

FEDERAL COURT OF APPEAL

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

- and -

JOANNE POWLESS

Respondent

NOTICE OF APPEAL

(pursuant to subsection 27(1) of the *Federal Courts Act*, RSC 1985, c F-7)

TO THE RESPONDENT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at 90 Sparks Street, Ottawa, ON K1A 0H9.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor or, if the appellant is self-represented, on the appellant, **WITHIN 10 DAYS** after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: August 11, 2025

Issued by: _____
(Registry Officer)

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APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the decision and order of the Honourable Madam Justice McDonald dated July 10, 2025, in Federal Court file number T-3332-24, where the Federal Court granted the Respondent's application for judicial review of the decision of the Senior Assistant Deputy Minister (SADM) of Indigenous Services Canada (ISC) dated November 28, 2024 (Decision) that denied the Respondent's request for funding for mould remediation and related renovations for her house.

THE APPELLANT ASKS that this Court:

1. Set aside the judgment of the Federal Court and allow the Appellant's appeal; and,
2. Grant such other relief as counsel may request and this Court may deem appropriate and just.

THE GROUNDS OF APPEAL are as follows:

1. The Respondent resides in a house on-reserve with her grandchildren. They are members of Oneida First Nation of the Thames Settlement;
2. On September 10, 2024, ISC denied the Respondent's request for Jordan's Principle funding in the amount of approximately \$200,000 toward mould remediation and related renovations for her house;
3. On November 14, 2024, the Respondent appealed the refusal and included a request for funding for appeal advocacy costs;
4. On November 25, 2024, the External Expert Review Committee (EERC) recommended that the first-level denial be upheld;

5. On November 28, 2024, the SADM agreed with the result of the Committee's recommendation, and upheld the first-level denial, but for the reasons outlined in the Decision. In the Decision, the SADM recognized that Jordan's Principle is grounded in the legal concept of substantive equality and is intended to ensure that First Nations children can benefit equally from existing government services available to the general public. In this case, she concluded that ISC was not aware of an existing government service available to the general public that provides funding for the purposes of mould remediation. The SADM held that the Canada Mortgage and Housing Corporation's On-Reserve Residential Rehabilitation Assistance Program (RRAP), which offers funding to address on-reserve housing issues, is not an existing government service for the purposes of Jordan's Principle but is a special program under subsection 16(1) of the *Canadian Human Rights Act* or an ameliorative program under subsection 15(2) of the *Charter*. The SADM held that Jordan's Principle is not intended to expand access to or alter the scope of special or ameliorative programs;
6. The SADM also refused the Respondent's request, made at the appeal level, for funding for advocacy services;
7. The Respondent challenged the Decision in Federal Court through judicial review. The Appellant consented to expediting the application for judicial review given the urgent nature of the issues;

8. On July 10, 2025, the Federal Court allowed the application for judicial review. The Federal Court concluded that ISC unduly focused on comparable services, noting that the issue is not whether the RRAP is an ameliorative program, but whether the children's health needs were adequately addressed. According to the Federal Court, ISC's focus on comparable services ignored the core principle of substantive equality, which requires consideration of historical disadvantage and the best interests of the children. The Court also held that ISC unreasonably concluded that other programs could meet the children's means, and that the amount of funding requested alone was not a reasonable basis for denying the request. The Court rejected the Respondent's arguments that there was any procedural unfairness from the change in decision-maker or the denial of the advocacy funding costs;
9. The Federal Court ordered the matter to be remitted for reconsideration and for cost submissions to be filed in the event the parties cannot agree on costs.

Grounds for Appeal

10. The Federal Court erred in law by concluding that the SADM failed to assess the funding request through the lens of substantive equality. ISC's assessment, which accounted for both a need for an underlying comparable service to identify a discriminatory gap in government services as well as the best interests of the children, is consistent with leading jurisprudence on substantive equality. The Federal Court's finding that an assessment of the health and best interests of the children as well as historical disadvantage is required, regardless of whether a comparable service exists

to the general public, is not in line with Supreme Court of Canada jurisprudence on substantive equality. It also departs from the original intent of Jordan's Principle, which is to enable equal access to government services in the context of a race-based discrimination complaint. Jordan's Principle is a remedy to address discrimination in the provision of services.

11. The Federal Court erred in fact and law by concluding that ISC's focus on the RRAP as an ameliorative program was unreasonable. The RRAP is an on-reserve program that specifically addresses First Nation housing issues. It was identified by ISC as an ameliorative program which did not amount to an existing government service to which Jordan's Principle would apply to provide funding beyond its scope. The Court states that the issue is not whether the RRAP was ameliorative, and that it was unreasonable to conclude that other programs could meet the children's needs, notwithstanding that ISC did not raise the RRAP to come to this conclusion. In doing so, the Court effectively declares the substantive equality portion of ISC's analysis to be meaningless, contrary to Supreme Court of Canada jurisprudence.

12. The Federal Court erred in fact and law by concluding that ISC unreasonably handled the funding request as solely a housing remediation request. The record is clear that ISC was alive to the children's health issues at every stage of the process. Moreover, the Court's conclusion suggests without further guidance that there was some other process or analysis that should have taken place had ISC characterized the request

differently. Further, the Court's conclusion that that the decision was made based on the quantum of funding requested is simply not supported by the evidence.

Relief Requested

13. The Appellant seeks the setting aside of the Federal Court's July 10, 2025 Decision, and the upholding of the underlying November 28, 2024 decision.

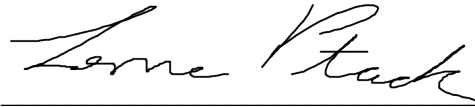
Hearing

14. The Appellant proposes that this matter be heard before the Federal Court of Appeal in Ottawa.

Statutory Basis

15. The Appellant relies upon the following:
- a. *Federal Courts Act*, RSC 1985, c F-7, including sections 18.1, 18.1(2), 18.1(3), 18.1(4) and 27;
 - b. *Federal Courts Rules*, SOR/98-106, including Rule 3 and Part 6;
 - c. *Canadian Human Rights Act*, RSC 1985, c H-6;
 - d. *Canadian Charter of Rights and Freedoms*; and
 - e. Such further and other grounds as this Honourable Court may permit.

DATED AT Ottawa, Ontario, this 11th day of August 2025.



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