Court File No.: A-270-25

FEDERAL COURT OF APPEAL

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

- and -

JOANNE POWLESS

Respondent

- and -

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

Interveners

MEMORANDUM OF FACT AND LAW OF THE INTERVENER ASSEMBLY OF MANITOBA CHIEFS

September 25, 2025

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OVERVIEW

1. Jordan's Principle is a child-first and needs-based principle that ensures First Nations children do not face gaps in accessing and receiving government services.[1] It is a remedial principle[2] that must be anchored in the history and context from which it arose: the long history of Canada's discriminatory treatment of First Nations children.

2. History and context are not background, but a binding legal constraint on reasonableness. In *Vavilov,* the Supreme Court of Canada confirmed that administrative decisions must be assessed in light of all legal and factual constraints on the decision-maker. In the context of Canada's Jordan's Principle decisions, these constraints include: (1) the history of colonial policies and systemic discrimination that Jordan's Principle was created to address; (2) Treaty rights and constitutional principles including the honour of the Crown and reconciliation; and (3) First Nations inherent rights of self-determination, as affirmed in section 35 of the *Constitution Act, 1982,* in legislation, and in international instruments. Any interpretation outside of these constraints erodes the remedial intent of Jordan's Principle and perpetuates the very discrimination it is meant to remedy.

3. The AMC always remembers that Jordan's Principle is in recognition of Jordan River Anderson, a First Nations child born to a family of Norway House Cree Nation. Due to the lack of services on-reserve, Jordan's family surrendered him to provincial care so he could obtain medical treatment. Jordan passed away, having lived his entire life in the hospital due to a jurisdictional dispute over costs between Canada and Manitoba.[3]

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[1] *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2017 CHRT 35 at para 10 [2017 CHRT 35].
[2] *Schofer v Canada (Attorney General)*, 2025 FC 50 at para 21 [*Schofer*].
[3] *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 352 [Merit Decision].

PART I – STATEMENT OF FACTS

4. The Assembly of Manitoba Chiefs ("**AMC**") accepts the factual record as presented by the parties.

PART II – POINTS IN ISSUE

5. The AMC takes no position in the outcome of this appeal. Rather, the AMC submits that Jordan's Principle decisions must be situated within the larger historical and contextual realities of Canada's colonial history of oppression, Treaty and constitutional principles, and First Nations inherent rights to self-determination, which define the scope of reasonableness. Neglecting this context would result in an impoverished and unreasonable application of Jordan's Principle that contradicts its remedial intent.

PART III – STATEMENT OF SUBMISSIONS

6. The AMC's submissions are organized in three parts:

a. Reasonableness in the unique context of Jordan's Principle;

b. Certain constraints on reasonable outcomes, including the colonial history of oppression, Treaty and constitutional duties to First Nations, and First Nations inherent rights to self-determination; and

c. An illustration of how these legal and factual constraints can guide the determination of reasonableness in the underlying appeal.

A. Reasonableness in the Unique Context of Jordan's Principle

7. Jordan's Principle is a remedial legal obligation designed to correct systemic discrimination.[4] The reasonableness analysis should reflect that intent. The deference owed under the reasonableness standard must not dilute the meaning and purpose behind Jordan's Principle. Reasonable Jordan's Principle decisions must be informed by the historical and systemic discrimination that the Principle is meant to remedy.

[4] Merit Decision at paras 352–354; *Schofer* at para 45.

8. When performing a reasonableness review, the reviewing court must determine whether the impugned decision is justifiable, transparent, and intelligible.[5] Reasonable decisions have rational, logical, and internally coherent reasoning.[6] They are also tenable considering the surrounding factual and legal constraints incumbent upon the decision.[7] While courts cannot substitute the decision maker's choice with their own in a reasonableness review, the decision must stand up to a robust review.[8]

9. The Supreme Court of Canada has identified legal or factual constraints that inform a decision's reasonableness. These include "the governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies."[9] This is not a closed list.[10]

10. The unique administrative context of Jordan's Principle complicates the reasonableness analysis.[11] Unlike many administrative decisions, Jordan's Principle is not part of a program; its scope and implementation are not defined in a statute.[12] This poses a challenge in reasonableness review, as the governing statutory scheme is usually the "most salient aspect of the legal context relevant to a particular decision."[13]

11. The jurisdictional vacuum surrounding service delivery for First Nations is a product of Canada's colonization and has allowed Canada to neglect its responsibilities

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[5] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*].
[6] *Vavilov* at para 102.
[7] *Vavilov* at para 105.
[8] *Vavilov* at paras 12-15, 67.
[9] *Vavilov* at para 106.
[10] *Vavilov* at para 106.
[11] Anne Levesque, "Beyond Scrutiny? Judicial Reviews of Decisions Impacting First Nations Children Using the Vavilov Framework" (2022) 19:1 JL & Equality 1 at 18-29, 2022 CanLIIDocs 3414.
[12] *Cully v Canada (Attorney General)*, 2025 FC 1132 at para 32.
[13] *Vavilov* at para 108.

towards First Nations.[14] This provides Canada with a problematically wide scope of discretion in service delivery to First Nations.[15] Indeed, the lack of legislation majorly impedes the improvement of living conditions on reserves.[16]

12. Since Jordan's Principle should be interpreted broadly and liberally,[17] an administrative decision maker's consideration of the factual and legal constraints informing the reasonableness of a Jordan's Principle decision should similarly be broad and liberal. A contextual analysis supplements the decision's justifiability in the absence of statutory guidance.

B. Jordan's Principle: Historical and Contextual Constraints

13. The AMC submits that a reasonable decision must not only conform to the binding orders of the Canadian Human Rights Tribunal ("**CHRT**"), but also reflect the historical disadvantage faced by First Nations children arising from Canada's colonial policies, respect constitutional and Treaty principles, including reconciliation and the honour of the Crown, and acknowledge First Nations inherent rights of self-determination.[18]

14. Decisions that ignore these factual and legal constraints cannot be reasonable as they fail to consider Jordan's Principle's remedial purpose and perpetuate the very inequities it was created to redress.

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[14] Janna Promislow & Naiomi Metallic, "Realizing Administrative Aboriginal Law" in Colleen M Flood & Lorne Sossin, eds, *Administrative Law in Context*, 3rd ed (Toronto: Emond Publishing, 2017) 129 at 144; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1a (Canada, 2019) at 561-564 (PDF pp 566-569) [MMIWG Report].
[15] Levesque at 11; Promislow & Metallic at 135-140.
[16] Canada, Office of the Auditor General of Canada, *Chapter 4 Programs for First Nations on Reserves* in *Status Report of the Auditor General of Canada to the House of Commons* (Ottawa: Office of the Auditor General of Canada, 2011) at 2 (PDF p 8) [OAG Report], cited in Merit Decision at paras 205-210, among others.
[17] *Schofer* at para 17.
[18] *Anderson v Alberta*, 2022 SCC 6 at para 36 ("judicial notice may be taken of the systemic and background factors affecting Indigenous peoples in Canadian society"); *R v Ipeelee*, 2012 SCC 13 at para 60.

(i) *Historical Context of Colonial Oppression*

15. Jordan's Principle aims at remedying Canada's past conduct by ensuring First Nations children receive adequate care. To fulfill this remedial purpose, Jordan's Principle decisions must be justified in light of the historical disadvantages that Canada created. These disadvantages are part of "the general factual matrix that bears on [Canada's] decision".[19] Failing to consider them in the reasonableness analysis contradicts the principle's remedial purpose and risks reproducing the shameful factual circumstances that led to its adoption.

16. The CHRT has recognized that Canada has exerted "racist, oppressive and colonial practices" over First Nations and entrenched them in its programs and systems.[20] Just as CHRT remedies must consider this fact,[21] so too should individual Jordan's Principle decisions.

17. Canada's colonial endeavour has produced lasting and devastating effects on First Nations children. Canada unilaterally asserted control over First Nations territory through disrespected Treaties or occupation.[22] To cement its control over First Nations peoples, Canada's First Nations child policy explicitly aimed at destroying children's connections with their families, culture, and identity. Canada repeatedly stole First Nations children from their homes to achieve this end.[23]

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[19] *Vavilov* at para 126.
[20] *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 20 at para 107 [2020 CHRT 20].
[21] 2020 CHRT 20 at para 107.
[22] Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* at 1 (PDF p 7) [TRC Summary].
[23] TRC Summary at 2 (PDF p 8); *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at para 10 [*Re Bill C-92*]; Merit Decision at paras 406-426.

18. Today, the legacy of Canada's assimilationist policy lives on.[24] Following its initial decision in 2016, which found that Canada underfunded services to First Nations children (the "**Merit Decision**"),[25] Canada's discrimination remains ongoing:

- Canada continued to prioritize finances over children's best interest after the Merit Decision.[26]
- Canada has not meaningfully implemented Jordan's Principle despite numerous CHRT orders.[27]
- Canada's ongoing and systemic neglect has made First Nations children vastly overrepresented in child welfare services.[28]
- Canada's lack of appropriate funding mechanisms also complicates on-reserve service delivery for First Nations governments.[29]

19. Overlooking this history at first instance defeats the remedial purpose of Jordan's Principle; on review the decision must be found unreasonable.

(ii) *Constitutional and Treaty Principles*

20. Duties under section 35 of the *Constitution Act, 1982* and Treaty obligations are not abstract background principles but binding legal constraints that directly shape the scope of reasonable Jordan's Principle decisions. The Supreme Court of Canada has repeatedly affirmed that administrative decision makers must exercise their statutory discretion in accordance with constitutional requirements and values.[30]

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[24] TRC Summary at 185-187 (PDF pp 191-193); MMIWG Report at 570-571 (PDF pp 575-576).
[25] Merit Decision at para 458.
[26] *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4 at para 132.
[27] *First Nations Child & Family Caring Society of Canada and Assembly of First Nations v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 6 at paras 565-566.
[28] *Re Bill C-92* at para 11.
[29] OAG Report at 4 (PDF p 10).
[30] *Vavilov* at para 56; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 56.

21. The principles developed under section 35 and Treaties should similarly be considered such constraints. Given their centrality to the Nation-to-Nation relationship, they must guide the application of Jordan's Principle. Canadian common law has long recognized that the *sui generis* relationship between the Crown and First Nations requires the Crown to act honourably, in good faith, in the best interests of First Nations, and in a manner that promotes reconciliation.[31] Canada must act honourably "[i]n all its dealings with Aboriginal peoples."[32] These obligations are not discretionary. They are part of the legal and factual matrix that a court must use to assess whether a Jordan's Principle decision is reasonable.

22. Canada reinforced these obligations by adopting section 35 of the *Constitution Act, 1982*. Section 35 recognizes and affirms Aboriginal and Treaty rights.[33] Treaties are Nation-to-Nation *sui generis* agreements that frequently guaranteed healthcare and other social supports.[34] They bind the Crown as solemn commitments[35] and cannot be ignored in the administrative context.[36] Canada's duty to act honourably also applies to its implementation of Treaty.[37]

23. The principle of reconciliation is the animating purpose of both section 35 and Treaty law.[38] The AMC supports the Truth and Reconciliation Commission's definition

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[31] *R v Desautel*, 2021 SCC 17 at para 25 [*Desautel*]; *R v Sparrow*, [1990] 1 SCR 1075 at 1108 (PDF p 34) [*Sparrow*]; *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 17 [*Haida Nation*]; *Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40 at para 21; *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 12 [*Pekuakamiulnuatsh Takuhikan*].

[32] *Haida Nation* at para 17 [emphasis added].

[33] *The Constitution Act, 1982,* Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s 35.

[34] See e.g., *Siksika Health Services v Health Sciences Association of Alberta*, 2018 ABQB 591 at para 4. See also Treaty No. 6 (1876); Treaty No. 8 (1899); Treaty No. 10 (1906).

[35] *Canada v Jim Shot Both Sides*, 2022 FCA 20 at para 108; *Sparrow* at 1105-1108 (PDF pp 31-34).

[36] *Vavilov* at para 111.

[37] *Haida Nation* at para 19.

[38] *Desautel* at para 22; *Pekuakamiulnuatsh Takuhikan* at para 12; *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69 at para 1.

of "reconciliation", which involves "establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country" through the "awareness of the past, acknowledgement of the harm that has been inflicted, atonement for the causes, and action to change behaviour."[39]

24. Properly implementing Jordan's Principle will advance reconciliation. A Jordan's Principle decision that reproduces systemic inequities or shifts costs back onto First Nations governments is inconsistent with Canada's obligations to First Nations and their citizens. Treaty obligations, and common law principles such as reconciliation and honour of the Crown, are contextual factors that influence the reasonableness of a Jordan's Principle decision.

(iii) *First Nations Inherent Rights and Self-determination*

25. The decision under review is a Jordan's Principle decision made by Canada, the very government whose colonial policies created the systemic inequities that Jordan's Principle is intended to remedy. This context fundamentally distinguishes Jordan's Principle from ordinary administrative decisions. As the decision maker is the historic oppressor, deference must be tempered by the reality that Canada's interests have repeatedly conflicted with those of First Nations children and families. In such circumstances, the Court should ensure its review is sufficiently robust to prevent decisions from reproducing the very harms Jordan's Principle was designed to correct.

26. Canada has formally recognized First Nations inherent rights to self-governance and self-determination. The *Act respecting First Nations, Inuit and Métis children, youth and families* ("**Bill C-92**"), affirms that First Nations hold an inherent right to govern child and family services. It requires that the child's best interests be assessed holistically, including cultural and social well-being.[40]

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[39] Truth and Reconciliation Commission of Canada, *The Final Report of the Truth and Reconciliation Commission of Canada, Volume 6, Canada's Residential Schools: Reconciliation* (Montreal & Kingston: McGill-Queen's University Press, 2015) at 3 (PDF p 10).

[40] *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24, ss 8-10.

27. Canada's adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* ("**UNDRIP**") likewise confirms First Nations rights to self-government and to determine and administer their own approaches to health and social supports.[41] It guarantees First Nations a right to healthcare improvements and requires states to take measures to improve children's economic and social conditions.[42] The CHRT has affirmed that among other things, Jordan's Principle aims to meet Canada's positive international obligations towards First Nations children under UNDRIP.[43]

28. Yet statutory affirmations cannot fulfill their promise if Canada retains unfettered control over funding decisions. When the colonial state holds the purse strings, inherent rights risk becoming hollow. The AMC submits that Jordan's Principle must strengthen the capacity of First Nations to care for their children. Proper implementation would transfer real authority back to First Nations governments, enabling them to meet children's best interests in culturally grounded and Nation-based ways. Such an approach would promote Canada's reconciliation with First Nations.[44]

29. The adoption of UNDRIP and Bill C-92 are not abstract policy statements; they bind Canada's conduct. Courts have confirmed that UNDRIP is an interpretive lens for assessing Canada's legal obligations.[45] Further, the CHRT has "reiterated its commitment to recognizing First Nations right to self-determination and current attempts by Parliament to refashion the historically colonial relationship Canada established with First Nations."[46]

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[41] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2007), arts 4, 23 [UNDRIP]; *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, s 4.
[42] UNDRIP, art 21.
[43] 2020 CHRT 20 at para 89.
[44] Colleen Sheppard, "Jordan's Principle: Reconciliation and the First Nations Child" (2018) 27:1 Const Forum Const 3 at 3-4, 6, 8-9, 2018 CanLIIDocs 11050.
[45] *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319 at para 76; *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at paras 507-510. See also *Vavilov* at para 114.
[46] *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 36 at para 15 [2020 CHRT 36].

30. When Canada acts as both the source of discrimination and the decision maker meant to remedy that discrimination, its choices must be scrutinized against these legal commitments. Otherwise, Jordan's Principle risks becoming another tool for the colonial state to ration remedies for the harms it created. Reasonableness requires decisions that respect these rights, rather than decisions that reinforce federal control and marginalization.

C. Application of Historical and Contextual Constraints to Key Issues

31. The broad factual and legal constraints considered above inform the reasonableness of Jordan's Principle decisions. Jordan's Principle focuses on the specific needs of First Nations children, "which include experiences of intergenerational trauma and other disadvantages resulting from [Canada's discrimination]."[47] Jordan's Principle has a remedial intent. It is part of the solution for remedying ongoing and historic discrimination against First Nations children and families.[48]

32. The following illustrates how these considerations can be applied to some of the key issues in the current appeal.

(i) *Proof of Comparable Service*

33. When making a Jordan's Principle decision, requiring proof of comparable service fails to recognize the systemic and structural disadvantages faced by First Nations children, which are a direct result of Canada's colonial conduct. First Nations children often "have higher levels of need for services (due to poverty, poor housing conditions, high levels of substance abuse, and exposure to family violence)".[49] These conditions are not natural or pre-existing; they stem from Canada's history of dispossessing First Nations of their lands, underfunding on-reserve services, and forcibly removing children from their families and cultures. They are the continuing

[47] 2020 CHRT 36 at para 12.
[48] 2020 CHRT 36 at paras 12, 14; *Schofer* at para 21.
[49] Merit Decision at para 336.

legacy of Canada's deliberate policies of assimilation and systemic discrimination.[50] Requiring comparators entrenches the colonial standards by measuring First Nations children's entitlements against services defined outside their cultural and legal contexts.

34. The Jordan's Principle Back to Basics policy document directs decision makers to presume that "First Nations children need services going beyond the kinds or levels of services available to non-First Nations children."[51] This presumption reflects the historic and ongoing disadvantages Canada created. Requiring First Nations children to demonstrate comparability or a "discriminatory gap"[52] entrenches inequity by importing a standard that erases their lived context.

(ii) *Substantive Equality*

35. Jordan's Principle must be applied through a substantive equality lens.[53] The CHRT has repeatedly emphasized that Jordan's Principle requires a broad, child-first, and needs-based approach.[54] Substantive equality requires decision-making that meets children's actual needs in light of contextual factors such as historical disadvantage, Treaty promises, and First Nations inherent rights.

36. In arguing that substantive equality cannot impose positive obligations on Canada,[55] Canada would have this Court believe that it is a passive player in the face of First Nations children's disadvantages. Canada argues that it is beyond its role to remedy a "pre-existing inequality."[56] This framing ignores that poverty, housing crises, and child welfare overrepresentation are not "pre-existing", but the products of Canada's colonial policies. Canada cannot claim neutrality when it created the

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[50] Merit Decision at paras 383-427; MMIWG Report at 231-233, 355, 562-563 (PDF pp 237-239, 360, 567-568).
[51] *Powless v Canada (Attorney General)*, 2025 FC 1227 at para 42, citing *Schofer* at para 18.
[52] Memorandum of Fact and Law of the Appellant at paras 41-44 [Appellant's Memorandum].
[53] *Schofer* at para 18.
[54] 2017 CHRT 35 at para 10.
[55] Appellant's Memorandum at paras 35, 39-40.
[56] Appellant's Memorandum at para 35.

inequalities Jordan's Principle is designed to remedy. This argument flies in the face of constitutional principles such as reconciliation and honour of the Crown.

37. Providing services above normative standards may further substantive equality for First Nations children. The CHRT has previously determined that to ensure substantive equality and culturally appropriate services, "the needs of each individual child must be considered and evaluated, including taking into account any needs that stem from historical disadvantage."[57] As previously discussed, it rejects relying on a normative standard since it "does not account for potential gaps in services where no jurisdiction is providing the required services."[58] This reflects states' broader obligation under UNDRIP to take special measures to improve Indigenous children's conditions. It also resonates with Treaty commitments to health supports.

38. For First Nations children, substantive equality means receiving care on-reserve, including safe housing and culturally grounded supports, provided in a way that respects First Nations rights and historical context. Excluding housing needs where linked to health ignores the holistic determinants of health recognized in First Nations laws and perspectives, Treaty promises, and Canada's obligations. To be reasonable, the scope of funding and services available in a Jordan's Principle decision must accord with the remedial purpose of achieving meaningful, substantive equality.

(iii) *Best Interests of the Child*

39. Jordan's Principle is explicitly child-first, aimed at advancing the best interests of First Nations children.[59] Promoting children's well-being is therefore an essential feature of reasonable Jordan's Principle decisions.

40. Child well-being includes not just physical health, but also cultural continuity, family integrity, and the ability to remain with the child's First Nation. First Nations define health and child well-being holistically, encompassing housing, water, cultural

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[57] *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2017 CHRT 14 at para 69 [2017 CHRT 14].
[58] 2017 CHRT 14 at para 71.
[59] 2017 CHRT 35 at para 10.

practices, and extended family care.[60] Reasonableness demands that the best interests of the child be assessed holistically. Treating housing as "outside" Jordan's Principle severs these essential connections and ignores First Nations legal orders. It contradicts Canada's obligations to act honourably in implementing Treaties, many of which included promises in implementing health supports.[61] It also contravenes Canada's commitments under UNDRIP, which require it to take effective measures to improve Indigenous people's health.[62]

41. Ongoing discrimination causes First Nations governments to operate with unique institutional barriers. First Nations governments are often geographically remote and face significant underfunding, mould contamination, and housing crises.[63] Restrictive interpretations of Jordan's Principle compound these systemic challenges: they divert scarce First Nations resources and compel some families to relocate off-reserve. Thus, they undermine both children's best interests and First Nations rights to self-determination.

42. Narrowly reading well-being to exclude housing also perpetuates systemic harm. Maintaining children's connection to their families, Nations, and cultures is critical to healing and reconciliation. Truth and Reconciliation Calls to Action 1-5 focus on child welfare, emphasizing the need to keep children in families and their Nations.[64] The National Inquiry into Missing and Murdered Indigenous Women and Girls links systemic child removal to loss of culture and violence.[65] The Royal Commission on Aboriginal Peoples recognized the devastating effects of child

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[60] First Nations Health Authority, "First Nations Perspective on Health and Wellness", as cited in MMIWG Report at 415 (PDF p 420).
[61] *Haida Nation* at para 19; Treaty No. 6 (1876); Treaty No. 8 (1899); Treaty No. 10 (1906).
[62] UNDRIP, art 24.
[63] MMIWG Report at 443 (PDF p 448).
[64] *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) at 1 (PDF p 5).
[65] MMIWG Report at 349-350, 409 (PDF pp 354-355, 414).

removals and institutional neglect.[66] These reports are relevant factual context that inform a decision's reasonableness. Narrow Jordan's Principle decisions that exclude housing supports effectively sever children from their communities, contradicting the child-first principle and Canada's reconciliation obligations.

43. Additionally, Jordan's Principle should not be considered in isolation from the systemic discrimination in the First Nations Child and Family Services program. In the Merit Decision, the CHRT found that poverty and poor housing on reserve, conditions largely outside the control of parents and directly traceable to Canada's underfunding, are key drivers of neglect findings and child apprehension that result in First Nations children being placed in care at dramatically higher rates than non-First Nations children.[67] Excluding housing needs that impact a child's health and wellbeing from Jordan's Principle replicates the inequities that drive child apprehensions and force families to relocate.

D. Conclusion

44. Before colonization, First Nations societies flourished as organized, autonomous peoples.[68] As sovereign peoples, First Nations are best positioned to determine their own healthcare and child services.[69] However, Canada's systemic discrimination has crippled First Nations governments in providing adequate services.

45. The CHRT's orders did not prescribe how Canada must implement Jordan's Principle. Instead, they required Canada to ensure that First Nations children receive substantively equal, needs-based services without delay.[70] Canada retained discretion over the precise implementation mechanisms. Continued discrimination in service delivery nearly a decade later is not due to uncertainty in CHRT orders; it is the result

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[66] Royal Commission on Aboriginal Peoples, *Looking Forward, Looking Back: Report of the Royal Commission on Aboriginal Peoples*, vol 1 (Ottawa: Canada Communication Group, 1996) at 326-349, 359-364 (PDF pp 330-353, 359-368).
[67] Merit Decision at para 161.
[68] *Desautel* at para 22.
[69] MMIWG Report at 499 (PDF p 504).
[70] Merit Decision at para 481.

of Canada's choices. Canada chose to respond narrowly, inconsistently, or inadequately. This perpetuates the very discrimination that the CHRT found.

46. The AMC awaits the day that Jordan's Principle is no longer needed because Canada has closed service gaps and remedied its historic discrimination. The AMC's long-standing position is that to remedy injustices to First Nations children, Jordan's Principle must be implemented to promote First Nations autonomy and self-determination. This requires long-term and sufficient funding. In the meantime, it is integral that the reasonableness review of Jordan's Principle decisions be constrained by the relevant factual and legal constraints, including historical context of colonial oppression, constitutional and Treaty principles, and First Nations inherent rights to self-determination. Decisions that disregard these constraints are unreasonable, as they reproduce the very systemic discrimination Jordan's Principle was created to remedy.

PART IV – ORDER SOUGHT

47. The AMC takes no position in this appeal's disposition.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 25th day of September, 2025 at Calgary, in the Province of Alberta.

FOX LLP
Carly Fox

Counsel for the Intervener,
Assembly of Manitoba Chiefs

PART V – LIST OF AUTHORITIES

Legislation

An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24

The Constitution Act, 1982, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11

United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14

Jurisprudence

Anderson v Alberta, 2022 SCC 6

Baker v Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65

Canada v Jim Shot Both Sides, 2022 FCA 20

Cully v Canada (Attorney General), 2025 FC 1132

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

First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2017 CHRT 14

First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2017 CHRT 35

First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2018 CHRT 4

First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2020 CHRT 20

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