

# ***Canadian Human Rights Tribunal update of Jordan's Principle Assembly of First Nations***

Presented by  
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March 5, 2024

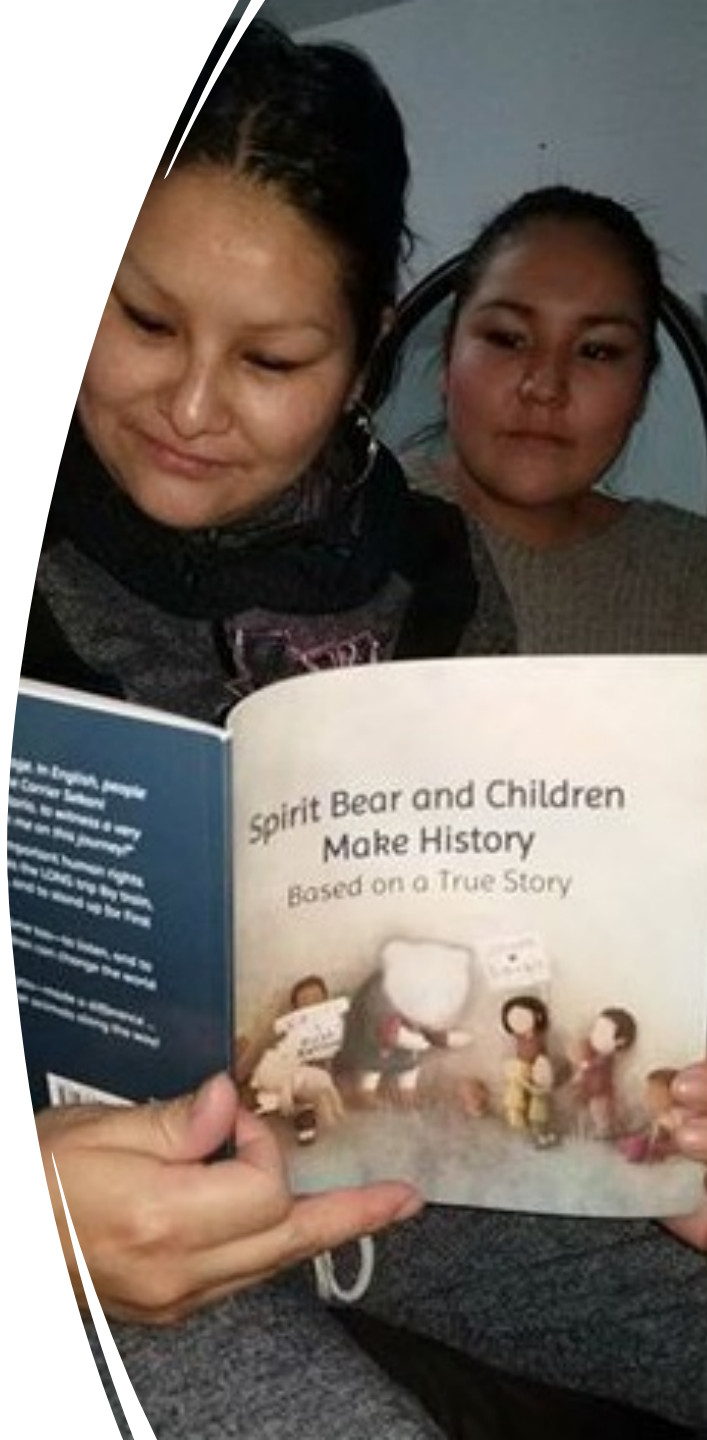


First Nations Child & Family  
Caring Society of Canada

Société de soutien à l'enfance  
et à la famille des Premières Nations  
du Canada

# Honouring Jordan and his family

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# 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





## Supreme Court Decision: C92

- Affirms the constitutionality of C92
- Centers child and family services in the honour of the crown
- Adopts UNDRIP as a presumption
- Mentions Jordan's Principle
- Provinces cannot use the notwithstanding clause
- Does not specifically enshrine child and family as a S. 35 right



# What is the CHRT case about?

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**Stop Canada's discrimination against First Nations children, youth and families now and forever in:**

**First Nations Child and Family Services**

**Jordan's Principle**

# Three Paths to ending Canada's Discrimination and Preventing Recurrence

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## Negotiation

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



## Combination

Consent order on matters  
Canada agrees to in negotiation  
Contested hearing on other matters

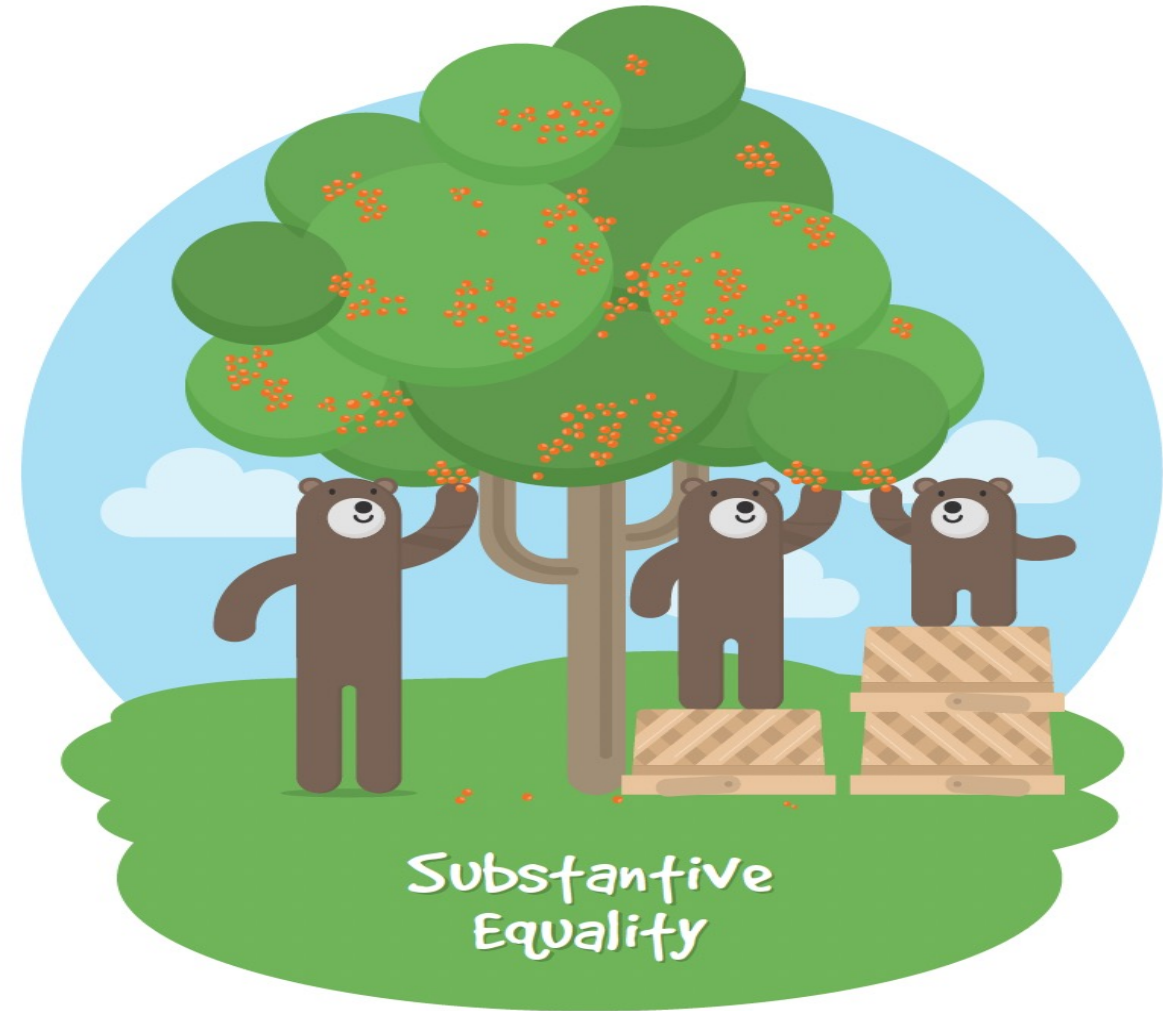
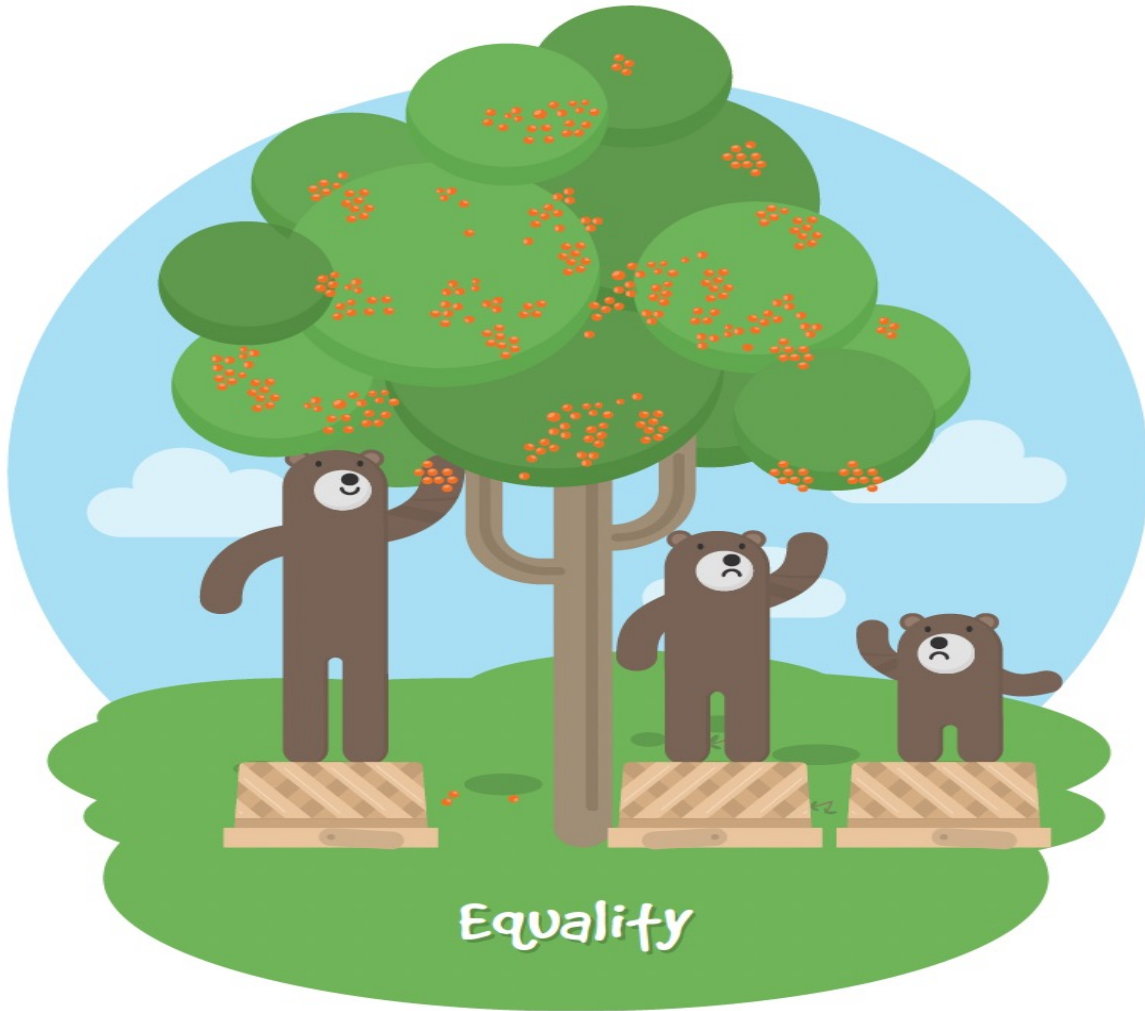


## Litigation

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



# Jordan's Principle is about Substantive Equality



# Analysis of ISC Jordan's Principle data (IFSD, 2022):

- Requests increased 625% between 2017-2021
- 50% increase between 2019-20
- Only 10% of that increase due to COVID
- Over 50% of requests were for under 5K - majority between \$100-999
- Significant Regional Variation
- Plugging shortfalls in federally funded programs
- **Read the IFSD data Report at:**  
<https://www.ifsd.ca>







## Spirit Bear Plan



### End Inequalities in Public Services for First Nations Children, Youth and Families

First Nations children and families living on reserve and in the Territories receive public services funded by the federal government. Since confederation, these services have fallen significantly short of what other Canadians receive. This injustice needs to end and Spirit Bear's Plan will do just that.

#### Spirit Bear calls on:

- 1 CANADA** to immediately comply with all rulings by the Canadian Human Rights Tribunal ordering it to immediately cease its discriminatory funding of First Nations child and family services. The orders further require Canada to fully and properly implement Jordan's Principle ([www.jordansprinciple.ca](http://www.jordansprinciple.ca)).
- 2 PARLIAMENT** to ask the Parliamentary Budget Officer to publicly cost out the shortfalls in all federally funded public services provided to First Nations children, youth and families (education, health, water, child welfare, etc.) and propose solutions to fix it.
- 3 GOVERNMENT** to consult with First Nations to co-create a holistic Spirit Bear Plan to end all of the inequalities (with dates and confirmed investments) in a short period of time sensitive to children's best interests, development and distinct community needs.
- 4 GOVERNMENT DEPARTMENTS** providing services to First Nations children and families to undergo a thorough and independent 360° evaluation to identify any ongoing discriminatory ideologies, policies or practices and address them. These evaluations must be publicly available.
- 5 ALL PUBLIC SERVANTS**, including those at a senior level, to receive mandatory training to identify and address government ideology, policies and practices that fetter the implementation of the Truth and Reconciliation Commission's Calls to Action.

#### SHOW YOUR SUPPORT!

-  **SPREAD THE WORD ON TWITTER** using #SpiritBearPlan and copy @CaringSociety
-  **CONTACT YOUR MEMBER OF PARLIAMENT** and ask them to support the plan
-  **CONTACT US** to learn more at [info@fncaringsociety.com](mailto:info@fncaringsociety.com)

# Spirit Bear Plan to end all inequalities in First Nations public services



# Urgent Non-Compliance re: Jordan's Principle

- **Canada's Non-compliance includes**
  - Unopened – delayed processing requests
  - Backlog of approved payments
  - 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

# Key Dates: Jordan's Principle Non-Compliance motion



**December 12, 2023: motion filed**



**January 12, 2024: Caring Society affidavits filed**

**Available: [fnwitness.ca](https://fnwitness.ca)**



**Hearing: June 3-4, 2024**

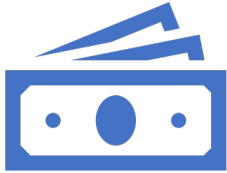
**Canadian Human Rights Commission – supports Caring Society motion**

**Canada opposed**

**NAN, COO, AFN - TBD**



# Class Actions and Jordan's Principle



**Multiple class actions result in payments to Nation citizens on and off reserve**



**Safeguards for most vulnerable requires**

Mental wellness and cultural supports (in FSA)  
Surge capacity for allied services on/off community  
(youth centers, domestic violence, CFS, law enforcement  
etc)  
Need for additional trained staff/facilities



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

Compliance is important safeguard

# Long term approach for Jordan's Principle

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- Creating a First Nation and First Nations expert informed approach to honour Jordan's Principle over the long term
- Dr. Helaina Gaspard from IFSD overseeing the work
- Your participation highly valued
- Contact Dr. Gaspard at [helaina.gaspard@ifsd.ca](mailto:helaina.gaspard@ifsd.ca)



# 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 (i.e.: coordinators)
- Knowledge keepers/Elders providing supports
- May be others depending on the service model








## 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

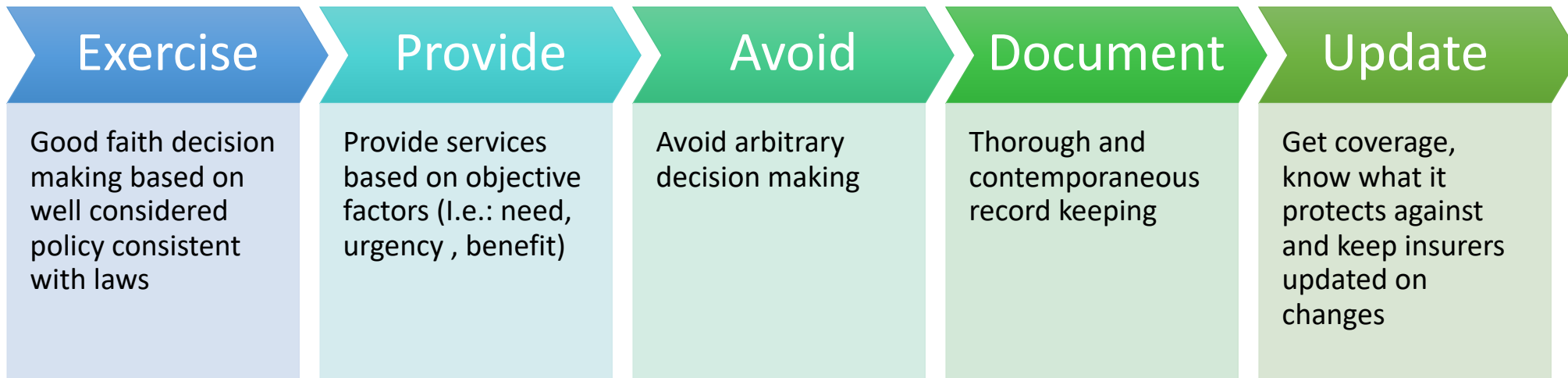




# Covering Insurance Costs- if you can get it

- Canadian Federation of Independent Businesses (CFIB) 2021 study found :
  - 7 in 10 small business reported increase in their premiums since the beginning of the year
  - 55% reported insurance as a major cost concern
  - 19% could not find insurance for their business at all
- CFIB recommends:
  - Ensuring universal access to insurance
  - Insurance premium relief
  - Timely info on changes to insurance landscape and how to manage risks
  - Update Insurance Code of Consumer Rights and Responsibilities

# Liability safeguards



# Agency and First Nations without Agencies CFS Budgets under proposed approach



To find out what your agency/First Nations without agencies budget would be under the new model contact [helaina.gaspard@ifsd.ca](mailto:helaina.gaspard@ifsd.ca)



Invite Helaina Gaspard to do a presentation on the funding research



Ensure the purpose, principles, structure and enforcement are strong. Possible option: statutory funding?



# Bear Witness Day May 10

Host a teddy bear tea party in honour of Jordan and educate children, youth and families in your Nations about Jordan's Principle

Free access to Spirit Bear and Children Make History books, animations and learning guides at [info@fncaringociety.com](mailto:info@fncaringociety.com) #BearWitnessDay



# Reconciliation is all of us

No matter who you are or where you're from, you can take respectful actions to help make a better Canada for First Nations children and their families. Here are a few ways you can participate. You can also visit [fncaringsociety.com/events](https://fncaringsociety.com/events).

## Have a Heart Day

Have a Heart Day is a child and youth-led reconciliation event that brings together caring Canadians to help ensure First Nations children have the opportunity to grow up safely at home, get a good education, be healthy, and be proud of who they are.

### Ways to Take Respectful Action

- Send a Valentine's card or letter supporting Have a Heart Day to the Prime Minister and/ or your Member of Parliament.
- Host your own Have a Heart Day event in your school or community – gather to share songs, recite poems, or read your letter to an elected official.

FEBRUARY

14



## School is a Time for Dreams

School is a Time for Dreams invites people from all over the country to support equitable education for First Nations children and all young people in Canada and honour Shannen's Koostachin's dream for safe and comfy schools.

### Ways to Celebrate

- Host a Shannen's Dream gathering to learn about Shannen Koostachin and her campaign for safe and comfy schools for all kids.
- Send a letter to the Prime Minister and/ or your Member of Parliament supporting Shannen's Dream. You can read the [letter](#)<sup>1</sup> Shannen wrote to the Government of Canada too!



## Bear Witness Day

Celebrated annually, Bear Witness Day honours Jordan River Anderson and invites people of all ages to "Bear Witness" to ensure Jordan's Principle is fully implemented.

### Ways to Bear Witness

- Host a Teddy Bear Tea Party and learn about Jordan River Anderson and the importance of Jordan's Principle. Don't forget to bring your teddy bears to daycare or school.
- Write a letter to your Prime Minister and/ or your Member of Parliament to implement the [Spirit Bear Plan](#)<sup>2</sup> to end inequalities in public services for First Nations children and families.



## Honouring Memories, Planting Dreams

Honouring Memories, Planting Dreams invites people of all ages to plant heart gardens in memory of children lost to the residential school system, to honour residential school survivors and their families, and to support the legacy of the Truth and Reconciliation Commission (TRC). [delete?](#)

### Ways to Honour

- Plant a heart garden to show your commitment to reconciliation! Similar to a garden, reconciliation requires ongoing care, attention and commitment in order to prosper.
- Read Spirit Bear's book *Honouring Memories, Planting Dreams* and/ or watch the accompanying film on Spirit Bear TV.
- Read *Spirit Bear's Guide to the Truth and Reconciliation Commission Calls to Action* and create a plan for how you will take action and respond to the Calls to Action.



1 [fncaringsociety.com/publications/shannens-letter](https://fncaringsociety.com/publications/shannens-letter)

2 [fncaringsociety.com/spirit-bear-plan](https://fncaringsociety.com/spirit-bear-plan)

MARCH

20

## Elderbeary Day

Elderbeary Day honours and celebrates the contributions of our Elders, who do so much to teach and raise our little ones.

### Ways to express your Gratitude

- Offer to help complete yard work, household tasks or run errands.
- Making heartfelt gifts or cards.



**First Nations Child &  
Family Caring Society**

[fncaringsociety.com](https://fncaringsociety.com)





# Take Aways

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GET INVOLVED IN  
COMMUNITY-  
BASED RESEARCH  
FOR JORDAN'S  
PRINCIPLE WITH  
IFSD



TRIBUNAL RETAINS  
JURISDICTION ON  
ENDING THE  
DISCRIMINATION  
AND PREVENTING  
ITS RECURRENCE



CHECK WITH YOUR  
INSURER AND  
TORT LAWYER RE:  
LIABILITY  
PROTECTION



FOLLOW THE  
JORDAN'S  
PRINCIPLE NON-  
COMPLIANCE  
MOTION



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