



# Jordan's Principle: Still not Filling the Gaps

*Presented by:*

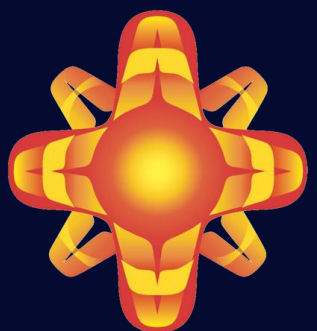
**DR. CINDY BLACKSTOCK  
BRITTANY MATHEWS  
DAVID TAYLOR & KEVIN DROZ**

**January 16, 2024, | 10 – 11 AM PST**



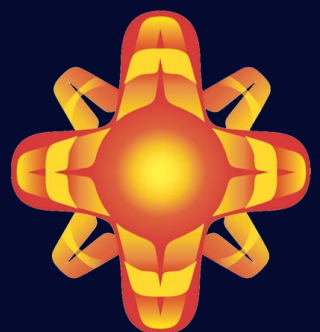
**First Nations Child &  
Family Caring Society**

*Hosted by the Our Children Our Way Society*



# Agenda

- **Welcome - Jennifer Chuckry (Chair)**
- **Opening Prayer- Judy Wilson**
- **Introductions - Jennifer Chuckry**
- **Presentations - Dr. Cindy Blackstock, Brittany Mathews, David Taylor & Kevin Droz**
- **Q&A**



# *Canada's non-compliance with Jordan's Principle*

## *Our Children: Our Way Webinar*

Presented by  
Cindy Blackstock, PhD  
January 16, 2024

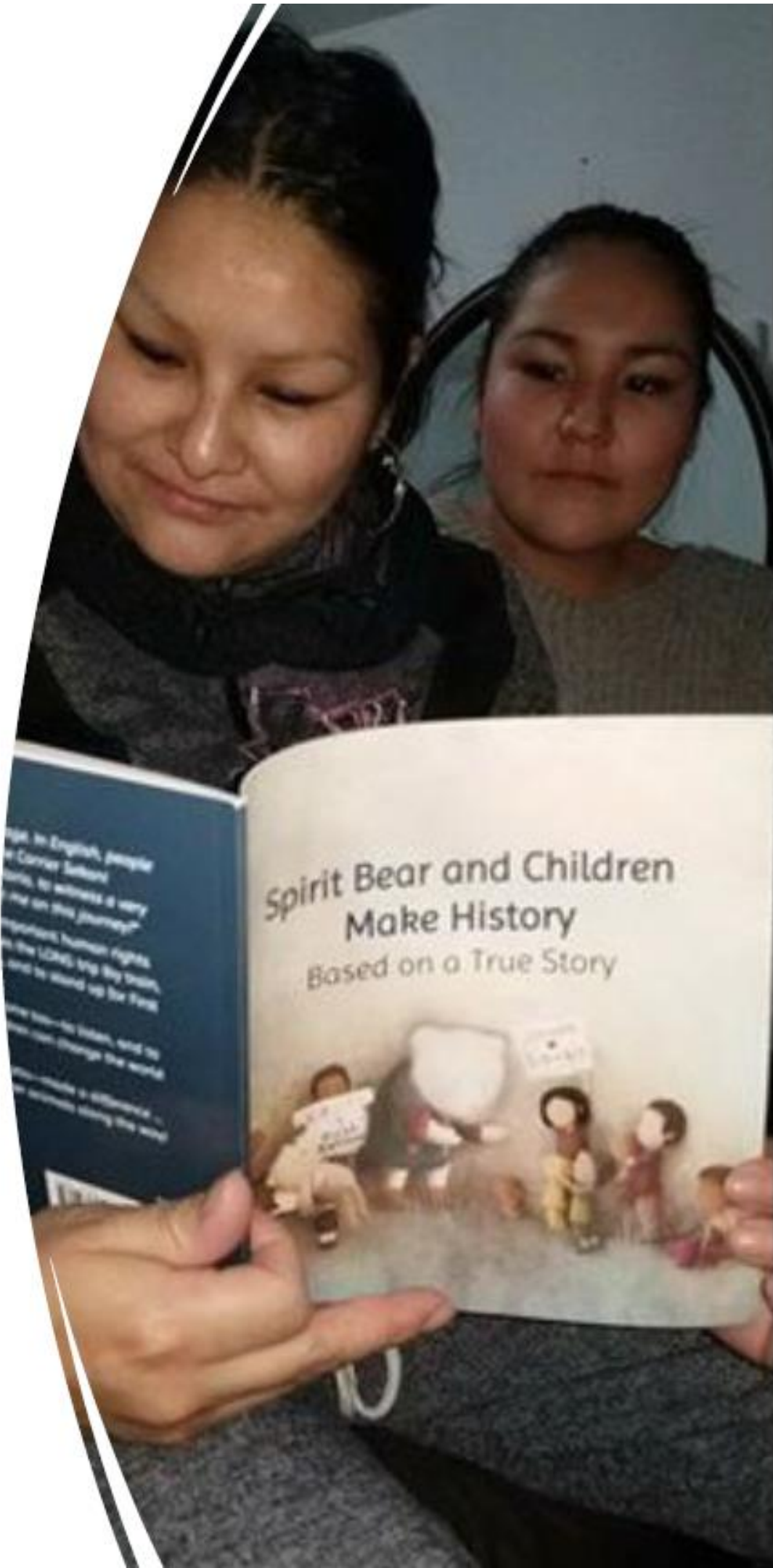


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du Canada

# Honouring Jordan and his family

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AWARDED TO OUR MOST  
GENEROUS FRIEND

♥ Spirit Bear ♥

you are there with us and help  
our voices be heard! you always  
would share your berries and  
give amazing hugs!

AWARDED BY YOUR FRIENDS

JOE ANA SKEK AMANDA CARLO  
NACY KEITH



# What is the CHRT case about?

**Stop** federal discrimination against First Nations children, youth and families in child and family and Jordan's Principle **now and forever**

OSGOODE HALL LAW SCHOOL

THE DEAN AND FACULTY COUNCIL OF OSGOODE HALL  
LAW SCHOOL IN TORONTO, CANADA AWARDS

Spirit Bear

FOR COURAGEOUS SUPPORT AND BEARING WITNESS  
THROUGHOUT A LONG AND DIFFICULT PROCESS OF  
TRUTH TELLING AND HEALING.

Bearister

AND GRANT ALL THE HONOURS, RIGHTS AND PRIVILEGES WHICH  
APPERTAINING THEREUNTO  
JUNE 2017

Hello Mr.

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# CHRT Jurisdiction

- Tribunal **no longer** has jurisdiction **re: compensation**
- Tribunal **retains** jurisdiction to **ensure the discrimination stops and does not recur in:**
  - Child and family services
  - **Jordan's Principle**

# What matters most to the Caring Society?

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High quality substantively equal, culturally and needs based child and family and Jordan's Principle services

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Compliance with existing orders

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Evidence informed funding structure, policies and agreements that ends discrimination for children and families **in year 11** and beyond

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Effective safeguards against Canada discriminating again

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Enforceability of orders and access to justice for First Nations, First Nations service providers and families



# Two Paths

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## Negotiation

Final Settlement Agreement (FSA)  
Requires agreement from Canada  
Approval by First Nations in Assembly  
Approval by Tribunal



## Litigation

Consistent with First Nations in Assembly  
Does not require Canada's agreement  
Tribunal process is public

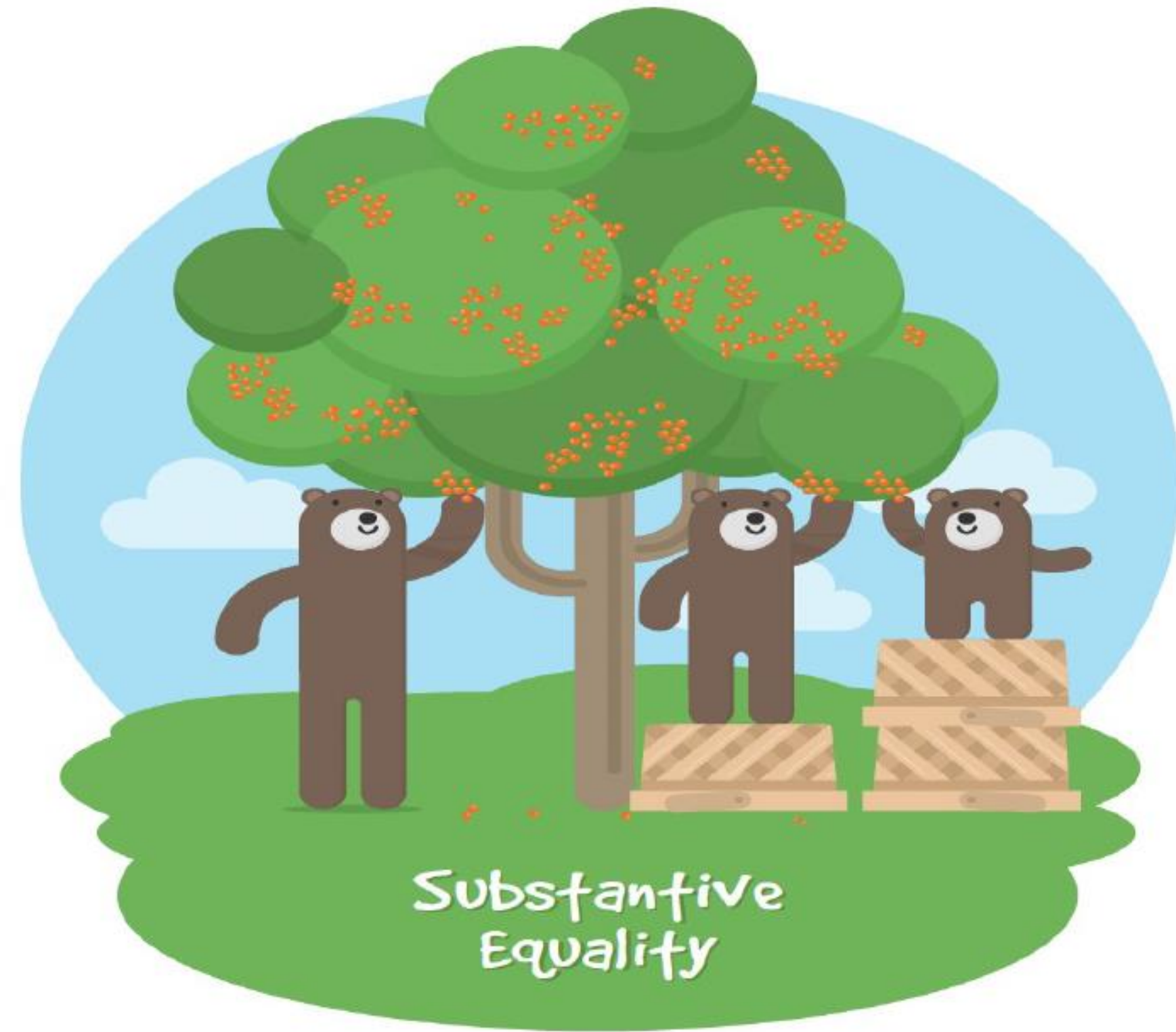
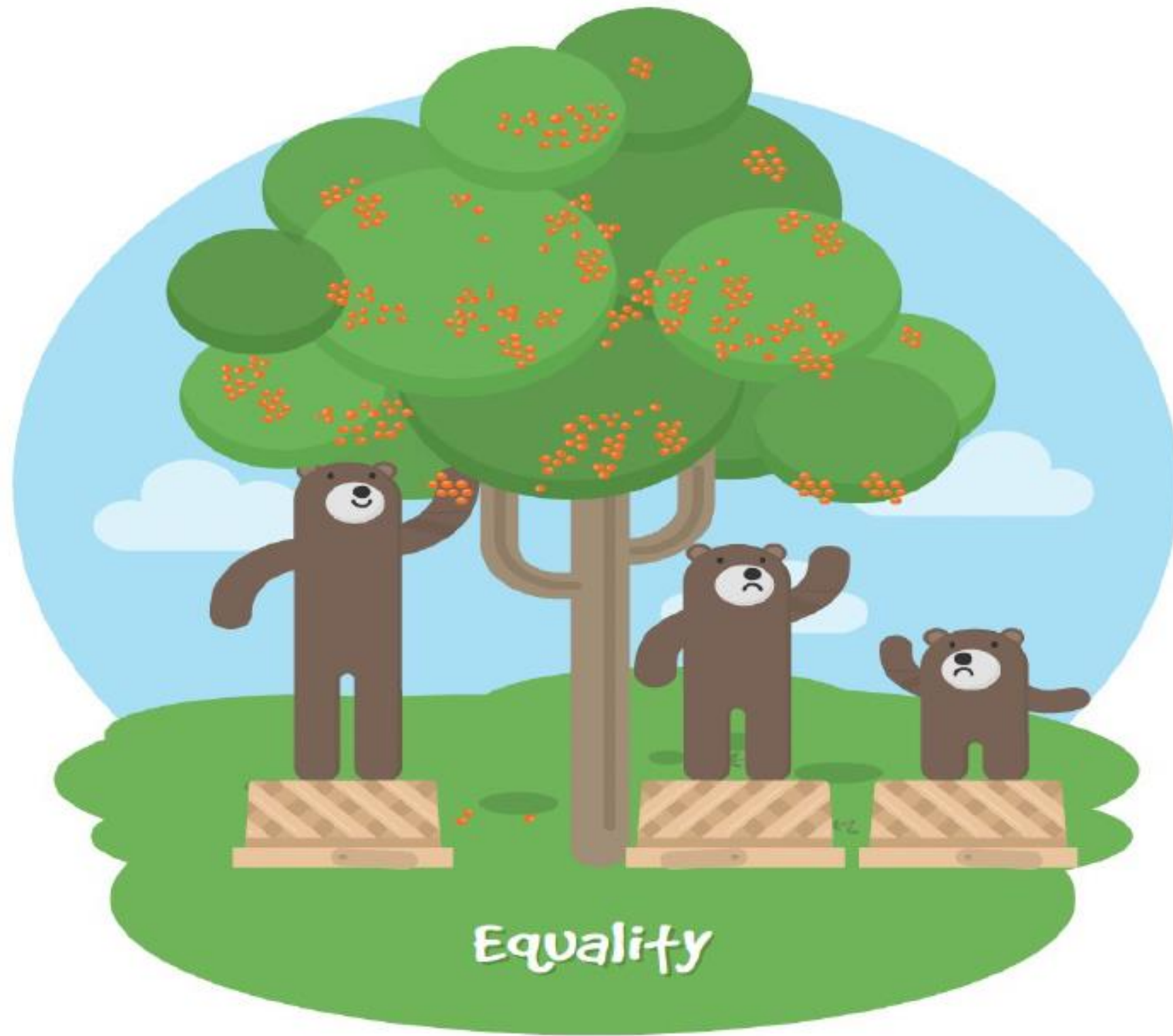




# Jordan's Principle

- Sacred: named after Jordan River Anderson
- Child first: kids before governments
- Covers: health, education & social services
- Legal: Canada must implement
- Requires: guardian consent & supporting letter

# Jordan's Principle is about Substantive Equality



# Challenge: Canada's approach to Jordan's Principle

- Denial of requests ISC views “income supplements”
- Failure to take a compassionate and urgent approach in all palliative care cases or when a child experiences a family death;
- Thousands of unopened requests and non-compliance with timeframes for determination and for payment
- ISC 24-hour line and regional line calls often go unanswered and/or long delays in call backs even for urgent cases
- Plugging holes in other under-funded programs- no comprehensive plan by Canada (i.e.: Spirit Bear Plan) to address gaps





# Urgent Non-Compliance re: Jordan's Principle

- **Canada's Non-compliance includes**
  - Unopened – delayed processing requests (4760 in BC)
  - Backlog of approved payments (3650 in Ontario)
  - Lack of timely and compassionate response to urgent cases
  - Serious issues with the 24-hour ISC Jordan's Principle and regional phone lines
  - Denying requests on non-permissible grounds (i.e.: income support)
- **Caring Society Remedies:** Presumptive approvals for requests under \$500 with professional letters; filling holes in other underfunded areas (education/health/income assistance); automating requests/payments; quality control, provide liability protection for First Nations and Coordinators

# Compensation and Jordan's Principle



**Funds from multiple class actions  
impacting communities**



**Safeguards for most vulnerable  
requires**

Mental wellness and cultural supports (in FSA)

Surge capacity for allied services on/off  
community

Additional trained staff/facilities



**Anticipate added demands for  
Jordan's Principle**

Compliance is important safeguard

# Non-compliance motion: a last resort

- Caring Society flagging non-compliance since 2018
- Caring Society proactively suggesting solutions
- Caring Society raised concerns repeatedly
- Canada did not resolve concerns
- Severity of harms for First Nations children grew



# Non-Compliance Process



**December 12, 2023: motion filed**



**January 12, 2023: Caring Society  
affidavits filed**



**January 23, 2023: Tribunal Case  
Conference**

Dates for Canada's response

Status of other parties

Hearing dates – April/May of 2024

# Caring Society: Outside the AIP Process



**Left the AIP to file the non-compliance motion**



**Taking different approach v. leaving negotiations**



**Public negotiation protocol forthcoming:**

Evidence

Transparency,

Accountability

Results

Enforceability



# Liability



RESEARCH BEING OVERSEEN BY  
THE NATIONAL ADVISORY  
COMMITTEE (NAC)



NOT INTENDED AS LEGAL  
ADVICE OR INSURANCE ADVICE



CONTACT A TORT LEGAL  
SPECIALIST AND YOUR INSURER  
FOR ADVICE

# General principles

- The greater the control the higher the liability for the conduct
- The more vulnerable the group (i.e.: children) the higher the responsibility to act in good faith
- The higher the risk level the greater the duty to mitigate risk
- The higher the duty of care; the higher the liability risk (with some limitations)

# Who needs coverage?

- The service provider (First Nations agency, First Nation, etc.)
- Employees of the First Nations agency, First Nation providing services
- Foster parents
- Knowledge keepers/Elders providing supports
- Jordan's Principle navigators
- May be others





## Liability: Jordan's Principle

- Increased liability for First Nations/First Nations organizations:
  - approving/denying requests;
  - providing funding
- Advise insurer of all activities to ensure coverage
- Bad faith decisions not covered by insurance
- Review liability provisions of funding agreements with Canada

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# Jordan's Principle: Back-to-Basics Approach

Our Children, Our Way

Presented by **Brittany Mathews** | January 16, 2024



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Caring Society of Canada

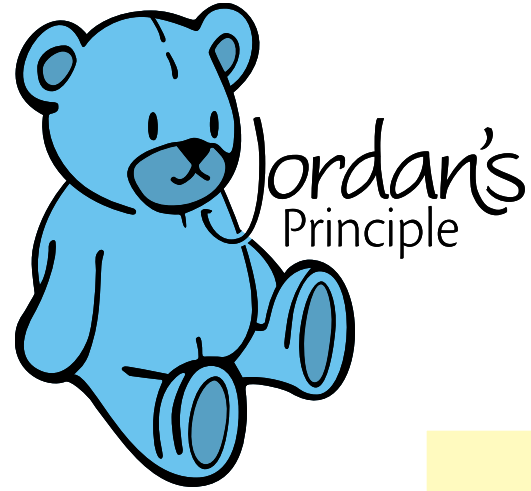
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# The Back-to-Basics (B2B) Approach to Improving Outcomes under Jordan's Principle



- Stems from October 2021 when the Parties entered into negotiations to try and reach an agreement to end the Canadian Government's discrimination against First Nations kids.
- During these negotiations, the Parties agreed that a "back-to-basics" approach to Jordan's Principle was required to get ISC closer to compliance with the Tribunal orders and to ensure that things were changing at the level of children and families.
- Applies to all Indigenous Services Canada (ISC) staff working on Jordan's Principle.
- The B2B Approach was implemented in early 2022.

**Visit:** [fncaringociety.com/publications/back-basics-approach-improving-outcomes-under-jordans-principle-information-sheet](https://fncaringociety.com/publications/back-basics-approach-improving-outcomes-under-jordans-principle-information-sheet)



# Key Elements of Back-to-Basics

Non-Discrimination

Children's needs and best interests must be at the center of decisions

Consider distinct community circumstances

Must be simple to access

Must be timely

Reduce the administrative burden on families

**Ensure substantive equality**

ISC team members will exercise compassion, common sense and a reconciliation-first approach

**Ensure culturally relevant service provision**



# Key Presumptions



- Substantive equality is presumed. Reference to normative standards cannot be used to deny requests.
- Professionals and Elders/knowledge holders are acting within their area of expertise when making a recommendation.
- Parents/guardians are acting in the child's best interest.
- The request is specific to the child and their needs.
- Minimum information is required for ISC to approve an urgent request and risk mitigation plans must be put in place where the request is unlikely to be determined within CHRT timeframes.
  - Example of urgent requests include end of life care, risk of child entering the child welfare system, physical safety concerns, no access to basic necessities and mention of suicide.

# Documentation required to support a request is reasonable and not a barrier to accessing Jordan's Principle.



- One letter from a professional (related to their scope of practice) or an Elder/knowledge holder (related to culture, language or wellness requests) is the presumed requirement.
- ISC does not require a letter for every requested product, service, or support. A letter can speak to multiple needs within the recommending professional's scope.
- Quotes, cost estimates, and length of service are not required for ISC to decide on the request.
- ISC staff will review previous requests for the child and any relevant letters already on file to support new requests that are clearly linked.
- In urgent cases, only verbal or written consent from the parent or guardian is needed; documentation can follow once the child's immediate needs are met.

# Caring Society Resources on Jordan's Principle



Information Sheet - Back-to-Basics approach for Improving Outcomes Under Jordan's Principle. (2023, May).

<https://fncaringsociety.com/publications/back-basics-approach-improving-outcomes-under-jordans-principle>

Information Sheet - Jordan's Principle: Ensuring First Nations Children Receive the Supports They Need When They Need Them. (2023, May).

<http://www.fncaringsociety.com/publications/jordans-principle-information-sheet>

Poster - How to Access Services and Supports Through Jordan's Principle. (2023, April).

<https://fncaringsociety.com/publications/jordans-principle-poster>

Visit [JordansPrinciple.ca](https://JordansPrinciple.ca) for the latest information.

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