



International Journal of Child and Adolescent Resilience

Pursuing Human Rights for Community-Level Resilience: The Jordan's Principle Case, Process, and Initiative as Resilient Community Action

Cindy Blackstock and Andrea Auger
First Nations Child and Family Caring Society of Canada

Corresponding Author: aauger@fncaringsociety.com

Abstract:

The United Nation's Convention on the Rights of the Child (CRC) is a globally-adopted initiative to ensure the best interests of the child remain at the forefront of competing agendas. Calls for concrete actions to be taken by a particular CRC signatory country to ensure a child's non-negotiable human rights. In Canada, concerns persist in the context of health disparities within First Nations communities, where the process has moved from child rights violation to playful community action. Jordan's Principle is a child-first principle, passed in the Canadian House of Commons in 2007, to ensure that a First Nations child's health and social services are provided commensurate with the "best interests" of the child. The principle is named in memory of Jordan River Anderson who died in hospital waiting for his needs to take precedence. His tragic death spoke to the need for jurisdictional disputes to be resolved after the needs of the child are met. Jordan's Principle reflects the active community-level resilience within First Nations and Aboriginal communities, (King, 2012), where action has a reciprocal relationship to resilience, thereby creating a community action-community resilience relationship with real, practical implications for resilience at the family and child levels.

Keywords:

Aboriginal Peoples, Jordan's principle, UN convention on rights of the child, first nations, child welfare

Note:

First Nations, Métis and Inuit are the three Aboriginal groups in Canada, with many distinct communities, languages and cultures within each group. In this context, the authors speak to the experience of First Nations children.

Resilience is increasingly applied to research and practice regarding Aboriginal populations to consider the multi-level pathways to health. The First Nations Child and Family Caring Society of Canada (Caring Society; www.fncaringsociety.com) is committed to evidence-informed solutions that address the causal problems of systemic disadvantage for First Nations children. The Caring Society uses a reconciliation-based framework to engage First Nations and other peoples to ensure First Nations children have an equitable opportunity to grow up safely with their families, go to good schools, be healthy and proud of who they are. Consistent with the UN Committee on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples, as well as community driven problem identification, community and research-based solution development, implementation and evaluation are cornerstones to the Caring Society approach. "Indigenous families, communities, and leaders are taking action to counter the forces of neoliberalism, assert their rights, and demand better for their children" (King, 2012, p. 37).

This paper outlines how a First Nations child, Jordan River Anderson, brought attention to systemic denials or delays in the receipt of government services by First Nations children across Canada, and inspired a national policy solution called Jordan's Principle. First Nations 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 (UNCRC) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), 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, First Nations children and youth often experience a reality that includes poverty, poor drinking water and lack of access to proper healthcare among other health discrepancies, leaving First Nations children and youth at a social, economical, and developmental disadvantage, compared to most Canadian children (Blackstock, 2011a; King, 2012). These daily challenges are often rooted in Canada's colonial history, and further amplified by government policies and procedures. There continues to be a national failure in addressing the large-scale challenges for First Nations peoples,

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 well-being of First Nations children (Royal Commission on Aboriginal Peoples [RCAP], 1996; Auditor General of Canada, 2008; Office of the Provincial Advocate, 2010, see www.fncaringsociety.com). 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.

Jordan's Principle

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, Manitoba with complex medical needs and 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 two 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 a reserve. Jordan passed away five years old, never having spent a day in his family home.

Consistent with the non-discrimination rights in the CRC, "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 (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 five provinces that have adopted Jordan's Principle, only the province of Nova Scotia was rated 'good', meaning that the province/territory has a dispute resolution process with a child-first principle for resolving jurisdictional disputes involving the care of First Nations children and youth (MacDonald, 2012). 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 2007, 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 to 2011 across all provinces and territories. Surprisingly, 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 *Wende report* (Blackstock, Prakash, Loxley & Wien, 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 the 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 proposed 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). 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 well-being and health being put on hold due to governments fighting over who should pay. If Canada were fully honouring its obligations under the UNCRC or the UN Declaration of Indigenous Peoples, Jeremy along with many other First Nations children and youth would not be in positions of receiving inadequate healthcare,

and having an overall disadvantage compared to non-indigenous children and youth (MacDonald, 2012). Community action is one process that may be facilitative for community-level resilience and, in the context of human rights violations, ongoing community action is critical for ongoing resilience promotion. Resilience is part of an overall change process, and Jordan's Principle is one vehicle for pioneering for change to enhance the resilience of under-served groups. Contexts of resiliencies are at least equally important as contexts of adversities. Sadly, an individual child's resilience potential ends if they have lost their life, as did Jordan. All our children deserve that option to showcase their resilience, with the resources and support of the family, community, and nation.

Note: For more information on Jordan's Principle and other community based initiatives for change, see the 7 Ways to Make a Difference for First Nations children, youth and families at: <http://www.fncaringsociety.com/7-free-ways-to-make-a-difference/>.)

Resources

- Aboriginal Peoples Television Network [APTN]. (2012, July 24). *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). *Wende: We are coming to the light of day.* First Nations Child and Family Caring Society of Canada.
- Canadian Broadcasting Corporation [CBC]. (2011, August 2). *First Nations children still taken from parents: Analysis finds more First Nations children in care than at height of residential school system.* Retrieved from: <http://www.cbc.ca/news/canada/story/2011/08/02/pol-first-nations-kids.html>.
- Canadian Paediatric Society (2012). *Are we doing enough? A status report on Canadian public policy and child and youth health. 2012 Edition.* Ottawa (ON): The Society. Retrieved from: www.cps.ca/English/Advocacy/StatusReport2012.pdf.
- MacDonald, N.E. (2012). Aboriginal children suffer while governments ignore Jordan's Principle. *Canadian Medical Association Journal*, 184(8), 853.
- King, J. (2012). "But how could anyone rationalize policies that discriminate?": Understanding Canada's Failure to Implement Jordan's Principle. *First People's Child & Family Review*, 7(1), 29-39.
- 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.* Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.
- United Nations. (2008) *United Nations Declaration on the Rights of Indigenous Peoples.* Retrieved from: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.