

# Moral Courage and Justice for First Nations Children

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I wanted to dedicate space in this newsletter to justice for Indigenous children. The National Day for Truth and Reconciliation may have passed, but the conversations and the work within our profession cannot lose momentum. In Dr. Cindy Blackstock's webinar, *Wanted: Moral Courage in Social Work*, she shared about the ongoing legal battles for equitable treatment for First Nations children by the Government of Canada. A link to the recorded webinar is posted on the SASW website. If you have not yet had the chance to watch it, I highly recommend it. I want to provide a high-level overview of these legal proceedings and discuss their significance to social work. These cases are the embodiment of moral courage, of taking personal and professional risks to do the right thing. Moral courage is crucial in anti-oppressive, anti-racist, and anti-colonial social work practice; it aligns with our ethical obligation to pursuit of social justice.<sup>3</sup> Much of this

information comes directly from the First Nations Child and Family Caring Society's (FNCFCS) website, which has a detailed timeline of Canadian Human Rights Tribunal (CHRT) cases and documents.

## Jordan's Principle

Jordan's Principle was unanimously supported in the House of Commons in 2007. It is a legal obligation to First Nations children with no end date, to ensure they all receive the health care products, social services, supports, and education they need.<sup>5</sup> The Principle is in memory of Jordan River Anderson, of Norway House Cree Nation. Jordan River Anderson passed away at the age of five, having never spent a day in his family's home, living his entire life in a hospital. He was born with complex medical needs, which resulted in jurisdictional funding disputes between the Provincial and Federal governments.<sup>5</sup> The Government of Canada's implementation of Jordan's Principle included definitions so narrow that no child met the criteria for several years. The definitions

required children to have complex medical needs (*i.e.*, multiple conditions) and to have multiple service providers in place.<sup>5</sup> As Social Workers, we must honour the life and spirit of Jordan River Anderson. We can do this by understanding the supports and services First Nations children and families are entitled to under Jordan's Principle, and ensuring we know how to support them in accessing this funding. We honour the spirit of Jordan River Anderson each time we speak his name and each time we speak of Jordan's Principle.

## CHRT Complaint

The Assembly of First Nations (AFN) and First Nations Child and Family Caring Society (FNCFCS) sought to have the Government of Canada voluntarily provide equitable and culturally relevant child welfare services to First Nations children for nearly 10 years. With no resolution in sight, the AFN and FNCFCS filed a complaint with the Canadian Human Rights Tribunal on February 26, 2007, on the basis that the Government of Canada discriminates against First Nations children on reserves by providing them with less government child welfare funding, and therefore less benefit, than other children in Canada.<sup>2,4</sup> It is important to note that at the time of this complaint, the United Nations Declaration of the Rights of Indigenous People (UNDRIP), was before the United Nations. The Government of Canada was among four nations who opposed UNDRIP, while 143 nations supported and 11 abstained.<sup>2</sup> These (in)actions highlight a misalignment between the Government of Canada's spoken commitment to reconciliation and their practice. While there have been some positive changes since 2007, including the recent implementation of UNDRIP by the Government of Canada, the trajectory of these cases

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show there is still much work to do.

In 2008, the Auditor General released a report confirming that First Nations child welfare services are funded at rates lower than those for non-Indigenous children, as alleged in the CHRT complaint. The Government of Canada has relied on legal maneuvers and technicalities throughout the history of these cases, the first being an appeal to dismiss on the basis that funding is not a “service”; thus, they believed the complaint was outside of CHRT jurisdiction.<sup>4</sup> The Government of Canada declined to participate in mediation, repeatedly raising technical objections and alleged procedural unfairness.<sup>2</sup> The CHRT’s assessment of the case lasted over one year, ultimately affirming the merits of the case.<sup>2</sup>

In 2009, the CHRT case considered the narrowing of Jordan’s principle, which the Government of Canada responded to by filing multiple appeals and motions to dismiss. In 2011, the case was dismissed in its entirety on a legal technicality. The FNCFCSC appealed and in 2012, the Federal Court set aside the CHRT Chair’s decision to dismiss, returning the complaint to the CHRT for a new hearing. As expected, the Government of Canada appealed.<sup>4</sup> In July of 2012, Dr. Blackstock filed a motion alleging the Government of Canada retaliated against her and monitored her; these allegations were substantiated in 2015 and the Government of Canada was ordered to pay damages.<sup>4</sup> Throughout the cases, the Government of Canada attempted to prevent public broadcasting of proceedings and have expert reports dismissed. These attempts were ultimately dismissed.<sup>4</sup>

### Victory for First Nations Children

On January 26, 2016, a landmark ruling found the Government of Canada is racially discriminating against 165,000 First Nations children. The Government of Canada did not appeal the decision.<sup>4</sup> In the same year, the CHRT also found the definition of Jordan’s Principle racist and discriminatory, ordering the Government of Canada to make immediate changes.<sup>5</sup> The application of Jordan’s Principle was expanded, eliminating the need for a child to have multiple disabilities, and applying to children living off reserve.<sup>4</sup>

### Ongoing Non-Compliance and Compensation

Since the landmark ruling, the CHRT has issued 19 non-compliance and procedural orders.<sup>4</sup> These orders have linked Canada’s non-compliance to unnecessary foster placements of many First Nations children and to the deaths of three.<sup>1</sup> In 2019, the CHRT ruled children and families affected by the narrow definitions of Jordan’s Principle and inequitable child welfare funding were entitled to compensation. On September 29, 2021, the Federal Court of Canada upheld the CHRT’s 2019 ruling regarding compensation, while agreeing all First Nations children should be eligible for Jordan’s principle, regardless of Indian status or where they live.<sup>4</sup> While the Government of Canada has spared no expense trying to evade their obligations to First Nations children, these children continue to experience systemic harm. Children are dying as a direct result. These harms are happening within systems in which social work is directly implicated. The number of children in child welfare have reached

record levels, eclipsing both the “60s scoop” and residential schools.<sup>2</sup> We can no longer be bystanders; we need to be involved in this fight for justice at an individual, organizational, and collective level.

### Substantive Equality

The matters in these cases and proceedings rely on the legal principle of substantive equality. This means that services needed to provide the same outcomes to First Nations children as other children must consider the historical and contemporary disadvantages and structural oppression they experience. Further, First Nations Children should be able to access services, products, and supports that may not be accessible to other children, to overcome those noted barriers, while taking into consideration the distinct needs and circumstances of First Nations children and families living on reserve.<sup>5</sup> This is an important principle for social workers in any capacity to be aware of.

### Moral Courage and the Path Forward

Dr. Blackstock was subjected to undue surveillance and retaliation for seeking justice and equitable treatment of First Nations children. The FNCFCSC no longer receives funding from the Government of Canada.<sup>2</sup> This is what Dr. Blackstock means when she speaks of moral courage in social work; making the moral decision to “put our missions before our organizational interests”.<sup>2</sup> We must decide how much we are prepared to risk, personally, professionally, organizationally, in challenging oppressive and harmful systems. Dr. Blackstock describes this as a “nothing to lose” approach:

*... there is nothing more threat-*

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*ening to federal politicians and policy makers than a group that operates in moral ways and has nothing to lose. When the “nothing to lose” organization is willing to reach beyond politicians and bureaucrats to the caring public then a social movement begins to take root.<sup>2</sup>*

As social workers, we occupy various spaces and positions of privilege and power. We need to have moral courage and take a “nothing to lose” approach seeking justice and equity for First Nations children. As Dr. Blackstock says, “reconciliation means not saying sorry twice.”<sup>2</sup> Dr. Blackstock has shown us one path forward with her

own actions. There are many paths to the future we want to see. Much of this work will not be easy, and it will not be comfortable. Some parts of this work are simple: following the court proceedings; watching them to show the Government of Canada you are a witness; contacting your Member of Parliament. Part of my role here at the SASW is support to members. I hope that I can serve as a resource to all of you in efforts such as these. I am no expert on any matter, but I will always do my best to seek anything I don’t know.

- 1 Blackstock, C. (2021). Screaming into silence. *Maclean’s*.
- 2 Blackstock, C. (2011). The Can-

adian Human Rights Tribunal on First Nations child welfare: Why if Canada wins, equality and justice lose. *Children and Youth Services Review*, 33, 187-194. DOI: 10.1016/j.childyouth.2010.09.02

- 3 Canadian Association of Social Workers (CASW). (2005). Code of Ethics. [https://www.casw-acts.ca/files/documents/casw\\_code\\_of\\_ethics.pdf](https://www.casw-acts.ca/files/documents/casw_code_of_ethics.pdf)
- 4 First Nations Child and Family Caring Society. [www.fncaringociety.com](http://www.fncaringociety.com)
- 5 Kamran, R. (2021). Canada’s history of failing to provide medical care for Indigenous children. *Pediatrics & Child Health*, 279-282. DOI: 10.1093/pch/pxaa