Federal Court  Cour fédérale

Date: 20250916

Docket: T-3180-25

Citation: 2025 FC 1524

Ottawa, Ontario, September 16, 2025

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

THE APPLICANTS LISTED BY INITIALS IN SCHEDULE A (CONFIDENTIAL)

Applicants

and

HIS MAJESTY THE KING IN RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF INDIGENOUS SERVICES (JORDAN'S PRINCIPLE)

Respondent

ORDER AND REASONS

[1] Pursuant to rules 115, 119 and 121 of the *Federal Courts Rules*, SOR/98-106, Ms. Julia Valencia, who is not a lawyer, seeks leave to "act as the authorized litigation representative of the Applicants." I am dismissing her motion, mainly because she has not shown that she would be able to provide adequate representation, nor that the Applicants lack the resources to retain a lawyer.

I. Background

[2] The Applicants are approximately 250 children who are awaiting a decision by Indigenous Services Canada [ISC] regarding their request for funding pursuant to Jordan's Principle. From the materials attached to Ms. Valencia's affidavit, I gather that they have received services funded by Jordan's Principle and provided by an organization called Roots and Wings Therapeutic Services Inc. [Roots and Wings]. However, their request to renew the funding for the present fiscal year has been pending for several months. As a result, Roots and Wings was forced to discontinue its services. Ms. Valencia's affidavit includes a statement from Roots and Wings' director describing the negative consequences of the withdrawal of services for certain beneficiaries, including apprehension by child and family services and two cases of suicidal ideation. There is little information as to the nature of the services provided by Roots and Wings, but at the case management conference, Ms. Valencia described it as "ABA therapy."

[3] Ms. Valencia is not a lawyer. She states that she has more than 25 years of experience in Indigenous child and youth services. She founded an organization called the National Indigenous Advocacy Services for Children. She personally assisted more than 600 Indigenous families who made an application to ISC pursuant to Jordan's Principle. Ms. Valencia does not assert that she has legal training or any kind of experience with the judicial process.

[4] Ms. Valencia tendered the notice of application for filing on August 27, 2025. The next day, my colleague Associate Judge John Cotter directed that the notice of application be filed

even though it was not prepared by a lawyer. He ordered that, by September 26, 2025, the Applicants shall either appoint a lawyer to represent them or file a motion for leave to be represented by a non-lawyer. Ms. Valencia then immediately requested an urgent case management conference, asking the Court to order ISC to reinstate funding immediately and to issue various orders expediting the matter. My colleague Justice Richard F. Southcott held that conference the following Saturday, August 30. He noted that any request for interim relief must be brought by motion and supported by affidavit evidence. He set compressed timelines for the holding of a further case management conference at which the sequencing of the various motions could be discussed.

[5] The Chief Justice appointed me as case management judge on September 2. On September 4, I held a case management conference. Ms. Valencia again asserted that the Court should immediately issue interim relief, and that everything else was a "technicality." I directed that the next step would be for Ms. Valencia to file a motion for leave to represent the Applicants, which she did on September 8. I then directed that the motion would be decided in writing, I provided the parties with an opportunity to file further materials or make submissions, and I indicated that the matter would be decided expeditiously.

II. Analysis

[6] Ms. Valencia relies on rules 115, 119 and 121. Rule 115 provides for the appointment of litigation representatives. Rule 119 states that an individual litigant may act in person or be represented by a solicitor—that is, a lawyer. Rule 121 requires persons who seek to act in a representative capacity, including in a class action, to be represented by a lawyer.

[7] Rule 115 is not applicable in this case. A litigation representative is a person who makes decisions on behalf of a minor or a person under a disability. For example, when a child is the applicant, one of their parents would usually act as litigation representative. The litigation representative is not the person's lawyer. In the present case, the requirement for a lawyer does not stem from rule 115 but rather rule 119 and possibly rule 121. Ms. Valencia has not brought any evidence that she meets the criteria in rule 115(2), in particular that she is eligible to act as a representative under the laws of Manitoba, where the Applicants reside.

[8] What Ms. Valencia is really asking for is a dispensation from rule 119. She wants to represent the Applicants even though she is not a lawyer.

[9] The Court has occasionally authorized non-lawyers to represent other persons, thus making an exception to rule 119. For instance, in *Sennikova v Canada (Attorney General)*, 2021 FC 982, aff'd 2022 FCA 215 [*Sennikova*], and in *Ashurova v Canada (Attorney General)*, 2025 FC 428, the Court authorized the applicant's husband to speak on her behalf at the hearing. Such orders are only made in "unusual circumstances:" *Scheuneman v Canada (Attorney General)*, 2003 FCA 439 at paragraph 5 [*Scheuneman*]. Similar principles would apply if the case were viewed through the lens of rule 121.

[10] When deciding whether to allow such requests, the barriers to access to justice faced by the litigant are a relevant factor. In *Sennikova*, for example, it was apparent that the applicant had a limited command of the English language. The inability to pay for a lawyer may also constitute such a barrier. Such facts, however, must be proved before the Court. They cannot be presumed.

[11] There are, however, countervailing considerations. Rules 119 and 121 are based on the idea that as a rule, only lawyers should be allowed to represent litigants before the Court. Among other things, this is because they receive extensive training, must abide by a code of ethics and subscribe to compulsory liability insurance. Access to justice is not only a matter of cost, it also relates to the quality of representation. In this regard, the Supreme Court of Canada has stated that access to justice is not furthered when non-lawyers are allowed to represent litigants in Court: *Fortin v Chrétien*, 2001 SCC 45 at paragraph 48, [2001] 2 SCR 500. Thus, when deciding whether to dispense with the guarantees of quality offered by lawyers, the Court will, among other things, assess the complexity of the matter and the competence of the proposed representative. See, for example, *Scheuneman* at paragraph 5.

[12] Now turning to the facts of the present matter. Ms. Valencia's main argument appears to be the urgency of the matter. I do not dispute that given its subject-matter, this application should be decided expeditiously. However, I fail to see how this is a factor in favour of granting Ms. Valencia's motion. I am not convinced that she is able to proceed more quickly than a lawyer. In truth, the way she has conducted the proceeding over the last two weeks suggests that the reverse is true. The urgency of the matter only strengthens the need for legal representation.

[13] In any event, Ms. Valencia is overstating the degree of urgency of the matter. Of course, allegations of suicidal ideation must not be taken lightly. I note, however, that the issue of a child's suicidal ideation was conveyed to ISC in an email dated June 18. The Applicants waited two months to bring the present application, which does not suggest that the Court's intervention is urgently needed to address this issue. In reality, mental health professionals are better placed

than the Court to respond to cases of suicidal ideation, and the report of Roots and Wings' director suggests that measures have been taken to ensure the safety of at least one of the two children involved. No information was provided regarding the other.

[14] Ms. Valencia has filed emails and text messages related to Roots and Wings' attempt to retain a lawyer. I infer from this that one of the grounds for her motion is the Applicants' inability to retain a lawyer or pay the associated costs, although this is not made explicit in her written representations. If anything, these exchanges show that Ms. Valencia succeeded in persuading the director of Roots and Wings to disregard advice from experienced counsel, based on her assertion that she could obtain the same result more quickly and, one assumes, at a lesser cost.

[15] In any event, there is no evidence that the Applicants are unable to pay for a lawyer. Each Applicant's parents signed a consent form including a statement that reads, "I am experiencing financial hardship and am unable to pay the Federal Court's judicial review filing fee." This single sentence appearing in a standard form prepared in advance is insufficient to prove the impecuniosity of each of the Applicants. Moreover, there is no evidence whatsoever that Roots and Wings, an organization that is said to have had at least 30 employees, lacks the resources to pay for a lawyer. Although there is no affidavit evidence to that effect, Ms. Valencia's written submissions include a statement that the director of Roots and Wings "has personally funded salaries and partial programming at a cost exceeding $2 million," presumably after funding pursuant to Jordan's Principle ran out.

[16] I also note that this Court recently decided cases based on Jordan's Principle, in which the individual applicants were represented by a lawyer: *Cully v Canada (Attorney General)*, 2025 FC 1132 [*Cully*]; *Powless v Canada (Attorney General)*, 2025 FC 1277 [*Powless*]. Moreover, the *Cully* case was expedited, and this Court rendered its judgment about six weeks after ISC's negative decision. This reinforces my conclusion that requiring the Applicants to retain a lawyer will not unduly delay the resolution of the present matter.

[17] Moreover, the complexity of the matter is a factor that favours requiring that the Applicants be represented by a lawyer. Given the lack of details in Ms. Valencia's pleadings, it is difficult to gauge the complexity of the present matter. Nevertheless, a quick perusal of the Court's reasons in *Cully* and *Powless* shows that matters involving Jordan's Principle are typically complex and involve difficult legal concepts that non-lawyers cannot be expected to master.

[18] This brings me to Ms. Valencia's competence. I do not dispute Ms. Valencia's assertion that she has developed in-depth knowledge of ISC's procedures and criteria for the application of Jordan's Principle. However, dealing with a government department and mastering the judicial process are starkly different things.

[19] Based on Ms. Valencia's written and oral interactions with the Court over the last two weeks, I conclude that she does not have the knowledge and skills necessary to represent the Applicants adequately. She does not appear to understand the criteria and procedure for obtaining interlocutory relief. She also seems unfamiliar with the nature and scope of an

applicant's evidentiary burden. She has been unable to provide the Court with meaningful legal submissions. She believes that compliance with this Court's Rules is a "technicality" that can be dispensed with because children are involved.

[20] This lack of competence is made even more serious by the fact that Ms. Valencia is seeking to represent a group of more than 200 individuals. The rights of many persons could be put in jeopardy without the guarantees associated with membership in a law society. The circumstances of the present case are far removed from situations where this Court allowed an individual to be represented by a family member.

[21] In sum, Ms. Valencia has not shown that there are exceptional circumstances that warrant that she be granted leave to represent the applicants.

III. Disposition

[22] For these reasons, Ms. Valencia's motion to be allowed to represent the applicants will be dismissed. Accordingly, the direction issued by Associate Judge Cotter stands, namely, that the Applicants must appoint a lawyer no later than September 26, 2025.

[23] Ms. Valencia has also indicated that she would seek a confidentiality order with respect to the names of the individual Applicants. The Respondent agrees with this request. Accordingly, I will order that schedule A to Ms. Valencia's affidavit, which contains the names of the Applicants, be sealed and kept confidential.

ORDER in T-3180-25

THIS COURT ORDERS that

1. The motion brought by Ms. Julia Valencia for leave to represent the Applicants is dismissed.
2. Schedule A to the affidavit of Ms. Valencia is sealed and must be kept confidential.
3. No costs are awarded.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3180-25
STYLE OF CAUSE:	THE APPLICANTS LISTED BY INITIALS IN SCHEDULE A (CONFIDENTIAL) v HIS MAJESTY THE KING IN RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF INDIGENOUS SERVICES (JORDAN'S PRINCIPLE)

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	GRAMMOND J.
DATED:	SEPTEMBER 16, 2025

WRITTEN REPRESENTATIONS BY:

Julia Valencia	FOR THE APPLICANTS
Darren Grunau	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT