

Canadian Human Rights Tribunal (CHRT) 36 Questions and Answers

Q.1. What is the new eligibility criteria for Jordan's Principle?

On November 25, 2020, the CHRT released a ruling further clarifying Jordan's Principle eligibility, which now includes:

- the child is registered or eligible to be registered under the *Indian Act*,
- the child has one parent/guardian who is registered or eligible to be registered under the *Indian Act*
- the child is recognized by their Nation for the purposes of Jordan's Principle
- the child is ordinarily resident on reserve

Q.2. Is the new eligibility in the CHRT ruling immediately effective?

Yes, as of November 25, 2020, requests for children covered under the eligibility criteria as ruled by the CHRT can be sent to Jordan's Principle at Indigenous Services Canada (ISC). ISC will review the requests as per the process agreed to by the parties to the CHRT complaint and in previous CHRT rulings.

Q.3. Is ISC accepting requests under the new eligibility criteria now? What is the process?

Yes, requests for children covered under the new eligibility can be sent as of November 25, 2020, to Jordan's Principle. ISC will review the requests as per the process agreed to by the parties to the CHRT complaint and in previous CHRT rulings.

If you have any questions about Jordan's Principle, including who is eligible, how to submit a request, or how to contact a regional focal point for more information:

- In Alberta:
 - Ph: 780-495-8340
 - Email: jordansprincipleab@canada.ca
- Nationally:
 - Visit www.canada.ca/jordans-principle
 - Contact the Jordan's Principle Call Centre at 1-855-JP-CHILD (1-855-572-4453), open 24 hours a day, 7 days a week

Q.4. Does one biological parent or guardian need to have a registration number under the *Indian Act* in order for the child to be eligible for the purposes of Jordan's Principle?

If the parent or guardian is entitled to be registered under the *Indian Act* but does not have a registration number yet, the child is still eligible. You may have to take steps to confirm that the parent or guardian is entitled to be registered.

Q.5. What happens when a child is an informal kinship care arrangement? If the guardian is eligible under the *Indian Act* does that mean the child is eligible?

Yes, if the child's guardian is eligible than the child is also eligible under the new order. A guardian is defined as someone in a formal or informal care arrangement for the children in their care. Documents to confirm they are an authorized guardian may include:

- proof of formal or customary adoption;
- proof of kinship/ care arrangements;
- a signed and witnessed letter from the child's parent;
- Court Order;
- Last Will and Testimony;
- Power of Attorney;
- a signed and witnessed letter from a health, social or educational professional; or
- confirmation from a Band or Nation.

There may be other options to confirm eligibility. For example, if:

- the child is recognized by their Nation for the purposes of Jordan's Principle
- the child is ordinarily resident on reserve

Q.6. How do you confirm that the child is recognized by their Nation for the purposes of Jordan's Principle? Does this apply to children living on and off reserve?

The parent or guardian can get recognition from a Nation by having a Designated Official complete the Confirmation of Recognition form. They can choose to provide consent to ISC to seek confirmation on their behalf by completing the Consent to Communicate form.

This new order applies to children on and off reserve.

Q.7. How does a Nation identify an appropriate First Nation official?

Identifying an appropriate First Nations official can happen in a number of ways:

Preferably, a First Nation will designate a person, or persons, as officials who can provide confirmation of recognition for the purposes of Jordan's Principle ("Designated Official") by:

- passing a Band Council Resolution, or;
- providing a letter on First Nation letterhead, or
- through another identified community governance mechanism.

The First Nation could also designate a person or persons from the Chief and Council and/or from within the administration, or from another community entity, as its Designated Official.

Alternately, the First Nation may also designate a person or persons from another organization, such as a First Nation Health Authority or a First Nations Child and Family Well Being Agency, as the Designated Official.

Q.8. How will First Nations be communicating with ISC about their choice for Designated Officials?

ISC will work with you to start managing and tracking identified First Nations Designated Officials. This information will be kept up to date. Efforts should be made to use other criteria before recognition from a Nation for confirming eligibility to ensure there is less of an administrative burden on the applicant.

Q.9. What happens with the Designated Officials that are identified if there is a change in First Nations leadership?

The order provides a default process for identifying Designated Officials but stresses the importance of respecting First Nations rights and self-determination. It will be up to the Nations to determine. ISC will continue working with partners to co-develop key policy guidance.

Q.10. What does that mean for First Nations citizenship and membership overall if a child is recognized by their Nation for the purposes of Jordan's Principle?

The CHRT Panel emphasized the commitment to respecting First Nations self-government. Its consideration of a First Nations child is not for matters outside of the context of Jordan's Principle eligibility. The panel stresses the orders are not intended to override or prejudice First Nations' rights.

Q. 11. Does this mean that First Nations children without status, but who are recognized by their Nation for the purposes of Jordan's Principle, can apply for other government programs or services under the *Indian Act* now?

No. The November 25, 2020 CHRT order is specific to eligibility under Jordan's Principle. It does not change the terms of eligibility for other government programs or services. Please review the terms of eligibility for other programs or services to learn more about them.

Q.11. Can Métis or Inuit leadership recognize a child as a part of their Nation for the purposes of Jordan's Principle under this new order?

No, Inuk children can access needed products, supports and services through the Inuit Child First Initiative (Inuit CFI). Métis children are not currently eligible under Jordan's Principle, unless they are ordinarily resident on reserve or are eligible for registration under section 6 of the *Indian Act*.

There is a distinct and separate process for confirming eligibility under Inuit CFI. They must be:

- a beneficiary or entitled to be a beneficiary of an Inuit Land Claim Organization in Canada; and
- under the age of majority in their province/territory of residence.

To confirm an Inuk child as a beneficiary or entitled to be a beneficiary of an Inuit Land Claim Agreement, they must provide:

- The child's 'N' number (which identifies the child as a beneficiary of an Inuit Land Claim); or
- Letter of enrolment/beneficiary card indicating the child is a beneficiary or is entitled to be a beneficiary of an Inuit land claim organization in Canada; or
- A Nunavut or NWT Health Card.

Q.12. What do I do when trying to confirm that the child is recognized by their Nation in urgent cases?

Confirming recognition by a Nation will not delay measures to provide the child with urgent assistance or to address the reasonably foreseeable risk of irremediable harm. For requests where eligibility depends on confirmation of recognition:

- **Non-urgent requests:** Are considered incomplete and will not be processed until confirmation of recognition is determined. If you are having difficulty getting confirmation or recognition, there is a Consent to Communicate form available for parents, guardians and families to get help from ISC when seeking confirmation from a Designated Official. Contact us to find out more.
- **Urgent requests:** Where the child is at risk of irremediable harm or is in palliative care, ISC can obtain verbal confirmation. If verbal is unavailable, ISC can confirm recognition after a decision has been made by a delegated ISC authority.

ISC will keep records of confirmation, to help things go more quickly in case there are more requests for the same child in the future.

Q.13. Are previously denied requests due to eligibility now eligible under this new order?

This new order does not include a legal requirement of retroactivity; however, ISC is taking steps to identify requests submitted from May 26, 2017 until now to determine if they are now eligible. This will allow for the maximum benefit to children, and continues ISC's commitment to implementing Jordan's Principle in its entirety.

Q.14. What happens with the cases that were submitted but a decision has not been made yet?

ISC is currently reviewing all requests submitted where a decision has not been made to determine if they fall within the new CHRT 36 eligibility criteria. A determination will be made using the new eligibility criteria. ISC is making every effort to ensure there is no additional administrative burden on the requestors.

Q.15. Are there any additional supports to cover the expenses incurred for determining whether a child is recognized by their Nation for the purposes of Jordan's Principle?

Yes, through the service coordination funding authority, there are additional supports available for those who perform confirmation of recognition for the purposes of Jordan's Principle. This can include First Nations communities and First Nations organizations who incur expenses to recognize children under a CHRT order or to develop policies and procedures related to this process. Please submit your proposals to your regional Jordan's Principle Focal Point.

Some examples of eligible expenses include:

- additional human resources costs (e.g. salary and benefits) specifically in association with confirming recognition of First Nations children for the purpose of Jordan's Principle;
- First Nation policy development and updating;
- internal First Nation governance/determination meetings
- communications - internal and external (social media; community newsletters; website development and maintenance; marketing)
- coordination processes – bringing multiple community sectors together;
- professional fees, including seeking advice and development of the recognition approach.

An administrative fee of 10% will be added to account for related overhead expenses.

ISC will work with those who perform Jordan's Principle service coordination and navigation functions on requests for funding. ISC will be available to clarify any questions that arise before making a decision on approval.

