

Federal Court



Cour fédérale

Date: 20250826

Docket: T-3332-24

Citation: 2025 FC 1425

Ottawa, Ontario, August 26, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

JOANNE POWLESS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

SUPPLEMENTARY JUDGMENT AND REASONS

[1] In *Powless v Attorney General of Canada*, 2025 FC 1227 [Judgment], I granted costs in favour of the Applicant, Ms. Joanne Powless. I allowed the parties to make post-Judgment submissions on costs. Having reviewed and considered those submissions, these are my reasons for costs.

I. Ms. Powless's submissions on costs

[2] Ms. Powless seeks elevated lump sum costs of \$36,310, representing approximately 50% of her total legal fees. Alternatively, she seeks lump sum costs of \$23,880, representing 33% of her submitted costs. Finally, if lump sum costs are not awarded, Ms. Powless seeks costs of \$17,280, in accordance with the high end of Column IV of Tariff B.

[3] Ms. Powless supports her claim based on the following factors:

- (a) She was the successful party.
- (b) The importance of the issues to Ms. Powless. Ms. Powless's home was declared unsafe due to mould, and her two granddaughters, for whom she is the guardian and primary caretaker, suffer from asthma. Other programs, besides Jordan's Principle, were either inadequate or insufficient to remediate the unsafe conditions of their home (Judgment at para 49).
- (c) The public interest in having the litigation proceed. This Court has stated that Jordan's Principle is to be "interpreted broadly and liberally rather than narrowly, so that it can effectively address the unique hardships confronting First Nations children" (*Schofer v Canada (Attorney General)*, 2025 FC 50 at para 17 citing *Pictou Landing Band Council v Canada (Attorney General)*, 2013 FC 342). The Judgment found that Indigenous Services Canada [ISC] had taken an "unreasonably narrow approach", which "fail[ed] to reflect the purpose and intent of Jordan's Principle" (Judgment at para 5).

- (d) The “serious financial imbalance” of the parties. Ms. Powless is an individual whose counsel acted on a public interest basis, whereas the Respondent has available financial resources of the state.

II. Attorney General of Canada’s submissions on costs

[4] The Attorney General submits that Ms. Powless should be awarded \$12,682.25, covering approximately 17.5% of her total legal fees. Alternatively, the Attorney General submits that costs should be awarded in the amount of \$17,280, in accordance with the high end of Column IV of Tarriff B.

[5] The Attorney General supports their position based on the following factors:

- (a) The Attorney General’s “good faith conduct with the Applicant in moving this matter towards a hearing on the merits as expeditiously as possible”.
- (b) The fact that Ms. Powless did not receive all relief sought or succeed on all arguments. In her application for judicial review, Ms. Powless sought a directed verdict. Instead, the matter was remitted to the decision-maker for reconsideration (Judgment at para 6). Ms. Powless also raised procedural fairness issues that were rejected in the Judgment (at paras 54-57).

III. Analysis

[6] The Court retains full discretion over the amount and allocation of costs (*Federal Court Rules*, SOR/98-106 [*Rules*], Rule 400(1)). Rule 400(3) provides a non-exhaustive list of factors that the Court can consider when determining costs.

[7] Costs can be calculated according to Tariff B in the *Rules* or awarded as a lump sum (Rule 400(4)).

[8] Lump sum costs awards range from 10 to 50% but are typically between 25 to 33% (*Apotex Inc v Shire LLC*, 2021 FCA 54 at para 22). Lump sum costs can be evaluated by starting at the lower end of the typical range for lump sum costs, namely 25%, and weighing whether the circumstances of the specific case warrant a higher or lower amount (*Bauer Hockey Ltd v Sport Maska Inc (CCM Hockey)*, 2020 FC 862 at para 14; *Seedlings Life Science Ventures, LLC v Pfizer Canada ULC*, 2020 FC 505 at para 22).

[9] In my view there are several factors in this case that support a costs award above 25%.

[10] First, Ms. Powless was successful in her application for judicial review (Rule 400(3)(a)). She succeeded on the substantive issue in her application for judicial review. The fact that Ms. Powless failed on a secondary issue and did not receive a directed verdict thus has little weight in this costs decision.

[11] Second, this case is important to Ms. Powless (Rule 400(3)(c)) as the issues raised in the judicial review application involved significant consequences for the health and wellbeing of her granddaughters.

[12] Third, the significant resource imbalance between the parties. While Rule 400(3) does not specify the resource imbalance between the parties as a factor for consideration, Rule 400(3)(o) allows the Court to consider “any other matter that it considers relevant”. Ms. Powless cites *Whalen v Fort McMurray No 468 First Nation*, 2019 FC 1119 [*Whalen*] as support for the proposition that the financial imbalance between the parties supports an elevated costs award. While *Whalen* was a First Nations governance dispute (*Whalen* at paras 21, 27), resource imbalance has been considered in other cases where elevated lump sum costs were awarded (*Metis Settlements General Council v Canada (Crown-Indigenous Relations)*, 2024 FC 919 CanLII at para 14). Furthermore, a consideration of the resource imbalance between the parties is consistent with the objective of “facilitating access to justice” (*Elevate LLP v Canada (Attorney General)*, 2025 FC 858 CanLII at para 15, citing *Whalen* at paras 3-5).

[13] While the above factors support a lump sum costs award above 25%, in my view a lump sum costs award of 50% would be too high, as “[t]his level seems to be appropriate mainly for situations in which the Court wishes to express its displeasure with the conduct of the losing party” (*Teva Canada Limited v Janssen Inc*, 2018 FC 1175 at para 35). In this case, the Respondent remained focused on the substantive issues and the matter was resolved in a timely manner. Such conduct does not warrant elevated costs (*Nekaneet First Nation v Louison*, 2023 FC 1227 at para 27).

[14] That said however, the Respondent's conduct does not justify a costs award below the typical range of lump sum costs awards. While the Respondent may have acted cooperatively and in good faith, and helped to expedite the matter, such conduct is expected of counsel and does not justify departing the typical range of lump sum costs.

[15] As such, I award Ms. Powless lump sum costs of \$23,880, representing approximately 33% of her total legal fees.

IV. Conclusion

[16] I order the Respondent, the Attorney General of Canada, to pay the Applicant, Ms. Joanne Powless, lump sum costs of \$23,880.

JUDGMENT IN T-3332-24

THIS COURT'S JUDGMENT is that the Applicant, Joanne Powless, is awarded costs in the all-inclusive sum of twenty-three thousand, eight-hundred and eighty dollars (\$23,880).

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-3332-24

STYLE OF CAUSE: JOANNE POWLESS V ATTORNEY GENERAL OF
CANADA

**SUBMISSIONS ON COSTS
CONSIDERED AT:** OTTAWA, ONTARIO

**SUPPLEMENTARY
JUDGMENT AND REASONS:** MCDONALD J.

DATED: AUGUST 26, 2025

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