Federal Court Cour fédérale

Date: 20260203

Docket: T-2269-25

Citation: 2026 FC 153

Ottawa, Ontario, February 3, 2026

PRESENT: Madam Justice Gagné

BETWEEN:

SAHTU DIVISIONAL EDUCATION COUNCIL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Sahtu Divisional Education Council [SDEC or the Applicant] appeals the orders of Associate Judge Catherine A. Coughlan made on October 21, 2025, granting the Attorney General of Canada's [AGC or the Respondent] motions to strike eight separate applications for judicial review, without leave to amend. The judicial reviews concern eight separate Indigenous Services Canada [ISC] decisions denying Jordan's Principle funding for First Nations children in the remote Sahtu region of the Northwest Territories [the Denial Decision]. The Associate Judge granted the Respondent's motions to strike the Applications on the basis that they were

premature, concluding that ISC has an internal appeal mechanism that should be exhausted before recourse can be had in this Court. She issued eight identical Judgments and Reasons with the only difference found at paragraphs 6 to 9, which deal with the specific funding refused (or not renewed) in each file.

[2] The parties have filed eight separate motion records in the proceedings below. On October 28, 2025, the Court ordered consolidation of the eight matters in Court File Nos. T-2165-25, T-2269-25, T-2271-25, T-2295-25, T-2297-25, T-2298-25, T-2382-25 and T-2539-25, into the present lead file.

[3] The Applicant asserts that the Associate Judge made the following five appealable errors:

> (a) In law by failing to apply the appropriate legal test to determine whether ISC's Jordan's Principle appeals process is an adequate and effective alternative to judicial review, which led the Associate Judge to further erring:
>
> > (i) In fact and law by failing to consider, misapprehending, or failing to give sufficient weight to relevant evidence regarding significant and systemic delay in ISC's adjudication of Jordan's Principle appeals, which is directly relevant to whether that process provides an adequate and effective alternative;
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> (b) In finding that there was effective recourse elsewhere due to errors in law in:
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> > (i) drawing an inference adverse to SDEC based on SDEC's participation in ISC's appeal process for the purpose of preserving its legal rights; and
> >
> > (ii) her consideration of prior Federal Court cases *Cully v Canada (Attorney General)*, 2025 FC 1132 and *Isaac v Canada (Attorney General)*, T-2872-24;

> (c) In fact and law by concluding that no exceptional circumstances are present to justify judicial review at this time, including by failing to consider, misapprehending, or failing to give sufficient weight to the urgent circumstances of First Nations children in the Sahtu;
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> (d) In law by failing to consider whether any deficiencies in the Notices of Application could be resolved by amendment, when such amendment was expressly proposed by SDEC; and
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> (e) In law by exceeding the jurisdiction of an Associate Judge pursuant to Rule 50(1)(e) of the *Federal Courts Rules*, in considering without any rational basis that "concerns about delay should be addressed at the merits stage of judicial review, not through interlocutory intervention" and that judicial review only "offers remedies of last resort", thereby barring SDEC from moving for interlocutory relief at all, including an injunction.

[4] In my view, the Associate Judge fully considered all issues pertaining to alleged errors (a), (b) and (c), she referred to the appropriate case law and made no error in the application of the guiding principles. I therefore endorse Associate Judge Ring's reasons on these issues.

[5] I also disagree with the SDEC that the Associate Judge exceeded her jurisdiction pursuant to Rule 50(1)(e) of the *Federal Courts Rules*. The Associate Judge did not hear a motion for an injunction, nor did she issue a related order; she simply found that the underlying procedure was premature as the Applicant had not exhausted its administrative appeal.

[6] However, the Associate Judge did not entertain the Applicant's specific request found in paragraph 92(b) of its Written Representations for an order:

> - Granting leave to amend its Notice of Application, in accordance with the draft amended Notice of Application filed as part of the Applicant's Motion Record at Tab 5.

[7] At paragraph 4 of her Reasons, the Associate Judge states that "the NOAs filed in this matter and in each of the other Court files shall be struck without leave to amend", and she repeats this at paragraph 2 of her Order. She provides no reasons as to why the amendment would not cure the defect, nor does she seem to have turned her mind to the issue.

[8] Considering the Associate Judge's silence and the Applicant's position before me, I will dispose of the Applicant's motion for leave to amend its Notice of Application.

[9] In its draft Amended Notice of Application, SDEC seeks to add to its Application for Judicial Review of the Denial Decision, the following remedy:

- In the alternative, an order in the nature of *mandamus* directing ISC to make a final determination in the Applicant's appeal of the Denial Decision.

[10] Rule 75(1) gives this Court the authority to allow a party to amend a document at any time, on such terms as will protect the rights of all parties (except during or after a hearing). Leave to amend is also often granted in response to a motion to strike.

[11] SDEC asserts that it sought its amendments independently, and not in response to the AGC's motion to strike. In other words, it sought leave to make its amendments regardless of the outcome on the AGC's motion to strike.

[12] SDEC cites several decisions where an amendment was permitted as: the motion was presented in a timely fashion; the proposed amendments would not delay the trial of the matter;

the position taken originally by one party has not led another party to follow a course of action in the litigation which would be difficult, if not impossible, to alter, and; the amendments sought would assist the Court in determining the true substance of the dispute on its merits (*Canderel Ltd. v Canada*, 1993 CanLII 2990 (FCA), [1994] 1 FC 3 at para 10; *Enercorp Sand Solutions Inc. v Specialized Desanders Inc.*, 2018 FCA 215 at para 19; *Janssen Inc. v Abbvie Corporation*, 2014 FCA 242 at para 3). However, the decisions referred to by the Applicant were all rendered in the context of actions before the Court, not applications.

[13] The Applicant is seeking leave to amend its application for judicial review by adding a writ of *mandamus* as alternative remedy, without changing the facts on record. The entire Notice of Application challenges the Denial Decision and criticizes the inadequacy and inefficacity of ISC's appeal process. These facts all support the Application for Judicial Review in the nature of a *certiorari* whereby the Applicant is seeking:

> 1. A declaration that the Denial Decision was made contrary to principles of natural justice or procedural fairness;
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> 2. A declaration that the Denial Decision was unreasonable;
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> 3. A declaration that the Denial Decision was otherwise invalid or unlawful;
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> 4. An order quashing or setting aside the Denial Decision;
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> 5. An order compelling ISC to grant funding for four Student Support Assistants for the 2024/2025 and 2025/2026 school years, or, in the alternative, an order remitting the matter for re-determination consistent with the Court's reasons on this Application.

[14] As was the case in *Habitations Îlot St-Jacques Inc v Canada (Attorney General)*, 2017 FC 535, the two judicial reviews, one a *certiorari* proceeding to set aside a decision and the other a *mandamus* proceeding to force the issuance of another decision between the same party, are completely different and somewhat incompatible. In *Habitations Îlot St-Jacques,* the Court rejected the proposed amendments sought by the applicant, which would have led to an entirely new remedy: a *mandamus* finding and the allowance of new evidence, over and above the initial *certiorari* proceeding. The Court saw in what the applicant was seeking "[…] less of an amendment and more of a different application for judicial review" (para 15).

[15] The facts pleaded by the Applicant in this case support a *certiorari* proceeding to set aside a decision by the ISC, not a writ of *mandamus* which requires an applicant to plead facts supporting the following factors (*Apotex Inc v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 FC 742 (CA) at para 4; aff'd [1994] 3 SCR 1100):

1. There is a public legal duty to act.

2. The duty is owed to the applicant.

3. There is a clear right to performance of that duty, in particular:

    a) The applicant has satisfied all conditions precedent giving rise to the duty.

    b) There was: i) a prior demand for performance of the duty; ii) a reasonable time to comply with the demand unless refused outright; and iii) a subsequent refusal which can be either expressed or implied, e.g., unreasonable delay.

4. Where the duty sought to be enforced is discretionary, consideration must be given to the nature and manner of that exercise of discretion.

> 5. No other adequate remedy is available to the applicant.
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> 6. The order sought will be of some practical value or effect.
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> 7. The Court in the exercise of its discretion finds no equitable bar to the relief sought.
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> 8. On a balance of convenience, an order in the nature of *mandamus* should be issued.

[16] The Applicant's appeal of the Denial Decision to the External Expert Review Committee was filed on June 27, 2025, whereas the present Application for Judicial Review was filed on July 3, 2025. There is obviously no factual background in the original Notice of Application supporting the above factors.

[17] In its Amended Notice of Application, dated August 27, 2025, the Applicant adds the following three paragraphs:

> [32] SDEC has repeatedly followed up with ISC on the status of SDEC's appeals. ISC has been unable to provide any specific timelines for decision-making through its internal appeals process, despite the risk of harm posed to First Nation children in the Sahtu as direct result of ISC's ongoing, pervasive delays.
>
> [33] SDEC has also been unable to determine basic information about the appeals process from ISC, including the identity of ISC's decision-maker on appeals. As far as SDEC can tell, ISC has recently altered its appeals structure (which was created specifically in response to concerns about independence) to change the final decision-maker to be the Senior Assistant Deputy Minister within ISC. ISC has absolute discretion in structuring its decision-making and appeals process and has shown itself willing to make changes to that process without public notification or review.
>
> [34] Given these issues, and in particular the urgency of this funding request and the direct impact of the Denial Decision on

> First Nation students in the Sahtu, ISC's internal appeals process is an inadequate alternative remedy for resolving this appeal.

[18] Keeping in mind that these allegations were made only two months after the appeal was filed with ISC, they do not support the above listed factors for the issuance of a writ of *mandamus*. They rather support the Applicant's contention that the ISC's appeal process is inadequate and should be circumvented in favour of an application for judicial review of the Denial Decision before this Court. For the reasons set forth in the Associate Judge's decision, the Court disagrees with the Applicant on that front.

[19] Consequently, the Applicant's motion for leave to amend its Application for Judicial Review is dismissed, without prejudice to the Applicant's right to bring fresh Applications for Judicial Review in the nature of a *mandamus* in those files where the ISC's appeal decision has not yet been rendered, or a fresh Application for Judicial Review challenging an unfavourable decision of the ISC's External Expert Review Committee, where such a decision was issued.

JUDGMENT IN T-2269-25

THIS COURT ORDERS that:

1. The Applicant's appeals in the present file and in files T-2165-25, T-2271-25, T-2295-25, T-2297-25, T-2298-25, T-2382-25 and T-2539-25 are dismissed;

2. The Respondent shall have costs fixed at the midpoint of Column III of Tariff B on the lead file motion only (T-2269-25);

3. Copy of this Judgment and Reasons will be placed in files T-2165-25, T-2271-25, T-2295-25, T-2297-25, T-2298-25, T-2382-25 and T-2539-25.

"Jocelyne Gagné"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2269-25
STYLE OF CAUSE:	SAHTU DIVISIONAL EDUCATION COUNCIL v ATTORNEY GENERAL OF CANADA
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