a broad range needs and fill gaps across service systems.	Broad role scaffolded by health director leadership, regular meetings and collaboration between service directors, and administrative assistant.
Range & level of Jordan's Principle services	Centralized allied/mental health services, remote pediatric services, 4 wellness workers, equipment for a land-based program.	Centralized allied/mental health services, rehab aid, 5 child development workers/respice care staff, coordinator for youth in transition to adulthood, land-based programming, language educator, family wellness camp.

A discretionary approach to Jordan's Principle

Initial designation as 'initiative'

No mechanism for systematically assess needs & underlying causes across Nations

Demand driven approach – depends on requests for services/funding

No transparency around funding or decision making

Inconsistent decision making by focal points (across cases and over time)

Administrative decision maker

'Stretching of' eligibility criteria

Focal point as 'appeals' mechanism

Federal changes in eligibility, application and approach

Lack of formal policy framework

Failure to revise policies to address gaps funded through Jordan's Principle

Shifting of services from existing funding to Jordan's Principle

Lack of proactive collaboration with First Nations organizations

Duplication & confusion/competition around roles/responsibilities

Across nations & organizations

Administrative discretion

Discretion of street level bureaucrats an enduring factor across public services

Necessary because of:

- The complexity of situations encountered & contextual factors

- The need to interpret/apply rules

Can also undermine implementation

- Workers may have leeway to contravene/subvert goals

- Discretion may also be used in order to avoid work/accountability

- Discretion establishes a conflictual relationship between managers and street level workers

“Street-level discretion promotes workers’ self-regard and encourages clients to believe that workers hold the key to their well-being. For both workers and clients, maintenance of discretion contributes to legitimacy of the welfare-service state.” (Lipsky, 1980)

A discretionary approach to Jordan’s Principle:

- Undermines self determination

- Sustains colonial legitimacy

- Maintains power for agents of historically racist institutions

- Undermines equity - Transforms children’s rights to a transactional benefit

Fulfilling responsibilities around equity and self determination

Remedying known gaps in policy - systematically identify and address the jurisdictional ambiguities and underfunding that give rise to each Jordan's Principle case

Addressing underlying infrastructure issues that give rise to inequities between Nations

Regular public dissemination of data on what has, and can be funded through Jordan's Principle

By region, remoteness & Nation size

Meaningful First Nations engagement in decision-making at every level (procedural equity)

Funding for First Nations led, regional coordination

Funds for information sharing and collaboration across First Nations

Funds for assessing and designing programs to meet needs

Long-term funds for capacity enhancement in every Nation

Changing policy & practice

Build relationships

Know the Indigenous led programs/services in your area

Help hold decision makers to account

Addressing infrastructure issues

Fixing known gaps in policies and services

Supporting Indigenous-led efforts to advocate for service systems that are:

Systemic

Holistic

Indigenous led

Equitably funded

Prioritize transparency

Work with Indigenous Nations and organizations to regularly share anonymized/aggregated service data in ways that are useful and accessible to them

Prioritize capacity enhancement

Work with Indigenous Nations and organizations to support, develop, and sustain education and training efforts

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Thank you

All research available at:
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SCAN ME