Federal Court of Appeal | Cour d'appel fédérale

Date: 20251215

Docket: A-270-25

Citation: 2025 FCA 226

CORAM: **WEBB J.A.**
MONAGHAN J.A.
PAMEL J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

JOANNE POWLESS

Respondent

and

ASSEMBLY OF MANITOBA CHIEFS and THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

Interveners

Heard at Ottawa, Ontario, on October 6, 2025.

Judgment delivered at Ottawa, Ontario, on December 15, 2025.

REASONS FOR JUDGMENT BY: MONAGHAN J.A.

CONCURRED IN BY: WEBB J.A.
PAMEL J.A.

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REASONS FOR JUDGMENT

MONAGHAN J.A.

I. Overview

[1] At the heart of this appeal are two school-age First Nations girls who suffer from poorly-controlled, moderate to severe asthma and live with the Respondent, Joanne Powless—their grandmother, guardian, and caregiver—in an on-reserve home with significant mould contamination. Neither the presence of mould, nor its adverse effects on the health and well-being of the two children is in dispute. Medical professionals treating the girls have recommended the mould be remediated because it exacerbates their asthma leading to other health and social problems, including breathing difficulties, emergency room visits, and missed school.

[2] Relying on Jordan's Principle, the Respondent twice applied to Indigenous Services Canada (ISC) for funding to remediate the mould and make the necessary repairs to the home to prevent its recurrence. ISC denied each request, both on initial assessment and on the Respondent's appeal of the initial denial.

[3] On judicial review of ISC's decision to uphold, through its appeal process, its initial denial of the Respondent's second application for funding, the Federal Court concluded that the decision was unreasonable and remitted the matter back to ISC for reconsideration: *Powless v. Canada (Attorney General)*, 2025 FC 1227 (*per* McDonald J.).

[4] The Attorney General appeals the Federal Court decision, asserting that, while the Court chose the correct standard of review—reasonableness—it misapplied that standard.

[5] I agree that the Federal Court correctly chose reasonableness as the standard of review. Therefore, the issue on this appeal is whether the Federal Court correctly applied that standard. In deciding that issue, no deference is owed to the Federal Court's analysis. Rather, this Court must step into the Federal Court's shoes, re-do the analysis, and draw its own conclusions about the reasonableness of the decision: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 12; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47.

[6] Doing so, I conclude that the ISC appeal decision is unreasonable, albeit for different reasons than the Federal Court. I also agree that the matter should be remitted back to ISC for reconsideration. Accordingly, I would dismiss the appeal.

I. Background

A. *The Origins of Jordan's Principle*

[7] Jordan's Principle is named after Jordan River Anderson, a child from Norway House Cree Nation in Manitoba who had complex medical needs. His family surrendered him to provincial care so that he could receive the necessary medical treatment. Although he then could

have moved to a specialized foster home, for two years Canada and Manitoba argued over who should bear the costs of such care. Jordan died at age five having never lived outside the hospital.

[8] On December 12, 2007, the House of Commons unanimously passed a motion concerning Jordan's Principle (House of Commons Motion 296):

> That, in the opinion of the House, the government should immediately adopt a child first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children.

[9] Although this explains the origins of Jordan's Principle, the House of Commons motion does not govern ISC's approach to a funding request relying on that principle. Rather, Canadian Human Rights Tribunal (CHRT) decisions, and the resulting orders, issued following a complaint made on behalf of First Nations children, govern.

B. *The CHRT Decisions*

[10] The complaint to the Canadian Human Rights Commission alleged Canada discriminated in the provision of child and family services to First Nations on reserve and in the Yukon. The Commission referred the complaint to the CHRT, which found the complaint was substantiated: *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 at para. 466 (the Merit Decision).

[11] Where a complaint is substantiated, subsection 53(2) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA) empowers the CHRT to order "the person found to be engaging in the discriminatory practice" to, among other things, "take measures…to redress the practice or to prevent the same or a similar practice from occurring in future". Relying on subsection 53(2), the CHRT ordered ISC to "cease its discriminatory practices", reform its program "to reflect the findings in [the Merit] decision", "cease applying its narrow definition of Jordan's Principle", and "take measures to immediately implement the full meaning and scope of Jordan's Principle": Merit Decision at para. 481.

[12] Moreover, the CHRT retained jurisdiction to address outstanding issues, including compensation for past discrimination and "how the requested immediate and long-term reforms [could] best be implemented on a practical, meaningful and effective basis" to remedy past and ongoing discrimination: Merit Decision at paras. 483, 494.

[13] Since then, relying on its retained jurisdiction, the CHRT has issued several additional orders. Although all are relevant, the 2017 CHRT order mandating the five key principles that govern the definition and application of Jordan's Principle is central to this appeal: *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2017 CHRT 35 at Annex A (amending 2017 CHRT 14) (the Governing Order).

[14] The Governing Order describes Jordan's Principle as "a child-first principle" and to that extent echoes the House of Commons resolution. However, the Governing Order goes much

further. It expressly states that no jurisdictional dispute between governments or government departments is necessary for the application of Jordan's Principle.

[15] Nor is Jordan's Principle "limited to First Nations children with disabilities, or those with discrete short-term issues creating critical needs for health and social supports". Rather, it "addresses the needs of First Nations children by ensuring there are no gaps in government services to them": Governing Order at para. 10, citing para. 135 of 2017 CHRT 14. (The full text of the Governing Order is reproduced in the Appendix to these reasons.)

[16] To that end, the Governing Order requires the government department of first contact—here ISC—to pay for a service available to all other children. However, where "a government service, including a service assessment, is not necessarily available to all other children or is beyond the normative standard of care", the Governing Order requires the department contacted to "still evaluate the individual needs of the child to determine if the requested service should be provided 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": Governing Order at para. 10, amending 2017 CHRT 14, para. 135.

[17] As will be seen, the meaning and scope of Jordan's Principle, as articulated in the Governing Order and animated by subsequent CHRT decisions, is at issue in this appeal. In particular, the parties disagree over the interpretation of "[w]hen a government service…is not necessarily available to all other children or is beyond the normative standard of care" and over what constitutes "gaps in government services".

[18] I pause to observe that ISC did not exist when the complaint to the Commission was made or when the CHRT issued the Merit Decision. ISC was created when a federal department, then known as Indigenous and Northern Affairs Canada (itself a successor to Aboriginal Affairs and Northern Development Canada), was dissolved and replaced by two new departments, ISC and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). While the CHRT decisions often use the predecessor department names, nothing turns on this. For simplicity, I refer to ISC throughout these reasons.

[19] Similarly, because all the CHRT decisions referred to in these reasons bear the same style of cause, I will identify them by their citation. Nothing is served by repeating the style of cause.

C. *The Respondent's Requests for Funding*

[20] Relying on Jordan's Principle, the Respondent first applied for funding for mould remediation in June 2022, but that request was denied. After her appeal was also denied, the Respondent applied for judicial review of that decision in the Federal Court. That application was discontinued when ISC agreed to reconsider the Respondent's application.

[21] On September 10, 2024, ISC again denied her request (the second initial refusal decision), and the Respondent again appealed.

[22] An External Expert Review Committee (EERC), which assesses Jordan's Principle appeals and makes recommendations to the final decision-maker, recommended that the

Respondent's appeal be denied. ISC's Senior Assistant Deputy Minister (Senior ADM) agreed with that recommendation and, accordingly, by letter dated November 28, 2024, advised the Respondent that the decision to deny her request for funding was upheld (ISC appeal decision). Importantly, however, as we will see, the Senior ADM—as the decision-maker—did not adopt the EERC's reasons for recommending that same decision.

[23] The Respondent then sought judicial review of the ISC appeal decision in the Federal Court.

D. *The Federal Court Found the ISC Appeal Decision Unreasonable*

[24] The Federal Court concluded that "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": Federal Court reasons at para. 43. It described the issue as "whether the children's health needs were adequately addressed" but said that "ISC failed to meaningfully engage with the children's health conditions or to assess whether those needs could be met under Jordan's Principle": Federal Court's reasons at paras. 46, 49. Instead, ISC "unreasonably treated the request as solely a housing remediation matter" which "was an impermissible narrowing of Jordan's Principle": Federal Court reasons at para. 53.

[25] I largely agree with the nature of these criticisms of the ISC appeal decision. However, because my conclusion that the decision is unreasonable is grounded in a failure of justification, I view these criticisms through that lens.

[26] The Federal Court also suggested that ISC relied on the estimated $200,000 cost of the work as a reason for denying the appeal, although it made inconsistent statements on this issue: Federal Court reasons at paras. 15, 43, 52. I disagree with any suggestion in the Federal Court's reasons that the cost was a reason for the decision. As I read the ISC appeal decision, the references to $200,000 appear only as a part of the description of the Respondent's request, not as a reason for denying it.

[27] Similarly, I disagree that ISC "concluded that other programs could meet the children's [needs]": Federal Court reasons at paras. 46-49. Read in context, the relevant statements in the ISC appeal decision cannot reasonably be seen to suggest that the named programs—Canada Mortgage and Housing Corporation's On-Reserve Residential Rehabilitation Assistance Program and the Capital Facilities and Maintenance Program—could meet the children's needs, or that their existence was a reason for the ISC appeal decision.

[28] That said, I owe no deference to the Federal Court's analysis. Therefore, any disagreement with its reasons for concluding that the ISC appeal decision is unreasonable does not resolve this appeal.

II. The Appeal

[29] As noted above, the only issue on this appeal is whether the ISC appeal decision is reasonable. The Appellant says it is, and the appeal should be allowed. The Respondent disagrees.

A. *Reasonableness Review and its Application to the ISC Appeal Decision*

[30] To decide whether the ISC appeal decision is reasonable, I must "focus…on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome": *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (*Vavilov*) at para. 83. Put another way, "judicial review is concerned with both outcome and process" and "reviewing courts must keep in mind the principle that the exercise of public power must be justified, intelligible and transparent": *Vavilov* at paras. 87, 95.

[31] This means that, where reasons are required for a decision (and they were required here), they must demonstrate justification, transparency and intelligibility: *Vavilov* at para. 81. A reviewing court must start with the reasons, which must explain the rationale for the decision having regard to the relevant factual and legal constraints that bear on it: *Vavilov* at paras. 84-86, 99; *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21 at paras. 46, 49. Those constraints can include the relevant law, the evidence before the decision maker, the parties' submissions, and the potential impact of the decision on the individual to whom it applies: *Vavilov* at para. 106.

[32] To determine whether the reasons justify the decision, the reasons are to be read holistically and contextually, having regard to the history of the proceeding and the institutional context in which the decision was made, with the objective of understanding the basis for the decision: *Vavilov* at paras. 91, 97.

[33] Applying these principles, I conclude the ISC appeal decision is unreasonable. While I do not preclude the possibility that the outcome of the decision may be justifiable—something about which I express no view—the reasons do not exhibit the justification required for this particular decision.

[34] I consider the reasons deficient on three grounds. First, adapting the language of the Supreme Court in the context of statutory schemes, the reasons here must demonstrate that the decision "ultimately [complies] 'with the rationale and purview of the [CHRT decisions] under which it is adopted'", those decisions being "the most salient aspect of the [relevant] legal context": *Vavilov* at para. 108. Second, the reasons must be responsive to the record before the decision maker and the Respondent's submissions. Third, the reasons must reflect the stakes for those affected by the decision.

[35] While the failure of the reasons to justify the outcome renders the ISC appeal decision an unreasonable one, it also makes any assessment of the reasonableness of the outcome impossible. Therefore, the matter must be remitted back for reconsideration.

[36] I turn now to explain why I have come to these conclusions.

[37] The background facts are summarized in the Federal Court's reasons: Federal Court reasons at paras. 8-24. While obviously an important consideration, the facts are not disputed, and I need not repeat them here. It is sufficient to refer to them as necessary in the analysis.

[38] I now turn to the reasons for the ISC appeal decision.

B. *The Reasons Fail to Justify the Outcome in Light of the Relevant Legal and Factual Constraints*

[39] The ISC appeal decision opens with three paragraphs explaining the background:

> Please accept this letter as formal notification advising that the decision to deny your request for funding mould remediation originally denied on September 5, 2024, has been upheld as of November 28, 2024. The recommendation for decision on your appeal…was made by the External Expert Review Committee ('the committee") and signed off by the ISC Senior Assistant Deputy Minister.
>
> The committee (EERC) is comprised of health, education, and social professionals outside of government who are Indigenous or have longstanding expertise in serving Indigenous communities across Canada.
>
> In evaluating your request, the committee reviewed the previous decision and reconsidered the unique needs of [the grandchildren] and whether the requests should be provided in order to ensure the application of substantive equality, while taking into account the need of culturally appropriate services, and the best interest of the child in the provision of services. The committee considered the new information provided and determined that your request does not meet the minimum requirements and cannot be approved under Jordan's Principle.

[40] I first observe that the last sentence is neither an accurate nor reasonable summary of the EERC's analysis. Reading that sentence in the context of the text that immediately precedes it, one can only conclude that the minimum requirements are the unique needs of the child,

substantive equality, culturally appropriate services, and the best interests of the child—the only matters the ISC appeal decision identifies as having been considered by the EERC—and that the EERC determined that at least some of those requirements were not met. In fact, the opposite is true. Notably, the EERC unanimously recognized that mould remediation was above the normative standard, was in the best interests of the children, and met substantive equality. It did not assess cultural appropriateness.

[41] It is true that the EERC unanimously recommended upholding the second initial refusal decision but for entirely different reasons than the ISC appeal decision suggests. Each member of the EERC concluded that the request was outside the scope of Jordan's Principle for essentially the same reason, although each used slightly different language to describe why: "major renovations", "mould remediation…constitutes a capital expense", and "home repairs that will undoubtedly result in the complete demolition of the interior of the home and extensive structural repairs…go far beyond mould remediation".

[42] The ISC appeal decision's mischaracterization of the EERC's analysis is certainly troubling. However, that alone may not render the ISC appeal decision unreasonable, because it was open to the Senior ADM to disagree with the EERC recommendation, or to agree with it, for the EERC's reasons or her own reasons. The next sentence in the reasons tells us what the Senior ADM decided:

> The ISC Senior Assistant Deputy Minister concurred with the result of the recommendation by the committee but for the reasons outlined below.

[43] In other words, the Senior ADM's reasons are not those of the EERC. The ISC appeal decision then proceeds to provide the Senior ADM's reason for denying the request:

> 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.

[44] This paragraph tells us that the reason for denying the request is the absence of an existing government program providing mould remediation. It also tells us that ISC relies on section 5 of the CHRA and section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11 (Charter). Notably, this paragraph does not refer to the Governing Order or any other CHRT decision.

[45] Obviously, that paragraph of the reasons cannot be read in isolation. That said, it is the only place in the ISC appeal decision where "the health needs of [the] grandchildren" are mentioned, and only in the context of describing the Respondent's request.

[46] The reasons continue with what I presume is a description of ISC's interpretation of Jordan's Principle:

> 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.
>
> [Emphasis added.]

[47] These passages footnote three paragraphs in the Merit Decision, Annex 1.B. of the Governing Order (the text of which is in the Appendix to these reasons), and paragraph 26 in 2019 CHRT 7, where the CHRT acknowledged the thousands of services approved under "this substantive equality remedy" and the substantial efforts made by Canada to provide services to First Nations children under Jordan's Principle.

[48] These passages from the ISC appeal decision also recognize Jordan's Principle's purpose—ensuring First Nation's children do not experience gaps or delays in accessing, and are not denied, government services. They also acknowledge that Jordan's Principle is premised on

substantive equality and thus may require the provision of resources or supports not provided to all others or that are beyond normative standards.

[49] However, the second paragraph twice refers to *existing* government services, harkening back to the earlier part of the reasons reproduced in paragraph 43. The word “existing” does not appear in the Governing Order.

[50] The Appellant reminds us that Jordan’s Principle is not a program but a remedial principle the CHRT ordered be applied after it found a complaint under section 5 of the CHRA was substantiated, and that section 5 presumes an existing service or benefit. The Appellant further explains that because section 15 of the Charter protects substantive equality, to assess whether there is a discriminatory impact, there must be a service or benefit. This, says the Appellant, is why the ISC appeal decision refers to those provisions.

[51] The Appellant submits that, despite many CHRT decisions considering and refining the Jordan’s Principle framework, the CHRT has never dispensed with the requirement that there be an existing government service, nor has it distinguished the binding human rights and Charter jurisprudence. At the hearing, the Appellant took us to many CHRT and Federal Court Jordan’s Principle decisions including *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342 (*Pictou Landing*), *Schofer v. Canada (Attorney General)*, 2025 FC 50, and *Malone v. Canada (Attorney General)*, 2021 FC 127. All of them, according to the Appellant, support the need for an existing service—which is a threshold issue: only when an existing service is identified do service gaps and normative standards come into play.

[52] Accordingly, says the Appellant, the Senior ADM's focus on the absence of an existing underlying service is entirely consistent with the relevant legal constraints—the CHRT framework for Jordan's Principle and appellate jurisprudence addressing discrimination in the context of the CHRA and the Charter. And once ISC determined there was no existing government service, there was no need to go any further. In the Appellant's view, the ISC appeal decision is thus reasonable.

[53] When asked, counsel for the Appellant candidly admitted that the record contains no policy or guidance document to which the EERC or the Senior ADM pointed or on which either relied. Rather, the Appellant explains that ISC's analysis is based on an interpretation of the CHRT's Jordan's Principle framework as the CHRT has refined it. Here, says the Appellant, the interpretation applied by ISC was reasonable.

[54] I accept that the Governing Order read in the context of the related CHRT decisions is open to more than one interpretation. While I do not preclude the possibility of an interpretation that could justify the outcome of the ISC appeal decision, the responsibility for justifying that decision rests with the decision maker, not the Appellant. Respectfully, the Senior ADM's "chain of analysis" is not evident from the reasons.

[55] For example, the CHRT has been clear—and the parties agree—that Jordan's Principle may require services beyond the "normative standard". From a review of CHRT decisions and the record in this appeal, it is evident that the range of services approved as social or health services "above the normative standard" under Jordan's Principle extends beyond what might,

under most circumstances, be considered a “social service” or “health service”: see, for example, 2025 CHRT 6 at paras. 55-56, 66.

[56] The ISC appeal decision treats the Respondent’s request as one for mould remediation, which of course it is. But the treating physician and nurse practitioner saw mould remediation as serving an urgent medical need for the two children. The treating physician went so far as to describe at least one of the children as “at risk for frequent and potentially life-threatening asthma exacerbations”, opining that mould removal and repairs “is a life-saving necessity”. All this information was in the record before the Senior ADM. The CHRT has emphasized, at least in the context of prioritizing responses, the significance of medical practitioners’ recommendations: 2019 CHRT 7 at paras. 81, 89; 2025 CHRT 6 at para. 104.

[57] The Appellant says the characterization of the requested service as mould remediation, and not a health service “above the normative service” or something needed to fill “a service gap”, is reasonable. The Appellant says these expressions, used in the CHRT decisions, refer to service levels, that is, where there is an existing government service, what quality (level) of service is needed to ensure substantive equality in the provision of the service and the best interests of the child. The Appellant further contends that these expressions contemplate the potential need to provide special services; and, although both the Federal Court and the CHRT have said Jordan’s Principle is to be given a broad and generous interpretation, they have also recognized it is not an open-ended principle that can provide services that are not provided to at least some children.

[58] Again, I do not preclude the possibility that this may provide a basis for a reasonable interpretation of the Governing Order, but it is the Appellant, not ISC, who is providing reasons that it asserts are ISC's reasons. But I am unable to determine from the ISC appeal decision and the record before me whether those are ISC's reasons.

[59] I of course accept that reasons must be reviewed in the context of the institutional setting in which the decision is made. I also accept that ISC receives many Jordan's Principle requests and that the CHRT decisions have imposed timelines for prompt response. But in this case I cannot conclude that the decision is justified by the reasons. In the absence of a guidance or policy document explaining ISC's interpretation, particularly given the history of this proceeding and the Respondent's submission on her appeal of the second initial refusal decision, ISC's reasons must explain ISC's interpretation of the Jordan's Principle framework as ordered by the CHRT, rather than merely state the result of applying that interpretation. Only then can the reasonableness of that interpretation be assessed.

[60] Put simply, the reasons do not justify the decision to uphold the second initial refusal decision.

[61] I turn now to the Respondent's written submission on her appeal of that decision.

C. *The ISC Appeal Decision did not Meaningfully Engage with the Respondent's Submission*

[62] The Respondent provided a lengthy written submission to which she appended significant documentary evidence in support of her appeal. The submission asserts that the children's needs must be evaluated to determine whether a service should be provided to ensure substantive equality in the provision of services to them, to ensure culturally appropriate services and/or to safeguard the best interests of the children, clearly quoting the Governing Order.

[63] The Respondent's submission challenged, among other points, the second initial refusal decision's characterization of the requested service, its failure to engage in a substantive equality analysis, and its failure to assess whether the request should be approved to safeguard the best interests of the children.

[64] The submission describes the children's "health complications, and related social and educational problems, related to the mold contamination", the "severe, acute health impacts on the children" of living in the home, and their increased "risk of displacement from their home and community through child welfare involvement". It explains that mould remediation would "allow the children to live in a healthy environment, free of the mold contamination that exacerbates their underlying respiratory conditions, significantly impacting their health and harming their educational and social development". The submission both enclosed and quoted documentation from the children's health care professionals.

[65] The submission asserted that ISC should have assessed the Respondent's funding request through a substantive equality analysis in the context of health outcomes. However, the Senior ADM's reasons do not engage with the Respondent's submission—or indeed with the children's health needs at all. The only place in the Senior ADM's reasons where the children's health needs are mentioned is in the description of the Respondent's request—made "to address the health needs of your grandchildren".

[66] The submission also highlighted the CHRT's previous finding that Canada's approach to Jordan's Principle was inadequate because it failed to consider that existing services may not meet First Nations children's specific needs, referencing 2017 CHRT 14. In that decision, the CHRT criticized ISC's emphasis on the normative standard of care and comparable services, describing the former as establishing "the minimal level of service only", and cautioned that "the normative standard may also fail to identify gaps in services to First Nations children, regardless of whether a particular service is offered to other Canadian children": 2017 CHRT 14 at paras. 69, 71, 73, 75 (emphasis added). The CHRT has re-emphasized the need to focus on the specific needs of First Nations children in subsequent decisions: see, for example, 2019 CHRT 7 at paras. 73, 79; 2020 CHRT 15 at para. 106; 2020 CHRT 20 at paras. 10, 11, 89; 2025 CHRT 6 at paras. 60-63.

[67] Given this submission, the Senior ADM's reasons do not adequately explain why ISC determined the service the Respondent sought did not qualify as a service above the normative standard or needed to fill a service gap.

[68] The failure to engage with the Respondent's submission is particularly problematic here because the eight paragraphs in the ISC appeal decision that constitute the reasons (i.e., that follow the sentence reproduced at paragraph 42) are identical to the second initial refusal decision with the sole exception of the addition of the phrase "available to the general public" starting at the end of the 5th line of the passage quoted in paragraph 43.

[69] Yet, "reasons are the primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties"; the principles of justification and transparency demand that those reasons "meaningfully account for the central issues and concerns raised by the parties": *Vavilov* at para. 127.

[70] The ISC appeal decision does not address the submission; it only acknowledges that the EERC (and notably not the Senior ADM) considered it. I recognize that the Senior ADM benefits from an assumption she reviewed the material. However, in the circumstances of this case—an appeal of the denial of a second request made following discontinuance of a judicial review of an earlier denial, and faced with the Respondent's submission challenging the reasons for the second initial refusal decision—it was incumbent on the Senior ADM to explain through her reasons why she disagreed with the submission, at least on the key points.

[71] As noted, although the reasons state a conclusion—because there is no existing government service, Jordan's Principle does not apply—they do not explain how ISC comes to that conclusion. Nor do they explain why that conclusion is consistent with the Governing Order and the Jordan's Principle framework.

[72] I accept that reasons need not respond to every argument: *Vavilov* at paras. 91, 128. I also accept that it not always feasible or necessary for a decision maker's reasons to be lengthy. However, in this case, on the record before us, I can only conclude that the Senior ADM did not "meaningfully grapple" with the key issues or the Respondent's central arguments: *Vavilov* at para. 128. Instead, the ISC appeal decision merely repeats the reasons for the decision that was the subject of the appeal, without even acknowledging it did so. And the ISC appeal decision does so knowing that the Respondent takes a different view of the Jordan's Principle framework, and presumably appreciating that the reasons did not adequately convey ISC's interpretation in light of the different points of view.

D. *The Reasons Do Not Reflect the Stakes*

[73] As the Supreme Court has said, "the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it"; those entrusted with "power over the lives of ordinary people, including the most vulnerable among us" must "ensure that their reasons demonstrate that they have considered the consequences…and that those consequences are justified in light of the facts and law": *Vavilov* at paras. 95, 135.

[74] The ISC appeal decision has "the potential for significant personal impact or harm" to the Respondent's grandchildren. Therefore, the reasons for the decision "must reflect the stakes"—the decision must explain why the decision best reflects, in this case, the Jordan's Principle framework as articulated by the CHRT: *Vavilov* at paras. 133-135.

[75] As I have described, the reasons for the ISC appeal decision do not demonstrate any consideration of these consequences—no discussion of health consequences or the risk of child welfare involvement given the unsafe living conditions in which the Respondent and her grandchildren live—a concern the Respondent also raised in her submission. Nor do the reasons explain why, notwithstanding those consequences, the decision is justifiable.

E. *Costs*

[76] Finally, I turn to the matter of costs of this appeal.

[77] The Respondent seeks lump sum costs of approximately $42,000 representing 50% of counsel's fees on a solicitor-client basis. The Respondent's counsel is acting on a *pro bono* basis. However, the Respondent submits that is not a bar to costs. Cost awards promote access to justice by encouraging more lawyers to provide *pro bono* services in deserving cases: *Roby v. Canada (Attorney General)*, 2013 FCA 251 at para. 24; *Cully v. Canada (Attorney General)*, 2025 FC 1379 at para. 18, citing *1465778 Ontario Inc. v. 1122077 Ontario Ltd.*, (2006), 82 OR (3d) 757, 2006 CanLII 35819 (ONCA) at para. 35.

[78] The Appellant did not seek costs. Should the appeal be dismissed, the Appellant submits that a lump sum costs award of $10,000 is more appropriate in the circumstances—the proceeding was not complex, the parties worked cooperatively together to prepare the matter for an expeditious appeal hearing, and such amount is consistent with the Tariff which remains the default principle for costs awards: section 407, *Federal Courts Rules*, SOR/98-106.

[79] Having regard to the submissions of the parties, I would, in my discretion, order the Appellant to pay the Respondent lump sum costs in the all-inclusive amount of $10,000.

[80] The interveners are neither entitled to costs, nor liable to pay costs.

III. Conclusion and Remedy

[81] In conclusion, while I do not preclude the possibility that the outcome of the ISC appeal decision is justifiable, it is not justified, transparent and intelligible in light of the relevant legal and factual constraints. Therefore, it is unreasonable.

[82] I recognize that the Respondent has twice applied for and been denied funding, and that it has been more than three years since her first application. Nonetheless, I agree with the Federal Court that the appropriate remedy here is to remit the matter back to ISC for reconsideration with the benefit of these reasons: *Vavilov* at para. 141.

[83] Accordingly, I would dismiss the appeal and order the Appellant to pay the Respondent costs in the all-inclusive amount of $10,000.

"K.A. Siobhan Monaghan"
J.A.

“I agree.
Wyman W. Webb J.A.”

“I agree.
Peter G. Pamel J.A.”

APPENDIX
The Governing Order as Amended by 2017 CHRT 35

ANNEX

1. Definition of Jordan's Principle

A. As of the date of this ruling, Canada shall cease relying upon and perpetuating definitions of Jordan's Principle that are not in compliance with the Panel's orders in 2016 CHRT 2, 2016 CHRT 10, 2016 CHRT 16 and in this ruling.

B. As of the date of this ruling, Canada's definition and application of Jordan's Principle shall be based on the following key principles:

i. Jordan's Principle is a child-first principle that applies equally to all First Nations children, whether resident on or off reserve. It is not limited to First Nations children with disabilities, or those with discrete short-term issues creating critical needs for health and social supports or affecting their activities of daily living.

ii. Jordan's Principle addresses the needs of First Nations children by ensuring there are no gaps in government services to them. It can address, for example, but is not limited to, gaps in such services as mental health, special education, dental, physical therapy, speech therapy, medical equipment and physiotherapy.

iii. When a government service, including a service assessment, is available to all other children, the government department of first contact will pay for the service to a First Nations child, without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. Canada may only engage in clinical case conferencing with professionals with relevant competence and training before the recommended service is approved and funding is provided to the extent that such consultations are reasonably necessary to determine the requestor's clinical needs. Where professionals with relevant competence and training are already involved in a First Nations child's case, Canada will consult those professionals and will only involve other professionals to the extent that those professionals already involved cannot provide the necessary clinical information. Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available. After the recommended service is approved and funding is provided, the

government department of first contact can seek reimbursement from another department/government;

iv. 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 should be provided 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. Where such services are to be provided, the government department of first contact will pay for the provision of the services to the First Nations child, without engaging in administrative case conferencing, policy review, service navigation or any other similar 2017 CHRT 35 (CanLII) 6 administrative procedure before the recommended service is approved and funding is provided. Clinical case conferencing may be undertaken only for the purpose described in paragraph 135(1)(B)(iii). Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available. After the recommended service is provided, the government department of first contact can seek reimbursement from another department/government.

v. While Jordan's Principle can apply to jurisdictional disputes between governments (i.e., between federal, provincial or territorial governments) and to jurisdictional disputes between departments within the same government, a dispute amongst government departments or between governments is not a necessary requirement for the application of Jordan's Principle.

C. Canada shall not use or distribute a definition of Jordan's Principle that in any way restricts or narrows the principles enunciated in order 1(b).

D. Canada shall review previous requests for funding that were denied, whether made pursuant to Jordan's Principle or otherwise, dating from **April 1st, 2009**, to ensure compliance with the above principles. Canada shall complete this review by **November 1st, 2017**.

2. Processing and tracking of Jordan's Principle cases

A. Canada shall develop or modify its processes surrounding Jordan's Principle to ensure the following standards are implemented by **June 28, 2017**:

i. The government department of first contact will evaluate the individual needs of a child requesting services under Jordan's Principle or that could be considered a case under Jordan's Principle.

ii. The initial evaluation and a determination of requests by individuals shall be made within 48 hours of the initial contact for a service request. In a situation where irremediable harm is reasonably foreseeable, Canada will make all reasonable efforts to provide immediate crisis intervention supports until an extended response can be developed and implemented. In all other urgent cases, the evaluation and determination of the request shall be made within 12 hours of the initial contact for a service request. Where more information is reasonably necessary to the determination of a request by an individual, clinical case conferencing may be undertaken for the purpose described in paragraph 135(1)(B)(iii). For non-urgent cases in which this information cannot be obtained within the 48-hour time frame, representatives from the Government of Canada will work with the requestor in order to obtain the needed information so that the determination can be made as close to the 48-hour time frame as possible. In any event, once representatives from the Government of Canada have obtained the necessary information, a determination will be made within 12 hours for urgent cases, and 48 hours for non-urgent cases.

ii.1 The initial evaluation and determination of requests for groups shall be made within one week of the initial contact for a service request. In a situation where irremediable harm is reasonably foreseeable, Canada will make all reasonable efforts to provide immediate crisis intervention supports until an extended response can be developed and implemented. 2017 CHRT 35 (CanLII) 8 In all other urgent group cases, the evaluation and determination of the request shall be made within 48 hours.

iii. Canada shall cease imposing service delays due to administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. Canada will only engage in clinical case conferencing for the purpose described in paragraph 135(1)(B)(iii).

iv. If the request is granted, the government department that is first contacted shall pay for the service without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before funding is provided; and

v. If the request is denied, the government department of first contact shall inform the applicant, in writing, of his or her right to appeal the decision, the process for doing so, the information to be provided by the applicant, the timeline within which Canada will determine the appeal, and that a rationale will be provided in writing if the appeal is denied.

B. By **June 28, 2017** Canada shall implement reliable internal systems and processes to ensure that all possible Jordan's Principle cases are identified and addressed, including those where the reporter does not know if the case is a Jordan's Principle case.

C. By **July 27, 2017** Canada shall develop reliable internal systems to track: the number of Jordan's Principle applications it receives or that could be considered as a case under Jordan's Principle, the reason for the application and the service requested, the progression of each case, the result of the application (granted or denied) with applicable reasons, and the timelines for resolving each case, including the time required for the Government of Canada to ask for and receive additional information necessary to understand the requestor's clinical needs, and a statement of when the service was actually provided.

D. Canada shall provide a report and affidavit materials to this Panel on **November 15, 2017** and every 6 months following the implementation of the internal systems outlined above, which details its tracking of Jordan's Principle cases. The need for any further reporting pursuant to this order shall be revisited on **May 25, 2018**.

3. Publicizing the compliant definition and approach to Jordan's Principle

A. By **June 09, 2017** Canada shall post a clear link to information on Jordan's Principle, including the compliant definition, on the home pages of both INAC and Health Canada.

B. By **June 28, 2017**, Canada shall post a bilingual (French and English) televised announcement on the Aboriginal Peoples Television Network, providing details of the compliant definition and process for Jordan's Principle.

C. By **June 09, 2017**, Canada shall contact all stakeholders who received communications regarding Jordan's Principle since January 26, 2016 and advise them in writing of the findings and orders in this ruling.

D. By **July 27, 2017**, Canada shall revisit any agreements concluded with third-party organizations to provide services under the Child First Initiative's Service Coordination Function, and make any changes necessary to reflect the proper definition and scope of Jordan's Principle ordered in this ruling.

E. By **July 27, 2017**, Canada shall fund and consult with the Complainants, Commission and the Interested Parties to develop training and public education materials relating to Jordan's Principle (including on the Decision and subsequent rulings), and ensure their proper distribution to the public, Jordan's Principle focal points, members of the Executive Oversight Committee, managers involved in the application of Jordan's Principle/Child First Initiative, First Nations communities and child welfare agencies and any other applicable stakeholders.

4. Retention of jurisdiction and reporting

A. The Panel retains jurisdiction over the above orders to ensure that they are effectively and meaningfully implemented and to further refine or clarify its orders if necessary. The Panel will continue to retain jurisdiction over these orders until **May 25, 2018** when it will revisit the need to retain jurisdiction beyond that date.

B. Canada is ordered to serve and file a report and affidavit materials detailing its compliance with each of the above orders by **November 15, 2017**.

C. The Complainants and the Interested Parties shall provide a written response to Canada's report by **November 29, 2017**, and shall indicate: (1) whether they wish to cross-examine Canada's affiant(s), and (2) whether further orders are requested from the Panel.

D. Canada may provide a reply, if any, by **December 6, 2017**.

E. Any schedule for cross-examining Canada's affiant(s) and/or any future reporting shall be considered by the Panel following the parties' submissions with respect to Orders 4(C) and 4(D).

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-270-25
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA v. JOANNE POWLESS AND ASSEMBLY OF MANITOBA CHIEFS and THE FIRST NATIONS CHILD AND CARING SOCIETY OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	OCTOBER 6, 2025
REASONS FOR JUDGMENT BY:	MONAGHAN J.A.
CONCURRED IN BY:	WEBB J.A. PAMEL J.A.
DATED:	DECEMBER 15, 2025

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