

# Canada's Information Package: What the Caring Society Learned After Cross-Examining Senior ISC Officials on the Jordan's Principle Non-Compliance Motion



## Introduction

In December 2023, the Caring Society filed a non-compliance motion before the Canadian Human Rights Tribunal ("the Tribunal") due to serious failures in Indigenous Services Canada's ("ISC") implementation of Jordan's Principle, including failures to determine requests (particularly urgent requests) within the Tribunal-ordered timelines, significant backlogs, reimbursement delays, communication issues with requestors, and concerns about accountability and quality control issues. Cross-examinations took place in early April 2024.

During the cross-examination of two senior federal officials, the Caring Society made information requests, and Canada responded by providing the "[Responses to Requests for Information](#)" document ("Canada's Information Package"). The following is a summary of the key points in Canada's Information Package identified by the Caring Society.

Please see this [information sheet](#) for a summary of the background behind the non-compliance motion and the orders the Caring Society is seeking on the motion.

This information sheet contains general information about data received from Canada and is **not legal advice**. Consult with your legal counsel to seek advice and guidance about your own needs and circumstances.

## Why does Canada's Information Package matter, particularly for First Nations children and families?

Canada's Information Package contains important recent information about how Canada implements Jordan's Principle. Some key points of interest include information about: (a) data about requests and where they come from; (b) the re-review and appeals processes; (c) backlogs; (d) ISC's reporting; (e) ISC's internal policies; and (f) ISC's quality control and accountability measures.

Canada's Information Package provides key insights into issues in ISC's implementation of Jordan's Principle and how these problems have been unaddressed in the absence of accountability mechanisms.

## A. KEY POINTS ABOUT REQUESTS

### Why did the Caring Society request information from Canada regarding Jordan's Principle requests?

Canada has raised that there has been an increase in socioeconomic requests, such as requests for supports for groceries, rent payments, mortgage payments, renovations, personal vehicles, and recreation. The Caring Society requested information about these requests to better understand the needs behind these requests.

### What do I need to know about the top categories of requests and on- and off-reserve requests for socio-economic supports?

Canada's Information Package shows that the top three categories of approved requests in fiscal year 2022-2023 and the first three quarters (Q1-Q3) of fiscal year 2023-2024 were: economic supports; medical travel; and education. These economic supports seem to be referred to as "socio-economic supports" in Canada's evidence.<sup>1</sup>

In Q1-3 2023-2024, the majority of approved requests for economic supports were for children ordinarily living off-reserve (67%) as opposed to on-reserve (33%). When looking at the categories of approved requests, economic supports made up 29% of the requests for children off-reserve, but only 14% of the requests for children on-reserve.

## B. KEY POINTS ABOUT RE-REVIEWS AND APPEALS

### Why did the Caring Society request information from Canada regarding re-reviews and appeals?

Re-reviews and appeals can both be used to identify issues or points of confusion that may be resulting in unfair denials. If there are trends in the types of requests that are approved on re-review or overturned on appeal, this indicates that the same mistakes are being made at the initial review stage. The Caring Society requested this information so that it, and other third parties, could better identify these issues and propose structural solutions to address them.

<sup>1</sup> See [V. Gideon Affidavit](#) at para 13.

## What is a “re-review” and when is it conducted?

Re-reviews were introduced in June 2022 as an informal mechanism to reconsider requests previously denied, prior to an appeal. The purpose of the re-review is to allow for course correction, without having to go to appeal, if: (1) new information becomes available that has rendered the product, service or support(s) eligible for approval; or (2) the [Back-to-Basics Approach](#) was not previously applied. Re-reviews may be initiated by Jordan's Principle employees, requestors, First Nations partners, parties advocating for or acting on behalf of a child or family, or service coordinators/navigators.

## What do I need to know about “re-reviews”?

Since the re-review was implemented in June 2022, there have been 424 requests for re-review following a denial or partial approval. Of these 424 requests for re-review, 374 (88%) were finally approved.

The top categories that were re-reviewed were:

- 16% Social supports (e.g., daycare, childcare, after school programs);
- 15% Economic supports (e.g., necessities of life, such as rent and groceries);
- 10% Travel supports; and
- 10% Education supports.

Where a denial rationale was available, the main reasons for the original denial of requests were: 65% “Denied due to insufficient documentation”; and 32% “Request not being needs specific.” Some denials had more than one reason for denial.

## What is an appeal and who conducts it?

When a Jordan's Principle request is denied, ISC is supposed to notify the requestor of the reasons and of their right to appeal the decision. The requestor has one (1) year to appeal the decision after receiving a denial.

The appeal is heard by an External Expert Review Committee (“Appeals Committee”), which is a non-governmental panel of nine experts. The Appeals Committee is supported by the Appeals Secretariat, which prepares summary-style documents for the Appeals Committee. The Appeals Committee reviews the request and makes a recommendation to the Chief Science Officer (“CSO”) within ISC on whether the determination should be upheld or overturned. The CSO makes a final determination based on that recommendation.

If the denial is upheld on appeal, the requestor has the option of filing an application for judicial review with the Federal Court within 30 days.

## What do I need to know about the appeals process?

In 2022-23, 58% of the 1,245 appealed requests were overturned. Among the major appeals categories, those with the highest overturn rates were:

- Oral Health (78% overturned);
- Social (62% overturned); and
- Education (62% overturned).

In Q1-3 2023-24, 47% of the 649 appealed requests were overturned. Among the major appeals categories, those with the highest overturn rates were:

- Medical Travel (73% overturned);
- Health Services (69% overturned); and
- Mental Wellness (64% overturned).

In 2022-23, the most common appealed requests were for: economic supports; infrastructure; and oral health. In Q1-Q3 2023-24, the most common appealed requests were for: economic supports; infrastructure; and social.

## C. KEY POINTS ABOUT BACKLOGS

### Why did the Caring Society request information from Canada regarding backlogs?

In August 2023, the Caring Society became aware of the possible extent of the backlogs at ISC in British Columbia through the Jordan's Principle Operations Committee (“JPOC”). However, it did not have a firm understanding of the nature of the backlogs in that province or nationally. The Caring Society asked ISC for this information to get a better sense of the state of the backlogs across the country.

### What do I need to know about backlogs?

“Backlogs” refers to the number of outstanding requests for products, services, and supports that ISC has yet to determine. ISC tracks data about backlogs at the request level, which means that when a family makes a request for three Jordan's Principle supports, for example, ISC will track that as three separate requests rather than one “case” or one “requestor.”

ISC estimates that, as of March 27, 2024, there were between 40,000 and 82,000 backlogged Jordan's Principle requests at various stages of the determination process. These requests could be for urgently needed supports for children and families.

The Caring Society has recommended two options to reduce backlogs: (1) presumptive approvals should be given for requests valued at less than \$500 that are accompanied by at least one letter

of support from a professional; and (2) automation of the intake process.

## What is the intake backlog? Why is it so important?

The “intake backlog” refers to unopened and uncategorized Jordan’s Principle requests. Requests in the “intake backlog” have not been triaged for urgency, which means that no one has assessed the request to determine whether it is urgent or time sensitive. This creates serious risks of harm for First Nations children. For the Caring Society, the intake backlog is the most pressing backlog issue facing First Nations children under Jordan’s Principle. The worst-case scenario is that requests about children at risk of irremediable harm—such as through a suicide crisis—are lost in the intake backlog.

Concerningly, ISC did not have data available as of March 27, 2024 about the intake backlogs in all regions. For example, we do not know the extent, if any, of the intake backlogs in Alberta, Northern region, Quebec, and Saskatchewan. It is unclear how many urgent cases may be awaiting determination in unopened emails in regional inboxes across the country.

To address the intake backlog, ISC has carried out “surge” efforts to try, for example, to clear the volume of emails in the intake backlog in some regions. Many regions have not yet had surge teams assigned. The Caring Society’s view is that these surge efforts would be more effective if they were implemented on a sustained basis until an intake backlog has been fully cleared. Surge support at intake should be part of a suite of strategies, as surge support at intake alone will not resolve the backlogs issue, given that backlogs may arise at various parts of the determination process.

## What is the in-process backlog?

The “in-process backlog” refers to requests that are in ISC’s system that do not have a decision. ISC’s estimated in-process backlog as of March 27, 2024 was between 34,116 on the low end and 75,397 on the high end. The regions are operating with varied in-process backlog levels. Quebec’s estimated in-progress backlog was between 110 and 592, whereas Ontario’s was between 6,819 and 10,946, and Manitoba’s was between 4,750 and 12,660.

The Caring Society’s view is that while the tens of thousands of backlogged requests are seriously concerning, the problem is not insurmountable. The Caring Society understands that ISC may be processing, on average, roughly 100,000 (or more) Jordan’s Principle requests per month.<sup>2</sup> That means that the in-process backlogs amount to less than one month of ISC’s processing capacity, regardless of whether the low-end or high-end estimates more accurately capture the realities of this backlog.

<sup>2</sup> See the [Caring Society’s factum](#) at paras 142-143.

<sup>3</sup> See [Dr. Blackstock’s Reply Affidavit](#) at paras 91-95.

## What is the payments backlog?

ISC did not have data available as of March 27, 2024 about the payments backlog. ISC was only able to say that, in December 2023, 43% of all invoices were processed within 15 business days. The Caring Society has heard from First Nations across the country that children, families, service coordinators, and service providers may experience financial hardships because of lengthy delays in receiving reimbursement for approved and provided Jordan’s Principle services.

## D. KEY POINTS ABOUT REPORTING

### Why did the Caring Society request information from Canada regarding Jordan’s Principle Reporting?

The Caring Society had been receiving monthly reports and compliance reports from ISC JPOC. However, ISC cancelled the January and February 2024 JPOC meetings.<sup>3</sup> The Caring Society requested these reports to have updated reporting information from ISC.

### What do I need to know about the Jordan’s Principle Monthly Reports?

The Jordan’s Principle Monthly Reports provide a high-level account of the requests ISC has approved through Jordan’s Principle and its expenditures. Comparing monthly approval numbers in these reports enables the Caring Society to get a sense of how many requests ISC may be approving on a monthly basis and to understand its overall processing capacity.<sup>4</sup>

## E. KEY POINTS ABOUT ISC POLICIES

### Why did the Caring Society request information from Canada regarding ISC Policies?

Operational Bulletins are internal guidance documents provided to ISC employees on a specific topic related to their job. These may provide guidance on how to interact with requestors or how to process certain requests.

The Caring Society requested that Canada provide it with all other non-privileged Operational Bulletins that are currently in force to better understand Canada’s policies and processes and their impact(s) on First Nations children.

<sup>4</sup> See the [Caring Society’s factum](#) at paras 142-143.

## What is Operational Bulletin 002?

“Operational Bulletin 002 – Consent Guidance” is a framework for ISC staff on how to get consent and protect the privacy of requestors in a manner that seeks to be compliant with the Tribunal’s orders and privacy legislation and policies. See Operational Bulletin 002 for a sense of ISC’s consent policies and information requirements under the Back-to-Basics approach.

## What is Operational Bulletin 003?

“Operational Bulletin 003: Prenatal Supports – Guidance” is a document that provides operational guidance on handling prenatal support requests. Requests for prenatal items that will directly support an expected child can be determined in the regional office. However, prenatal services (e.g., midwife, doula services, multivitamins) that are considered to be directly supporting a mother/pregnant person over the age of majority are to be escalated to the National Review Team for a decision.

## What is Operational Bulletin 004?

“Operational Bulletin 004: Direction on Housing and Major Renovation Requests to Jordan’s Principle – Guidance” asserts that requests for major renovations, new builds, and/or funding to purchase a home are ineligible under Jordan’s Principle, and that any of these requests, on or off reserve, should be escalated to the National Review Committee. Operational Bulletin 004 only permits “minor capital renovations” on a case-by-case basis. Examples of minor renovations include: wheelchair ramps; stair glides; safety yard enclosures (e.g. fencing); room modifications to allow space for additional equipment; and bathroom renovations related to accessibility.

## What are the “Back to Basics and Best Practices” documents?

These Best Practices documents are meant as a tool for regional ISC staff and Service Coordinators to identify common practices for specific types of requests. The documents provide guiding principles, examples of different types of documentation, and guidance regarding adjudication based on various scenarios. Canada provided the Caring Society with the Back to Basics and Best Practices documents on the following topics:

- Recreational Activities, which provides guidance for requests relating to recreational items such as sports, sports equipment, tournaments, and martial arts;
- Requests for the Home: Furniture and Appliances;
- Requests for a Fence, which indicates that if the fence request is for over \$100,000, it requires a briefing note and must be approved by a Jordan’s Principle Regional Director; it cannot be approved by the focal point.

<sup>5</sup> See [C. St-Aubin Affidavit](#) at para 77.

## F. KEY POINTS ABOUT QUALITY CONTROL AND ACCOUNTABILITY MEASURES

### Why did the Caring Society request information from Canada about quality control and accountability measures?

[Canada has committed](#) to implementing quality control and accountability measures, such as a complaints mechanism. It has yet to implement a complaints mechanism or effective quality control measures. Canada asserted that it had audited its contact centres. The Caring Society asked for information to get a sense of the status and scope of Canada’s quality control and accountability measures, if there are any.

### What do I need to know about ISC’s audits of the National and Regional Contact Centres?

The Caring Society’s view is that ISC’s call centre audits do not tell us very much. Based on the limited information it has, the Caring Society understands that ISC audited its call centre between March 2, 2023 and April 4, 2024. The audits only tracked whether “call evaluation” or “silent monitoring” took place. ISC’s data does not indicate what, if any, lessons were learned from these audits or whether any course correction took place following the audits.

### What do I need to know about ISC’s gaps analysis project?

ISC’s affidavit evidence was that it is leading a project to identify the overlaps, gaps, and/or opportunities for ISC funded community-based programs to provide similar access to the most frequent Jordan’s Principle requests. ISC has advised that the results from this project will be used to inform future program reforms and funding requests.<sup>5</sup> The Caring Society asked about the status of this project. ISC advised that: “This project is still in the pre-deployment phase and has encountered unforeseen delays. The targeted completion date is forecasted for late 24/25 to early 25/26. At present, Indigenous Services Canada is actively identifying a Senior departmental lead for the upcoming launch.”

## BACKGROUND

Jordan’s Principle is a child-first principle named in memory of Jordan River Anderson that ensures that First Nations children can access the products, services and supports they need, when they need them. In 2016, the Tribunal ordered Canada “to cease applying its narrow definition of Jordan’s Principle and to take measures to immediately implement the full meaning and scope of Jordan’s Principle.”<sup>6</sup>

<sup>6</sup> 2016 CHRT 2 at para 481.

Due to the Tribunal's orders, more than [4.58 million](#) products, services, and supports have been approved pursuant to Jordan's Principle since July 2016. Unfortunately, ISC's implementation of Jordan's Principle has also been marked by serious non-compliance issues, leading the Caring Society to file its non-compliance motion regarding Jordan's Principle on December 12, 2023.

**Please visit [fncaringsociety.com/i-am-witness](https://fncaringsociety.com/i-am-witness) to see the latest information about the human rights complaint that the Caring Society and the AFN filed in 2007.**