

STANDING WITH FIRST NATIONS CHILDREN TO ACHIEVE CULTURALLY BASED EQUITY

ADDITIONAL INFORMATION FOR CANADA'S LIST OF ISSUES



Aboriginal and non-Aboriginal children walk to Parliament Hill on June 11, 2012 for equity for First Nations children

**SUBMITTED BY: THE FIRST NATIONS CHILD AND FAMILY CARING
SOCIETY OF CANADA (THE CARING SOCIETY)**

August 1, 2012



“Dear Mr. Harper, [...] The children on the native reserves are just like any other Canadian child but they are not being treated like that. So many people have realized this problem and I am very surprised you are not one of them. You are breaking the Charter of Rights and Canadians helped write it. In the Charter of Rights it clearly states that every Canadian gets the same rights but that is not happening.”

– Cassidy in *Children have power!* (p.24)

Background and Importance

Thousands of Canadian children marched to their mailboxes on June 11, 2012 with letters to the Canadian Government. Their message - *now is the time that First Nations children get the same chance to grow up safely in their families, go to good schools, be healthy and proud of who they are*. First Nations¹ children and youth deserve the same chance to succeed as all other children, however, the Canadian Government provides inequitable child welfare, education and in health services 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). The challenges that First Nations children and youth face daily are often sourced in Canada’s colonial history.

The Caring Society attended the pre-session for Canada in Geneva in February 2012 with a delegation of three First Nations children and three First Nations youth so that they could share firsthand accounts of the impacts of the longstanding inequities on their rights. We submitted our own UNCRC Alternative report *Jordan & Shannen: First Nations children demand that the Canadian Government stop racially discriminating against them*. In addition, the Caring Society contributed to two of the following joint alternate reports: (1) the Office of the Provincial Advocate for Children and Youth and the Caring Society submitted *Our Dreams Matter Too*, a

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.

report written by First Nations children and youth which deals specifically with equity in First Nations education and (2) KAIROS and the Caring Society submitted the report *Honouring the Children*. The Honouring the Children report describes inequities in First Nations child welfare, health and education and cites numerous examples of how First Nations are attempting to redress the inequities. The report describes a human rights case filed by First Nations alleging Canada's flawed and inequitable First Nations child welfare programs, funding and policies are discriminatory (I am a Witness), Jordan's Principle (equitable access to government services for First Nations children) and Shannen's Dream (proper schools and equitable education for First Nations children). Under the Convention on the Rights of the Child, First Nations children and youth are entitled to be free of discrimination and to have their cultural rights respected. After the pre-session in Geneva in February, the Committee created its list of issues and provided the opportunity for the organizations who attended the session to submit additional information for Canada's review. The Caring Society respectfully submits additional information to be reviewed for Canada's upcoming review in September 2012.

"Dear Mr. Harper, We, the students at Lady Evelyn, feel that it is unfair that you are not the people who live on the native reserves in Canada. Aren't you breaking the Charter of Rights by not providing equal funding for everyone? It says that every race, ethnic group or religion has the right to equal protection without discrimination."

– Arya in Children have power! (p. 97)

Canadian Human Rights Case on First Nations Child Welfare (www.fnwitness.ca)

Canada is being held to account for its longstanding pattern of providing inequitable and flawed child welfare services to First Nations children on reserves under the Canadian Human Rights Act. This historic case has international implications as it is, to our knowledge, the first time a developed country has been challenged for its failure to uphold the UNCRC and the human rights of Indigenous children before a body with the power to make enforceable orders. In 2007, the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society of



School children gather on Parliament Hill for Have a Heart Day in support of equity in child welfare for First Nations children.

Canada (the Caring Society) filed a complaint to the Canadian Human Rights Commission (the Commission) against Aboriginal Affairs and Northern Development Canada (AANDC), formerly Indian and Northern Affairs Canada (INAC). The complaint alleges that the Government of Canada has a longstanding pattern of providing flawed and inequitable funding, programs and policies for child welfare services provided to First Nations children on reserves. In 2008, the Canadian Human Rights Commission referred the case to the Canadian Human Rights Tribunal (CHRT) for a full hearing on the merits of the case. In addition, the Canadian Human Rights Commission joined the case as a party to the proceedings before the CHRT representing the public good. Canada filed two unsuccessful Federal Court applications to have the case dismissed on a legal technicality before bringing a similar motion before the Canadian Human Rights Tribunal in 2010.

Canada (the Caring Society) filed a complaint to the Canadian Human Rights Commission (the Commission) against Aboriginal Affairs and Northern

In March 2011, Canadian Human Rights Tribunal, Chairperson Shirish Chotalia, released her decision from the June 2010 hearing on Canada’s motion to dismiss the complaint. Chair Chotalia dismissed the case before a full hearing due to a legal technicality. The AFN, the Commission and the Caring Society filed judicial reviews with the Federal Court. The hearing was held in February of 2012 and on April 18, 2012, the Federal Court Justice Madam Mactavish, ruled in favour of the AFN, the Commission and the Caring Society by overturning Chairperson Chotalia’s ruling and returning the matter back to the CHRT for re-determination. Justice Mactavish rejected Canada’s central argument that federal First Nations child welfare services delivered on reserve to First Nations children cannot be compared to provincial services. In her summary of the decision, Justice Mactavish states: “the Tribunal erred in failing to consider the significance of the Government’s own adoption of provincial child welfare standards in its programming manual and funding policies.” She also had concerns over the

“You are breaking the laws of the UN Convention on the rights of children. The convention says that children have a right to be raised by their parents”
- Thierry in *Children have power!*
(p.38)

fairness of the proceedings and several significant legal errors made by the Tribunal in 2010. Justice Mactavish also referred the matter back to the Tribunal for a full hearing on the merits of the case to see whether or not discrimination exists. The

Government of Canada has applied to the Federal Court of Appeal with a request to overturn Justice Mactavish’s decision. Nonetheless, the hearing at the Canadian Human Rights Tribunal will occur concurrently with the Federal Court of Appeal action. A hearing date has been set down at the Tribunal to hear preliminary motions in September of 2012. The evasive tactics of the Canadian Government to escape a full hearing on whether or not it is discriminating against thousands of First Nations children is disturbing and requires international commentary. Despite

its historic implications, Canada did not include this case in its report to the Committee and has not, to our knowledge, provided any commentary on how its actions in this case align with its obligations pursuant to the UNCRC. Information about the case is available at www.fnwitness.ca.

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 that get in the way of First Nations children living on reserves

"I think that just because your skin colour is different, or you have a different religion, does not mean that you should be treated differently"
- Imran in *Children have power!* (p.7)

accessing government services on the same terms as other children. It was named in memory of Jordan River Anderson of Norway House Cree Nation in the province of Manitoba who was born in Winnipeg with complex medical needs. 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 a 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 is a child first approach to resolve jurisdictional disputes within, or between, the federal and provincial/territorial governments where the government of first contact pays for the 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). The provinces or territories have not implemented Jordan's Principle since it passed in the House of Commons in 2005 and further to this, the status of Jordan's Principle remains stagnant from 2009-2011. Recently the Government of Canada gave its staff an award for its work on Jordan's Principle despite the poor implementation scoring on the Canadian Paediatric Society's report card as well as the numerous

"The charter of rights states that everyone must be equally protected without discrimination, including race and they should be treated equal no matter what province/territory they live in."

*– Molly in Children have power!
(p. 56)*

cases of jurisdictional disputes similar to that of Jordan. In an interview with the Aboriginal Peoples Television Network, Vandna Sinha, professor at McGill University, states 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.

Shannen's Dream (www.shannensdream.ca)

"I think all the children should have the rites to a good school and equal education as everyone. Then we can have peace and Love in our world"

- Zoe & Lydon in *Children have power!* (p.85)



*North Shore Micmac
District FASD Youth
Forum, 2011*

In 2012, the Federal Government of Canada released the Federal Budget and promised 275 million dollars over three years to partially address the inequities in First Nations education and to renovate schools on reserve. Although this amount may seem generous, this is far less than what is needed to achieve equity. First Nations children receive \$2000-\$3000 less for their education than non-Aboriginal children who receive provincially funded education. This means that there is no funding or inadequate funding for things like special education, libraries, computers or technology, extracurricular activities, principals or directors. In addition, as of 2010, 48 new schools are needed across the country and approximately 29 schools are in need of

substantial repairs. Because education on reserves is often not quality education, many First Nations children and youth must leave their communities, taking them away from their families, culture and traditions. The financial situation of the Canadian Government does not appear to be a substantial factor, as within months of the 2012 Budget, the Prime Minister announced a new bridge project between Canada and the USA where Canada will pick up all costs, including the costs of buying property in the US state of Michigan to ensure this project goes ahead (Yahoo News, 2012). Although Canada says it will redeem the USA costs overtime it does not extend this same logic to investments in children despite significant evidence that investments in equity and children will result in significant benefits to the children and to the country.

“Dear Prime Minister Harper [...] Why do you not give them the same thing as the kids in Ottawa like me? Lives can be at risk because the problem wasn’t solved. I want you to send me a letter with an explanation why you didn’t give them equal rights and proper schooling”

- Kezia in *Children have power!* (p.47)

Recommended Questions for Canada

Issue	Question	Expected Response from Canada	Follow up Question	Supporting Citation
Canadian Human Rights Case on First Nations Child Welfare	a) The Country report does not include a mention of this case, please explain why it was excluded given that the case was filed in February of 2007.			Blackstock, <i>Jordan & Shannen</i> (2011b), p. 4-6; KAIROS and the Caring Society, <i>Honouring the Children</i> (2011), p. 8-10;
	b) Canada has pursued a number of legal strategies in an effort to	Will not comment due to legal proceedings	In Canada’s submissions to the Federal Court, Canada argued that	Attorney General of Canada (2011). para 72, p.1551.

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	<p>avoid a full hearing on the discrimination claims before the Canadian Human Rights Tribunal. Please explain how these strategies align with Canada’s obligations pursuant to the UNCRC.</p>		<p>the UNCRC has no legal force in Canada. Is this your official position?</p>	
	<p>c) Canada notes in its country approach that it is providing the enhanced prevention focused approach in certain regions in an apparent effort to address the inequities. The Auditor General of Canada states that the enhanced prevention approach is an improvement to the old formula, Directive 20-1, but is still flawed and inequitable. What additional funds has Canada provided to regions where the enhanced prevention approach is provided to</p>	<p>Will call attention to how much they have spent on the enhanced approach and will also say they have acted on the Auditor General’s Approach. (Note: the Canadian Government has taken action on some of the Auditor General of Canada’s reports but has not taken the action needed to redress financial inequities or structure flaws in the formula.)</p>	<p>Ask the question again focusing on Canada’s financial redress of the inequities noted by the AOG.</p>	<p>Auditor General of Canada (2008), Sections 4.48, 4.49, Appendix – List of Recommendations.</p>

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	<p>redress the inequities found by the Auditor General of Canada?</p> <p>d) BC and New Brunswick are still on the Directive 20-1 which provides significantly less funding for First Nations children served by child welfare than the enhanced approach. Why is this the case and what specific measures is Canada taking to redress the issue?</p>	<p>Canada has plans to fully roll out the enhanced approach by 2015.</p>	<p>Canada originally said it would roll out the enhanced approach by 2013, why the extension of three years?</p>	<p>McDonald, Ladd, et.al (2000).</p>
<p>Jordan's Principle</p>	<p>a) Since the last report from the CPS, what steps has Canada taken to further the implementation of Jordan's Principle, considering that the Wen:de report and the CPS have urged the full implementation of Jordan's Principle.</p>	<p>Aboriginal Affairs and Northern Development Canada and Health Canada are working with provinces and First Nations to implement Jordan's Principle. Efforts to reach agreements and develop dispute resolution mechanisms are underway in four provinces. Agreements to work together were reached in Manitoba in 2008 and Saskatchewan in 2009 and work is underway to finalize agreements in</p>	<p>Ask the question again focusing on the 8 provinces and territories that have not adopted the Principle.</p>	<p>Canadian Paediatric Society, Jordan's Principle, (2012), p.28-29; Blackstock, Prakash, Loxley & Wien, <i>the Wen:de Report</i> (2005), p. 87-112; Blackstock (2011b), <i>Jordan & Shannen</i>, p.8-9.</p>

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	<p>b) Please explain the benefits of limiting the scope of Jordan’s Principle to children with multiple disabilities.</p>	<p>British Columbia and New Brunswick.</p> <p>Federal and provincial contacts and processes are in place in each province to deal with any cases that are brought forward. To date, cases brought forward have been addressed through existing mechanisms with none progressing to a declared jurisdictional dispute.</p>	<p>Can you please comment on the Maurina Beadle case?</p>	<p>Blackstock, Jordan’s Principle and Maurina Beadle’s fight for implementation (2011a), p.12-13; Pictou Landing First Nation and Maurina Beadle vs. Attorney General of Canada. (2011a); Pictou Landing First Nation and Maurina Beadle vs. Attorney General of Canada. (2011b).</p>
	<p>c) The nomination for the Government’s work on Jordan’s Principle states: “[Jordan’s Principle] required figuring out a new way of working together, nationally and regionally, to implement a child-first approach to existing health, education and social services.” What policies has Canada developed to address disruptions in service access in education, social services and other areas given that</p>	<p>Aboriginal Affairs and Northern Development Canada and Health Canada are working with provinces and First Nations to implement Jordan's Principle. Efforts to reach agreements and develop dispute resolution mechanisms are underway in four provinces. Agreements to work together were reached in Manitoba in 2008 and Saskatchewan in 2009 and work is underway to finalize agreements in British Columbia and New Brunswick.</p>	<p>Ask the question again with a focus on social services and education.</p>	<p>AANDC, (2011).</p>

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	Jordan's Principle was passed in the House of Commons over 4.5 years ago?			
Shannen's Dream	Shannen's Dream was passed in the House of Commons in February of 2012. Can you provide a plan and timeline for the implementation of Shannen's Dream for safe and comfy schools?	Canada plans to complete the school in Attawapiskat in 2013 and has allotted \$275 million dollars to First Nations schools.	Can you please advise us as to when the inequities in First Nations education will end?	Blackstock, <i>Jordan & Shannen</i> (2011b), p.7-8; Shannen's Dream, <i>Our Dreams Matter Too</i> (2011); KAIROS and the Caring Society, <i>Honouring the Children</i> (2011), p. 5-7; The Caring Society, <i>First Nations Education</i> . (2010)

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