# OHCHR STUDY ON CHILDREN'S RIGHTS TO HEALTH – HUMAN RIGHTS COUNCIL RESOLUTION 19/37

## SUBMISSION FROM THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

### Background and Importance

First Nations[1] children and youth deserve the same chance to succeed as all other children. As set upon by the UN Convention on the Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples, Indigenous children have the right to adequate health and to culturally based health services and without discrimination (UNCRC, Article 2, 24; UNDRIP, Article 21, 24). However, the reality of First Nations children and youth who live on reserves is often one of poverty, poor drinking water and lack of access to proper healthcare among other health discrepancies, leaving First Nations children and youth behind other Canadian children. These daily challenges are often rooted in Canada's colonial history and further amplified by government policies and procedures, a failure to address large scale challenges such as poverty which exacerbate poor health conditions, and programs and services that do not reflect the distinct needs of First Nations children and families. Further, the Canadian Government provides inequitable health, child welfare and education services and funding undermining the rights, safety and wellbeing of First Nations children (Royal Commission on Aboriginal Peoples [RCAP], 1996; Auditor General of Canada, 2008; Office of the Provincial Advocate, 2010). Despite these challenges to health, First Nations communities are taking steps of redress to promote healthy outcomes for the children and youth and the generations to come.

[1] First Nations refers to one of the three Aboriginal groups in Canada as per the Federal Government definition. First Nations people can be status or non-status. First Nations status refers to those residing on reserves: land reserved for First Nations peoples. The other two Aboriginal groups are the Métis and Inuit populations.

**Jordan's Principle (www.jordansprinciple.ca)**

Jordan's Principle is a child first principle to resolving jurisdictional and funding disputes between and within the federal and provincial/territorial governments preventing First Nations children living on reserves from accessing government health services on the same terms as other children. It was named in memory of Jordan River Anderson of Norway House Cree Nation in the Canadian province of Manitoba. Jordan was born in the large city centre of Winnipeg with complex medical needs and he had to remain in hospital care until he was well enough to go home. Although the doctors said that Jordan was well enough to go home, he lived unnecessarily in hospital for over 2 years while the Province of Manitoba and the Government of Canada fought over who should pay for his at home care because he was a First Nations child whose family lived on reserve. Jordan passed away at the age of 5, never having spent a day in his family home. Consistent with the non-discrimination rights in the UNCRC, "Jordan's Principle" was passed in the House of Commons in 2007. Jordan's Principle calls on the federal and provincial/territorial governments of first contact to pay for a First Nations child's services immediately and jurisdictional issues can be resolved later. However since that time, the federal government and provincial/territorial governments have failed to properly implement Jordan's Principle. The Canadian Paediatric Society (CPS) Report, *Are We Doing Enough?* (2012), rates the status and implementation of Jordan's Principle across the country in 2009 and then in 2011. Out of the 13 provinces and territories in Canada, 8 have not yet introduced Jordan's Principle. Of the 5 provinces that have adopted Jordan's Principle, only the province of Nova Scotia was rated 'good', meaning that the "[p]rovince/territory has a dispute resolution process with a child-first principle for resolving jurisdictional disputes involving the care of First Nations children and youth" (CPS, 2012, p.29). Although some may see this as progress, Nova Scotia has not

fully implemented Jordan's Principle meaning that First Nations children may continue to wait for services and not have access to the necessary medical services they need due to lengthy dispute resolution processes. Although Jordan's Principle was passed in the House of Commons in 2005, not one of the provinces or territories has fully implemented it. According to the CPS, the status of Jordan's Principle remains stagnant from 2009-2011 across all provinces and territories and yet recently, the Government of Canada gave its staff an award for its work on Jordan's Principle despite the poor implementation scoring on the CPS report card as well as the numerous cases of jurisdictional disputes similar to that of Jordan.

To illustrate that Jordan's situation is not an isolated incident, Vandna Sinha, professor at McGill University, states in an interview with the Aboriginal Peoples Television Network that "it [is] clear that there are a lot of Jordan's Principle cases out there that aren't being addressed under the terms of the federal definition because they've tried to re-define and narrow Jordan's Principle in some way" (APTN, 2012). The number of cases that exists has yet to be determined however the Wen:de report (2005) estimated the number of cases in 12 First Nations child and family service agencies to be approximately 400 in the span of a year.

On June 24, 2011, Pictou Landing First Nation and Maurina Beadle launched a Federal Court case against the Government of Canada alleging that Canada's failure to fully honor Jordan's Principle in her son Jeremy's case was discriminatory. Maurina Beadle is a loving First Nations mother caring for her son, Jeremy, who was born with extremely high special needs. After suffering a double stroke, Maurina needed assistance with Jeremy's physical care so she approached the Pictou Landing First Nation. Hoping to be reimbursed, the First Nation paid for Jeremy's immediate at-home costs due to delays resulting from provincial and federal disputes over who would cover the costs. Pictou Landing First Nation continues to struggle with the costs

to support Maurina and Jeremy and may not be able to continue to pay for Jeremy's at home care. The Province of Nova Scotia wanted to move Jeremy out of home and into care outside of the province (CBC, 2011). Canada supported this idea and suggested that if Pictou Landing First Nation was unable to continue to provide the in home support Jeremy needed, child welfare could intervene and the government would pay for that. Since Maurina was not prepared to lose her son to an institutional setting or child welfare, she and the Pictou Landing First Nation decided to file the case against Canada to access the services that Jeremy needs and deserves. Cross-examination documents (Pictou Landing First Nation v. Attorney General of Canada, 2011a, 2011b) in the Beadle case show that the case may have not been necessary since:

> [t]he Canadian Government and Government of Nova Scotia both said that Jeremy was entitled to a fixed amount per month for care and refused to provide more support, even though Jeremy's needs could not be met for the fixed amount. Both governments minimized a prior court decision [Nova Scotia (Community Services) v. Boudreau] successfully challenging the fixed amount and a government policy that allowed for additional funding in exceptional circumstances such as Jeremy's. (Blackstock, 2011b, p.13)

The Boudreau case indicated that services in Nova Scotia should be based on child need and not on arbitrary cut-offs in government. In limiting Jeremy to a fixed amount of care that is inadequate to his needs and circumstances, Canada is clearly not adopting the normative standard of care as set out by the Supreme Court of Nova Scotia. If the Beadle case is successful, it could set a precedent in Canadian law which would mean more First Nations children being helped by Jordan's Principle and less First Nations children's wellbeing and health being put on hold due to governments fighting over who should pay. It is a case that Maurina Beadle should not have had to file if Canada were fully honouring its obligations under the UN Convention on the Rights of the Child or the UN Declaration of Indigenous Peoples.

**Resources**


Aboriginal Peoples Television Network [APTN]. (July 2012). *Despite Parliament's vow, FN kids still fall through cracks, research shows.* Interview with Vandna Sinha from the University of McGill. Retrieved from: http://aptn.ca/pages/news/2012/07/24/despite-parliaments-vow-fn-kids-still-fall-through-cracks-research-shows/

Blackstock, C. (2011a). Jordan's Principle and Maurina Beadle's fight for implementation. *Eastern Branch Ontario Association of Social Workers Bulletin, 37* (3), 12. Retrieved from https://www.oasw.org/en/membersite/pdfs/EasternBulletin-Fall2011.pdf

Blackstock, C. (2011b). *Jordan & Shannen: First Nations children demand that the Canadian Government stop racially discriminating against*. Shadow Report: Canada 3rd and 4th Periodic Report to the UNCRC.

Blackstock, C., Prakash, T., Loxley, J., and Wien, F. (2005). *Wen:de: We are coming to the light of day*. First Nations Child and Family Caring Society of Canada.

Canadian Broadcasting Corporation [CBC]. (2011). *First Nations children still taken from parents: Analysis finds more First Nations children in care than at height of residential school system*. http://www.cbc.ca/news/canada/story/2011/08/02/pol-first-nations-kids.html

Pictou Landing First Nation and Maurina Beadle vs. Attorney General of Canada. (2011a). Cross Examination of Ms. Barbara Jean Robinson, manager at Aboriginal Affairs and Northern Development Canada. Court file No. T-1045-11. Retrieved from: http://www.fncaringsociety.com/sites/default/files/jordans-principle/docs/Robinson-Cross.pdf

Pictou Landing First Nation and Maurina Beadle vs. Attorney General of Canada. (2011b). Cross Examination of Ms. Jacqueline Susan Ross, manager at Aboriginal Affairs and Northern Development Canada. Court file No. T-1045-11. Retrieved from: http://www.fncaringsociety.com/sites/default/files/jordans-principle/docs/Ross-Cross.pdf

United Nations. (1989). *Convention on the Rights of the Child.* Office of the United Nations High Commissioner for Human Rights.

United Nations. *United Nations Declaration on the Rights of Indigenous Peoples.* March 2008. Retrieved from: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.