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 FAMILY CARING SOCIETY OF CANADA

Interveners

MEMORANDUM OF FACT AND LAW OF THE INTERVENER, THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

September 25, 2025

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Overview

1. The First Nations Child and Family Caring Society of Canada (the "**Caring Society**") intervenes in this appeal to assist the Court in understanding the remedial requirements of Jordan's Principle and to ensure that Canada, the perpetrator of discrimination towards First Nations children, does not succeed in eroding the substantive equality rights affirmed by the Canadian Human Rights Tribunal (the "**Tribunal**") in its uncontested final orders and decisions. The Caring Society submits that this appeal ought to be dismissed, as the Federal Court properly determined that Canada's denial of the Respondent's request was unreasonable.

2. Jordan's Principle is Canada's legal obligation to address its discriminatory provision of health, education and social services. It is not a program, but a legal order focused on remedying Canada's long history of discrimination by ensuring First Nations children can access culturally appropriate and substantively equal health, education, social services, products and supports. Jordan's Principle operates to protect and promote the substantive equality rights of First Nations children, recognizing that they face unique disadvantages due to government action and inaction ancillary to racism, discrimination, colonialism and forced assimilation. Jordan's Principle is a transformative human rights remedy, placing positive and active obligations on Canada to act in the best interests of First Nations children.

3. On this appeal, Canada seeks to narrow the remedial requirements and scope of Jordan's Principle contrary to Tribunal orders, which have been affirmed by the Federal Court in multiple proceedings. As part of its discriminatory conduct, Canada has repeatedly tried to undermine the spirit and intent of Jordan's Principle by imposing limits on Jordan's Principle contrary to existing orders. If Canada's arguments and proposed relief succeed in this case, it will reinforce Canada's discriminatory conduct by diminishing the substantive equality protections to which First Nations children are entitled and result in an injustice by allowing Canada to reargue positions it has previously advanced, lost and failed to successfully contest.

PART I – STATEMENT OF FACT

A. Jordan River Anderson's Legacy

4. Jordan's Principle was founded in honour of Jordan River Anderson, a courageous young boy from Norway House Cree Nation, Manitoba. Jordan was born on October 22, 1999, and had to remain in the hospital for the first two years of his life for medical reasons. When he was two years old, doctors cleared Jordan to live in a specialized foster home with at-home supports located near the hospital as part of a transition plan for Jordan to return to his family in Norway House. The governments of Canada and Manitoba disagreed on which government or government department (Health Canada or DIAND) should pay for Jordan's in-home care, given his on-reserve First Nations status. As a result of this disagreement, Jordan remained in a hospital room unnecessarily for over 2 years before tragically passing away on February 2, 2005, at the age of five, never having the opportunity to live in a family home.[1]

5. In 2007, the Caring Society and the Assembly of First Nations filed a *Canadian Human Rights Act* complaint against Canada alleging that its provision of First Nations child and family services and failure to properly implement Jordan's Principle was discriminatory, based on the prohibited grounds of race and national or ethnic origin. Canada was aware that its discriminatory conduct was adversely impacting First Nations children, in what the Tribunal would later term "wilful and reckless" discrimination and a "worst case scenario".[2]

6. On December 12, 2007, with the support of Jordan's family and Norway House Cree Nation, the House of Commons unanimously adopted 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.[3]

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[1] *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 [Merits Decision].
[2] *FNCFCSC et al v AGC*, 2019 CHRT 39 at para 234 [2019 CHRT 39].
[3] Merits Decision at para 353.

7. In 2016, following almost ten years of litigation at the Tribunal, Jordan's Principle was affirmed as a legal obligation, binding on Canada to redress the profound discrimination Canada has perpetrated against First Nations children in the provision of social services and supports (the "**Merits Decision**"). Canada was ordered to immediately cease applying its narrow definition and immediately implement Jordan's Principle within its full meaning and scope.[4]

8. While there continue to be serious concerns regarding Canada's compliance with Jordan's Principle, Jordan's legacy is remarkable. His family has demonstrated courage, grace and loving justice in sharing his namesake that has changed the lives of thousands of First Nations children across Canada: between July 2016 and January 31, 2024, more than 4.4 million services, products and supports have been approved under Jordan's Principle by Indigenous Services Canada ("**ISC**").[5] It is critical that Jordan's legacy be upheld and that the rights entrenched by the Tribunal are not eroded to the detriment of First Nations children, and specifically to the detriment of the two children at the centre of this case.

B. The Facts

9. The basis for the denial in this case is relevant to the issues in this appeal. In its decision on this judicial review application, the Federal Court set out relevant portions of the Jordan's Principle denial, including the following:

> 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 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. […]

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[4] Merits Decision at para 481.
[5] *FNCFCSC et al v AGC*, 2025 CHRT 6, at para 79 [2025 CHRT 6].

> ISC sees this program as a special program for the purposes of the CHRA (as described in section 16(1) or an ameliorative program for the purposes of the Charter (as described in section 15(2). Special or ameliorative programs are specifically designed by governments to combat discrimination by helping members of a disadvantaged group in particular ways.
>
> Jordan's Principle is concerned with enabling First Nations children in gain substantively equal access to existing government services that are available to the general public. It is not intended to provide access to or change the scope of special or ameliorative programs.[6] [Emphasis added]

10. Ultimately, the Federal Court determined that the denial was unreasonable, based on a proper understanding of Jordan's Principle, including the following considerations:

- ISC failed to assess the request through a substantive equality lens and the health and best interests of the grandchildren, as Jordan's Principle requires;
- ISC's focus on comparable services (such as the RRAP) ignores the core principle of substantive equality and a reasonable application of Jordan's Principle, which requires consideration of historical disadvantage and the best interests of the child; and
- Whether another program exists is not relevant if that program is inaccessible or inadequate when addressing the health needs of the grandchildren. ISC failed to fully engage with the grandchildren's health conditions or assess whether their needs could be met under Jordan's Principle.[7]

PART II – POINTS IN ISSUES

11. The Caring Society submits that this Appeal raises the following issues:

a. Did the Federal Court identify the appropriate standard of review?

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[6] *Powless v Canada (Attorney General)*, 2025 FC 1227 at para 29 [Decision Under Appeal].
[7] Decision under Appeal at para 49.

b. Did the Federal Court apply the appropriate standard of review?

12. The Caring Society submits that the proper standard of review is reasonableness and that the Federal Court properly applied the appropriate standard in finding that Canada's denial was unreasonable, as it failed to apply the remedial requirements of Jordan's Principle.

PART III – SUBMISSIONS

A. Understanding Jordan's Principle and the Role of Substantive Equality

13. Jordan's Principle is a legal remedy, ordered in response to substantiated findings of discrimination against First Nations children. This final order was made to ensure that First Nations children can make for themselves the lives that they are able and wish to have, free from discrimination, as protected under the *CHRA*.[8] Moreover, the Tribunal has likened its orders that Canada cease and desist its discriminatory practices to a permanent "injunction-like" order against Canada.[9] As a remedial legal obligation, the remedial requirements of Jordan's Principle include the following:

- **Child First Principle:** Jordan's Principle is a child-first principle that is meant to redress the gaps and adverse differentiation within the social services system, including those resulting from jurisdictional disputes within and among provincial and federal government entities, to ensure that First Nations children's needs are met. Jordan's Principle requires the government department of first contact to pay for the service, product or support and seek reimbursement from the other government/department after the child has received the service.[10] Canada cannot, therefore, refer First Nations children to other government programs and services until there are evidenced safeguards in place to ensure that the discriminatory system has been redressed and that

[8] *Canadian Human Rights Act*, RSC 1985, c H-6, s. 2.
[9] 2025 CHRT 6 at para 602. See also *FNCFCSC et al v AGC,* 2018 CHRT 4 at para 34 [2018 CHRT 4].
[10] Merits Decision at para 351.

government programs and services are sufficiently coordinated to protect the substantive equality rights of First Nations children.[11]

- **Non-Discrimination:** Jordan's Principle applies to all services, products and supports, including but not limited to health, education, and social services and is equally available to all First Nations children, including First Nations children recognized by their First Nation, regardless of residency and *Indian Act* status and regardless of their health, social, and economic condition.[12]

- **Best interests of the Child and Substantive Equality:** Jordan's Principle addresses the needs of First Nations children by ensuring there are no gaps in government services to them. When a government service is beyond the normative standard of care available to other children, Canada must evaluate the individual needs of the First Nations child in keeping with the best interests of the child and substantive equality, with due attention to ensuring culturally appropriate service provision.[13]

14. The above principles have been confirmed, reaffirmed and clarified by the Tribunal in multiple non-compliance orders focused on remedying the harms experienced by First Nations children, often serious, when Canada fails to fully discharge its legal obligations. Canada has repeatedly tried to challenge the scope of Jordan's Principle and its remedial requirements, all without success. While Canada did not challenge the Merits Decision (which confirmed Jordan's Principle as a legal obligation), Canada sought judicial review of 2017 CHRT 14, which affirmed many of the remedial requirements set out above. [14] Ultimately, that judicial review was resolved on consent, with the parties agreeing to many of the remedial requirements that are now being challenged by Canada on this appeal.[15] In addition, Canada

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[11] 2025 CHRT 6 at paras 95 and 162.
[12] *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969 at para 303 [2021 FC 969].
[13] *FNCFCSC et al v AGC*, 2017 CHRT 14 at para 135 1(B)(iv) [2017 CHRT 14] and *FNCFCSC et al v AGC*, 2017 CHRT 35 at para 10 [2017 CHRT 35].
[14] 2017 CHRT 14 at para 135 1(B)(iv).
[15] 2017 CHRT 35 at para 10.

unsuccessfully sought judicial review of 2020 CHRT 20[16] and initially sought judicial review of 2025 CHRT 6, but later discontinued that application.[17]

(i) The Proper Approach to Applying Substantive Equality on a Jordan's Principle Request

15. A proper substantive equality analysis requires Canada to embrace and recognize the historic disadvantages and unique circumstances of First Nations children: "to ensure substantive equality and the provision of culturally appropriate services, the needs of each individual child must be considered and evaluated, taking into account any needs that stem from historical disadvantage and the lack of on-reserve and/or surrounding services."[18] The Supreme Court has described substantive equality as follows:

> Substantive equality, unlike formal equality, rejects the mere presence or absence of difference as an answer to differential treatment. It insists on going behind the façade of similarities and differences. It asks not only what characteristics the differential treatment is predicated upon, but also whether those characteristics are relevant considerations under the circumstances. The focus of the inquiry is on the actual impact of the impugned law, taking full account of the social, political, economic and historical factors concerning the group. [emphasis added][19]

16. There is no question that First Nations children face unique disadvantages that are relevant to the consideration of a Jordan's Principle request.[20] In the Merits Decision, the Tribunal found that First Nations children face specific and compounding challenges, unique to their identity as First Nations children. These include the detrimental impacts of Residential Schools and the resulting intergenerational trauma that affects children even today.[21] First Nations children also face underlying risk

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[16] 2021 FC 969 at para 4.
[17] 2025 CHRT 6 was judicially reviewed in T-3603-24, judicial review discontinued March 13, 2025.
[18] 2017 CHRT 14 at para 69.
[19] *Withler v Canada (Attorney General),* 2011 SCC 12, at para 39. See also *Quebec (Attorney General) v A,* 2013 SCC 5, at para 332 [*Quebec v A*].
[20] See for example, *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at para 21.
[21] Merits Decision at paras 151, 402 and 421 to 422. See also, 2017 CHRT 14 at para 72; *FNCFCSC et al v AGC*, 2020 CHRT 20 at paras 10, 281 and 317 [2020 CHRT 20].

factors such as poverty and poor infrastructure, as well as an overrepresentation in the child welfare system due, in large part, to Canada's discriminatory conduct.[22] Indeed, the jurisprudence confirms that First Nations children are "a vulnerable segment of our society impacted by funding decisions within a complex jurisdictional scheme"[23] and often face intersecting forms of prejudice and stereotypes.[24]

17. The substantive equality analysis to be conducted under Jordan's Principle means accounting for the historical and contemporary disadvantages facing First Nations children. In a practical sense, this means that Canada is required to approach each Jordan's Principle request with the understanding and acknowledgement that First Nations children have higher needs in health, education, and social services related to what the Truth and Reconciliation Commission coined "cultural genocide", to which Canada was a key actor.[25]

18. In this case, Canada failed to consider the Respondent's request through a substantive equality lens. Indeed, there is no indication in the denial letter (referenced above at paragraph 9) that Canada took into account the historical and contemporary disadvantages facing these children (as First Nations children) in considering their health status and their need to live in a mould-free environment. In this regard, the Federal Court properly found that Canada "ignored its underlying substantive equality purpose: to address serious health risks to the children."[26]

B. Unpacking the Issue of Comparison in the Context of Jordan's Principle

19. Canada's approach on this appeal suggests that Jordan's Principle requires the adjudicator to perform a comparison between First Nations children and non-First

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[22] Merits Decision at para 422.
[23] 2021 FC 969 at para 122.
[24] See for example, *Lewis v Canada (Public Safety and Emergency Preparedness),* 2017 FCA 130 at para 86; *Lovelace v Ontario,* [2000] 1 SCR 950 at para 69; and *Corbiere v Canada (Minister of Indian and Northern Affairs),* [1999] 2 SCR 203 at para 67.
[25] Truth and Reconciliation Commission, *Honouring the Truth, Reconciling for the future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Montreal: McGill-Queen's University Press, 2015) at p 1.
[26] Decision under Appeal at para 50.

Nations children, thus reformulating Jordan's Principle in a manner that invokes comparison as a decisive indicator for substantive equality.[27] According to Canada's comparator approach, if an existing government service is available to a non-First Nations child and is also available to a First Nations child, there is no discrimination requiring a response from Canada under Jordan's Principle. In its factum, the Appellant states: "If there is no policy, legislation or service to compare against, there is no benefit denied for the purposes of substantive equality".[28] This flawed and recycled approach has been argued and rejected.[29]

20. Attempting to correlate the concept of comparison with substantive equality is incongruous with appellate equality jurisprudence as well as the Tribunal's orders in this case. Indeed, in 2010, before the hearing on the merits began, Canada sought to dismiss the human rights complaint on the basis that no comparator group existed as a result of the unique constitutional considerations for First Nations children.[30] Canada's argument was rejected by the Federal Court. This Court upheld the Federal Court decision, finding that a comparator group may be evidence of discrimination but is not itself determinative.[31] Canada again recycled its arguments regarding the need for comparative evidence at the hearing on the merits.[32] This approach was properly dismissed by the Tribunal and was not challenged by Canada.[33]

21. In 2017, following Tribunal orders requiring Canada to implement the full meaning of Jordan's Principle[34], the parties brought further motions for non-

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[27] Appellant's Factum at paras 30 to 32 and 38.
[28] Appellant's Factum at para 38.
[29] 2017 CHRT 14 at paras 69 to 73; 2017 CHR 35 at para 10; *Cully v Canada (Attorney General)*, 2025 FC 1132 at paras 51 to 52, and 85 [*Cully*].
[30] *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2012 FC 445 at para 162 [2012 FC 445].
[31] 2012 FC 445 at para 213; *Canada (Attorney General) v Canadian Human Rights Commission*, 2013 FCA 75, at paras 18 and 21. See also *Moore v British Columbia (Education)*, 2012 SCC 61 and *Quebec v A*.
[32] Merits Decision at paras 316 to 318.
[33] Merits Decision at para 323.
[34] *FNCFCSC et al v AGC,* 2016 CHRT 10 at para 33 [2016 CHRT 10] and *FNCFCSC et al v AGC*, 2016 CHRT 16 at para 160 [2016 CHRT 16].

compliance in relation to Jordan's Principle. The evidence on the motions made clear that Canada was attempting to restrict the definition of Jordan's Principle to require comparison, contrary to the Tribunal's orders. Canada's internal reformulation inserted the already rejected notion of comparison:[35]

Proposed Definition Option	Key Elements and Considerations
Option One: Jordan's Principle is a child-first approach to address the needs of First Nation children assessed as having disabilities/special needs by ensuring cross jurisdictional issues to [*sic*] not disrupt, delay or prevent a child from accessing services. Under Jordan's Principle, in the event that there is a dispute over payment of services between or within governments, First Nation children living on reserve (or ordinarily on reserve) will receive required social and health supports comparable to the standard of care set by the province (normative standard). The agency of first contact will pay for the services until there is a resolution	**Key Elements** Similar to the criteria and scope as original JP response but broader than original definition (which was limited to "children with multiple disabilities requiring services from multiple service providers), this approach maintains a focus on children with special needs. Broadens the definition of jurisdictional dispute to include intergovernmental disputes (not just federal/provincial) this responds **Considerations:** • May draw criticism due the continued focus on special needs (while broader) as the original JP response. • Maintaining the notion of comparability to provincial resources **may not address the criticism of the Tribunal regarding the need to ensure substantive equality in the provision of services**. • The focus on a dispute **does not account for potential gaps in services where no jurisdiction** is providing the required services. [Emphasis added]

22. Other evidence led on the non-compliance motions demonstrated that Canada was attempting to entrench comparison with existing government services as a formal requirement under Jordan's Principle, despite knowing that such an approach was not in keeping with Jordan's Principle.[36] The Tribunal rejected Canada's approach in this regard, with particular attention focused on the issue of comparability:

> **Furthermore, the emphasis on the 'normative standard of care' or 'comparable' services in many of the iterations of Jordan's Principle**

[35] 2017 CHRT 14 at paras 50 and 52.
[36] 2017 CHRT 14 at paras 57 and 58.

> **above does not answer the findings in the *Decision* with respect to substantive equality and the need for culturally appropriate services (see *Decision* at para. 465)**.[37] [Emphasis added]

23. Again in 2020, Canada attempted to introduce the requirement of comparability into the Jordan's Principle analysis. When the Tribunal ordered Canada to compensate its victims of discrimination, the parties were required to establish a framework to address how victims could access compensation. Canada's proposed definition of "service gap" under Jordan's Principle required "a situation where a child requested a service that was not provided because of a dispute between jurisdictions or departments as to who should pay; would normally have been publicly funded for any child in Canada; was recommended by a professional with expertise directly related to the service; but the child did not receive due to the federal government's narrow definition of Jordan's Principle."[38] Canada's approach was firmly rejected by the Tribunal:

> Therefore, the **Panel rejects the following parameters proposed by Canada** that there must have been a "request" for a service; there must have been a dispute between jurisdictions or departments as to who should pay; **and the service must have been normally publicly funded for any child in Canada.** [Emphasis added][39]

24. Canada's attempts to recycle its arguments regarding the need for comparative evidence in the form of existing government services should be prohibited by this Court. Canada is attempting to get through the back door what it could not get through the front door, thus attempting to subvert the Tribunal's orders and rebut its legal obligations to First Nations children. The principles of fairness and justice dictate that Canada's approach in this regard ought to be disavowed.[40]

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[37] 2017 CHRT 14 at para 69.
[38] *FNCFCSC et al v AGC,* 2020 CHRT 15 at para 65 [2020 CHRT 15].
[39] 2020 CHRT 15 at paras 106 to 107. See also 2020 CHRT 15 at para 112, where Canada previously advanced the argument that the availability of programs for First Nations children must be assessed against programs that are generally available to most other children. The Tribunal noted that "Canada's arguments on programs addressing needs to First Nations children were rejected and discussed at length."
[40] See for example, *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44, at para 21. See also *Vo v Canada (Citizenship and Immigration)*, 2018 FC 230 at para 8; *Toronto*

25. Indeed, invoking comparison as a remedial requirement demonstrates Canada's pernicious attempts to shield itself from its legal obligations to First Nations children – comparison gives Canada cover because it is not "responsible" for many of the services, products and supports that non-First Nations children need. This approach is detrimental to First Nations children, as it leaves them without legal recourse, as noted by the Federal Court in 2012, when Canada sought to dismiss the complaint:

> As a result of their unique position in the Canadian constitutional order, Canada's First Nations people receive services from the federal government that are not provided to other Canadians at the federal level. These include child welfare services, education services and health care, amongst others.
>
> This has the effect of placing Canada's First Nations people in the "no man's land" envisaged by Professor Young, **where there may be no counterpart to the experience or profile of those marginalized or dispossessed individuals or groups who are seeking the vindication of their rights through the legal process**.[41] [Emphasis added]

26. The Federal Court of Appeal ultimately left the issue of comparison to be determined by the Tribunal.[42] In the Merits Decision, the Tribunal adopted the Federal Court's approach and unequivocally rejected the comparison requirement – a decision, it bears repeating, that was not challenged by Canada.[43]

27. In any event, invoking comparison when considering a Jordan's Principle request is misaligned with the appellate jurisprudence; when comparability has been applied in the appropriate circumstances (which do not exist here), it has been done to determine whether a policy, program or legislative provision is discriminatory. That is not the focus of a Jordan's Principle request. Jordan's Principle is the remedy to the already established discrimination that First Nations children face every day.[44] To this end, Canada's use of comparison to undermine the orders affirming First Nations

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(City) v Cupe, Local 79, 2003 SCC 63 at para 23; and *Gibbs v Canada (Citizenship and Immigration)*, 2025 FC 188 at para 7.
[41] 2012 FC 445 at paras 335 and 336.
[42] 2013 FCA 75 at para 23.
[43] Merits Decision at para 323.
[44] See for example, 2020 CHRT 20 at para 89.

children's fundamental human rights is prolific and finds alignment with the Tribunal's repeated findings regarding Canada's "old mindset".[45]

C. The Inapplicability of the "Ameliorative" Program

28. Canada argues that the existence of the On-Reserve Residential Rehabilitation Assistance Program (the "**RRAP**"), labelled as an ameliorative program, shields it from its legal obligations under Jordan's Principle.[46] This, like many of the arguments advanced by the Appellant, has already been tested and rejected by the Tribunal:

> Similarly, Canada adds that there are a number of ameliorative programs that consider the specific needs of children, such as the Non-Insured Health Benefits program, the Home and Community Care and Assisted Living programs on-reserve.
>
> The above arguments were advanced by Canada in the hearing on the merits where an exhaustive list of programs on reserves was filed in evidence and tested. Canada's arguments on programs addressing needs of First Nations children were rejected and discussed at length. The Panel already found that Canada was unable to measure comparability with provincial services offered to children.[47]

29. As the perpetrator of discrimination, Canada is now seeking to play both sides of the argument. Canada is attempting to invoke the RRAP as an existing government program (which it says is required to trigger eligibility under Jordan's Principle) and then argues that the RRAP's failure to meet the needs of the children is insulated as an ameliorative program, in keeping with its unreasonable and unsupportable definition and interpretation of substantive equality. This self-serving analysis was recently rejected by the Federal Court in *Cully*:

> Finally, excluding applications where the comparator program is ameliorative would, in many instances, have the perverse effect of excluding First Nation children facing intersecting disadvantages from accessing Jordan's Principle funding to meet their needs. This would

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[45] See 2018 CHRT 4 at para 154; *FNCFCSC et al v AGC*, 2019 CHRT 7 at para 63; 2019 CHRT 39 at paras 10, 155 and 171.
[46] Appellant's Factum at para 51.
[47] 2020 CHRT 15 at paras 113 to 114.

> undermine the central objective of Jordan's Principle, substantive equality. [48]

30. Canada's assertion that "*Charter* jurisprudence on ameliorative programs remains relevant in the statutory human rights context when it comes to basic principles of substantive equality"[49] is an oversimplification and mischaracterization of the jurisprudence and the issues alive in this appeal. This Court has stated that while human rights legislation and s. 15 *Charter* jurisprudence are mutually influential; *Charter* jurisprudence "cannot be indiscriminately applied to discrimination cases initiated under human rights legislation".[50] Further, in *Dominique*, the Tribunal found that the principles of *Charter* jurisprudence were of "little use" as the circumstances in *Dominique* arose as a result of Canada's commitment "made in the context of the historically difficult relations between First Nations and Canada's law enforcement and policies authorities",[51] not dissimilar to the context giving rise to the Jordan's Principle orders. Indeed, it is troubling that Canada is now utilizing the *Charter* in an attempt to undermine the gains made through the quasi-constitutional *CHRA*.

31. Notwithstanding all of the above, whether the RRAP is an ameliorative program is ultimately irrelevant: irrespective of whether there is an existing government program and whether it is ameliorative, Canada's legal obligations under Jordan's Principle remain unchanged: the government of first contact pays for the service and can seek reimbursement after the needs of the children are met.

32. Importantly, in its submissions during the non-compliance motion giving rise to 2025 CHRT 6, Canada acknowledged that it cannot refer requestors to existing programs, such as Non-Insured Health Benefits, on-reserve income assistance or education programming.[52] Canada argued that being unable to redirect requestors to existing programs exacerbates the backlog in determining Jordan's Principle applications and requested the Tribunal to expand the remedial requirements to allow

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[48] *Cully* at para 91.
[49] Appellant's Factum at para 62.
[50] *Canada (Attorney General) v Dominique*, 2025 FCA 24 at para 68 [*Dominique*].
[51] *Dominique* at para 70.
[52] 2025 CHRT 6 at para 89.

it to undertake this approach.[53] The Tribunal reiterated its previous findings that existing government programs do not meet the needs of First Nations and, until Canada presents evidence to the contrary, referring requestors to other government services will not meet the needs of First Nations children:

> **Without sufficient evidence that Canada has in fact done or has completed a thorough evaluation of federal programs that are intended to respond to First Nations children's real needs and gaps in services, the same questions and findings from the Merit Decision remain**. Only a proper and complete evaluation that analyzes all federal programs offered to First Nations children and clearly identifies gaps or overlaps will establish this.[54] [Emphasis added]

33. Despite Canada's persistent efforts to undermine, reframe and misapply the remedial requirements of Jordan's Principle, nothing has changed: First Nations children are entitled to receive substantively equitable services, in keeping with their best interests. The existence of another government program (such as the RRAP) has not altered Canada's responsibility in this regard. As the government of first contact, Canada is required to pay for the service and, if it so chooses, can seek reimbursement thereafter.[55] Ultimately, it is the needs of the children, considered within the framework of substantive equality, that ought to guide the determination of this appeal, thus protecting the pathway for the First Nations children who will follow.

PART IV – ORDER SOUGHT

34. The Caring Society takes no position on the disposition of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of September 2025.

Sarah Clarke & Robin McLeod

Solicitors for the Intervener, First Nations Child and Family Caring Society of Canada

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[53] 2025 CHRT 6 at paras 93, 357 and 429.
[54] 2025 CHRT 6 at para 383, 385, 396-397.
[55] Merits Decision at para 351.

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PART V – LIST OF AUTHORITIES

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REGULATIONS/STATUTES	
1.	*Canadian Human Rights Act*, RSC 1985, c H-6
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2.	*Battlefords and District Co-operative Ltd V Gibbs*, [1996] 3 SCR 566
3.	*Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75
4.	*Canada (Attorney General) v. Dominique*, 2025 FCA 24
5.	*Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, 2021 FC 969
6.	*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445
7.	*Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203
8.	*Cully v. Canada (Attorney General)*, 2025 FC 1132
9.	*Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44
10.	*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

11.	*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
12.	*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
13.	*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
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),* 2019 CHRT 7
15.	*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada),* 2019 CHRT 39
16.	*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 15
17.	*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
18.	*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 10
19.	*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 16
20.	*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
21.	*Gibbs v. Canada (Citizenship and Immigration)*, 2025 FC 188
22.	*Lewis v. Canada (Public Safety and Emergency Preparedness),* 2017 FCA 130

23.	*Lovelace v. Ontario*, [2000] 1 SCR 950
24.	*Moore v. British Columbia (Education)*, 2012 SCC 61
25.	*Powless v. Attorney General of Canada*, 2025 FC 1227
26.	*Quebec (Attorney General) v. A*, 2013 SCC 5
27.	*Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5
28.	*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63
29.	*Vo v. Canada (Citizenship and Immigration)*, 2018 FC 230
30.	*Withler v. Canada (Attorney General),* 2011 SCC 12
SECONDARY SOURCES	
31.	Truth and Reconciliation Commission, *Honouring the Truth, Reconciling for the future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Montreal: McGill-Queen's University Press, 2015).