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Via Email

Our File Number: LEX-500166425

December 10, 2024

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 1J4

Dear Members Marchildon and Lustig,

**Re: First Nations Child and Family Caring Society of Canada et al. v.
the Attorney General of Canada et al.
Tribunal File: T1340/7008**

We write on behalf of Indigenous Services Canada (**ISC**) with Canada's report to the Tribunal, as required by the November 21, 2024 Summary Ruling. This letter shares ISC's concerns with the some of the deadlines set out in the Summary Ruling, as well as the important steps ISC is taking to address the existing backlog of Jordan's Principle requests, with a focus on urgent requests.

This letter also provides Canada's initial response to the Assembly of First Nations' (AFN) December 9, 2024 request for an extension of the commencement of the Tribunal's Summary Ruling orders to March 31, 2025. ISC acknowledges AFN's request and respects the need for time to address internal matters. ISC does not take a position on delaying the start of the ordered consultations to April, 2025. Due to the urgent nature of the Tribunal's orders and the focus currently on interim solutions, rather than the long-term reform, ISC affirms its readiness to begin Tribunal-mediated consultations.

Introduction

Canada remains committed to Jordan's Principle and honouring the memory and legacy of Jordan River Anderson. ISC is approaching the Tribunal's orders in a manner that continues the progress Canada has made in the implementation of the Jordan's Principle initiative. Canada is focused on strengthening reconciliation and building on its collaborative relationships with First Nations mandated service organizations.

In the November 21 Summary Ruling, the Tribunal made a series of orders requiring Canada to complete various tasks on strict deadlines. On December 4, 2024, Canada wrote to the

Canada

Tribunal expressing concerns with some of the deadlines within the Summary Ruling. In particular, ISC is concerned that the timelines to address the backlog of Jordan's Principle requests could have unintended impacts on delivering critical services to First Nations children and families and is not operationally feasible. As described below, ISC proposes a solutions-based path forward that addresses concerns and works towards a resolution of backlogged requests, without unintended consequences to First Nations children, their families, and the delivery of other essential services to Indigenous communities across Canada.

Canada's specific concerns with the ordered deadlines

ISC's first priority is to identify and process urgent requests, then clear all backlogged requests. This work is taking place as ISC continues to receive and assess a high number of new requests on a daily basis. As of December 4, 2024, and as set out in Annex A, there are approximately 140,000 backlogged requests, including approximately 25,000 self-identified urgent cases.

ISC is reviewing all self-declared urgent requests on a priority basis. However, the Tribunal's order that ISC complete the review, triage and reclassify the backlog by December 10, 2024, while continuing to respond to incoming requests, would have required diverting significant resources from other ISC essential programs. This would jeopardize the overall delivery of services to Indigenous Peoples across Canada within ISC's mandate.

The order that ISC return back to the Tribunal with its detailed plan, with targets and deadlines, is similarly challenging. The plan will require complex operational changes to criteria and processes across a large and decentralized national initiative. Such changes require careful planning. Changes in processes to triage the high volume of requests and implement new decision-making processes requires sufficient time for ISC to:

- ensure that those responsible for assessing requests and managing internal processes are properly trained and informed of the Tribunal's interim definition;
- adapt systems and operating practices;
- communicate with First Nations communities and other partners.

At this time, and taking into account the unpredictable number of new daily requests, ISC is unable to estimate the timeframe in which all backlogged requests will be cleared. However, we anticipate that via Tribunal-assisted mediation, the parties will co-develop solutions to reduce and eventually eliminate the backlogged requests. This will include considering Tribunal direction to co-develop objective criteria for urgency, including the criteria and guidelines for cases involving no access to basic necessities, cases involving caregivers and children fleeing from domestic violence, and the criteria for qualified professionals.

Current/Immediate Steps being taken by ISC to address the backlog

Notwithstanding the concerns raised above, ISC has taken important steps to address urgent backlogged requests in anticipation of Tribunal-assisted mediation towards co-development of efficient and effective solutions to reduce and eventually eliminate the backlog within the government context.

In the meantime, and to ensure ISC is responsive to time sensitive situations, each region has developed internal triaging processes to identify and address cases where a failure to act immediately could result in irremediable harm to the First Nations child. Additionally, Canada has in place a system for identifying urgent requests as they are submitted through the Jordan's Principle Case Management System (CMS).

For great certainty, ISC will continue to process urgent requests where there is a possibility of irremediable harm to the First Nations child. Where First Nations children are in an emergency situation and/or are at immediate risk of harm, Call Centre Agents are equipped with a detailed list of services to support callers. This list includes emergency services (police, fire, ambulance), mental health supports, and other regional specific resources and contribution agreements. This list is shared with all regional teams.

In response to the Tribunal's request for information on how backlogged requests are being addressed generally:

1. **Request for information identifying the total number of currently backlogged cases:** Annex A to this report provides, as of December 6, 2024, the total number of backlogged cases both nationally and in each region, including intake backlog, in-progress backlog, and information regarding the cumulative number of backlogged cases at month's end, dating back 12 months.
2. **Immediate steps taken by Canada to address existing urgent requests based on the following interim definition:** To the extent products, services, or supports requested through Jordan's Principle are linked to the child's specific urgent circumstances, Canada is currently applying the Tribunal's interim definition of urgent, pending the outcome of Tribunal-assisted mediation.

By December 10, 2024, the following steps to address the backlogged requests have been completed by ISC or are in progress:

- Communicated this interim definition directly with intake staff to be applied to backlogged requests;
- Provided staff with the discretion to make determinations on the urgency of a request, and re-classify requests appropriately that do not meet the interim definition;

- Initiated updates to the ISC website to communicate the interim definition of urgent with the public and which will invite requestors to contact ISC;
- Updated the National Call Centre script to provide staff the tools to respond to enquiries.

3. **Regional Delegation of Authority:** To further reduce backlogged requests, ISC is revising internal policies to reduce request escalation to National Headquarters and permitting regional decision-makers more discretion to make decisions on Jordan's Principle requests. This step will reduce the wait-times for requestors and reduce unnecessary delays caused by multiple levels of decision-making.

National Headquarters will act as a 'Centre of Expertise and Quality Control and Assurance', to assess and determine requests that are complex, multi-dimensional and inconsistent with the application of eligibility criteria, thus considered an "exceptional case". This will enable a dedicated decision-maker at National Headquarters to assess more complex requests.

4. **Confirming Reimbursement process:** In the 2024 fiscal year, Jordan's Principle has already made 65,681 payments between April 1st and October 31st, 2024. ISC has projected that 152,000 payments will be made by year-end. While 92.6% of these payments are issued efficiently via direct deposit, meeting the 15-business day processing standard has been challenging. Currently, only 26.1% of requests are processed within the 15 business day timeframe, with 44.5% processed within 30-business days as a result of the high volume of requests and complexity. ISC is working directly with First Nations parties to find solutions to issues that arise and to ensure the accuracy of information from requestors in a timely way. This includes ensuring requestors provide supporting invoices, and establishing practices and procedures to ensure that the necessary information can be provided and transmitted in a form that can be readily processed by Canada's financial system.

5. **Reimbursement process to ensure timely payment:** ISC works to process all payments within 15 business days. To assist with faster reimbursement, ISC adjusted its policy on acquisition card thresholds for one-time transactions from \$5,000 to \$10,000, and for emergency travel from \$5,000 to \$20,000 per transaction. These policy adjustments enable intake officers to grant access for one-time transactions and emergency travel immediately for requests that fall within the new threshold. Work is also underway with internal control teams to enhance the efficiency of its payment processes including streamlining workflows, identifying and eliminating unnecessary steps in the payment process, and improving communication.¹

¹ As described in the Affidavit of Dr. Valerie Gideon affirmed on March 21, 2024.

ISC is exploring ways to expedite its reimbursement and payment timelines. While there are no current guidelines or formal process in place, ISC looks forward to discussing the issue further at Tribunal assisted mediation.

For the Tribunal's broader information, this ISC initiative faces growing challenges with reimbursements as the volume of requests and corresponding payments has surged by 311% over the last five (5) fiscal years. As set out in the list below, payments (including payments relating to requests that would not cause irremediable harm) have increase from 26,153 in the 2019-2020 fiscal year to 107,548 in the 2023-2024 fiscal year:

- FY2019-20: 26,153 payments
- FY2020-21: 28,270 payments
- FY2021-22: 44,314 payments
- FY2022-23: 71,860 payments
- FY2023-24: 107,548 payments

6. Review and determination of urgent requests during and outside business hours:

Canada confirms that requestors have access to staff 24 hours a day, 7 days a week, and 365 days a year. ISC staff processing requests have the authority to review and determine urgent requests both during and outside business hours.

7. Website information:

Information relating to the availability of staff to process and make decisions on urgent requests can be found online on the ISC website here: [Indigenous Services Canada - Canada.ca](https://www.indigenousservices.ca). The information is clearly presented, with sections that link to specific areas including who and how to send a request, the forms required, processing requests, requesting a reimbursement, and receiving payments. The contact information for all Jordan's Principle focal points in each region is clearly identified on the ISC website. In the event a person experiences difficulties reaching the focal point or requires immediate assistance, the ISC website also provides the contact information of the Jordan's Principle Call Centre: 1-855-JP-CHILD (1-588-572-4453); teletypewriting: 1-866-553-0554.

ISC confirms that its website is up to date and reflects the hours of operation and contact information for each regional office for the submission of Jordan's Principle requests or to inquire about payments. The contact information on the ISC website is shared on Jordan's Principle social media when applicable.

8. Appeal Process: ISC has confirmed that it is working to streamline its appeal process to share processes, review training, and modify roles and responsibilities. This work will

support consistent decision-making while ensuring the review of each case individually and the independence of the appeals processes.

Plan to Address Backlog

ISC has developed and is implementing the following actions in accordance with the Tribunal's orders to triage all backlogged cases that includes a review of requests that were self-identified as urgent:

- A) **Reassignment of existing resources:** ISC has immediately reassigned existing Jordan's Principle resources to a surge team to focus on urgent requests, to the degree that ISC is able to do so without adversely impacting other services to Indigenous communities across Canada. Training materials and a communications plan are now complete, and ISC is holding a FAQ session for ISC staff on how to use their Case Management System (CMS) to reclassify urgent items as of December 4, 2024. ISC will continue to focus its resources on the intake and adjudication of new urgent requests to prevent the backlog from continuing to increase. The immediate focus will be on the review of urgent requests, the adjudication of deemed-urgent requests, and contacting requestors with unresolved deemed-urgent requests. The focus of the headquarters operational team will be on data cleanup to speed up request processing (i.e. merging of duplicate records). Regional operational teams will focus on averting further increases to backlogged requests. ISC projects that the data clean will be completed by February 28, 2025.
- B) **ISC is concurrently focusing on service delivery and design.** ISC is continuing to identify, evaluate and implement Information Technology (IT) options that will speed up request processing to include a Jordan's Principle external facing portal for Jordan's Principle service coordinators, and eventually to all Jordan's Principle requestors. ISC will continue to evaluate options to support the semi-automated notification to requestors as well as the use of potential new technology such as Generative Artificial Intelligence. ISC will apply a service design and delivery lens to current process and resource allocation to identify opportunities for more effective and efficient service delivery. One of the IT options currently being explored includes the application of algorithms to identify urgency based on the interim definition of urgency, with the aim of prioritizing new urgent cases above all others in the system.
- C) **Re-classification of self-determined urgent requests:** There are currently approximately 25,000 urgent requests in the backlog. ISC will conduct a system review using key words, timeframes, and types of requests to determine urgency of a request. More specifically, ISC will review most recent to oldest urgent cases to ensure 'urgent' under the interim definition are addressed as a priority. ISC will prioritize the review of self-declared urgent requests in the backlog, and commit to communicating with the


requestor immediately after having reviewed their request (i.e., with a decision, interim measures and/or seek additional information to support adjudication, as required).

Each region has its own triage processes to identify and address cases where a failure to act immediately could result in irremediable harm to the child.

- D) **Communications of determinations to requestors to follow initial review of urgent backlog:** Decisions will be communicated to requestors according to existing practices. The methodology for approval may be made by category, existing program and/or service that is not addressing the distinct needs of the First Nations child and families, and the application of substantive equality. It is also expected that there will be cases that requestors self-identified as urgent that do not meet the interim definition of urgent. Moreover, other requests may require additional information given their complexity. Therefore, communication and decision-making will occur on a case-by-case basis to determine the classification of these requests. For greater certainty, the communication to requestors with confirmed urgent cases would be either: i) a decision on their request, or ii) where a decision cannot be made immediately, ISC will identify interim measures to address any reasonably foreseeable irremediable harms that would be beneficial to the child and request additional information to support adjudication.
- E) **Communications with Requestors on Decision:** ISC communicates decisions to requestors letter or email, depending on how the request was submitted. ISC will conduct a maximum of three contact attempts per request. As noted above, with regional Jordan's Principle staff having the discretion to determine cases, the speed of communications with requestors will increase.

Thank you for the opportunity to provide this report to the Tribunal and the parties. ISC hopes to work with the parties through Tribunal-assisted mediation on these matters.

Sincerely,



Dayna Anderson
General Counsel

Encl: Annex A – Status Report on Operational Backlogs: Jordan's Principle (December 2024)

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Status Report on Operational Backlogs

Jordan's Principle



Indigenous Services
Canada

Services aux
Autochtones Canada

Canada

Scope

This report presents data on the status of the three operational backlogs associated with the implementation of Jordan's Principle. More specifically, it provides the total number of backlogged requests, nationally and in each region, including the intake pending backlog, requests in progress backlog, the appeal backlog, and the payment/reimbursement backlog. It also presents monthly trends associated with specific backlog volumes where data is available.

Definitions & Methodology

Overall Request Backlog (A + B)

Definition: The number of active requests (items) received by Jordan's Principle that do not have a decision, excluding dormant requests where one or more contact attempts have been made to the requestor for additional information.

Methodology: The overall request backlog is comprised of two parts – **Intake pending (A)** and **Requests in Progress (B)**. (See Table 1)

Intake Pending (A)

Definition: The number of requests (items) received by Jordan's Principle that have not yet been entered into the CMS.

Methodology (A): The number of emails received by Jordan's Principle that contain one or more requests that have not yet been entered into the CMS. Email is the primary medium in which new requests are received by Jordan's Principle, accounting for ~85% of all initial communication. Therefore, it has been used as a proxy indicator for the intake pending backlog. The email count is restricted to specified inbox folder(s) used by regions to sort and triage emails pending intake into the CMS to minimize the risk of including emails not directly associated with new requests like follow-ups, invoices, and general inquiries. For the purposes of estimating backlogged requests it is assumed that each email represents one active request (See Table 2).

Requests in Progress (B)

Definition: The number of active requests (items) entered in the CMS that do not have a decision, excluding dormant requests where one or more contact attempts have been made to the requestor for additional information.

Methodology: The number of active requests in the CMS that 1) are not appeals 2) do not have a decision, and 3) are not dormant requests where one or more contact attempts have been made to the requestor. (See Table 4)

Contact us at: jordansprinciple-principedejordan@sac-isc.gc.ca

Appeal Backlog

Definition: Appeal requests received by Jordan's Principle that do not yet have an appeal decision to uphold or overturn the original decision, excluding dormant requests where one or more contact attempts have been made.

Methodology: The number of active requests in CMS that 1) are appeals 2) do not have a decision to uphold or overturn the original decision, and 3) are not dormant requests where one or more contact attempts have been made to the requestor. (See Table 5)

Considerations

- The data within this report differs from backlog analyses previously submitted to the Canadian Human Rights Tribunal (CHRT) in two ways:
 1. The previous methodology could not differentiate between backlogged Jordan's Principle and ICFI requests. This analysis excludes ICFI requests from the backlog data in the Request system (B).
 2. Earlier analyses presented backlog data as both high and low estimates. This analysis uses a methodology consistent with the high estimate approach.
- ISC is unable to determine if unopened emails contain Jordan's Principle requests or ICFI requests, as such, data for unopened emails (A) is assumed to be an *overestimate* of the emails associated with Jordan's Principle.
- The backlog volumes presented in this report are at the request level, not at the cases or requestor level. For example, it is possible that one requestor might have three cases, and each case might have three items requested. The backlog associated with this requestor would appear as 9 requests, not the 3 cases or 1 requestor.
- The definition of request backlog used for this report does not consider the compliance timelines or service standards. Thus, a proportion of the backlog may still meet the compliance service standards outlined by the CHRT.
- Due to the live nature of the CMS, backlogged requests are generally incomplete records, constantly evolving and are not readily available for reporting purposes
- The functionality enabling identification of dormant pending contact attempts was not implemented in the CMS until March 2021. Prior to this functionality, dormant requests would remain as pending or in progress and have not been updated since, and thus still appear in the backlog figures provided in this report. Moreover, not all system users update the status of requests in the system when a contact attempt is made to the requestor. As a result, these dormant requests are included in the backlog figures provided in this report.

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Summary

Request Backlog

- As of December 4, 2024, it is estimated that Jordan's Principle has nearly 140,000 backlogged requests (Table 1).
 - Nearly 15,000 backlogged requests are pending intake based on email volumes (Table 1)
 - The remaining roughly 125,000 backlogged requests are in progress, of which 25,891 are urgent based on the self-declaration of requesters (Table 2).

Appeal Backlog

- As of December 2, 2024, there are 404 requests in the appeal backlog (Table 3).

Payments Backlog

- Data on the volume of backlogged payments/reimbursements is not available at the time of compiling this report. However, efforts are underway to identify solutions and develop the mechanisms necessary to systematically track and report this information in the future. Initial estimates may be available within 6 to 12 months.
- Between April 1st and Oct 31st, 2024, ISC processed 26.1% of all invoices within the 15 business days, and 44.5% within 30-business days.

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Results

Table 1: Estimated Request Backlog by Region as of December 4, 2024

Region	Intake Pending Backlog (A)	In-Progress Backlog (B)	Total Estimated Request Backlog (A+B)
	Emails for new requests not yet in the CMS	Undetermined Requests in the CMS	
AB	2,881	14,142	17,023
AR	1,464	9,104	10,568
BC	3,318	10,991	14,309
MB	1,436	23,908	25,344
NR	0	4,867	4,867
ON	1,407	29,296	30,703
QC	1,569	1,723	3,292
SK	2,797	30,795	33,592
Total	14,872	124,826	139,698

1) Intake pending backlog (A) includes requests under Jordan's Principle and ICFI; 2) In progress backlog (B) limited to Jordan's Principle requests; 3) Includes service coordination requests; 4) In-progress requests were collected through the Jordan's Principle Case Management System (extracted 2024-12-05) and may not align with other analyses; 5) Email volume collected during the week of 2024-12-04.

Table 2: In Progress Backlog by Urgency and Region as of December 4, 2024

Region	Estimated Request in Progress Backlog		
	Urgent	Non-urgent	Total (B)
Alberta	2,791	11,351	14,142
Atlantic	218	8,886	9,104
British Columbia	3,023	7,968	10,991
Manitoba	7,042	16,866	23,908
Northern	652	4,215	4,867
Ontario	10,127	19,169	29,296
Quebec	419	1,304	1,723
Saskatchewan	1,619	29,176	30,795
National	25,891	98,935	124,826

1) Limited to Jordan's Principle requests; 2) Includes service coordination requests; 3) Requests were collected through the Jordan's Principle Case Management System (extracted 2024-12-05) and may not align with other analyses.

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Table 3: Estimated Appeal Backlog as of December 5, 2024

Region	Appeal Backlog
Alberta	60
Atlantic	24
British Columbia	55
Manitoba	23
Northern	50
Ontario	158
Quebec	18
Saskatchewan	16
National	404

1) Limited to Jordan's Principle requests; 2) Requests were collected through the Jordan's Principle Case Management System (extracted 2024-12-05) and may not align with other analyses.

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Historic Trends in Operational Backlogs

Table 4. Estimated Intake Pending Backlog (A) by Region over the previous 6 months*

Region	2024					
	Jun	Jul	Aug	Sep	Oct	Nov
Alberta	2,176	1,975	2,000	2,297	2,563	2,830
Atlantic	1,816	1,947	2,242	2,498	2,344	1,620
British Columbia	1,131	1,213	1,259	1,277	1,400	1,593
Manitoba	2,733	3,030	1,347	843	995	1,220
Northern	0	0	0	4	15	5
Ontario	1,556	1,554	1,306	1,412	1,527	1,434
Quebec	0	16	7	24	224	1,590
Saskatchewan	1,787	2,191	2,151	2,463	2,523	2,614
National	11,199	11,926	10,312	10,818	11,591	12,906

* Data on the intake pending backlog is only available for the last 6 months.

1) Intake pending backlog (A) includes requests under Jordan's Principle and ICFI and 2) email volumes were collected during specific periods each month (June 2024, collected week of 2024-06-23; July 2024, collected week of 2024-07-28; August 2024, collected week of 2024-08-025; September 2024, collected week of 2024-09-22; October 2024, collected week of 2024-10-20; and November 2024, collected week of 2024-11-17).

Table 5. Estimated Request in Progress Backlog (B) by Region over the last 12 months

Region	2023	2024										
	Dec	Jan	Feb	Mar	Apr	May*	Jun	Jul	Aug	Sep	Oct	Nov
Alberta	6,613	6,912	7,320	7,670	8,597		10,511	12,238	13,412	14,381	14,104	14,000
Atlantic	4,636	3,768	4,100	4,069	4,460		4,243	5,570	5,729	6,029	6,272	8,506
British Columbia	2,457	3,054	3,284	3,871	6,579		8,221	8,823	9,304	9,749	10,141	10,777
Manitoba	10,212	10,487	12,131	12,878	13,241		14,879	16,329	16,979	18,198	18,724	22,390
Northern	5,736	5,902	6,043	6,373	6,683		7,153	6,139	5,978	6,004	5,619	5,322
Ontario	11,018	11,407	11,563	12,810	14,070		18,217	19,667	21,066	22,164	23,074	27,617
Quebec	955	827	844	857	621		648	673	739	799	896	1,455
Saskatchewan	19,775	21,060	22,095	23,294	24,599		26,567	27,133	27,945	28,764	29,466	30,595
National Teams	0	0	0	0	0		0	0	0	4	4	4
National	61,402	63,417	67,380	71,822	78,850		90,439	96,572	101,152	106,092	108,300	120,666

* Data on the request in progress backlog is not available for May 2024.

1) Limited to requests under Jordan's Principle; 2) Includes service coordination requests; 3) Requests were collected through the Jordan's Principle Case Management System (December 2023, extracted 2023-12-11; January 2024, extracted 2024-01-17; February 2024, extracted 2024-02-09; March 2024, extracted 2024-03-11; April 2024, extracted 2024-04-10; June 2024, extracted 2024-06-10; July 2024, extracted 2024-07-11; August 2024, extracted 2024-08-09; September 2024, extracted 2024-09-10; October 2024, extracted 2024-10-08; and November 2024, extracted 2024-11-19) and may not align with other analyses.

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Indigenous Services Canada - First Nations and Inuit Health Branch

Table 6: Estimated Appeal Backlog by Region over the last 12 months

Region	2023	2024										
	Dec	Jan	Feb	Mar	Apr	May*	Jun	Jul	Aug	Sep	Oct	Nov
Alberta	8	11	31	66	4		6	16	2	21	16	50
Atlantic	0	33	3	6	4		27	34	41	24	27	21
British Columbia	8	4	8	12	27		39	55	32	23	34	54
Manitoba	1	18	1	7	19		27	23	14	20	24	18
Northern	3	0	3	0	5		12	21	22	19	16	44
Ontario	25	23	67	54	52		87	115	92	92	125	185
Quebec	1	1	2	5	14		12	14	29	20	33	18
Saskatchewan	1	0	1	15	25		6	9	5	5	6	5
National	47	90	116	165	150		216	287	237	224	281	395

* Data on the request in progress backlog is not available for May 2024.

1) Limited to Jordan's Principle requests; 2) Includes service coordination requests; 3) Requests were collected through the Jordan's Principle Case Management System (December 2023, extracted 2023-12-11; January 2024, extracted 2024-01-17; February 2024, extracted 2024-02-09; March 2024, extracted 2024-03-11; April 2024, extracted 2024-04-10; June 2024, extracted 2024-06-10; July 2024, extracted 2024-07-11; August 2024, extracted 2024-08-09; September 2024, extracted 2024-09-10; October 2024, extracted 2024-10-08; and November 2024, extracted 2024-11-19) and may not align with other analyses.

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Jordan's Principle and Inuit Child First Initiative Reporting and Analytics
 Indigenous Services Canada - First Nations and Inuit Health Branch