Federal Court  Cour fédérale

Date: 20250710

Docket: T-3332-24

Citation: 2025 FC 1227

Ottawa, Ontario, July 10, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

JOANNE POWLESS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Joanne Powless, a First Nations grandmother, applied for Jordan's Principle funding to address the health needs of her two granddaughters. Ms. Powless is the guardian and primary caregiver to her two school age granddaughters, both of whom suffer from asthma. Their

on-reserve home has been declared unsafe for the children because of the presence of mould. Without other housing options, Ms. Powless requested Jordan's Principle funding for mould remediation and temporary living expenses.

[2] This matter has been ongoing since 2002, and Indigenous Services Canada (ISC) has repeatedly denied the funding request characterizing it as a request for mould remediation for on-reserve housing and therefore beyond the scope of Jordan's Principle.

[3] Jordan's Principle is a human rights principle established by the Canadian Human Rights Tribunal (CHRT) to ensure First Nations children receive substantively equal access to government services and benefits like non-First Nations children. Jordan's Principle is designed to prevent First Nations children from being denied essential public services or experiencing delays in receiving them. It ensures that where a government service is available to all other children, the government or department of first contact will pay for the service and then seek reimbursement as required from other governments or departments after the child has received the service (*Malone v Canada (Attorney General)*, 2021 FC 127 [*Malone*] at para 7).

[4] On this judicial review, Ms. Powless asks the Court to direct ISC to fund the mould remediation and their temporary accommodation expenses. In the alternative, she asks that the ISC decision be quashed and remitted for re-determination. She also seeks review of the refusal for advocacy funding, and she seeks costs on this application.

[5] For the reasons that follow, I am granting this judicial review. In my view, ISC took an unreasonably narrow approach to this Jordan's Principle request by considering the request as a housing renovation request rather than considering the request from the perspective of the health needs of these children. This narrow approach fails to reflect the purpose and intent of Jordan's Principle.

[6] On the appropriate remedy, I decline to grant the directed verdict requested by Ms. Powless and will remit the request for re-determination.

II. Background facts

[7] The background facts are not in dispute.

[8] Ms. Powless and her grandchildren are members of Oneida First Nation of the Thames Settlement and reside on-reserve, in Southwold, Ontario. Ms. Powless and her grandchildren live in a multigenerational home with their two uncles.

[9] Both grandchildren have been diagnosed with asthma by Dr. Ryan Giroux, a general pediatrician. He assessed both children and in his report of July 19, 2024 states:

> … However, her symptoms including frequent asthma exacerbations, missed school, exercise-induced symptoms, frequent daytime/nighttime cough, and intermittent wheezing show that she is still very poorly controlled.
>
> […]
>
> … [name redacted] is at risk for the sequelae of poorly controlled asthma. This includes reduced school functioning and educational

> attainment, which has already been evidenced by her teachers not being able to assess her this year due to weeks of missed school because of asthma symptoms. Reduced educational attainment at this critical age (early grade school) can lead to not only lifelong consequences of lower likelihood of post-secondary education and employment, but it also can mean difficulty with integrating socially with her peers. Additionally, poorly controlled asthma means that she is at risk for frequent and potentially life-threatening asthma exacerbations.
>
> All in all, removal of mold and repairs to home is, in my opinion, a life-saving necessity and promotes much more than just lung health.

[10] Dr. Giroux noted that one of the children experiences daytime and nighttime coughing, has missed school, and has exercise intolerance. He also reported frequent nosebleeds requiring bedding changes, which he attributed to environmental factors.

[11] The condition of the home where the children reside is not in dispute and is described as unhabitable and harmful to the health of the children. There are a series of photographs of the interior of the Powless home depicting the mould on the ceiling and walls as well as cracks in the foundation and walls.

[12] On September 26, 2023, Pamela Bridgen, RN(EC), NP-PHC, states as follows:

> Chronic exposure to dampness and mold in the home environment have been associated with increased risk of asthma, asthma exacerbation, rhinitis, and respiratory infections. [Redacted] already carries a diagnosis of asthma, and has had several recent exacerbations requiring hospital visits, signalling poor asthma control. Chronic exposure to mould puts her at risk of complications from uncontrolled asthma such as poor sleep, frequent respiratory infections, absence from school, and activity limitations. The mould in the home needs to be eradicated. The

> children are at risk of ongoing/worsening health issues if the home environment is not improved.

[13] On September 20, 2023, Eagle Eye Construction provided a quote for the work on the home as follows:

> Eagle Eye Construction went did an assessment on Joanne's home, upon inspection the roof was leaking for a period of time, but has been fixed. The water damage/weather damage then turned into mould throughout the whole home. There will be total gut job for this home right to the bare ribs of the 2/6 framing, will need to apply kilz to certain areas, will need new insulation, new vapour barrier, new drywall, new painting, new flooring, new windows and doors all new trim, all new cabinets. all new siding as mould is on the siding. It is with our professional team after inspection this whole inside of the house must be done, can't just fix certain areas as the mould will regrow without handling the entire mould problem. The foundation has cracks and need immediate attention as water is getting into the home throughout the cracked foundation, we will waterproof the foundation and seal the leak, need to excavate down to the footing and fix the problem areas. Grand Total for all work to be completed $186,639.35

[14] Ms. Powless also got a quote from C Schmitt Custom Build and Renovations who quoted $191,514.62 for the necessary work.

[15] ISC did not dispute these amounts nor was the proposed cost estimate to remediate the house a ground relied upon by ISC as a basis to deny the funding request.

A. *Previous ISC Decisions*

[16] Ms. Powless first requested funding for mould remediation on June 8, 2022.

[17] In the initial Jordan's Principle application, in the Reason for Request section, the following is noted:

> The unmet needs of [redacted] and [redacted] are to live in their home without having their health and wellbeing being impacted by excessive mold, lack of sufficient insulation, and improper finishing being unsafe. [Redacted] is experiencing worsening breathing-related symptoms that are a direct result of breathing in mold spores. The family cannot continue to stay in their dwelling or both sisters will be at risk for a medical crisis. The family experiences food loss and precarity due to the conditions in the home; displacement will compound their food precarity and impact the assurance of sufficient personal and hygiene care. Both sisters clothing have been contaminated with mold from the home; they require the provision of sufficient clothing that is not a potential health hazard.

[18] On September 14, 2023, Environmental Public Health Services of ISC conducted a housing inspection of Ms. Powless' property, confirming the presence of mould. The inspection report states, in part:

> **Foundation**
>
> **Observation**: The foundation was cracked/damaged
>
> **Recommendation**: A building inspector should assess the foundation to identify repairs to be carried out and provide a written report to the homeowner. Based on the assessment, the necessary corrective action should be taken.
>
> **Mould**
>
> **Observation**: Mould noticed on the ceiling near the washroom, mould is present throughout the ceiling of the washroom. Attic area has wet insulation material present, which contributes to mould growth.
>
> **Recommendation**: Removed the wet insulation material in the attic area then replace the mouldy ceiling or drywall in the washroom area.

[19] In January 2024, ISC denied the request, stating that “major renovations fall outside the scope of Jordan's Principle” and that the supporting documentation did not sufficiently link the requested services to the children's needs.

[20] Ms. Powless appealed ISC’s denial. After the appeal was denied, she filed an application for judicial review. That application was discontinued when the parties agreed that ISC would reconsider the request.

[21] In the reconsideration decision of September 10, 2024, ISC again denied the request. It concluded that Jordan's Principle does not apply to mould remediation, as it is not an existing government service. Relevant excerpts are included here:

> … As summarized below, we have determined that Jordan’s Principle does not apply to the circumstances of this case and your request for funding mould remediation for $200,000.00 is not approved under Jordan’s Principle.
>
> […]
>
> For these reasons, Jordan’s Principle does not apply to the circumstances of this case, and your request for funding mould remediation for $200,000.00 is not approved under Jordan’s Principle. [footnotes omitted]

[22] On November 14, 2024, the Applicant appealed the refusal and included a request of $5,559.60 for funding for appeal advocacy costs.

[23] On November 28, 2024, the External Expert Review Committee (Committee) assessed Ms. Powless’ appeal of the September 10, 2024 first-level decision. The Committee considered

whether funding should be provided to ensure substantive equality, culturally appropriate services, and the best interests of the grandchildren. It ultimately upheld the first-level denial. The Committee's rationale is set out in the DDM form and the "Presentation Form" provided to the decision-maker. The Presentation Form states, in part:

> … It is evident from the inspection reports that the home's severe disrepair goes beyond what can be addressed through mould remediation alone, requiring extensive foundational and exterior repairs due to poor original construction and lack of upkeep. Unfortunately, major renovations fall outside Jordan's Principle's scope, which is limited to minor accessibility modifications such as wheelchair ramps, stair glides, safety yard enclosures, and specialized bathroom equipment. As difficult as this decision is, the panel agreed to uphold the denial of this request since the proposed mould remediation constitutes a capital expense that exceeds our authority. Recognizing the urgency and unsafe conditions of the home, our primary concern remains the children's safety and health. Thus, we strongly advise the family to relocate from their current environment as soon as possible. […]

[24] While the Committee's work informed the final decision, the Committee is not the decision maker. It is an external advisory panel of health, education, and social professionals outside of government who are Indigenous or have specialized expertise in serving Indigenous communities across Canada. Its role is to review appeals of Jordan's Principle funding decisions and provide a recommendation based on its assessment.

B. *Decision Under Review*

[25] In the Judicial Review Application, the Applicant seeks judicial review of the External Expert Review Committee's November 28, 2024 report (referenced above). However, as the Respondent notes, the Committee is a recommending body whose input is considered by the

decision-maker, but the Committee is not the decision maker. Established administrative law principles dictate that only the final appeal decision is properly before this Court. This principle ensures that reviewing courts consider the full findings and ultimate reasons of the decision-maker (*Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at para 32.)

[26] That said, the Committee's recommendations are relevant, as they informed the decision under review. The decision explicitly states: "The ISC Senior Assistant Deputy Minister concurred with the result of the recommendation by the committee but for the reasons outlined below" [emphasis added].

[27] The decision under review is the November 28, 2024 Denial (Denial Letter) issued by ISC's Senior Assistant Deputy Minister (Senior ADM), who replaced the Chief Science Officer as decision-maker. Relying on the Committee's materials, the Senior ADM found that the Applicant was not denied substantively equal access to existing government services available to the general public. The Senior ADM concluded that Jordan's Principle did not apply, as it is not intended to provide access to or change the scope of special or ameliorative programs.

[28] ISC also denied the request for funding for advocacy services, finding the request "unrelated to any Jordan's Principle request". It further noted that no Jordan's Principle authority permits reimbursement of legal costs for an appeal.

[29] The relevant portions of the Denial Letter are reproduced here:

> Your Jordan's Principle request seeks funding for mould remediation for your on-reserve home to address the health needs of your grandchildren, who live with you. Jordan's Principle serves to ensure that First Nations children have equal access to government services like other children across Canada. Indigenous Services Canada (ISC) is not aware of an existing government service available to the general public that currently provides funding to Canadians for the purposes of mould remediation. As there is no existing government service, you have not been denied access to either a service within the meaning of section 5 of the Canadian Human Rights Act (CHRA) or a benefit within the meaning of section 15(1) of the Canadian Charter of Rights and Freedoms (Charter). Therefore, Jordan's Principle does not apply in the circumstances of this case.
>
> Jordan's Principle is a human rights principle that is intended to ensure that First Nations children do not experience gaps or delays in accessing government services, and that they are not denied government services because of their identity as First Nations children.
>
> Jordan's Principle is based on the legal concept of substantive equality. It serves to ensure that First Nations children can benefit equally from existing government services i.e. services available to the general public, like other children across Canada, taking into account the need for culturally appropriate service supports, and to safeguard the best interests of First Nations children in light of their particular needs. It recognizes that to allow First Nations children to access substantively the same level of services as other children in Canada, First Nations children may need resources or supports that are not provided to all others, or that are beyond normative standards, within the context of an underlying existing government service available to the general public. These kinds of supports account for the unique circumstances, experiences and needs of the child, as a First Nations child.
>
> ISC has identified a government program that was specially designed to improve the health and safety of onreserve housing. The Government of Canada invests in the Canada Mortgage and Housing Corporation's (CMHC) On-Reserve Residential Rehabilitation Assistance Program (RRAP).

> ISC sees this program as a special program for the purposes of the CHRA (as described in section 16(1)) or an ameliorative program for the purposes of the Charter (as described in section 15(2)). Special or ameliorative programs are specifically designed by governments to combat discrimination by helping members of a disadvantaged group in particular ways.
>
> Jordan's Principle is concerned with enabling First Nations children to gain substantively equal access to existing government services that are available to the general public. It is not intended to provide access to or change the scope of special or ameliorative programs.
>
> For these reasons, Jordan's Principle does not apply to the circumstances of this case, and your request for funding mould remediation for $200,000.00 is not approved under Jordan's Principle.

III. Preliminary issue – objections to evidence

[30] In support of this judicial review, in addition to her own Affidavit dated January 27, 2025, the Applicant also filed the following Affidavits:

(i) The Affidavit of Jasmine Kaur, affirmed on January 27, 2025; and

(ii) The Supplemental Affidavit of Doreen Navarro, affirmed on March 26, 2025.

[31] The Respondent objects to the Court considering the Affidavits of Jasmine Kaur and Doreen Navarro, as the information within the Affidavits and attached as Exhibits, contains information that was not before ISC and therefore not considered by ISC. The Respondent argues that these Affidavits do not meet any of the three exceptions to the inclusion of new evidence on judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20 [*Access Copyright*]).

[32] On judicial review, the Court cannot normally consider evidence that was not before the administrative decision maker (*Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 97–98 [*Tsleil-Waututh*]; *Access Copyright* at para 19). Indeed, "[t]he essential purpose of judicial review is the review of decisions, not the determination, by trial *de novo*, of questions that were not adequately canvassed in evidence at the tribunal or trial court" (*Access Copyright* at para 19).

[33] The exceptions to this principle extend to materials that: (1) provide general background assisting the reviewing court in understanding the issues; (2) demonstrate procedural defects or a breach of procedural fairness in the administrative process; or (3) highlight the complete absence of evidence before the decision maker (*Tsleil-Waututh* at para 98; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 23–25; *Access Copyright* at paras 19–20).

[34] The Applicant argues that the Navarro Affidavit, which attaches an Operational Bulletin dated after the decision under review and not before the decision-maker, is relevant to the remedy sought, namely a directed verdict. The Applicant also argues that the Kaur Affidavit provides background information on the Jordan's Principle appeal process and includes documents relating to advocacy funding requests in other cases.

[35] In the circumstances, I agree with the Respondent that the evidence proposed to be introduced through these Affidavits which was not before ISC is not appropriate in the context of this judicial review. I will consequently disregard this evidence. In any event, it does not impact my decision on this judicial review.

IV. Issues & Standard of Review

[36] The decision under review is the ISC Senior ADM's November 28, 2024 decision. The Applicant challenges the reasonableness of this decision and raises procedural fairness issues with the process followed by ISC.

[37] Reasonableness is the appropriate standard of review of the merits of decisions on funding under Jordan's Principle (*Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969 [*First Nations Child Society*] at para 74; *Malone* at paras 32-35; *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342 at para 76).

[38] In assessing reasonableness, this Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12 and 15 [*Vavilov*]). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85).

[39] The question of whether *Charter* rights or values are engaged is assessed on a correctness standard and, if answered in the affirmative, the necessary balancing of those rights or values with statutory objectives is assessed on the standard of reasonableness (*Robinson v. Canada*

(Attorney General), 2024 FC 2092 at para 69; *York Region District School Board v Elementary Teachers' Federation of Ontario*, 2024 SCC 22 at para 64).

[40] Regarding the procedural fairness issues, the Court must consider whether the applicant knew the case to meet and had a full and fair chance to respond, and whether a fair and just process was followed (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54 and 56).

V. Jordan's Principle - Legal Framework

[41] The background and procedural history of Jordan's Principle is comprehensively outlined by Justice Favel in *First Nations Child Society* at paras 12–72).

[42] Justice Zinn recently summarized the legal framework for Jordan's Principle in *Schofer v Canada (Attorney General)*, 2025 FC 50 at paras 17–21:

> [17] Jordan's Principle is a child-first principle that ensures First Nations children can access essential public services available to all other children without delays, denials, or disruptions caused by jurisdictional disputes between federal and provincial governments or departments: *First Nations Child Society* at para 12. Recognizing the historical and systemic disadvantages faced by First Nations children, this Court has emphasized that the Principle must be interpreted broadly and liberally rather than narrowly, so that it can effectively address the unique hardships confronting First Nations children: *Pictou* at paras 85-86 and 95.
>
> [18] Substantive equality is central to this framework. First Nations children may need services beyond those typically provided to non-First Nations children due to systemic inequities including socio-economic challenges, intergenerational trauma, and cultural access barriers: *First Nations Child Society* at para 18. The ISC's Back to Basics policy document [B2B] echoes this understanding.

> It directs decision-makers to "presume that First Nations children need services going beyond the kinds or levels of services available to non-First Nations children due to the unique disadvantage that they face."
>
> [19] Essential public services are commonly categorized into educational, social, or medical needs. Specific identified supports within these categories include nursing care, home and community support, necessary health benefits not covered by insurance, special education, assisted living, income assistance, and child and family services: *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada)*, 2016 CHRT 2 at para 355; *First Nations Child Society* at para 14.
>
> [20] In implementing the Principle, the government or department first contacted is to fund the necessary service immediately and resolve reimbursement issues afterward: *Malone* at para 8. This imperative must be carried out with vigilance to the child's best interests and distinct needs, such that any administrative uncertainty and limitations do not undermine substantive equality: *Pictou* at paras 86-91.
>
> [21] ISC's Standard Operating Procedures [SOPs] give operational structure to these obligations. The SOPs stress the timely, direct provision of services with tangible benefits that meet the child's documented health, social, or educational needs, supported by professional recommendations. In urgent scenarios, minimal documentation may suffice to prevent delays, reflecting the need for a flexible, child-first approach in line with Jordan's Principle's broad remedial intent.

VI. Analysis

A. *Is the finding that Jordan's Principle did not apply to the children's circumstances reasonable?*

[43] In my view, it was unreasonable for ISC to deny the request by narrowly framing it as a housing remediation request, rather than assessing it through a substantive equality lens and the health and best interests of the children, as Jordan's Principle requires. The request was grounded

in serious health concerns, and the evidence shows that no viable alternatives were available. ISC relied on the $200,000 cost as a reason for denial, but this reliance was misplaced. There is no evidence that Jordan's Principle imposes monetary limits, and no evidence was provided to suggest that the quoted cost was inflated or unreasonable. In the absence of such evidence, the quantum of the request is irrelevant. ISC's decision reflects an unduly narrow and inconsistent application of Jordan's Principle.

[44] The Applicant argues that the Senior ADM took an unreasonably narrow view by focusing only on whether the requested service was available to the "general public". This "one-dimensional" approach, the Applicant submits, has been rejected by the CHRT as inconsistent with the purpose of Jordan's Principle, which is to close service gaps affecting Indigenous children. The Applicant disputes that the proper test for Jordan's Principle requests is whether an "existing government service" is available to others and rejects the Respondent's interpretation that section 5 of the *Canadian Human Rights Act*, RSC, 1985, c H-6, requires the services to be customarily available to the general public for the CHRT to have jurisdiction.

[45] The Applicant relies upon various CHRT decisions which reject a narrow interpretation of Jordan's Principle. The CHRT has emphasized that Jordan's Principle requires a broad, substantive equality approach that accounts for the distinct circumstances of First Nations children, including historical disadvantage, and mandates individualized, culturally appropriate services regardless of where the child resides or whether comparable services exist for others. It is helpful to outline some of the CHRT decisions (for ease of reference I will refer only to the CHRT citation) as follows:

a) In 2016 CHRT 2 at para 481, the CHRT ordered Indian and Northern Affairs Canada (INAC), known at the time of the hearing as Aboriginal Affairs and Northern Development Canada (AANDC), to similarly "cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's Principle". The CHRT further noted at para 482:

> [482] More than just funding, there is a need to refocus the policy of the program to respect human rights principles and sound social work practice. In the best interest of the child, all First Nations children and families living on-reserve should have an opportunity "…equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society" (*CHRA* at s. 2).

b) In 2019 CHRT 7, the CHRT further condemned Canada's narrow interpretation of Jordan's Principle that restricted its application to First Nations Children with "disabilities and those who present with a discrete, short-term issue for which there is a critical need for health and social supports":

> [12] Finally, the Panel noted that INAC's new formulation of Jordan's Principle once again appeared to be more restrictive than formulated by the House of Commons. That is, INAC was restricting the application of the principle to "First Nations children on reserve" (as opposed to all First Nations children) and to First Nations children with "disabilities and those who present with a discrete, short-term issue for which there is a critical need for health and social supports." The Panel ordered INAC to immediately apply Jordan's Principle to all First Nations children, not only to those residing on reserve. In order for the Panel to assess the full impact of INAC's formulation of Jordan's Principle, it also ordered INAC to explain why it

formulated its definition of the principle as only being applicable to First Nations children with "disabilities and those who present with a discrete, short-term issue for which there is a critical need for health and social supports" (see 2016 CHRT 16 at paras. 107-120). This third ruling was also not challenged by way of judicial review.

[13] In May 2017, the Panel made additional findings in light of the new evidence before it and has partially reproduced some of them below for ease of reference:

> […]
>
> Furthermore, the emphasis on the "normative standard of care" or "comparable" services in many of the iterations of Jordan's Principle above does not answer the findings in the Decision with respect to substantive equality and the need for culturally appropriate services (see Decision at para. 465). The normative standard of care should be used to establish the minimal level of service only. To ensure substantive equality and the provision of culturally appropriate services, the needs of each individual child must be considered and evaluated, including taking into account any needs that stem from historical disadvantage and the lack of on-reserve and/or surrounding services (see Decision at paras. 399-427), (see 2017 CHRT 14, at para. 69).
>
> […]

[14] Also, in the 2017 CHRT 14 ruling the panel made additional findings that are relevant to the questions before us as part of this ruling:

> Therefore, the fact that it is considered an "exception" to go beyond the normative standard of care is concerning given the findings in the *Decision*, which findings Canada accepted and did not challenge. The discrimination found in the *Decision* is in

> part caused by the way in which health and social programs, policies and funding formulas are designed and operate, and the lack of coordination amongst them. The aim of these programs, policies and funding should be to address the needs for First Nations children and families. […]
>
> Canada's narrow interpretation of Jordan's Principle, coupled with a lack of coordination amongst its programs to First Nations children and families (…) along with an emphasis on existing policies and avoiding the potential high costs of services, is not the approach that is required to remedy discrimination. Rather, decisions must be made in the best interest of the children. While the Ministers of Health and Indigenous Affairs have expressed their support for the best interest of children, the information emanating from Health Canada and INAC, as highlighted in this ruling, does not follow through on what the Ministers have expressed. (see 2017 CHRT 14, at para.74).
>
> […] Furthermore, emphasizing the normative standard of care does not ensure substantive equality for First Nations children and families. […]

c) In 2017 CHRT 35 one of the key principles of Jordan's Principle was identified at para 135 B iv. as follows:

> When a government service, including a service assessment, is not necessarily available to all other children or is beyond the normative standard of care, the government department of first contact will still evaluate the individual needs of the child to determine if the requested service <u>should be provided</u> to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child. (emphasis added)

d) In 2025 CHRT 6 at para 160, the CHRT found that Jordan's Principle requires "an understanding of the services that are available in the community or elsewhere and the gaps in [those] services," to remain "responsive to the children's needs."

[46] In this case, Ms. Powless argues that ISC's reliance on the availability of the CMHC On-Reserve Residential Rehabilitation Assistance Program (RRAP) as a special or ameliorative program is inconsequential. She argues that the finding of ISC that "there is no existing government service, you have not been denied access to either a service within the meaning of section 5 of the Canadian Human Rights Act (CHRA) or a benefit within the meaning of section 15(1) of the Canadian Charter of Rights and Freedoms (Charter)…." is unreasonable as the ISC unduly focused on comparable services. I agree. The issue is not whether the RRAP is an ameliorative program, but whether the children's health needs were adequately addressed. ISC's focus on comparable services ignores the core principle of substantive equality, which requires consideration of historical disadvantage and the best interests of the children.

[47] Ms. Powless provided detailed evidence in her Affidavit about her unsuccessful efforts to secure alternate housing:

> 35. While doing all that I could to find supports for my Home Repairs Application, I also sought out funding outside Jordan's Principle. In particular, I took steps to secure funding for home repairs through Oneida Nation of the Thames.
>
> 36. On November 20, 2023, I received an email from the Oneida Nation of the Thames Housing Department, which informed me that I would qualify for a loan of $25,000, subject to certain conditions.

> 37. This funding was roughly one-eighth of the amount I had requested from ISC pursuant to Jordan's Principle to remediate the mold in my home. I did not think that this loan could meet my granddaughters' needs due to the big gap between the loan amount and the estimate for the mold-related repairs. I also did not know how I would be able to pay back the loan.
>
> 38. In November 2023, a Navigator also assisted me in trying to find quotes for Airbnb to try to house my family.
>
> 39. On February 1, 2024, I applied for a three-bedroom rental apartment through the Oneida Nation of the Thames Housing Department. I did not get the apartment.

[48] There was also evidence from the Oneida First Nation's Housing Manager stating that the CMHC funding referenced in the Denial was already "allocated and maxed out." The letter notes that Oneida Nation of the Thames "receive[s] a v[e]ry low amount of funding each year", that it was "not an option for Joanne in the year 2023–2024" and that there was a "very low chance of obtaining approval for next year's allocation." In the letter, the Housing Manager noted that the cost of the requested remediation and repairs would far exceed the funding available.

[49] Considering this evidence, it was unreasonable for ISC to conclude that other programs could meet the children's means. The record shows clearly that those programs were either inaccessible or inadequate to address the health needs of these children. ISC failed to meaningfully engage with the children's health conditions or to assess whether those needs could be met under Jordan's Principle .

[50] Instead, the ISC Decision framed the request as a housing remediation matter and ignored its underlying substantive equality purpose: to address serious health risks to the children. The

RRAP, identified as an ameliorative program under section 15(2) of the *Charter*, offers no relief nor benefits to address the health conditions suffered by the children.

[51] I acknowledge that the substantive equality guarantee in section 15(1) "does not impose a general, positive obligation on the state to remedy social inequalities or enact remedial legislation" (*R v Sharma*, 2022 SCC 39 at para 63). However, in this case, ISC was required to assess the request through the lens of Jordan's Principle, which includes the health and best interests of the children. On the record before me, it did not.

[52] Finally, I wish to comment on the amount of funding requested, namely $200,000. ISC refers repeatedly to this quantum, presumably to highlight that the amount is high, but there is no evidence nor argument that Jordan's Principle imposes a financial limit on individual requests. Nor is there evidence to suggest that the quotations provided were excessive or unreasonable. In the absence of financial parameters on Jordan's Principle requests, the quantum alone was not a reasonable basis for denying the request.

[53] In summary, ISC unreasonably treated the request as solely a housing remediation matter, without considering the serious health conditions of these young children. This, in my view, was an impermissible narrowing of Jordan's Principle.

B. *Was the change in decision-maker and the denial of advocacy funding procedurally fair?*

[54] The Applicant argues that it was procedurally unfair for ISC to change the decision-maker without notice or an opportunity to address the change. The Applicant points to two

Committee Presentation Forms dated November 18, 2024—one signed by Tom Wong and the other by Candice St-Aubin—and submits that the change should have been disclosed.

[55] In my view, the change in the decision-maker does not, on its own, raise procedural fairness concerns. Procedural fairness focuses on the process, not the identity of the decision-maker.

[56] There is no evidence that this change deprived the Applicant of any meaningful opportunities to understand or address the perceived gaps in their application. The Applicant has not demonstrated how a change in decision maker would change their position in any meaningful way.

[57] The Applicant also argues that it was procedurally unfair for the ISC to deny them advocacy funding. This argument is based largely on the information in the Affidavit of Jasmine Kaur, which was not before the decision-maker. Accordingly, that is not a factor that can be considered in the procedural fairness context.

VII. Conclusion

[58] For the reasons outlined above, I am granting this judicial review as I have concluded that the decision of the ISC is unreasonable. The decision is quashed, and the matter shall be remitted for re-determination.

VIII. Costs

[59] The Applicant is entitled to costs and seeks elevated costs. The Respondent did not provide submissions on costs and requested the ability to provide submissions following receipt of the Court's reasons. Accordingly, if the parties cannot agree on costs, they may file submissions not to exceed five pages.

[60] The Applicant's costs submissions are to be served and filed by Monday, July 21, 2025 and the Respondent's submissions are to be served and filed by Friday, July 25, 2025.

JUDGMENT IN T-3332-24

THIS COURT'S JUDGMENT is that:

1. This judicial review is granted.

2. The decision is set aside and shall be reconsidered.

3. If the parties are unable to agree on costs, they may file cost submissions as set out in the reasons for judgment.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3332-24
STYLE OF CAUSE:	JOANNE POWLESS V ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MAY 15, 2025
JUDGMENT AND REASONS:	MCDONALD J.
DATED:	JULY 10, 2025

APPEARANCES:

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Lorne Ptack Loujain El Sahli	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Conway Baxter Wilson LLP/s.r.l. Barristers and Solicitors Ottawa, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT