Considerations for the sustainability of Jordan's Principle

DRAFT

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Executive Summary

The Institute of Fiscal Studies and Democracy (IFSD) gratefully recognizes the contributions of the Regional Working Group (t*echnical experts and practitioners in the administration and delivery of Jordan's Principle who were asked to convene to walk alongside IFSD as it undertakes its work), as well as other contributors.*

The content of this report does not necessarily reflect the views of the Caring Society (the contract holder for this project), those of the Regional Working Group, or other contributors.

Jordan's Principle (named for Jordan River Anderson) is meant to ensure First Nations children can access products, supports, and services for health, education, and social needs.

> Jordan's Principle is named in honour of Jordan River Anderson who died in a Winnipeg hospital, never having been in his family home because of a jurisdictional battle between the federal and provincial governments on who would pay for his homecare.

The current structure, funding, and accountability around the implementation of Jordan's Principle are concerning from a public financial management perspective. Its administration and delivery are risks to both its sustainability and the First Nations children it is intended to serve.

From a public financial management perspective, sustainability of a program requires consideration of its overall expenditures, its alignment to priorities, the effectiveness and efficiency of its operation, and its transparent reporting. Program sustainability is assessed regularly through audits and evaluations. Periodically, there are significant fiscal consolidation exercises that may result in spending restraint or reallocation. Should a program not meet the considerations of sustainability, it is subject to adverse funding decisions.

Data gathered by Indigenous Services Canada (ISC) are insufficient to demonstrate results for children or to identify gaps in related program areas. Based on ISC's information there is no way of knowing if Jordan's Principle is being administered and funded effectively to meet the needs of First Nations children. With undefined and insufficiently documented achievements, Jordan's Principle is vulnerable to adverse funding decisions.

Restructuring Jordan's Principle could improve sustainability and consistency in delivery, leverage data from a reformed approach to quantify gaps and needs in existing programs, and align operations to the clarified spirit and intent of Jordan's Principle. These changes are necessary to ensure the sustainability of Jordan's Principle.

Sustainability for Jordan's Principle means ensuring demonstrable results and value for First Nations children. This requires administrative clarity, appropriate funding, documented performance, and consistent delivery.

Ideally, Jordan's Principle would not need to exist. However, because gaps in existing programs, supports, and services will not be closed instantly or quickly, some mechanism to respond to the Canadian Human Rights Tribunal's (CHRT) orders on Jordan's Principle is required. Restructuring Jordan's Principle is necessary to make it sustainable and useful beyond being an interim remedy. **Restructuring Jordan's Principle could improve sustainability and consistency in delivery, leverage data from a reformed approach to quantify gaps and needs in existing programs, and align operations to the clarified spirit and intent of Jordan's Principle. These changes are necessary to ensure the sustainability of Jordan's Principle.**

This report presents options and considerations for the reform of Jordan's Principle to help ensure its sustainability for First Nations children.

Recommendations for a path forward

1) **Define and adopt an alternative structure to Jordan's Principle.**
   A legal rule, Jordan's Principle is reliant on administrative decisions for its operations. It merits the same structural parameters that exist for other demand-driven programs in Canada, such as Employment Insurance or Old Age Security. There are options to structure Jordan's Principle to better ensure its sustainable operation and funding are linked to the needs of First Nations children.

2) **Transition to the reformed structure.**
   Once a reformed structure for Jordan's Principle is defined, adopt a two-track approach to its implementation over 3 years. Track 1: Adopt a new data-gathering framework. Track 2: Leverage the collected data in years 2 and 3 to inform parameters and funding for Jordan's Principle.

3) **Build consensus among practitioners and the parties to clarify Jordan's Principle's policy statement and its implementation.**

ISC's website includes statements, guidelines, and rules around Jordan's Principle. Lacking, however, is a clear policy statement that guides and connects the structure, delivery, accountability, and funding of Jordan's Principle. The content of a policy statement will inform the rules that govern a restructured approach to Jordan's Principle, guiding the scope and parameters of activity.

4) **Define and implement a performance framework.**
With all the information gathered on Jordan's Principle, we still do not know the reason(s) why children are seeking support and what happens to them following an intervention. With these gaps, there is no way of assessing progress toward formal or substantive equality through Jordan's Principle. To be sustainable, Jordan's Principle's performance must be measurable and its results documented. A national strategic performance framework is an essential component of a sustainable approach to Jordan's Principle.

5) **Define and implement a national data gathering framework, aligned to the spirit and intent of Jordan's Principle.**
Data on Jordan's Principle should be gathered locally, consistently, and with decency. A consistent approach to gathering child-centred data means more relevant data that can be used to both measure and monitor children's needs and identify gaps in existing programs and services.

6) **Stabilize funding for a 3-year transition period.**
A baseline and escalators are essential for estimating the costs of Jordan's Principle. Available information is insufficient to estimate a bottom-up cost based on defined factors. IFSD proposes estimating the cost of Jordan's Principle on an interim basis until such time that data capture is improved sufficiently to inform access parameters and costs.

7) **Maintain the Regional Working Group.**
Support the Regional Working Group (as practitioners) continuing to convene to provide input and oversight on the reform and implementation of Jordan's Principle. The contributions of the Regional Working Group are reflected throughout this report.

Introduction

Jordan's Principle is named in honour of Jordan River Anderson who died in a Winnipeg hospital, never having been in his family home because of a jurisdictional battle between the federal and provincial governments on who would pay for his homecare.

As a 'child first' principle rooted in substantive equality, Jordan's Principle requires the government of first contact to consider and evaluate the needs of each individual child, including any needs stemming from their unique cultural background, historical disadvantage, and the lack of on-reserve or nearby services.

The Institute of Fiscal Studies and Democracy (IFSD) gratefully recognizes the contributions of the Regional Working Group (t*echnical experts and practitioners in the administration and delivery of Jordan's Principle) who were asked to convene to walk alongside IFSD as it undertakes its work, as well as other contributors.*

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Jordan's Principle is meant to ensure First Nations children can access products, supports, and services for their health, education, and social needs.

IFSD's research on options for the sustainability of Jordan's Principle was ordered by the Canadian Human Rights Tribunal (CHRT) in 2022.[1]

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[1] In 2022 CHRT 8, Canada was ordered to (par. 172):

> […] fund the following research through the Institute for Fiscal Studies and Democracy ("IFSD"):
>
> […]
>
> d. upon completion of the Jordan's Principle Data Assessment, the IFSD needs assessment regarding a long-term funding approach for Jordan's Principle, including but not limited to identifying and addressing formal* equality gaps, in keeping with the Tribunal's rulings, including but not limited to 2016 CHRT 2, 2017 CHRT 35, 2020 CHRT 20 and 2020 CHRT 36 (the "Jordan's Principle Long Term Funding Approach Research").
>
> *** This order does not modify any substantive equality orders made by this Tribunal in this case.**
>
> […]

In response to the order, IFSD was mandated to propose options for the long-term sustainability of Jordan's Principle through the:

1) Development of a policy framework;
2) Review of existing programs and services;
3) Definition of options and considerations for reforming the implementation of Jordan's Principle; and,
4) Financial analysis and costing of the baseline and any proposed reforms.

To fulfil this mandate, IFSD has undertaken its work from a public financial management perspective. This means considering the structure, funding, accountability, and delivery for a reformed and sustainable approach to Jordan's Principle. From a public financial management perspective, sustainability of a program (including its activities and initiatives) requires consideration of its overall expenditures, its alignment to priorities, the effectiveness and efficiency of its operation, and its transparent reporting. Sustainability is assessed regularly through audits and evaluations. Periodically, there are fiscal consolidation exercises that may result in spending restraint or reallocation.. Should a program not meet the considerations of sustainability, it is subject to adverse funding decisions. Sustainability for Jordan's Principle means ensuring it can demonstrate results and value for First Nations children. This requires administrative clarity, appropriate funding, documented performance, and consistent delivery.

Jordan's Principle's current structure, funding, and accountability are concerning from a public financial management perspective. Existing administration and delivery pose risks to its sustainability and the First Nations children it is intended to serve.

During the September 2024 hearings of the CHRT, panel member Edward Lustig emphasized the boundaries of the CHRT's role in pronouncing on administrative and operational matters in Jordan's Principle:

> You know where that right point is to make the system work better and to avoid the calamity of someone who's dying not getting the service. We're not going to be able to tell you where that point is. We're only going to be able to tell you: Go off and try to find it yourselves.[2]

The statement reflects the limitations of the current operation of Jordan's Principle. Its administration has been problematic due to backlogs of requests, inconsistent application of rules across regions and gaps in data gathering, among other challenges. While Jordan's Principle is supporting the needs of First Nations children, the legal rule's national administration is untethered to both the goal of substantive equality and to the needs of children.

[2] Brett Forester, "Tribunal urges First Nations, feds to 'leave their conflicts aside' on Jordan's Principle issues," *CBC*, last updated September 12, 2024, https://www.cbc.ca/news/indigenous/jordans-principle-hearing-tribunal-1.7321710.

In Canada, substantive equality guides assessments of equality rights that are protected under s.15 of the Charter of Rights and Freedoms.[3] Substantive equality is focused on equality in outcomes which may be achieved through equal or differentiated treatment.

Consistent with these parameters, ISC defines substantive equality on its Jordan's Principle website:

> Substantive equality is a legal principle that refers to the achievement of true equality in outcomes. It is achieved through equal access, equal opportunity and, most importantly, the provision of services and benefits in a manner and according to standards that meet any unique needs and circumstances, such as cultural, social, economic and historical disadvantage. […][4]

To pursue substantive equality for First Nations children, the root causes of need for Jordan's Principle would have to be addressed. This means identifying and quantifying structural gaps in alignment to the Spirit Bear Plan or similar plan that considers the general well-being of First Nations children in their communities. The cost of substantive equality for First Nations children would require remedying long-standing gaps in the resourcing and provision of health, social, and education services.

> There is no mechanism to sufficiently measure whether the results of Jordan's Principle fulfill its purpose of providing substantive equality in access to services for First Nations children.

Substantive equality was invoked in the CHRT's decisions on Jordan's Principle to confirm discrimination.[5] However, no orders or prescriptions on how to structure Jordan's Principle were provided to address service gaps to achieve substantive equality. The implementation of Jordan's Principle by ISC has been administratively reactive to CHRT orders. There was no evidence of consideration for how to align the structure, delivery, funding, and accountability for the results of Jordan's Principle to its spirit and intent. There is no mechanism to sufficiently measure whether the results of Jordan's Principle fulfill its purpose of providing substantive equality in access to

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[3] See Appendix A (Faisal Bhabha, Legal analysis on realizing substantive equality through Jordan's Principle); *Fraser v. Canada (Attorney General),* [2020] 3 S.C.R. 113, at para 40 *[Fraser]*; Colleen Sheppard (with Vrinda Narain and Tamara Thermitus), *Employment Equity and Inclusion: Through the Lens of Substantive Equality,* working paper prepared for the Employment Equity Act Review Task Force, September 2022, 76.

[4] Indigenous Services Canada, "Jordan's Principle: Substantive equality principles," *Government of Canada,* last updated November 21, 2019, https://www.sac-isc.gc.ca/eng/1583698429175/1583698455266#chp2. For a discussion of substantive equality in reference to Jordan's Principle, see also, Institute of Fiscal Studies and Democracy (IFSD), *Data assessment and framing of an analysis of substantive equality through the application of Jordan's Principle* (September 2022), https://ifsd.ca/wp-content/uploads/2024/06/ifsd-report-2022-09-data-assessment-and-framing-analysis-of-substantive-equality-through-the-application-of-jordans-principle.pdf.

[5] See Appendix A (Faisal Bhabha, Legal analysis on realizing substantive equality through Jordan's Principle).

services for First Nations children. This has resulted in an administrative approach to Jordan's Principle that risks its efficacy and sustainability.

Data gathered by ISC is insufficient to demonstrate results for children or to identify gaps in related program areas. There is no way of knowing through ISC's information if Jordan's Principle is being administered and funded effectively to meet the needs of children. **With undefined and insufficiently documented achievements, Jordan's Principle is vulnerable to adverse funding decisions.**

As a legal rule, the operation of Jordan's Principle is contingent on decisions by the federal government. An administrative change can increase, decrease, or restrict access to Jordan's Principle. To manage the impact of these potential changes, the structure, funding, accountability, and delivery of Jordan's Principle should be linked to rules and operational practices aligned to its spirit and intent.

This report proceeds with a **framework for the reform of Jordan's Principle** with options for **changes to structure, accountability, delivery, and funding**.

IFSD makes the following observations:

1) **Structure:** A revised structure (including legal framework, rules, and operating parameters) is required for Jordan's Principle. The structure should clarify its policy authority and connect to an accountability framework.
2) **Accountability:** A national strategic performance framework is required to ensure Jordan's Principle meets the needs of First Nations children. This should be undertaken by monitoring outcomes for children, as well as outcomes and funding for related program activity areas as defined in the Spirit Bear Plan, for example, or a similar approach.
3) **Delivery:** A relevant and consistent data gathering framework at intake is required to link requests to Jordan's Principle with the unique contexts of children, the root causes of their needs, and the limitations of existing services or programs. This information is imperative to understand Jordan's Principle's interaction with other programs, identify gaps and ensure sustainability.
4) **Funding:** A baseline should be defined for funding allocations with appropriate escalators until such time that relevant data can be gathered to redefine a baseline linked to the needs of First Nations children.

Assessing a Jordan's Principle request through the lens of substantive equality is not the same as pursuing substantive equality through Jordan's Principle. Assessing a request through the lens of substantive equality means ensuring a product, support, or service is provided equally or on a differentiated basis to a child in need. On its own, Jordan's Principle cannot address substantive equality. To truly address substantive equality, equality in outcomes would be sought. This requires addressing structural inequities in other existing programs and services to promote equal starting points and

opportunity for equality in outcomes. Jordan's Principle can provide access to products, supports, and services in health, education, and social services. But substantive equality can only be pursued by addressing structural inequities with adjustments to the existing provision of services.

If substantive equality seeks equality in outcomes despite differences, e.g., historical, cultural, etc., Jordan's Principle is doing something different. Jordan's Principle is intended to ensure First Nations children have *access* to the products, supports, and services they need, with consideration of their unique circumstances. The goal of Jordan's Principle cannot be equality of outcomes because it cannot control or provide for more than the product/service/support it is intended to deliver.

The administration of Jordan's Principle and its use to identify gaps in surrounding supports and services related to the outcomes of First Nations children are ways it could be used to promote substantive equality. Jordan's Principle as a call to action to address gaps in the factors promoting structural inequality (e.g., poverty, housing, etc.) could be a conduit for substantive equality. But, on its own, it is an administrative tool to equalize access to products, supports, and services.

Ideally, Jordan's Principle would not need to exist. However, because gaps in existing programs, supports, and services will not be closed instantly or quickly, some mechanism to respond to the CHRT's orders on Jordan's Principle is required. Jordan's Principle will need to exist until such time that outcomes for First Nations children are at least equivalent to the general population. Restructuring Jordan's Principle is necessary to make it sustainable and effective, beyond being a temporary solution. Restructuring Jordan's Principle could improve sustainability and consistency in delivery, leverage data from a reformed approach to quantify gaps and needs in existing programs and align operations to the clarified spirit and intent of Jordan's Principle.

Context

Jordan's Principle is meant to "[resolve] jurisdictional disputes that impeded First Nations children from accessing government services," to "[respond] to the unmet needs of First Nation children," and to "[support] families in accessing products, services and supports for First Nations children and youth to help with a wide range of health, social and educational needs."[6]

In responding to these needs, Jordan's Principle must ensure substantive equality for First Nations children. In May 2017, the CHRT ruled that, under Jordan's Principle, the Government of Canada or government of first contact should "…evaluate the individual needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the child, …ensure culturally appropriate services to the child and/or…safeguard the best interests of the child."[7] According to ISC, "Jordan's Principle is intended to make sure that First Nations children have substantively equal access to government services, taking into account their distinct circumstances, experiences, and needs as First Nations children."[8]

ISC's data gathering on Jordan's Principle does not align to the capture of jurisdictional disputes nor substantive equality. The national database for Jordan's Principle, "GCcase," is maintained by ISC. The existing system was introduced in 2019, with data from previous fiscal years included based on availability. As part of its work, IFSD requested GCcase data to analyze trends in requests to Jordan's Principle. Based on its past report[9], IFSD understood the limitations of the dataset in assessing substantive equality, as well as the resolution of jurisdictional or other service gaps for First Nations children. GCcase, however, is the only available source of request data on Jordan's Principle and is used to assess trends (with noted limitations).

On April 20, 2023, IFSD submitted a letter requesting Jordan's Principle data from GCcase (Appendix B). On January 9, 2024 (9 months after the initial request was submitted,) IFSD received the data from ISC. This caused delays to overall project timelines. Throughout the analysis process, IFSD submitted questions to ISC and benefitted from the perspective of the GCcase technical team. While technical questions were answered by the team, other questions directed to the non-technical

[6] GC InfoBase, "Infographic for Jordan's Principle and the Inuit Child First Initiative," *Government of Canada*, accessed February 19, 2025, https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#infographic/program/INDSC-BYP06/intro/.

[7] *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, par. 134 (iv), https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/232587/index.do.

[8] Indigenous Services Canada, "Jordan's Principle," *Government of Canada*, last updated March 3, 2025, https://www.sac-isc.gc.ca/eng/1568396042341/1568396159824.

[9] Institute of Fiscal Studies and Democracy (IFSD), *Data assessment and framing of an analysis of substantive equality through the application of Jordan's Principle*.

team, e.g., related to expenditures, operational practices, etc., received insufficient responses or remain outstanding.[10]

IFSD made several attempts to engage with federal public servants involved in administering Jordan's Principle. On July 6, 2023, IFSD reached out to ISC to develop an approach to working with public servants (see Appendix C). Despite follow-ups by IFSD and attempts by some ISC officials, engagement with public servants never occurred. It is regrettable that ISC would not support engagement with their public servants. Their perspectives would have been valuable in framing the current operations of Jordan's Principle and areas for improvement.

The subset of GCcase data provided to IFSD does not contain all available information. Some of the variables were aggregated to protect privacy. For instance, in the data provided to IFSD, there is no information on the context of the child making a request to Jordan's Principle beyond geographic location, e.g., province/territory, on/off reserve. Other variables, such as the age of the child and the cost (requested and approved or denied), are presented as ranges, with no specific values provided. As a result, IFSD's analysis of GCcase data is limited to describing requests and associated characteristics.

GCcase data records requests that individuals and groups made for funding from Jordan's Principle. Each request refers to one single item that an individual or a group is requesting. One child can be associated with multiple requests, and one request can be associated with multiple children.

There are four different lenses IFSD uses when analyzing GCcase data:

1) Number of children
2) Number of requests
3) Products, Services, and Supports (PSS)
4) Row count

Table 1

Measure	Description	Considerations
Number of requests	• The items people request from Jordan's Principle. • This approach counts each item once even if it is associated with multiple children.	• No count of individual children. • Limited alignment to administrative practice, i.e., clusters instances of requests.

[10] As a recent example, in January 2025, IFSD requested Jordan's Principle expenditures by region from ISC. ISC responded, indicating they did not have the resources to provide such granular information to IFSD. However, in a January 10, 2025, letter to the CHRT, ISC provided regional breakdowns of expenditures (for contribution approaches) for Jordan's Principle. IFSD again followed-up with ISC given the similarities of its request and the published data, and no response was provided.

Number of children	• The children associated to requests, when defined. • This approach counts each child once even if they are associated with multiple requests.	• Not defined for all group requests.
Products, Services, and Supports (PSS)	• Estimated number of instances of children requesting support through Jordan's Principle.	• Risks overestimating the impact/reach of Jordan's Principle (resulting from using an estimated number of children who benefit from a group request without actual numbers).
Row count	• Defined number of instances of children requesting support through Jordan's Principle.	• Risks underestimating the impact/reach of Jordan's Principle (by assuming only one child benefits from group requests that do not define the number of associated children).

GCcase data includes only requests with a decision. This means unopened requests or those in a backlog are not included in the dataset. The data to which IFSD has access is for the period 2017-18 to 2022-23, with different variables and varying completeness across fiscal years. Variables are increasingly consistent, complete, and broader in scope from fiscal year 2020-21 onwards. However, the dataset IFSD has access to terminates in fiscal year 2022-23. As a result, the impact of guidelines and decisions after that date, as well as the inclusion of unopened/backlogged requests, may impact the trends observed.

ISC has made several changes to the operation of Jordan's Principle. For instance, on February 10, 2025, ISC announced a series of new measures regarding the implementation of Jordan's Principle.

Going forward, all requests must show "how the requested product, service or support meets the distinct needs of the First Nation child" and that the child either "experienced gaps or delays in accessing government services" or "was denied an existing government service because of their identity as a First Nations child."[11]

In addition, these new measures:

- Restrict certain types of requests unless necessary for substantive equality.
  - This includes certain "school-related requests." ISC specified they will now re-direct requests from off-reserve school boards and private schools to other federal or provincial programs.
- Require requesters to provide a professional letter of support to demonstrate need.

[11] Indigenous Services Canada, "Statement by Minister Hajdu on the changes to operating procedures related to processing requests under Jordan's Principle," *Government of Canada*, last updated February 10, 2025, https://www.canada.ca/en/indigenous-services-canada/news/2025/02/statement-by-minister-hajdu-on-the-changes-to-operating-procedures-related-to-processing-requests-under-jordans-principle.html.

- Introduce additional requirements for group requests (e.g., all group requests must list each child associated with the request).[12]

Jordan's Principle was established to ensure that First Nations children would not suffer due to jurisdictional battles on payment for services between the federal and provincial governments (as did Jordan River Anderson). Canada has typically exercised its jurisdiction in relation to First Nations on reserve, with the position that First Nations off reserve are the responsibility of the provinces.

In its 2017 decision (2017 CHRT 14), the CHRT ordered that Jordan's Principle would be applicable to First Nations children no matter where they lived (on or off reserve). The matter of payment for services (regardless of constitutional authority) would be left for governments to manage. Recent data on expenditures through Jordan's Principle indicates increased expenditures for children off reserve (slightly overtaking expenditures for children on reserve). The expenditure trend may be a function of funding for group requests[13] or the federal government not seeking reimbursement from provincial/territorial governments for areas under their jurisdiction.[14]

The February 10, 2025, directive may be indicative of a realignment by the federal government of their expenditure decisions in alignment with its jurisdiction in relation to First Nations children on reserve (or at least a signal that provincial/territorial governments will be required to fund their own areas of jurisdiction).

Both the federal and provincial/territorial governments provide services to First Nations. Their coordination and cooperation would improve access to services.

The limitations of GCcase mean that the data cannot assess substantive equality or whether needs from jurisdictional or other service gaps are met.

The gaps in information from GCcase include:

- No information on *why* a child is seeking support from Jordan's Principle. The root cause of the request, e.g., insufficient funds, refusal from existing federal program, lack of service availability, etc., is not defined. This information is necessary for assessing substantive equality and service gaps.
- No information on the child's context. Such information would include considerations on geography, e.g., road access, states of emergency, service availability, etc.
- No data on outcomes for children who received support through Jordan's Principle, i.e., how the child is doing post intervention.

Summative observations of GCcase data (for available data up to fiscal year 2022-23):

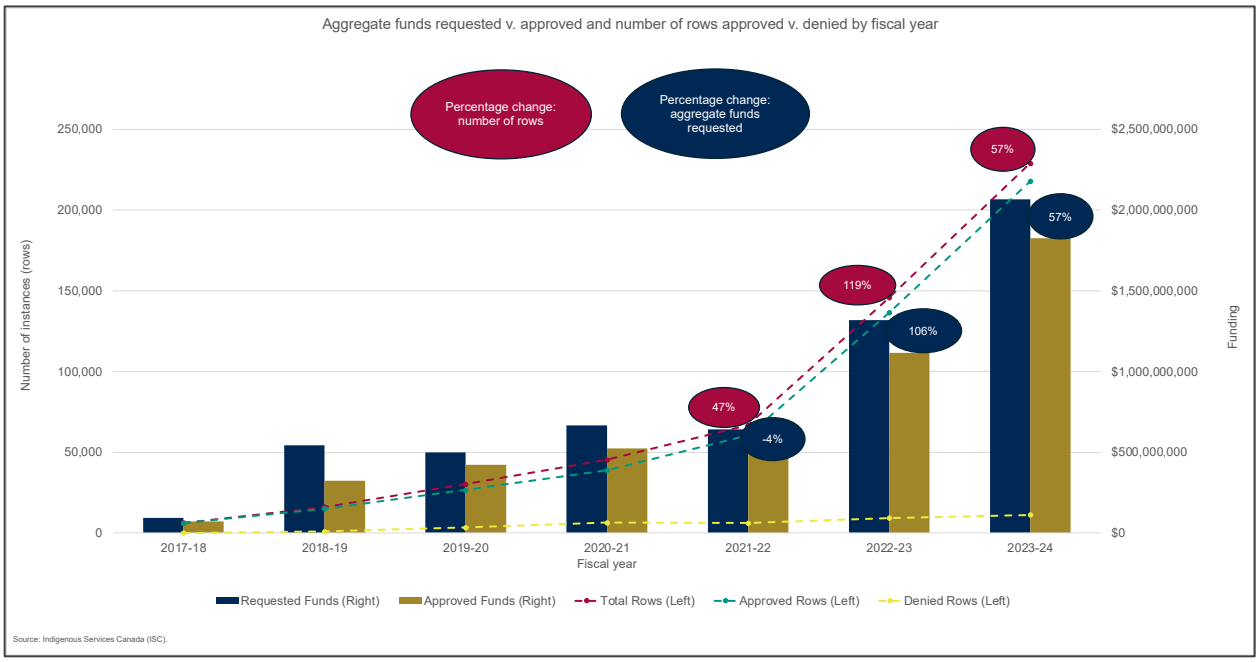
[12] Indigenous Services Canada, "Statement by Minister Hajdu on the changes to operating procedures related to processing requests under Jordan's Principle."
[13] The GCcase data provided by ISC does not distinguish between on and off-reserve group requests.
[14] IFSD attempted media and social media analysis to identify possible instances of provincial underfunding that *may* have increased reliance on Jordan's Principle. The analysis did produce meaningful results given the volume of media coverage, political announcements, and subjectivity in assessing their impacts on Jordan's Principle.

1) Instances of requests (i.e., row count) to Jordan's Principle have increased across fiscal years, most significantly from 2021-22 to 2022-23 (a 119 percent increase). Expenditures have also increased across fiscal years.
2) Most requests across fiscal years are approved.
3) Most requests are for individuals.
4) Most requests are for amounts less than $5,000. However, most group requests are for amounts greater than $5,000.
5) Little is known about the number of children associated with group requests.
6) From 2018-19 to 2021-22, most individual requests were for children residing on-reserve. The trend changed in 2022-23, with most requests for children residing off-reserve.
7) In fiscal year 2022-23, on-reserve, requests were associated mainly with medical travel, education, and economic supports. Off-reserve, requests were associated with economic supports and education.
8) Since 2020-21, Manitoba and Ontario have had the largest shares of requests.

IFSD's methodology for GCcase analysis is available in Appendix D. The methodology reviews the various lenses for sorting and understanding the data, as well as the various attempts at analysis using the dataset. For additional GCcase and analysis of aggregate expenditures on Jordan's Principle, see Appendix E.

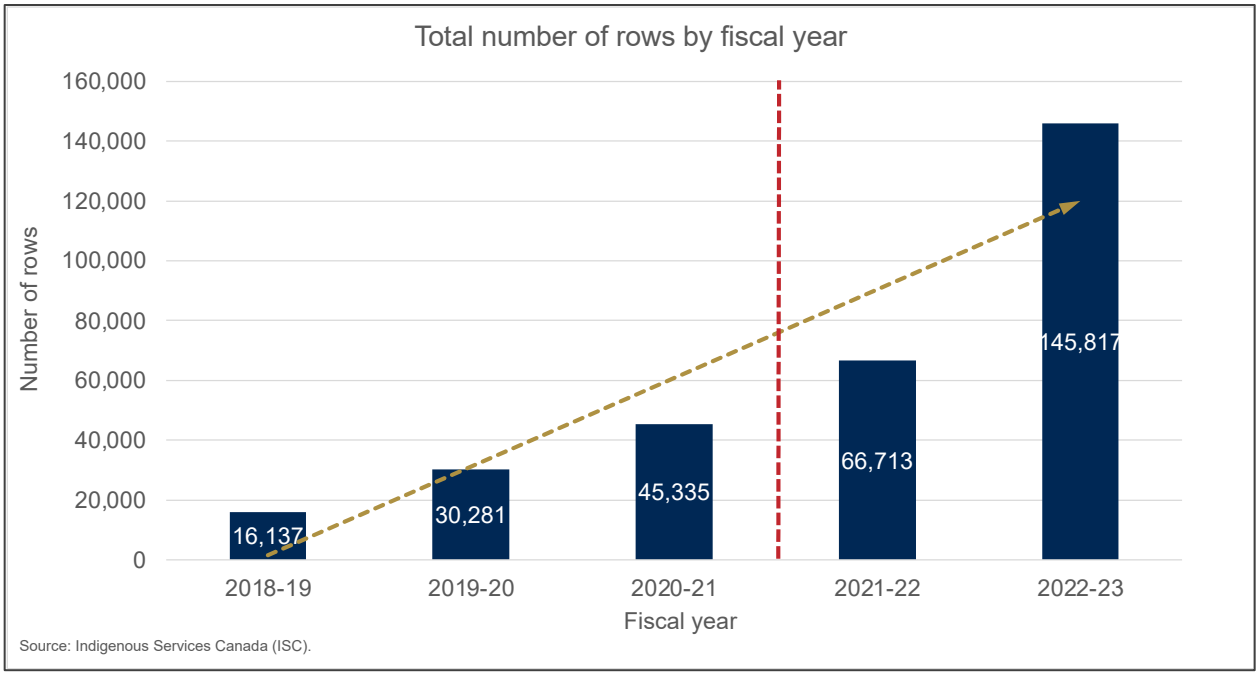
Expenditures (requested and approved) and instances of requests (approved and denied) have increased across fiscal years, and most significantly from fiscal year 2021-22. In fiscal year 2023-24, Jordan's Principle expenditures reached approximately $1.8B (Figure 1). (See Table 1 for details on the use of "rows" for counting instances of requests.)

Figure 1



There was a significant growth in requests between fiscal year 2021-22 and 2022-23 (119 percent increase) (Figure 2). Back to Basics[15] was introduced in 2022. IFSD cannot verify if or how the implementation of Back to Basics in 2022 impacted the increase in the number of requests. The data is untethered to ISC's administration, i.e., rules, evaluation, and public understanding of Jordan's Principle.

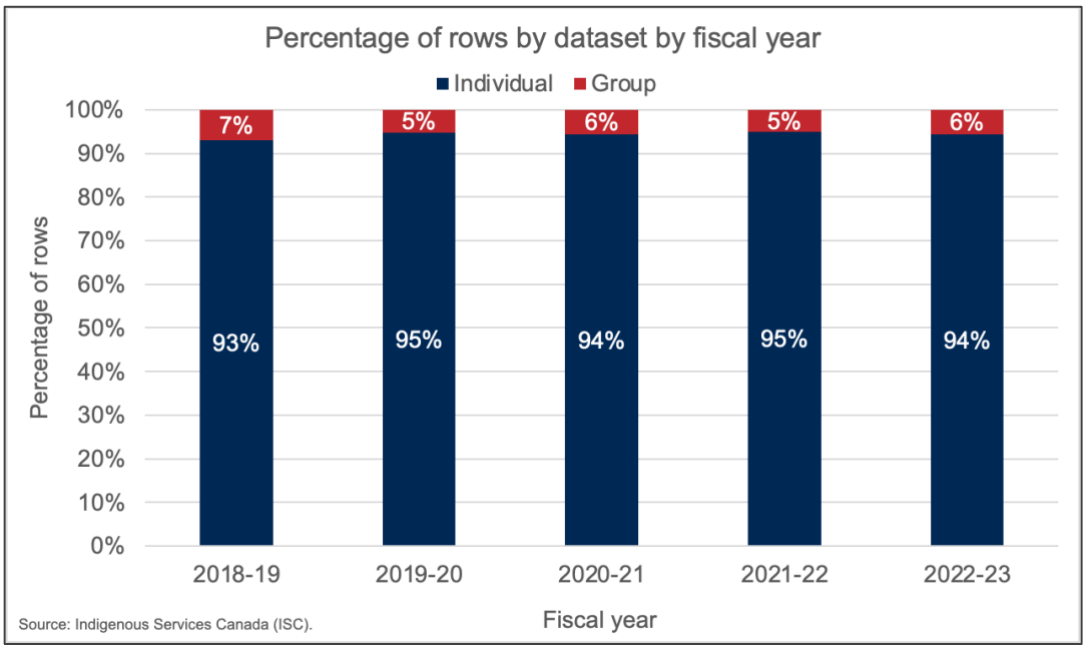
Figure 2



[15] Back to Basics is an approach evaluating requests to Jordan's Principle implemented by ISC in 2022. According to ISC, Back to Basics "placed the focus on ensuring First Nations and Inuit families have simple and timely access to the services and supports aimed at improving the well-being and healthy development of their children" (Indigenous Services Canada, *Departmental Results Report 2022-23* (Government of Canada, 2023): 19, https://publications.gc.ca/collections/collection_2023/sac-isc/R1-110-2023-eng.pdf), and ensures Jordan's Principle is implemented in a manner that is non-discriminatory, centers the needs and best interests of the child, is simple to access, timely, and minimizes the administrative burden on families," (Indigenous Services Canada, "2023-24 United Nations 2030 Agenda and the Sustainable Development Goals," *Government of Canada*, last updated March 9, 2023, https://www.isc.gc.ca/eng/1666291904593/1666291923094).

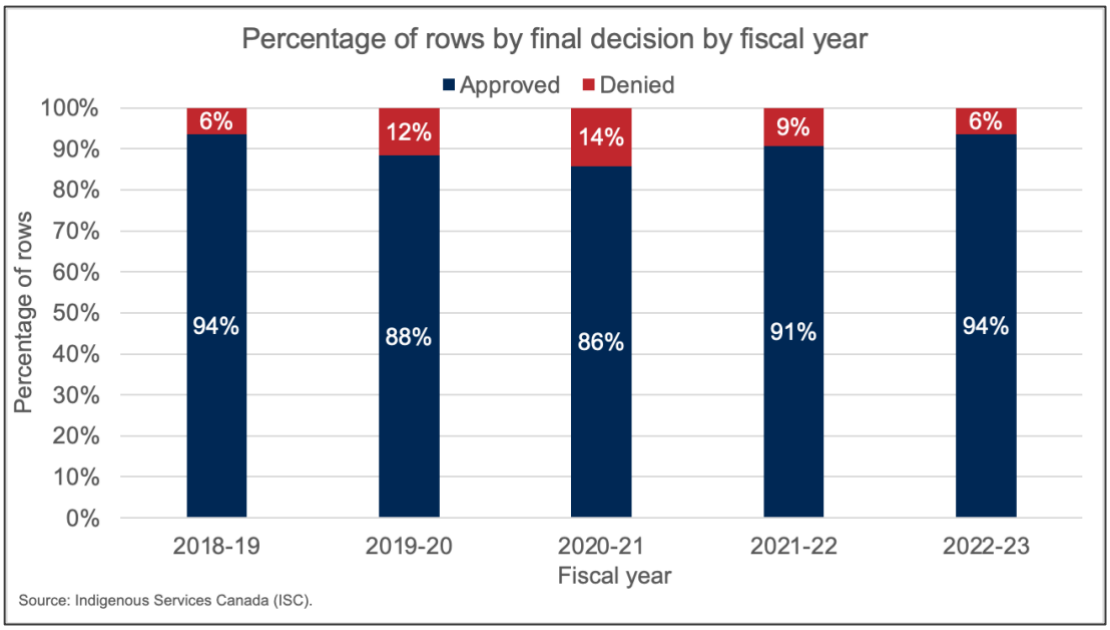
The majority (over 90%) of instances of requests are for individuals across fiscal years (Figure 3).

Figure 3



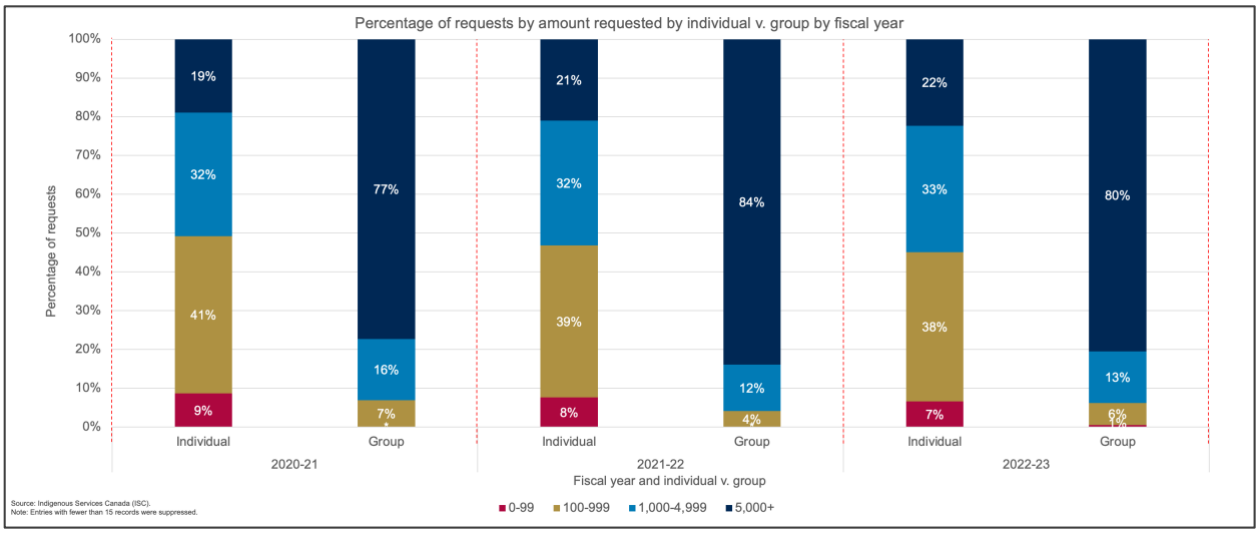
Across fiscal years, most instances of requests are approved (Figure 4).

Figure 4



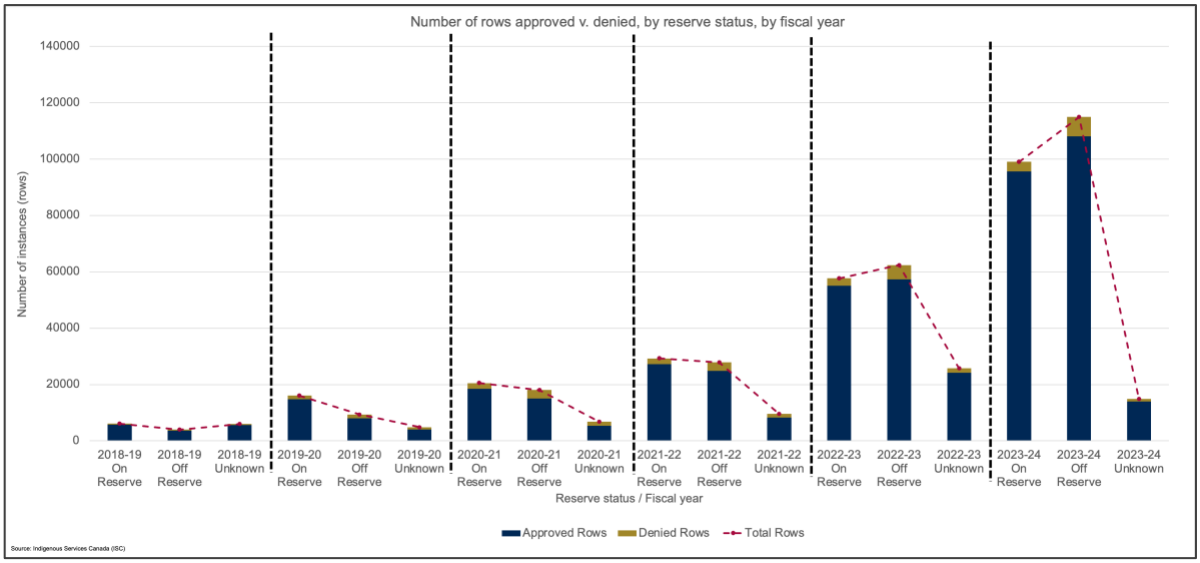
The largest shares of all requests are for amounts below $5,000. However, group requests across fiscal years are mostly for amounts above $5,000 (Figure 5).

Figure 5



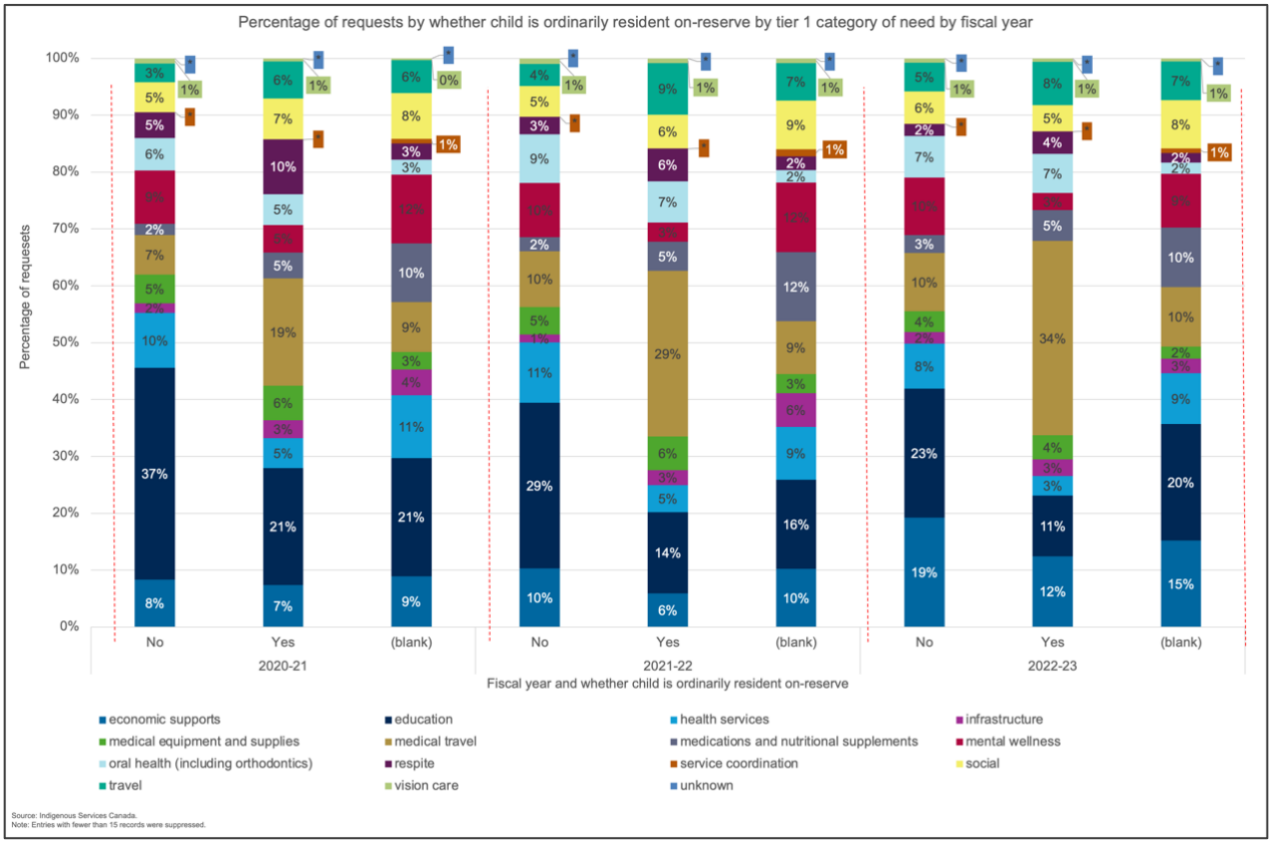
From 2018-19 and 2021-22, the total instances of requests were greater on-reserve than off-reserve. The trend shifted in 2022-23, in which total instances of off-reserve requests were greater (Figure 6).

Figure 6



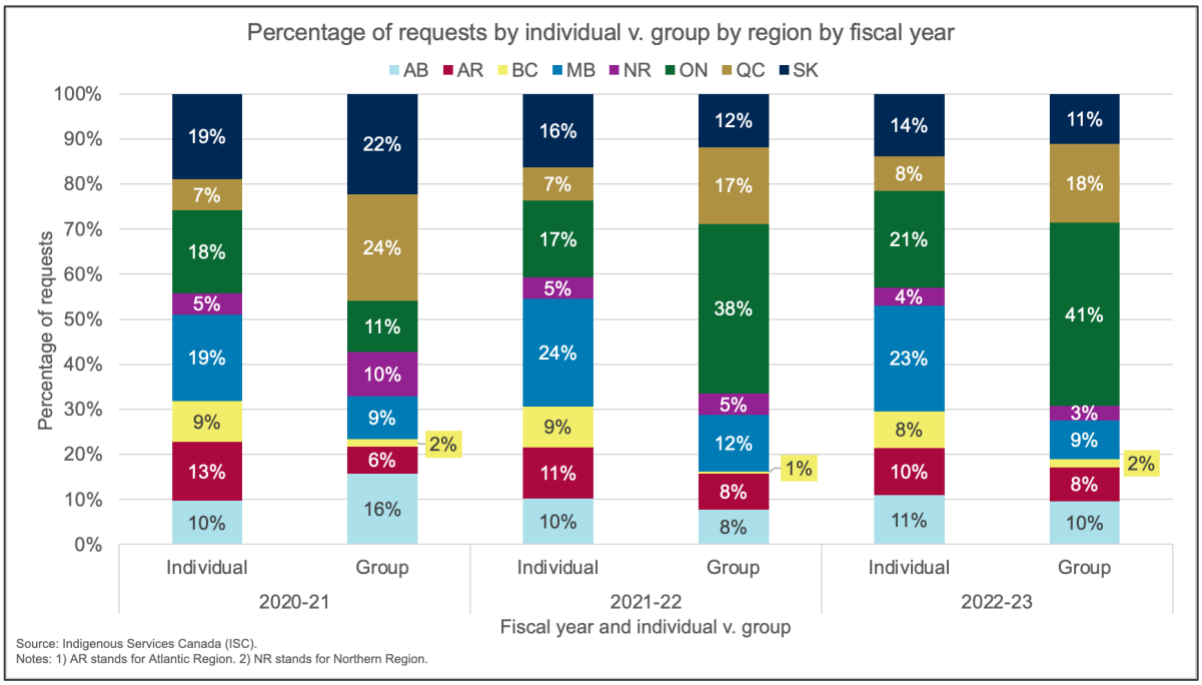
In fiscal year 2022-23, most requests on-reserve were related to medical travel. Off-reserve, requests were associated with education and economic supports (Figure 7).

Figure 7



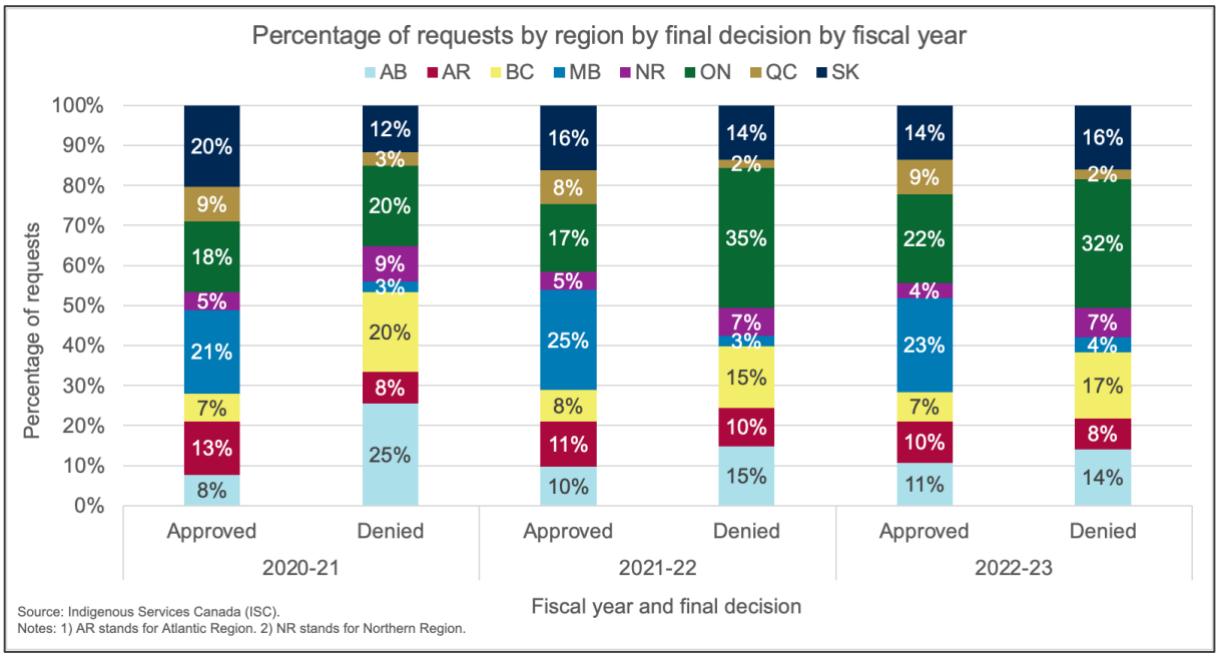
The largest shares of requests in fiscal years 2021-22 and 2022-23 are from Ontario and Manitoba (Figure 8). In fiscal year 2022-23, Ontario had the largest share of group requests and Manitoba the largest share of individual requests.

Figure 8



The largest shares of approved requests are from Manitoba and Ontario in fiscal year 2022-23. Ontario had the largest share of denied requests in fiscal year 2022-23.

Figure 9



The increased volume of requests and increased expenditures through Jordan's Principle are indicative of demand. The issue is that demand is not captured in relation to the goals of Jordan's Principle. The volume of data cannot compensate for a lack of understanding of needs addressed through Jordan's Principle or results for the well-being of children. **Jordan's Principle needs to be realigned to ensure its structure, accountability, delivery, and funding are all linked to its goals.**

The long-term sustainability of Jordan's Principle

An established legal principle, Jordan's Principle is **a call to action** to do better for First Nations children.

Jordan's Principle is intended to support access to health, education and social services for First Nations children, in their contexts. Contexts vary with well-established differences in areas such as housing suitability, household income, geography, etc., among First Nations, as well as with non-Indigenous people (see Appendix F). As a legal principle, Jordan's Principle rests atop existing programs to improve them, often addressing differences in context. To improve existing programs and services, the gaps that Jordan's Principle exposes in them must be closed.

The approach to Jordan's Principle must link ***structure, accountability, delivery and funding*** (Figure 10).

The structure will influence approaches to delivery and funding requirements. Accountability will be impacted by approaches to delivery, funding amounts, and funding recipients. Over time, proper accountability requires that the structure be adjusted based on the results generated for children.

While focusing on outcomes is paramount, it is also necessary to establish ***parameters***, such as standards for implementation, associated with Jordan's Principle to define eligibility and areas of intervention.

While focusing on outcomes is paramount, it is also necessary to establish ***parameters***, such as standards for implementation, associated with Jordan's Principle to define eligibility and areas of intervention. Such parameters may include: *individual and group access to Jordan's Principle, regardless of where a First Nation child lives in Canada, for their health, social well-being, and education-related supports, products, and services. In addition, operational parameters should be considered:*

1) Segment individual and group requests. They are addressing two different types of needs and should be evaluated separately. This means different funding streams and evaluation criteria.

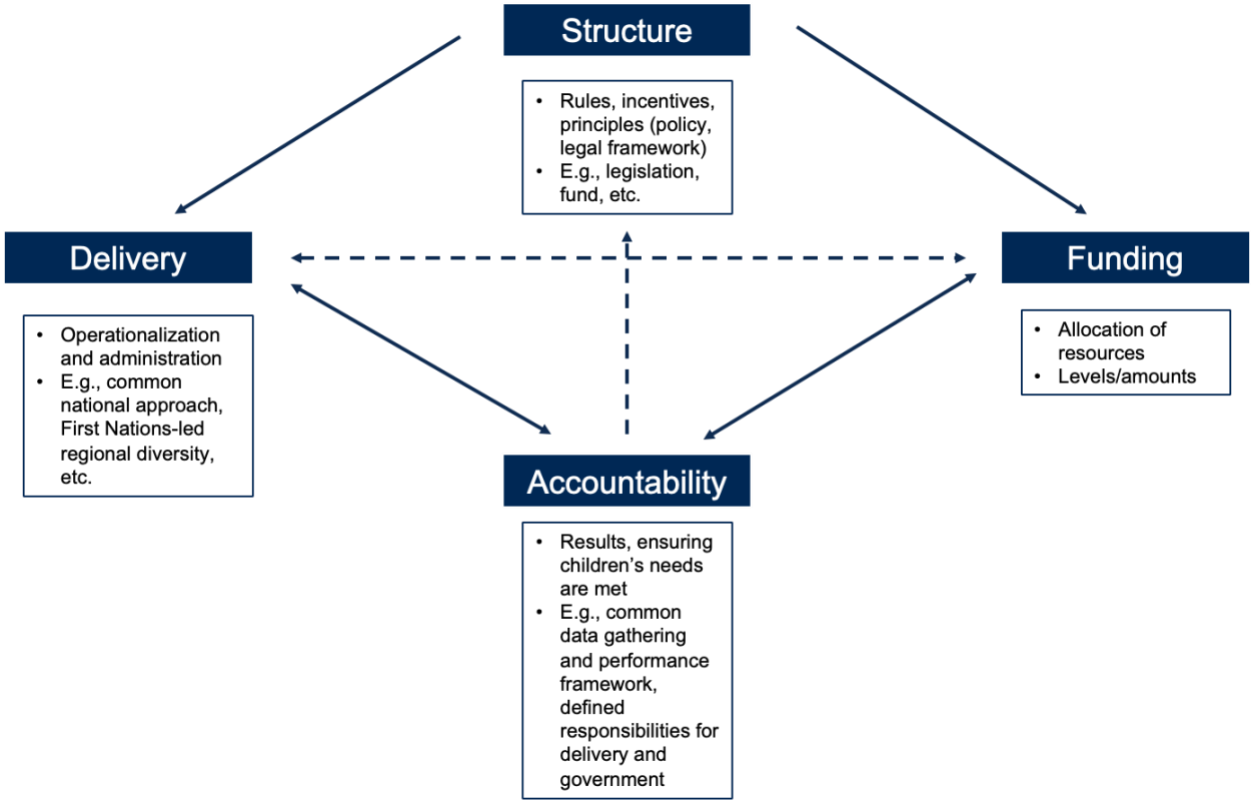
   Individual requests are typically for one child and their need(s) or a small number of children from the same family/kinship unit. With an individual request, the context of the child can be defined, and both the need and its root cause can be confirmed. Individual requests merit their own stream for evaluation. Group requests have been leveraged to address matters in various circumstances. For instance, a group request can be used for service access for multiple children confronting the same need, e.g., learning support. Group requests have also been used to build service coordination practices in some regions. By their nature, group requests may be proposed to address matters that are differently

quantified than individual requests. For these reasons, individual and group requests should each have their own assessment and eligibility criteria and separate evaluation streams.

2) Urgent requests could be differentiated between life-threatening and life-altering requests to improve evaluation speed. A service coordinator or designated person at intake could be accountable for defining the nature of urgency in concert with a relevant letter of support.

   In an assessment of how to define urgency, the common component was compressed time for reaction or decision-making. Urgent requests are not necessarily life threatening. IFSD proposes a decision tree in Appendix G to triage urgent requests. In this model, urgency is assessed on whether the request is for a life-threatening or life-altering matter. If life threatening, an immediate response is required. If life altering, comparability with provincial/territorial standards, substantive equality, etc., are applied.

Figure 10



Jordan's Principle can be reconceptualized to build a solution for First Nations children by identifying and addressing root causes of need rather than indefinitely addressing gaps. Over time, Jordan's Principle should help to close gaps permanently by

identifying areas of consistent need, so that fewer and fewer interventions are required because circumstances around the child have improved.

Structure

Defining a structure for Jordan's Principle means clarifying the rules and policy that govern its implementation, funding, and performance. A legal rule, Jordan's Principle lacks an established structure to guide its implementation. Its operation is reliant on administrative decisions, leaving Jordan's Principle vulnerable to those decisions.

In standard federal activity areas, there are three guiding components:

- Policy statement (*what is being addressed)*: purpose/intent of the activity.
- Structure (*how it will be addressed)*: legal, regulatory, and funding frameworks.
- Performance (*with what result)*: assessment of the activity.

These components are connected. A policy statement, with the problem to solve or issue to be addressed, guides the structure (which informs delivery and funding) alongside monitoring performance for change and to define when the goal has been achieved. The guiding components are useful markers for the enactment of a federal program or rule like Jordan's Principle.

> There are statements, guidelines, and rules associated with Jordan's Principle through ISC's website. Lacking, however, is a clear policy statement that guides and connects the structure, delivery, accountability, and funding of Jordan's Principle.

Table 2

What is the problem Jordan's Principle is trying to solve?	Inequity in the provision of social, education, and health services to First Nations children flowing from jurisdictional issues specific to First Nations children and discrimination in the construction, implementation and function of health, education, and social services provided to First Nations children.
What is the purpose of Jordan's Principle?	To ensure access to health, education, and social services for First Nations children, guided by substantive equality, or, to ensure substantive equality for First Nations children by providing access to health, education, and social services, including services beyond the "normative standard of care."
How was the purpose of Jordan's Principle intended to be achieved?	Initially, Jordan's Principle was intended to apply a "child-first" principle in the presence of a jurisdictional dispute that would otherwise delay or deny service delivery to a First Nations child—thereby circumventing the dispute in favour of service delivery. However, guided by reference to substantive equality, the ambit of Jordan's Principle has expanded to attempt to negate all barriers to equity with respect to health and social services for First Nations children, and/or to ensure equity in the provision of those services.
What results has Jordan's Principle generated?	Indeterminate for ISC. First Nations children and families are benefitting from Jordan's Principle. However, there is presently not enough publicly available information to determine results of Jordan's Principle in any meaningful way. The information ISC provides on the results of Jordan's Principle relate to outputs and are not true results. Without consideration of a child's context or

	starting point and the impacts on the child post-intervention, it is presently impossible to qualify what results Jordan's Principle is generating with respect to substantive equality.
Are there gaps in existing policy and legal frameworks to achieve the intended purpose?	Yes. As a legal principle, Jordan's Principle is implemented through administrative decisions. It is not a law nor is it a program. It is a legal principle that a government decided to implement. The administrative approach to Jordan's Principle could be changed by another government by increasing, decreasing, or constraining access to Jordan's Principle.

Jordan's Principle's policy has largely been defined by orders from the CHRT. The orders were interpreted by ISC and its predecessor departments to operationalize Jordan's Principle. There are statements, guidelines, and rules associated with Jordan's Principle through ISC's website. Lacking, however, is a clear policy statement that guides and connects the structure, delivery, accountability, and funding of Jordan's Principle (Table 2).

A policy statement must be defined for Jordan's Principle to guide structure and performance.

A clear policy statement defines the purpose of the action. Consider, for example, the policy statement on equalization from the Constitution Act 1982:

> Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.[16]

From this statement, a statute was enacted, a program established, and funding flowed through transfers with a mandatory five-year review of terms.

From ISC's website[17] there are various administrative rules for access and procedural guidelines on requests. These elements do not constitute a policy statement. The closest statement to policy is the discussion of ISC's obligations through Jordan's Principle on substantive equality:

> Pursuant to the CHRT May 26, 2017 decision as amended, the Government of Canada is to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services and to safeguard the best interests of the child.
>
> This requires Canada to provide all First Nations children, on and off reserve, and Indigenous children ordinarily living on reserve, with publicly funded benefits, supports, programs, goods and services in a manner and according to a

[16] *Constitution Act, 1982,* s.36 (2), https://laws-lois.justice.gc.ca/eng/const/FullText.html.
[17] Indigenous Services Canada, "Jordan's Principle."

> standard that meets their particular needs and circumstances, on a substantively equal basis with non-First Nations children.[18]

It may be assumed that this is the policy statement for Jordan's Principle, although this is not clear from ISC's website. The content of this policy, if it were enacted, would require linkages to a performance framework to assess the achievement of substantive equality. No such framework exists. Further, there is no definition of what constitutes access to services that are substantively equal with non-First Nations children.

A policy statement must be defined for Jordan's Principle to guide structure and performance. To offer a starting point for deliberations on a performance framework with the Regional Working Group[19], IFSD prepared a policy statement for consideration:

> *Jordan's Principle (named in honour of Jordan River Anderson) is a source of emergency resources to address the needs of First Nations children (no matter where they live in Canada) that are unmet by existing programs. The program areas include the necessities of life, e.g., housing, water, food, etc., health, e.g., physical, mental health, and allied services, and education, e.g., tools, specialized supports, etc.*
>
> *Requests to Jordan's Principle will be assessed to ensure equal treatment or substantive equality, by fostering equality in starting points between First Nation and non-First Nation children. The best-interests of the child and a culturally informed approach will be considered.*

The Regional Working Group disagreed with IFSD's statement and the premise of a discussion of a policy statement. A policy statement was for leadership to decide. Instead, the Regional Working Group offered guiding statements and considerations on the spirit and intent of Jordan's Principle:

1) Addressing the **root causes of need and gaps in existing programs and services**, especially in housing, health, and social services.
2) **Recognizing and understanding requests in their contexts** to achieve substantive equality because different places have different needs.
3) Accessing services, supports, and products **wherever and whenever needed**.
4) **Differentiating** between the ***needs* of children and the *wants* of parents**.
5) **Empowering families** to end cycles of dependency.
6) **Training and development for First Nations by First Nations** to empower First Nations in their communities to support the delivery of Jordan's Principle, leveraging local knowledge.

When considering the common elements of the Regional Working Group's recommendations and statements, the following summary statement is proposed:

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[18] Indigenous Services Canada, "Jordan's Principle: Substantive equality principles."
[19] The Regional Working Group's three workshop summaries are available in Appendix H.

Jordan's Principle is a sacred gift from Jordan River Anderson to ensure First Nations children have the supports, services, and products whenever they need them wherever they need them.

Jordan's Principle ensures that the root causes of need and gaps in existing programs and services are addressed (until they can be permanently repaired).

Children and youth live in different places. The pursuit of substantive equality requires that their unique contexts be recognized in the delivery of and access to services, supports, and products through Jordan's Principle.

To sustainably deliver Jordan's Principle in the cultural and linguistic contexts of First Nations, local talent will be essential. Training by First Nations for First Nations to develop local talent will be imperative to the success and sustainability of Jordan's Principle.

The content will inform the rules to govern a restructured approach to Jordan's Principle, guiding scope and parameters of activity.

Major federal programs that are demand-driven (as is Jordan's Principle), have clear policy, legal, and funding frameworks (Table 3). These elements are often defined in statute, with statutory funding.[20] The structure of these major programs provides clarity on access and eligibility, as well as parameters to establish funding requirements and forecasts of expenditures, such as for Employment Insurance (EI)[21] and Old Age Security (OAS)[22].

Table 3

Policies	Problem to solve/policy statement	Funding approach	Examples of driving factors that influence funding
Jordan's Principle	"[…] a child-first principle aimed at resolving jurisdictional disputes that impeded First Nations children from accessing government services. […] a legal obligation […], that responds to the unmet	The Government of Canada evaluates requests and covers the cost of approved products, services, and supports.	Unclear (e.g., how are unmet needs quantified?)

[20] Government of Canada, "2024-25 Estimates," last updated June 12, 2024, https://www.canada.ca/en/treasury-board-secretariat/services/planned-government-spending/government-expenditure-plan-main-estimates/2024-25-estimates.html.
[21] Office of the Superintendent of Financial Institutions and Office of the Chief Actuary, *2025 Actuarial report on the Employment Insurance Premium Rate* (Government of Canada, September 13, 2024), https://www.osfi-bsif.gc.ca/en/oca/actuarial-reports/2025-actuarial-report-employment-insurance-premium-rate.
[22] Office of the Chief Actuary, *Actuarial Report (18th) on the Old Age Security Program as at 31 December 2021* (Government of Canada, November 3, 2023), https://www.osfi-bsif.gc.ca/en/oca/actuarial-reports/actuarial-report-18th-old-age-security-program-31-december-2021.

	needs of First Nation children, regardless of where they live in Canada. The demand-driven initiative supports families in accessing products, services and supports for First Nation children and youth to help with a wide range of health, social and educational needs."[23]	There is no defined baseline or factors to estimate demand.	
Old Age Security (OAS)	"[T]o ensure a minimum income for seniors and contribute to their income replacement in retirement."[24]	Each OAS program (4 in total) has an annual net income threshold to receive benefit payments and maximum monthly benefit payments. Benefit payments are accessed based on criteria, e.g., age, income, etc.[25]	Population over age 65, resident in Canada Life expectancy Income level Inflation
Employment Insurance (EI)	To "provide eligible workers with temporary support to partially replace lost employment income."[26]	EI benefits are 55% of average insurable weekly earnings[27] to a maximum of $65,700 annually ($695 weekly). There are various rules that govern duration of the EI benefit. This is impacted by components such as earnings, seasonality of work, regional unemployment rate, etc.[28]	Population over age 15 Labour market data by region, e.g., participation, unemployment, self-employment, duration, etc. Earnings and benefits

[23] GC InfoBase, "Infographic for Jordan's Principle and the Inuit Child First Initiative."
[24] GC InfoBase, "Infographic for Old Age Security," *Government of Canada*, accessed February 14, 2025, https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#infographic/program/HRSD-BGN01/intro.
[25] Employment and Social Development Canada, "Old Age Security payment amounts," *Government of Canada*, last updated October 1, 2024, https://www.canada.ca/en/services/benefits/publicpensions/cpp/old-age-security/payments.html.
[26] GC InfoBase, "Infographic for Employment Insurance," *Government of Canada*, accessed February 14, 2025, https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#infographic/program/HRSD-BGO01/intro.
[27] Canada Revenue Agency determines what constitutes insurable earnings. These include "most of the different types of compensation from employment, such as wages, tips, bonuses and commissions" (Government of Canada, "Benefits for self-employed people," last updated May 2, 2025, https://www.canada.ca/en/services/benefits/ei/ei-self-employed-workers.html).
[28] Government of Canada, "EI regular benefits: How much you could receive," last updated December 31, 2024, https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit/benefit-amount.html.

From a public financial management perspective, Jordan's Principle merits the same structural parameters that exist for EI and OAS to ensure its sustainability. With Jordan's Principle, increased expenditure and broadened access were presumed to address the needs of First Nations children. The failing of the approach is that it leaves Jordan's Principle vulnerable to administrative decisions[29] (see Appendix I). Rules, structure and funding linked to relevant data (as in the cases of EI, OAS and other important programs), protect the long-term sustainability of Jordan's Principle to ensure it can meet the needs of First Nations children.

There are options for the structure of Jordan's Principle that can support differentiated delivery mechanisms. The options can be combined to produce various structures. For instance, the ombud[30] and boards of the administrative decision-making model can be included in the special operating agency. Each option has political considerations and vulnerabilities. **Regardless of the approach chosen, the principles of accountability, funding sustainability, and transparency will be paramount to ensuring the well-being of children. The status quo is thus the least desirable option relative to these principles.**

IFSD is presenting its analysis and recommendations from a public financial management perspective on structure, accountability, delivery, and funding for Jordan's Principle. The content of this report presents options and considerations for First Nations and First Nations leadership for decision-making on the future course of Jordan's Principle.

Regardless of the approach chosen, the principles of accountability, funding sustainability, and transparency will be paramount to ensuring the well-being of children. The status quo is thus the least desirable option relative to these principles.

Whichever course is determined by First Nations and First Nations leadership, information gathering for First Nations by First Nations must be included. This type of data can contextualize the environment, e.g., housing, emergency circumstances, etc., of product, support, or service requests for a First Nation child. It is the analysis of different starting points and gaps being addressed through Jordan's Principle that can be leveraged to promote substantive equality by remedying gaps in existing programs. First Nation-owned and First Nation-led data gathering can be the foundation of a national aggregate portrait of gaps, changes, and improvements.

[29] As part of this work, IFSD commissioned legal analysis on the legal security of Jordan's Principle. The analysis found that the administration of Jordan's Principle was its source of vulnerability. See Appendix I.
[30] See for instance, Naiomi Metallic, Hadley Friedland, and Shelby Thomas, *Doing Better for Indigenous Children and Families: A Report on Jordan's Principle Accountability Mechanisms* (Caring Society and Department of Indigenous Services Canada, 2022), https://digitalcommons.schulichlaw.dal.ca/reports/15/.

This type of First Nations gathered data has demonstrated impacts. The $2B in housing for First Nations committed in Budget 2022 was informed by First Nations data on housing needs and cost. The historic First Nations child and family services agreement in principle was underpinned by data from First Nations and First Nations child and family services agencies across Canada. Jordan's Principle deserves no less comprehensive treatment of data to inform decision-making tied to results for First Nations children.

A member of the Regional Working Group from the Northwest Territories fundamentally disagreed with the consensus of the group on the need for a common data gathering framework. From their perspective, First Nations children have been negatively profiled across generations. Additional data gathering linked to their unique contexts should only be done by the First Nations Information Governance Centre. Research done by First Nations for First Nations will align outcome of children's needs. The Regional Work Group member also recommended a more detailed conversation on a "common data" dialog before pursuing any research on First Nations children.

The options presented below should be read through the lens of First Nations governance. Pursuant to Assembly of First Nations (AFN) Resolution 60/2024, First Nations-in-Assembly will review and provide direction on negotiations and decisions for the reform of Jordan's Principle to the AFN Executive Committee and the Children's Chiefs Commission. Such direction should include representation and appointment processes for First Nations-led boards included in several options. First Nations should also define their goal for Jordan's Principle and an associated performance framework. The framework will be integral to orienting efforts and measuring progress toward their vision. IFSD notes that a regional working group proposed components of such a framework (see Appendix K).

Jordan's Principle's current structure is premised on administrative decisions (informed by CHRT orders). Administrative decisions take the form of guidelines and directives that define eligibility for access and allowable programs, products, and supports and services, with implications for both administrators and users of Jordan's Principle.

The administrative flexibility of Jordan's Principle allows for changes through internal decisions. Other than CHRT orders, there are limited (non-judicial) tools to guide government decisions. This means that a government can increase, restrict, or alter access to Jordan's Principle, impacting its operation and delivery. As a result, Jordan's Principle is vulnerable to administrative decisions.

The flexible application of Jordan's Principle has had benefits, for example, in applying resources to different types of community-level services, coordination functions, etc. Such a flexible approach, however, is not sustainable. There are significant gaps in ISC's data gathering associated with results from Jordan's Principle. Any initiative that cannot demonstrate performance is vulnerable to adverse funding decisions. Jordan's Principle is no exception.

Structure is about rules that create incentives and guide the behaviour of actors in a system. There are various options for structuring Jordan's Principle. The options below are presented in two groups: legislative and non-legislative options. Structural options for Jordan's Principle are linked to elements of delivery, funding, and accountability (see Figure 10).

> Despite diversity of mechanisms, consistency in the application of Jordan's Principle would support its effective administration. Even with a diversity of approaches, a set of consistent rules can be employed to ensure that all First Nations children can benefit from access to Jordan's Principle.

There are various approaches to delivery possible through the structural options for Jordan's Principle. It is expected that different approaches will continue within and across regions. Despite diversity of mechanisms, consistency in the application of Jordan's Principle would support its effective administration. Even with a diversity of approaches, a set of consistent rules can be employed to ensure that all First Nations children can benefit from access to Jordan's Principle.

Funding for Jordan's Principle would ideally be linked to demand-driving factors related to health, education, and social services. As noted in this report, there is insufficient information on what drives demand in Jordan's Principle to estimate funding requirements. In the Funding section of this report, alternative approaches to cost estimation are proposed. Ideally, however, Jordan's Principle would benefit from the same treatment as OAS and EI, with clear eligibility and funding parameters.

Mechanisms for accountability, e.g., reporting, should align to resource flow and delivery. The effort should be led by First Nations for First Nations. This means that ISC's role in data should be defined by the revised structure. Reporting must also align to existing Government of Canada policies on sound financial management. These policies and directives provide protections for both the funder, i.e., Canada, and the recipient, i.e., First Nation or entity accountable for delivery.

There are clear rules and guidelines on comptrollership and accountability for spending federally:

1) The Treasury Board Policy on Transfer Payments[31] requires that transfers have appropriate controls, are cost effective, have appropriate oversight, and meet the purpose/intent of the transfer.

[31] Treasury Board of Canada Secretariat, "Policy on Transfer Payments," *Government of Canada,* last updated December 20, 2024, https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=13525.

2) The Directive on Transfer Payments[32], section 6 (cash management) defines the latitude of departmental managers. However, there are clear terms and conditions and rules of contribution approaches that apply.

   In the case of Jordan's Principle, there are no such terms defining engagement with funding recipients (in the case of payments/reimbursements). This section of the directive would make it seem prudent to have mandated regional bodies, like the First Nations Health Consortium (FNHC) in Alberta, with defined agreements with the federal government to issue payments for Jordan's Principle through a contribution agreement. That way, controls are maintained locally, where expenditures are occurring. Such an approach would also uphold section 7, where the organization engaged in the grant or contribution would be required to produce audited financial statements and relevant reports on expenditures.
3) The Framework for Management Compliance[33] has helpful details on obligations and repercussions. This is important to define why comptrollership is necessary for transfer payments.

Veterans Affairs has various programs with transfer payments to individuals. For instance, the Treatment Allowances program[34] requires assessment from a medical officer and treating physician or medical examination during hospitalization or other treatment:

> [T]reatment allowances may be paid to an eligible pensioner during periods of hospitalization or on an out-patient basis for acute care of a pensioned condition, when the care is prescribed by a treating physician and a consulting departmental medical officer has confirmed the care to be "acute care"; or when the person undergoes a medical examination as requested by the Veterans Review and Appeal Board and is hospitalized in order to undergo the examination. The TPP does not have repayable contributions.[35]

Anytime there are transfers to persons, there are clear terms, guidelines, and criteria in place that align to comptrollership rules. A new structure for Jordan's Principle could include such parameters, enhancing its operations.

There are impacts and options for the various possible structures with implications for the implementation of Jordan's Principle. The options represent trade-offs that should be assessed against the priorities of First Nations and their leadership.

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[32] Treasury Board of Canada Secretariat, "Guideline on the Directive on Transfer Payments," *Government of Canada,* last updated October 3, 2024, https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=19421&section=html.
[33] Treasury Board of Canada Secretariat, "Framework for the Management of Compliance," *Government of Canada,* last updated August 27, 2010, https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=17151.
[34] Veterans Affairs Canada, "Details on Transfer Payment Programs," last updated May 24, 2024, https://www.veterans.gc.ca/en/about-vac/reports-policies-and-legislation/departmental-reports/departmental-plans/departmental-plan-2024-2025/supplementary-information-tables/details-transfer-payment-programs#tpp-ppt26.
[35] Veterans Affairs Canada, "Details on Transfer Payment Programs."

Legislative options

Legislation (law enacted by Parliament) provides rules to govern behaviour,[36] aligned to the spirit and intent of the matter being legislated. The legislative options to structure Jordan's Principle include:

1) Law with a program for implementation, e.g., Farm Income Protection Act.
   A law could be established and require a federal program, Jordan's Principle, to operationalize the law. A program would be defined in alignment with the spirit and intent of the law, with regulations around accessing Jordan's Principle. Funding for Jordan's Principle (the program tied to the law) would be appropriated annually. Over time, should there be clarity in the drivers of demand for Jordan's Principle, a revision to the legislation and statutory funding may be sought. Applying a formula without clarity around the sources of demand, however, risks misaligning resources and needs.

   Example: The Farm Income Protection Act (FIPA) authorizes agreements between the federal government and provinces to protect the income of agricultural producers. The Department of Agriculture and Agri-Food Canada administers several programs, under FIPA, to this end, including AgriInsurance, AgriInvest, and AgriStability. Each program has defined goals and parameters to uphold FIPA. Funding arrangements vary by program.

2) Law establishing an administrative decision-making structure for Jordan's Principle, e.g., Social Security Tribunal.

   An administrative decision-making structure for Jordan's Principle can be defined, removing ISC from the direct administration of Jordan's Principle. A national body would be established through legislation (see Appendix J for a national approach and a hybrid approach with regional decision-making structures). In both the national and hybrid approaches, an ombud function is included. Depending on its formulation, the administrative decision-making structure may report through and receive funding through an existing department, e.g., ISC. This practice is common. Consider, for instance, the Social Security Tribunal that operates at arm's length of government but receives funding through Employment and Social Development Canada (ESDC).

   Example: The Social Security Tribunal (SST)[37] is an independent administrative tribunal that makes decisions on appeals related to Employment Insurance, Canada Pension Plan (CPP), CPP benefits, Old Age Security and Guaranteed Income Supplement benefits. SST, while operationally independent, reports to Parliament through the Minister of Employment, Workforce Development and Official Languages (the SST is linked to the ESDC portfolio). Members of the

[36] Justice Canada, "How New Laws and Regulations are Created," *Government of Canada,* last updated July 21, 2021, https://www.justice.gc.ca/eng/laws-lois/index.html.
[37] Social Security Tribunal of Canada, "Our work, our people," last updated July 10, 2024, https://www.sst-tss.gc.ca/en/our-work-our-people.

SST make decisions on appeals based on facts and the law. Funding for the SST comes from statutory sources related to its mandate (EI Operating Account, CPP Operating Account, and Consolidated Revenue Fund for OAS matters).

3) Law establishing a fund to make available resources for Jordan's Principle, e.g., Ship-source Oil Pollution Fund[38] (the Ship Fund).

   A law would define the creation of an administrative decision-making structure for Jordan's Principle or a program, with the provision to establish a fund for its operations. Initial capitalization would be required. It is possible that Jordan's Principle could replenish funds by recovering costs for programs, supports, and services paid through the fund that should have been covered by other departments or orders of government. The administrative decision-making structure would operate independently of government in its assessment of requests, it would be required to report annually to Parliament through a designated minister, e.g., ISC. If a program were established and resourced through a fund, the program would report through ISC.

   Example: The Ship Fund (established through Part 7 of the *Marine Liability Act*[39]) provides compensation to those impacted by oil pollution in Canadian waters. The Ship Fund is managed by Ship and Rail Compensation Canada, which operates independently of the Government of Canada (it is an administrative tribunal). The Ship Fund reports to Parliament through the Minister of Transport. The Ship Fund operates as a limitless compensation fund, initially funded through levies on oil shippers and now sustained by cost recovery from polluters and growing interest. If the fund were ever insufficient to cover compensation costs, it could seek additional funding from the government. There are also options to replenish the fund that may be engaged: (1) recovering costs from polluters, and (2) reintroducing levies on oil shippers.

Legislative options require Parliament's approval to amend or rescind. In principle, legislative options provide stability because change requires time and parliamentary processes. Legislation is proposed by the government and represents its approach to addressing an issue or expressing commitment to an objective.

Legislation, however, does not guarantee funding. If legislation is defined with a statutory provision for funding, Parliament's approval of the legislation and the associated funding formula are deemed to be approved. However, if funding is non-statutory, any funding related to its enactment, e.g., through a program, is subject to annual parliamentary appropriation. Annual appropriations for the program and administrative decision-making structure are most likely. The fund may have a one-time investment or a pre-defined annual schedule of investments, which may then be subject

[38] Ship and Rail Compensation Canada, "Ship Fund," accessed April 2025, https://ship-rail.gc.ca/ship.
[39] *Marine Liability Act*, S.C. 2001, c. 6, https://laws-lois.justice.gc.ca/eng/annualstatutes/2001_6/FullText.html.

to annual appropriation. The lack of clarity on sources of demand for Jordan's Principle limit both associated funding estimates and defining formulas for a statutory option.

Approaches to the delivery of Jordan's Principle are expected to remain diverse across regions if a legislative option were selected. The legislation would not be expected to impact current approaches. For example, First Nation-led, as in Manitoba, regional organizations, as with First Nations Health Consortium in Alberta or the Council of Yukon First Nations, etc. It is expected that legislation would allow for variable implementation insofar as common rules are upheld.

With legislative options for structure, the definition of a floor or baseline of required action is useful in defending and sustaining gains. The law is a source of rules to which to appeal in legal action or advocacy. While a law would provide clarity on the spirit and intent of Jordan's Principle and the rules to guide its implementation, the law alone is insufficient to guarantee a result. Each of the legislative options present trade-offs in time for implementation, complexity, and politics.

Establishing administrative decision-making structures for Jordan's Principle would be time and resource intensive. The structures would take years to draft and pass legislation, and subsequently establish the operating entities. It took roughly one year to establish the SST from the announcement in Budget 2012 to its operation in 2013 (although it merged existing administrative tribunals, i.e., functioning entities)[40]. The Immigration and Refugee Board stems from the 1985 *Singh* decision from the Supreme Court of Canada and was operational in 1989[41]. It is assumed that the establishment of a fund would be more complex than funding an administrative decision-making structure through annual parliamentary appropriations.

Among the legislative options, a law with an associated program would be the least complex from an administrative perspective. The law would require the establishment of the program that would operate within ISC. Annual funding would flow through ISC and the department would be required to report to Parliament, just as it currently does for all its programs. While Jordan's Principle's operation would continue to reside with ISC, a law would provide clarity around its rules, spirit, and intent to guide the implementation. With a program tied to a law, there would be less vulnerability of Jordan's Principle to administrative decisions. Rules associated with Jordan's Principle (as defined in law) would have to be upheld through delivery through the Jordan's Principle program. With a law, contraventions can be clearly defined and argued.

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[40] Employment and Social Development Canada, "Review of the Social Security Tribunal of Canada," *Government of Canada,* last updated April 19, 2022, https://www.canada.ca/en/employment-social-development/corporate/reports/evaluations/social-security-tribunal-review.html.

[41] See Immigration and Refugee Board of Canada, "The Immigration and Refugee Board of Canada celebrates 30 years," *Government of Canada,* last updated May 22, 2019, https://www.irb-cisr.gc.ca/en/stay-connected/Pages/30-years-irb.aspx.

From the drafting of proposed legislation (with a policy case), through defining and obtaining financial and management authorities for implementation, legislative options will take time to develop and implement.

Political support from government and approval by Parliament would be required for any of the legislative options. From the drafting of proposed legislation (with a policy case), through defining and obtaining financial and management authorities for implementation, legislative options will take time to develop and implement.

The legislative options for a revised structure for Jordan's Principle represent different priorities. If independence from ISC is prioritized, a decision-making structure operating independently from ISC would be preferable. Beyond establishing the structure through legislation, operationalizing its activities would take years. A decision-making structure would be established in law, its operating parameters defined, and funding determined. Then, the department of the minister to which the decision-making structure is linked would undertake the hiring process. Once completed, the decision-making structure would be accountable for delivering Jordan's Principle.

If the priority is clarity of rules for Jordan's Principle in support of its consistent implementation, then a law with a program would be preferable. This option would be implemented faster than a law with a decision-making structure. While operating within ISC, the program would benefit from the rules defined in law for its operation. It is expected that a law for Jordan's Principle would define rules for access, eligibility, and delivery, with consideration of reporting to ensure results for First Nations children.

Non-legislative options

Non-legislative options can be implemented by the federal government without a law enacted by Parliament. The arrangements for these structures are made administratively.

1) Special Operating Agency within an existing department, as with the Coast Guard within the Department of Fisheries and Oceans.
   Special Operating Agencies (SOA)[42] are units within a department that benefit from independence and a separate accountability structure to fulfil their mandates. Established through a framework agreement (between the deputy minister, minister, and Treasury Board), SOAs do not require legislation. Although they are part of an existing department, not separate legal entities, their mandates are separate and clearly defined.

   For Jordan's Principle, an SOA could be established with administrative guidelines and data gathering developed by First Nations and ISC (assuming it is

[42] Treasury Board of Canada Secretariat, "Overview of federal organizations and interests," *Government of Canada,* last updated August 16, 2016, https://www.canada.ca/en/treasury-board-secretariat/services/reporting-government-spending/inventory-government-organizations/overview-institutional-forms-definitions.html.

the host department). Funding for the Jordan's Principle SOA would be included in departmental reference levels, i.e., through annual appropriations. A special purpose allotment (SPA)[43] could be applied to funding for the Jordan's Principle SOA to ensure it cannot be reallocated within the department. Separate reporting requirements to uphold accountability (relative to its mandate) would be important. An ombud could be established in association with the SOA to report annually on results from a First Nations-defined performance framework for Jordan's Principle. The framework, combining case-level and national data, could shed light on areas of demand and ties to existing federal program areas. The ombud could interface with ISC to ensure the appropriate administration of Jordan's Principle, consistent with the SOA's mandate.

Example: The Canadian Coast Guard[44] is an SOA within the Department of Fisheries and Oceans. Its mandate to provide safety and accessibility in Canadian waterways is defined in the *Oceans Act* 1996 (s. 41(1)), with other functions defined in the *Canada Shipping Act* 2001 (s. 129(1) and (2)). Results and activities are reported through the Department of Fisheries and Oceans annually. The Coast Guard has greater management and financial flexibility through the Maritime Security Framework[45].

2) Status quo: The current approach to Jordan's Principle is reliant on administrative decisions. Funding is appropriated annually. There are no accountability mechanisms for public reporting on results. In its current form, Jordan's Principle has systemic weaknesses that threaten its sustainability.

Non-legislative options for Jordan's Principle benefit from administrative expediency relative to legislative approaches. Engaging in a framework agreement within a department (through the deputy minister, minister, and Treasury Board) can be undertaken without the often lengthy parliamentary processes for enacting legislation. The establishment of an SOA could be a step toward stabilizing operations in Jordan's Principle before pursuing additional or alternative structural changes. For instance, an SOA may be established, with legislation pursued at another time. As with any administrative arrangement, changes are feasible with less procedure than legislative processes, and there are no rules (defined in law) to define operations.

The different structural options presented for Jordan's Principle are not mutually exclusive. For instance, legislation may be pursued following the establishment of an SOA. An ombud could be tied to many or all of the options presented. An SPA could be applied to a program structure (with legislation) or to an SOA. Defining priorities for

[43] Treasury Board of Canada Secretariat, "Allotments," *Government of Canada,* last updated January 3, 2012, https://www.tbs-sct.canada.ca/ems-sgd/ac-ca-eng.asp.
[44] Canadian Coast Guard, "Canadian Coast Guard," *Government of Canada,* last updated April 1, 2025, https://www.ccg-gcc.gc.ca/index-eng.html.
[45] Canadian Coast Guard, "Maritime Security Framework," *Government of Canada,* last updated July 26, 2019, https://www.ccg-gcc.gc.ca/publications/maritime-security-surete-maritime/framework-cadre/index-eng.html.

structure will assist in assessing options and exploring combinations of options to effectively address priorities.

Irrespective of the chosen reformed structure for Jordan's Principle, it will be necessary to:

1) Clarify the Jordan's Principle baseline and cap funding (with escalators) for a 2-to-3-year period until data gathered from Jordan's Principle provides clarity on needs and funding requirements.

2) Define the reformed structure for Jordan's Principle with a consensus of practitioners and the parties. Implement the change with a two-track approach:
    a. Track 1: Gather relevant data (as defined in point #1 above) to clarify the needs of First Nations children and funding through Jordan's Principle.
    b. Track 2: Leverage the gathered data to redefine eligibility parameters for Jordan's Principle. The gathered data can help to redefine a baseline, suitable escalators, and a performance framework linked to the spirit and intent of Jordan's Principle.

Accountability

Jordan's Principle is helping children by ensuring they have access to supports and services when they need them. There has been a consistent growth in the number of requests to Jordan's Principle across fiscal years. While Jordan's Principle is concealing gaps in other program and service areas by supplementing resources or expediting access to products supports or services, clarity around its operation and impacts is needed for its sustainability.

As a legal principle, Jordan's Principle's operation is contingent on administrative decisions by the federal government. An administrative change can increase, decrease, or restrict access to Jordan's Principle. Any program or initiative that cannot demonstrate its performance is susceptible to adverse funding or administrative decisions.

ISC's current performance measurement of Jordan's Principle

ISC is measuring the performance of Jordan's Principle with a single indicator: the number of products, services, and supports multiplied by the number of associated children (Figure 11). This means that neither the number of products, services, and supports, nor the number of individual children making requests, is defined in existing reporting. This indicator is useless in assessing equality or substantive equality for First Nations children. The utility of the indicator is confined to counting the instances of issued products or services. This is a problem.

This means that neither the number of products, services, and supports, nor the number of individual children making requests, is defined in existing reporting. This indicator is useless in assessing equality or substantive equality for First Nations children.

ISC's approach does not align to the Government of Canada's *Policy on Results*[46], nor the *Policy on Transfer Payments*[47]. The essence of these interconnected policies is to

[46] Treasury Board of Canada Secretariat, "Policy on Results," *Government of Canada,* last updated September 8, 2023, https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=31300. See sections:

> 3.1.1. Improve the achievement of results across government; and
> 3.1.2 Enhance the understanding of the results government seeks to achieve, does achieve, and the resources used to achieve them.

[47] Treasury Board of Canada Secretariat, "Policy on Transfer Payments."

ensure that public expenditures are delivering intended results, with appropriate oversight and controls. This means that inputs (i.e. resources), outputs (i.e. program activities), and outcomes (i.e. results) should all be measured to understand program performance. ISC is only capturing program inputs (i.e. dollars spent) and some vague form of outputs (i.e. activities).

See the following sections in *Policy on Transfer Payments*:

> 4.2.2 Transfer payment programs are designed, delivered and managed in a way that achieves outcomes, contributes to departmental results, takes account of risk and clearly demonstrates value for money;
>
> […]
>
> 4.2.4 Transfer payment programs are accessible, understandable and useable by applicants and recipients, including the following:
>
> > 4.2.4.1 The administrative requirements on applicants and recipients, which are required to ensure effective control, transparency and accountability, are proportionate to the level of risks specific to the program, the value of funding and the risk profile of applicants and recipients;
> > 4.2.4.2 Applicants and recipients are engaged in support of innovation, continuous improvement, and the establishment of fair, transparent and positive relations with them; […].

Figure 11

▼ Detailed Results (2023-24 to 2024-25)

Planned Results for 2023-24 | Planned Results for 2024-25

Jordan's Principle and the Inuit Child First Initiative is seeking to achieve **1** result in 2024-25. Progress towards meeting these results will be measured using **1** indicators . Progress towards meeting these results will be measured using **1** indicators . Assessed performance against these indicators will be reported in **fall 2025**.

Filter results

Expand all | Collapse all

Results

▼ First Nations and Inuit children have access to products services and supports

Indicator	Number of approved products, services and supports for First Nations and Inuit children
Date to achieve target	0
Target	Target to be determined
Target explanation	As this initiative is demand-driven and responds to the unmet needs of First Nations children, a stable Projection estimate cannot be established. As the eligibility criteria broadens and as more First Nations become aware of Jordan's Principle, the number of approved products, supports and services are expected to increase at rates that cannot be forecasted.
Methodology	Explanation/Rationale: The indicator measures the total number of approved products, services and supports for First Nations and Inuit children. This is an indicator of access to services and potential impact on improved outcomes for First Nations and Inuit children. Jordan's Principle and Inuit Child First Initiative administers funding through two models: individual and group requests. For individual requests, ISC assumes that by virtue of approving a request and dispersing funds for the product, service or support that the funds have reached the intended individual. For group requests, data collection relies on the estimated number of children intended to be served as detailed in the request proposal. Group funding recipients may also collect data per the terms of the Contribution Agreement, but the data is unstructured and may be inaccurate or incomplete. Calculation/Formula: The figure is a count of the number of approved requests multiplied by the number of children presumed to benefit from those products, services and supports. Measurement Strategy: The data collection tool for the Jordan's Principle and Inuit Child First Initiative is JPCMS (Jordan's Principle Case Management System). Baseline: 365,668 (2020-2021)
Last year's target	Target to be determined

Data sources: Departmental Results Reports, Departmental Plans, Public Accounts of Canada

Datasets: Performance information (results and indicators) by Program and by Organization, Planned performance information (results and indicators) by Program and by Organization, Expenditures and Planned Spending by Program, Actual and Planned Full-Time Equivalents (FTEs) by Program

▶ Footnote(s)

The administrative challenges with Jordan's Principle, from extensive backlogs in opening requests and inconsistent interpretation of rules to a lack of measurement and monitoring for results, fail to meet the objectives of both policies. The administration of Jordan's Principle has been a consistent issue before the CHRT. There have been multiple non-compliance motions brought forward to highlight its ineffectual administration and challenges for those seeking access through Jordan's Principle. The administration stemming from the reactive implementation of Jordan's Principle has resulted in a lack of structure and limited data to assess results for children. These issues were clearly defined in an internal departmental audit in 2019,[48] yet remain unresolved.

For Jordan's Principle to be sustainable, its performance must be measurable, and its results made clear (Table 4).

[48] Indigenous Services Canada, "Audit of the Implementation of Jordan's Principle," *Government of Canada,* last updated October 28, 2020, https://www.sac-isc.gc.ca/eng/1594378735468/1594378764255.

Table 4

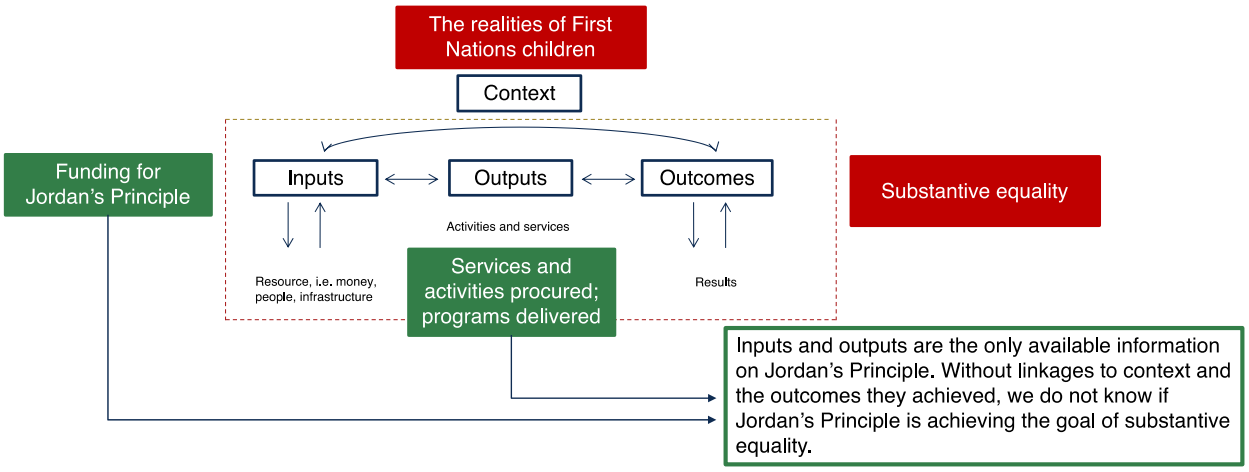
What we know	Jordan's Principle is addressing needs.
What we don't know	The root causes of requests to Jordan's Principle…why are children in need? We know inequalities exist, but what are they? How are they affecting children?
Why this matters	Jordan's Principle is concealing gaps in existing program areas. Understanding the root causes of need is critical to developing informed policy and funding decisions to support well-being over the long-term.

As a legal principle, Jordan's Principle's operation is contingent on administrative decisions by the federal government. An administrative change can increase, decrease, or restrict access to Jordan's Principle. Any program or initiative that cannot demonstrate its performance is susceptible to adverse funding or administrative decisions.

There is no way of knowing if the funding from Jordan's Principle is addressing gaps in substantive equality. This would require linking ***why*** the claim was being made, i.e., the shortfall being addressed, to ***what*** happened to the child's/group's wellness after the claim (Figure 12).

> A **consistent approach** to gathering **child-centred data** means more **relevant data** that can be used to **measure and monitor children's needs and identify gaps in existing programs and services**.

Figure 12



There are core pieces of information that are missing from data capture on Jordan's Principle. Namely, why children are seeking support from Jordan's Principle and what happens to them following the intervention. A **consistent approach** to gathering **child-**

centred data means more **relevant data** that can be used to **measure and monitor children's needs and identify gaps in existing programs and services**.

As expressed by the Regional Working Group, the goal of data gathering should be *consistency with decency*. A consistent approach ensures regular and common information is gathered to benefit all children by improving Jordan's Principle and identifying gaps in existing programs. Decency means engaging respectfully with children and families, avoiding duplication of requests, and following OCAP® Principles.

Presently, data gathering is inconsistent across regions. While some First Nations or regions are collecting good information, capacity for analyzing it is limited. A common data gathering framework, defined by Jordan's Principle technical experts, would help to standardize access to and administration of Jordan's Principle.

The limitations of consistently captured relevant data were a concern of the Regional Working Group. The consideration was also reflected in case studies, in which those delivering Jordan's Principle designed their own tools for both data capture and for assessing the reasonableness of expenditures where no tools or consistent methodology existed. The extract below from the Regional Working Group's meeting captures concerns about the collection and analysis of data for Jordan's Principle:

> A critical concern was identified in the discussions: the current national data for Jordan's Principle, predominantly administrative in nature, fails to capture the complex and unique needs of First Nations children. This data does not reflect the realities on the ground, nor the specific needs of the children, families, and communities seeking support from Jordan's Principle.
>
> To address the gap between a community's reality and requests to Jordan's Principle, it was proposed that local data about First Nations should be gathered by First Nations to establish a baseline of well-being (in compliance with OCAP® principles). This community-level information on well-being could be used to help contextualize requests to Jordan's Principle. This dual approach of community data with administrative data could offer a more comprehensive view of the needs and challenges faced by First Nations children.
>
> Regionally, administrative practices to data gathering share many commonalities with some variations […].
>
> There is a recognized opportunity to develop a comprehensive set of indicators to test data gathering methods specific to Jordan's Principle. The working group underscored the importance of self-reliance in these processes to ensure that control over information remains with the First Nations and their designated organizations.
>
> To address these challenges, the working group identified several areas in need of development:
>
> 1) Support for capacity building for data collection: training for people, the right tools, and processes are needed to equip First Nations and their organizations for data gathering and analysis.
> 2) Gap analysis of existing federal programs: Jordan's Principle helps a lot of children but it also covers gaps in existing federal program areas. Those gaps need to be identified and quantified.
> 3) Data management infrastructure: it would be powerful to have a consistent approach for First Nations-led data gathering and analysis for Jordan's Principle. Such infrastructure would

support the aggregation of data in a manner that facilitates comparative analysis and transparent reporting.

4) Data disaggregation: the working group called on ISC to disaggregate and report on data by territory (Northwest Territories, Yukon, Nunavut), rather than rolling it up into an aggregate category.

Read the full second meeting summary here.

Regional and national aggregation of data and analysis are possible, when information gathering is standardized and relevant to the delivery of Jordan's Principle.

IFSD understands ISC's current data gathering and processing of requests as follows:

1) Intake: information entered
2) Review: recommended action
3) Decision: confirmed/denied
4) Notification: communication of decision
5) Payment: issued to recipient

From the backlogs identified in ISC's December 2024 letter to the CHRT, it appears that ISC would benefit from a common online intake form to alleviate pressures at the intake and review steps. The same form would benefit First Nations and other organizations delivering Jordan's Principle to capture consistent data for analysis. The data gathered could improve connections between outputs and desired outcomes. At the time of writing, and as documented in internal audits, ISC cannot demonstrate results in Jordan's Principle.

ISC's internal challenge with Jordan's Principle appears to be operational and administrative. It is not *more* people that are needed for administration, but clearer guidelines and tools for managing Jordan's Principle. The implementation of Jordan's Principle has been layered, inconsistent, and disjointed as ISC reacted to implement CHRT rulings.[49]

Given the internal challenges, ISC employees associated with Jordan's Principle should be allowed to try different approaches to improve operations, even if some of these attempts initially fail. There are opportunities for pilot projects with leading First Nations organizations delivering Jordan's Principle with capacity to collaborate with ISC. These opportunities for research and learning of best practices among First Nations and other relevant providers should inform an evidence-based approach to changing the administration of Jordan's Principle.

There are various considerations for improving the administration of Jordan's Principle based on IFSD's findings:

1) Reform ISC's intake process.

[49] Indigenous Services Canada, "Audit of the Implementation of Jordan's Principle."

2) Invest in technology to build an alternative child-centred approach to intake and request management.
3) Focus on the child when gathering data. This means those locally delivering Jordan's Principle should gather data and share relevant subsets with ISC.

Centering the child in data gathering and analysis will be imperative for understanding if the operation of Jordan's Principle is upholding its spirit and intent of substantive equality.

The approach will take at least three years to be functional. Year 1 will be the introduction and implementation of a common data gathering framework. Years 2 and 3 will be for data gathering and analysis. At the close of Year 3, the information can be analyzed not to define results, but to define an initial set of parameters to inform Jordan's Principle. With the information on the gaps it is addressing or the surrounding programs and service failures it is concealing, an approach to addressing those gaps could then be defined.

Table 5 provides an overview of basic information about a child making a request, much of which could be coded at intake.

Table 5

Nature of request	• Individual • Group • Point-in-time • Ongoing/long-term • Recurrent (varying intervals) • Urgency: immediate urgent need or other
Context	• Location: on-/off-reserve • Province/territory and name of FN or city/town • Geographic zone (1-4) • Age of child • Poverty/deprivation, i.e., expressed need for basic necessities, income supports, etc. • Risk factors for child, e.g., health, mental health, environment, etc. • Requestor's relation to child • Letter of support from professional/other
Gap analysis	• WHY is the child seeking support through Jordan's Principle, e.g., deprivation/poverty, geographic location, lack of services, unfunded by another program, etc. • Were other supports, services, or programs sought prior to the request? Why is support being sought through Jordan's Principle?
Input	• Date of request • Location of intake • Item/service/support requested (use ISC's list?) • Cost • Supporting letter/referral
Output	• Other services/referrals made through request, e.g., provincial/territorial service, federal program, First Nation or

	organization program, such as budget building or healthy grocery shopping • Evaluation of request • Amount issued v. requested; item/service issued v. requested • Risk factors to note for parent or child • Expected short-term impact on child (may be best as a statement, i.e., with Product X, the child will…)
Outcome	• Starting point of child (at time of request) versus follow-up at close of file or point-in-time (A possible approach is to follow a sample of children accessing Jordan's Principle to assess outcomes over time) • Did the child or their family make another requested? • Did the child improve or no longer require additional support following the intervention? • Were gaps in other service areas identified?

Information from the consistent capture of relevant data on Jordan's Principle can be used to inform planning and expenditures. If the data or a similar subset from Table 5 were gathered, it could be used to define needs, track gaps in other program areas, and inform parameters for accessing Jordan's Principle. Such consistency could improve planning and create stability for those accessing and delivering Jordan's Principles. Guidelines and changes to date have been ad hoc and reactive. Using relevant information from Jordan's Principle to reset its course would be a step towards stability and sustainability.

As long as these gaps remain, there is no way of assessing progress toward formal or substantive equality of access to services through Jordan's Principle. A national strategic performance framework is an essential component of a sustainable approach to Jordan's Principle.

A performance framework can be linked to a common data gathering framework. The Regional Working Group defined a two-pronged approach to data capture to support a performance framework:

1) Case-level information focused on the child; and,
2) Community-level data to capture the context of the child's lived environment, for example, housing suitability, potable water, employment, etc.

A performance framework is a tool to measure to monitor change relative to a goal or desired outcome. With all the information gathered on Jordan's Principle, we still do not know *why* children are seeking support and *what* happens to them following an intervention.

As long as these gaps remain, there is no way of assessing progress toward formal or substantive equality of access to services through Jordan's Principle. A

national strategic performance framework is an essential component of a sustainable approach to Jordan's Principle.

The Regional Working Group defined the importance of the framework as a tool to ensure equity for First Nations children and to define gaps to improve programs and services. From a public financial management perspective, the evidence generated from the framework can help to sustain Jordan's Principle by demonstrating its results for children, especially when faced with decisions on its expenditures.

Building a national strategic performance framework for Jordan's Principle would:

1) Measure and monitor the needs of children;
2) Identify gaps in existing programs and services;
3) Hold Canada accountable;
4) Ensure the structure, delivery, and funding approaches to Jordan's Principle are working; and,
5) Measure progress toward the defined spirit and intent of Jordan's Principle.

Wholistic well-being was a guiding principle for the Regional Working Group for the national strategic performance framework. In their discussions, the Regional Working Group defined a series of national indicators. Some indicators were aggregations of case-level data, while others were broad community-level indicators that could be captured from public and other data sources.

The indicators defined by the Regional Working Group are captured in Table 6. They are clustered thematically. IFSD was tasked by the Regional Working Group with identifying broad community-level indicators to contextualize the case-based data (also included in Table 6). To operationalize the performance framework, definitions for indicators, measures, and data capture are to be defined. Sources of information include case-level data (aggregated), Census data, Regional Health Survey (RHS) data, and ISC data.

The development and operationalization of a strategic performance framework will take time. It is, however, imperative that it be done to ensure accountability in Jordan's Principle. This means ensuring structure, delivery, and funding are meeting the needs of children.

The content in Appendix K, to explore the indicators defined by the Regional Working Group, is illustrative. First Nations and leadership should review and revise the content to align with a revised structure and/or changes in delivery and/or accountability. This information should be gathered and analyzed by First Nations for First Nations. Additional support (people, tools, funding) will be required in most First Nations or First Nations-mandated organizations to gather and analyze this or similar data.

Table 6

Category	Indicators
Education and pedagogy	Literacy rates in English and/or French
	Literacy rates in Indigenous languages
	Numeracy rates
	Elementary school completion rate
	Duration to completion of high school
	Age at high school graduation
	Change in expected educational outcomes
	Post-graduation outcomes for youth with complex or special needs
	Support or service to develop inherent talent or ability
Family well-being	Sense of community belonging
	Stability of family arrangement
	Contact with child and family services
	Children in care accessing Jordan's Principle
Health and wellness	Recreational opportunities around the child
	Instances of exceptional health-related supports and services
	Health outcomes at least equal to or better than the general population
	Health services consistent with Canada Health Act standards (as a minimum)
	Instances of requests for mental health and/or spiritual supports defined as: crisis, maintenance, or normal/self-care
Nature of requests and defined needs	WHY – Reason for accessing Jordan's Principle (root cause(s))
	Instances of intergenerational Jordan's Principle requests, e.g., adolescent parent accessing Jordan's Principle
	Nature of request: point in time; on-going/long-term; repeated
	Instances of children ageing out but requiring ongoing support
	Instance of navigation to access Jordan's Principle
	Instances of referrals to existing supports and services
	Identifying the source of the referral, e.g., Elder, physician, etc.

	Were the child's needs met through Jordan's Principle
Community well-being	Instances of community trauma
	Cultural knowledge
	Access to land
	Access to Elders
	Community emergencies impacting well-being
Access and funding	Number of non-Indigenous and non-First Nation organizations/recipients receiving funding through Jordan's Principle
	Documented fee increases or supplemental fees incurred when paid through Jordan's Principle
	Details on requests and transfer amounts through Jordan's Principle
Broad national indicators (proposed by IFSD)	Housing suitability
	Housing in need of repair
	Food security
	Rates of substance misuse (alcohol, drugs)
	Access to potable water
	Deprivation (income measure, relative to the relevant Market Basket Measure)
	Employment rate
	Unemployment rate
	Highest level of educational completion
	Instance of critical health issues (Note: Dependent on Regional Health Survey data)
	Access to health and dental services (Note: Dependent on Regional Health Survey data)
	Rates of access to Income Assistance
	Population by geographic zone

Delivery

The administration of Jordan's Principle by ISC is addressed in the structure, funding, and accountability sections of this brief.[50] In this section, analysis will focus on the delivery of Jordan's Principle by practitioners across regions.

There are four main approaches to the delivery of Jordan's Principle[51]:

1) **Service coordination:** Service coordinators in First Nations support applications and submit them to ISC.
2) **First Nation-administered:** First Nations accept and approve applications to Jordan's Principle (with certain limitations). Any applications that are beyond scope or are to be denied are referred to ISC.
3) **First Nation organization-administered:** First Nations organizations support applications and/or accept and approve applications to Jordan's Principle.
4) **Direct to ISC:** Requests for support are submitted directly to ISC.

Within the diversity of regional approaches, what is permitted as a practice in one region, e.g., the use of pre-paid credit cards, gift cards, vouchers, was not necessarily permitted in all regions. An extract of the first Regional Working Group meeting summary captures the different approaches and rules for delivery:

> Different approaches, different people, and different rules yield different results. The regional working group shared the diversity of their approaches to delivering Jordan's Principle […]. There were creative approaches and solutions that were shared, but it was clear that what was permitted in one region, e.g., pre-paid credit cards, gift cards, vouchers, was not necessarily permitted in others. The variance in accepted approaches needs to be addressed.
>
> There was special emphasis placed on the importance of relationships with regional ISC officials, namely focal points. As in any interaction, positive relationships can promote collaboration and mutually beneficial solutions. Certain regions highlighted the strengths and benefits of their positive working relationships with regional ISC officials. One region even noted that their ISC counterparts spend time learning about their First Nations and have quarterly meetings scheduled with First Nations and their regional support organization. These regular interactions are opportunities for information sharing, learning, and problem solving, which promote better outcomes for the region.
>
> Participants underscored the impact one public servant can have in managing their request. If a Jordan's Principle request cannot be approved regionally, it is escalated to headquarters, entering 'the ISC black box,' leaving the requestor with limited information and recourse until a decision is rendered. With significant staffing changes in some regions, participants expressed challenges with consistent decision-making at the regional level. What an official four weeks ago may have approved, another may be denying. The advocacy for consistency is left to those working in and supporting First Nations.

[50] In an effort to map ISC's internal operationalization of Jordan's Principle, IFSD prepared a map of its internal structure on a best efforts basis (using publicly accessible information). In addition, IFSD prepared a policy map that reflects the external view of Jordan's Principle's operation. See Appendix L.
[51] IFSD sought legal opinions on matters of liability for First Nations in the delivery of Jordan's Principle. The two opinions and a summary are available in Appendix M. IFSD's summary is not legal advice, nor is it a legal interpretation. IFSD invites readers to review the opinions and seek legal advice.

The Caring Society is regularly called upon for support and intervention across regions when challenges arise with delayed responses and denied claims.

There was a call for greater transparency and information sharing on how decisions are made regionally, what parameters are in place to guide decisions, and whether there are inter-regional assessments of consistency in the application of Jordan's Principle. Participants suggested that ISC's officials and those working in First Nations and supporting organizations should all access the same training to ensure consistent information is shared. In their discussion on the future of Jordan's Principle, the regional working group noted the need for national standards and goals with local care and control of delivery to mitigate the variances.

Read the full first meeting summary here.

IFSD has worked with First Nations and First Nations organizations to develop nine case studies on the delivery of Jordan's Principle (six of which have received approval for use in public reporting). The cases survey different models and approaches to delivering Jordan's Principle. Mandates and activities differ, highlighting the varying levels of risk, expertise, and internal controls required to manage activities associated with Jordan's Principle.

IFSD has worked with First Nations and First Nations organizations to develop nine case studies on the delivery of Jordan's Principle.

The cases represent how Jordan's Principle has been applied and leveraged to meet different needs. Consider the Yukon First Nations Education Directorate (YFNED), which built a comprehensive approach to education-related supports for youth. From the redesign of curriculum, to school-based advocates and dedicated professional services like psychologists, YFNED is "building better communities." They have defined their own approach and actualize it by taking advantage of the lack of structure and policy framework around Jordan's Principle. It's a double-edged sword. While the flexibility suits them, it also means that criteria and funding access can change, and reporting requirements are inconsistent, limiting information on how children are doing (Appendix N1).

Frontline workers attending Nishnawbe Aski Nation's (NAN) "As We Gather," conference highlighted operational challenges in Jordan's Principle and proposed operational improvements. They emphasized the scope of their responsibilities in Jordan's Principle that extend beyond their official functions (Appendix N2).

A service coordinator shared their experience in developing criteria for managing requests through Jordan's Principle. They were concerned that Jordan's Principle is creating a reliance on temporary solutions without building capacity and resilience in families. Service Coordinator X considers a return to the spirit and intent of Jordan's Principle to be the meaningful support of children and families by focusing on needs, building resilience in families, and providing tools for sustainable well-being (Appendix N3).

A self-governing First Nation implementing a pilot program shared their efforts to stand up a delivery approach to Jordan's Principle. Their efforts to serve their citizens were challenged by the inconsistent management of Jordan's Principle by ISC (Appendix N4).

The Council of Yukon First Nations (CYFN) built their own approach for the operationalization of Jordan's Principle. With an intake process, expenditure tracking, and case management system, CYFN is documenting how Jordan's Principle is being used to address the root causes of need. Extending their existing health and social mandate, CYFN leveraged their internal practices to introduce needed parameters on the delivery of Jordan's Principle to support needs (Appendix N5).

The North Shore Mi'maq Tribal Council (NSMTC) identified gaps in the program and service needs of children in its seven First Nations. Existing programs were insufficiently resourced and too inflexible to meet needs, so they turned to Jordan's Principle. Using a two-track approach of service coordination and clinical services, NSMTC was able to provide the critical services needed by children in their communities. Their work is complicated by the inconsistency of ISC's management of Jordan's Principle. The irregular management and decisions impact NSMTC's work (Appendix N6).

> The administrative flexibility of Jordan's Principle has been beneficial in developing approaches to meet diverse needs. However, practitioners' ability to continue doing so was a matter of ongoing concern given the variability in ISC's management of Jordan's Principle.

In surveying the different modes of delivery across regions, the importance of variation to meet different contexts is clear. However, also evident is the gap in consistent parameters and criteria to support practitioners in the delivery of Jordan's Principle. In many cases, practitioners themselves defined tools for data gathering and assessment where none existed. Their approaches are also reactions to the varied allowable expenditures and practices in the regions. The administrative flexibility of Jordan's Principle has been beneficial in developing approaches to meet diverse needs. However, practitioners' ability to continue doing so was a matter of ongoing concern given the variability in ISC's management of Jordan's Principle.

Funding

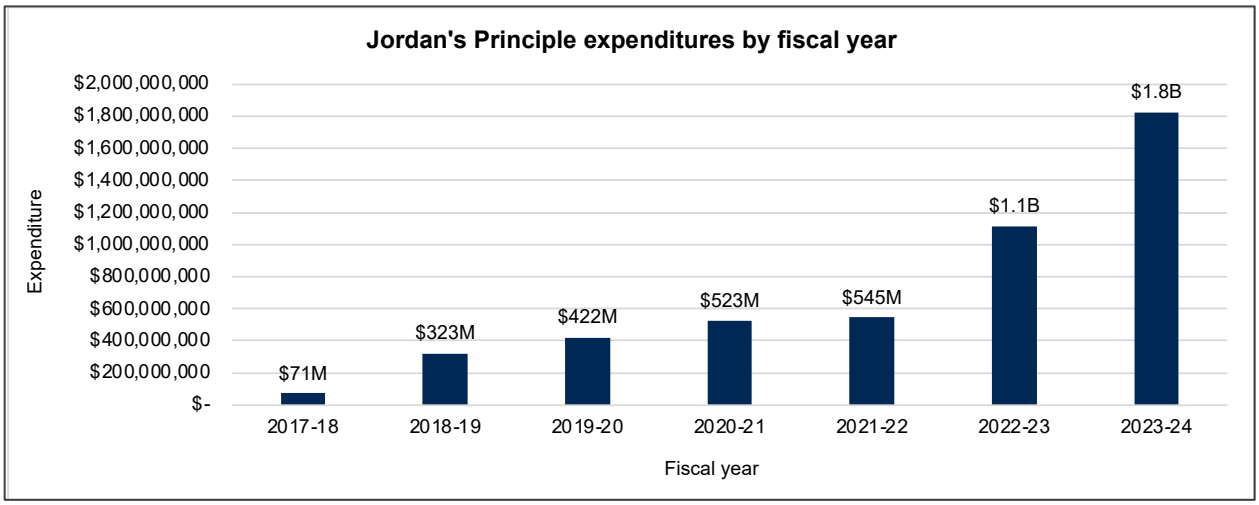
There are two crucial elements for estimating the costs of Jordan's Principle:

1) Baseline, i.e., a starting point. How the baseline is defined and what is included should be clarified (Table 8); and,
2) Escalators, i.e., the factors that influence/change the base expenditure over time (Table 9).

> Typically, when a demand-driven measure is introduced, there is a period of growth followed by stability. The stability comes from consistent terms and saturation of the eligible population. Jordan's Principle expenditures do not exhibit these characteristics.

Jordan's Principle has seen significant increases in expenditures in the last three fiscal years. This could be due to a change in demand, changes in the rules for access, or some combination thereof. The significant and persistent growth in Jordan's Principle across fiscal years is unusual. Typically, when a demand-driven measure is introduced, there is a period of growth followed by stability. The stability comes from consistent terms and saturation of the eligible population. Jordan's Principle expenditures do not exhibit these characteristics.

Figure 13



Other demand-driven programs in Canada have defined factors that influence their expenditures and are established in law. While Jordan's Principle is demand-driven, it is treated differently. While a legal rule, it does not have the structure or defined funding arrangement of Employment Insurance (EI) or Old Age Security (OAS). This is a vulnerability – outlined in the Structure section of this report above – that should be addressed.

At the time of writing, we do not have sufficient and consistently captured data on Jordan's Principle to estimate a bottom-up cost based on defined factors, e.g., program or service gaps, needs of children, etc. Nor is there consistency in delivery mechanisms and cost drivers that would allow for estimates to be inferred.

Jordan's Principle is providing products, supports, and services in the areas of health, social services, and education for First Nations children. These are expenses that can be quantified as part of Jordan's Principle's overall annual expenditures. Requests for products, supports, and services may be assessed with consideration of substantive equality. Their issuance is largely a matter of equal treatment, i.e., ensuring First Nations children have the products, supports, and services where and when they need them.

Using the Spirit Bear Plan as a framework, associated federal programs aligned to the areas of action can be defined, pursuant to federal funding obligations on reserve. As depicted in Appendix O, a minority of federal programs aligned to the Spirit Bear Plan have gap and cost analysis completed. Such gap and cost analysis would be best undertaken with First Nations sharing their primary data.

Given these limits for estimating the bottom-up costs of Jordan's Principle and for estimating the costs of substantive equality, IFSD proposes estimating the cost of Jordan's Principle on an interim basis until such time that data capture is improved to inform access parameters and costs. Inconsistent data that is untethered to the spirit and intent of Jordan's Principle means that expenditure data cannot be linked to needs or other sources of demand. We know that expenditures are increasing, but we do not know why, nor is there appropriate data to decipher the cause.

To estimate the cost of Jordan's Principle, IFSD is proposing options for a baseline and escalators. This is an interim approach until better information, tied to the spirit and intent of Jordan's Principle, is available.

Table 7

Baseline	Description	Value ($)
Fiscal year 2023-24 expenditures (Baseline 1)	Full and final Jordan's Principle expenditures for fiscal year 2023-24. This captures status quo rules on access and significant growth in requests and expenditures.	$1.8B
Poverty gap 2023-24 (Baseline 2)	Deprivation/poverty is a root cause of need and gaps in substantive equality in points of departure for First Nations children. An income-based poverty gap could be a proxy for a Jordan's Principle baseline. IFSD has used the Census (2016[52]) estimate of the median household income for First Nations (on-reserve) adjusted to 2023 prices and Statistics Canada's estimate of a Market Basket Measure (MBM) (Canada's official measure of poverty) for remote areas to estimate the poverty gap for First Nations.	$1.3B

Table 8

Escalator	Description	Rate of growth (rounded)
Average growth rate of Jordan's	Jordan's Principle expenditures have grown significantly over the last five years. If there are no changes to the structure or	36%

[52] Following a consultation with Statistics Canada, IFSD is using Census 2016 total median household income data with adjustments for inflation in its cost estimation, as it considers the number a more accurate (albeit imperfect) reflection of the current state of First Nations.

Total median household incomes as captured in Census 2016 and Census 2021 increased significantly for First Nations. Statistics Canada has also observed general growth in income across Canada (see Statistics Canada, "Pandemic Benefits Cushion Losses for Low-Income Earners and Narrow Income Inequality – After-Tax Income Grows Across Canada Except in Alberta and Newfoundland and Labrador," *Government of Canada*, last updated July 13, 2022, https://www150.statcan.gc.ca/n1/daily-quotidien/220713/dq220713d-eng.htm).

Nationally, pandemic relief programs and other direct transfers to persons, e.g., increases to the child benefit, contributed to the income growth. While every First Nation is different, and the sources of their income changes unique, the pandemic relief programs and direct transfers were nationally available and were likely an important factor in the income growth observed for First Nations. Moreover, Statistics Canada indicated a change in Canada Revenue Agency (CRA) reporting with Form T90 for First Nations (starting in 2019) which could contribute to differences when making historical comparisons—although the size and direction of the impact is unknown.

Principle expenditures (Escalator 1)	parameters of Jordan's Principle, growth may continue. The average growth rate as an escalator would represent a continuation of growth based on the mean.	(see Figure 13 for total expenditures by fiscal year)
Average growth rate of Spirit Bear-related programs (Escalator 2)	Various federal programs align to the Spirit Bear Plan of closing gaps in essential services for First Nations children. Assuming Jordan's Principle addresses gaps in these program areas, the average rate of growth in the last five years of this basket of programs could be used as an escalator to estimate growth in Jordan's Principle expenditures. Notes: 1) This estimate uses publicly available information on GCInfoBase. Since, ISC has significantly changed their program definitions on GCInfoBase over the past 5 years, the estimate is illustrative. Use of more granular, internal data would yield a more precise estimate for change in spending on areas that align to the Spirit Bear Plan. 2)The recent significant increases to the First Nations Child and Family Services Program are an exception. The program is excluded from the calculation of average growth as an outlier, as are expenditures on Jordan's Principle. 3) This estimate includes spending on programs for First Nations on and off reserve.	11% (see Table 9 for programs aggregated thematically associated to the Spirit Bear Plan)
Moving average growth of GDP (Escalator 3)	Some major federal transfers such as the Canada Health Transfer and Equalization grow with an escalator equal to the moving average growth of the nominal Gross Domestic Product (GDP) in the current and past two years. Using the economic projection from the 2024 Fall Economic and Fiscal Update, escalators based on nominal GDP growth can be estimated for the next five years.	Various (see Table 10 for the escalator by fiscal year)

Table 9

Estimated Spirit Bear program-related expenditures (millions) by fiscal year						
	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Health and Mental Health (excl. infrastructure) (ISC)	$3,437	$3,602	$4,284	$4,842	$4,840	$5,324
Education (excl. infrastructure) (ISC)	$2,370	$2,390	$2,440	$2,650	$3,020	$3,100
Infrastructure (incl. housing, water, health, education) (ISC)	$2,179	$2,127	$2,358	$3,001	$5,564	$3,890
Income Assistance (ISC)	$1,030	$983	$1,220	$1,300	$1,320	$1,570
Governance (ISC and CIRNAC)	$581	$1,273	$1,527	$1,734	$1,613	$756
Emergency Management Assistance (ISC)	$165	$241	$790	$668	$491	$595
Indigenous Early Learning and Child Care Transformation Initiative (ESDC)	$12	$121	$197	$176	$232	$285
Other (ISC, CIRNAC, ESDC, and Department of Justice)	$735	$658	$1,192	$1,223	$898	$1,127
Total	$ 10,900	$ 11,958	$ 14,589	$ 16,253	$ 19,018	$ 18,468

Table 10

	2024-25	2025-26	2026-27	2027-28	2028-29
Escalator value (%)	6.25	3.6	4.1	4.0	4.1

The estimates with Baseline 1 and Baseline 2 vary depending on the escalator applied (Table 12). Escalator 3 presents the most modest estimates, whereas Escalator 1 and Escalator 2 generate the highest estimates across fiscal years (Figure 14 and Figure 15).

> For the sustainability of Jordan's Principle, a baseline should be defined and capped by reasonable escalators tied to the needs of children being served by Jordan's Principle.

Table 11

Estimated Jordan's Principle Funding ($ billions)							
	Fiscal year	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
Baseline 1	Escalator 1	1.8	2.45	3.32	4.52	6.14	8.34
	Escalator 2	1.8	2.00	2.23	2.48	2.75	3.06
	Escalator 3	1.8	1.91	1.98	2.06	2.15	2.23
Baseline 2	Escalator 1	1.3	1.77	2.40	3.26	4.43	6.03
	Escalator 2	1.3	1.45	1.61	1.79	1.99	2.21
	Escalator 3	1.3	1.38	1.43	1.49	1.55	1.61

Figure 14

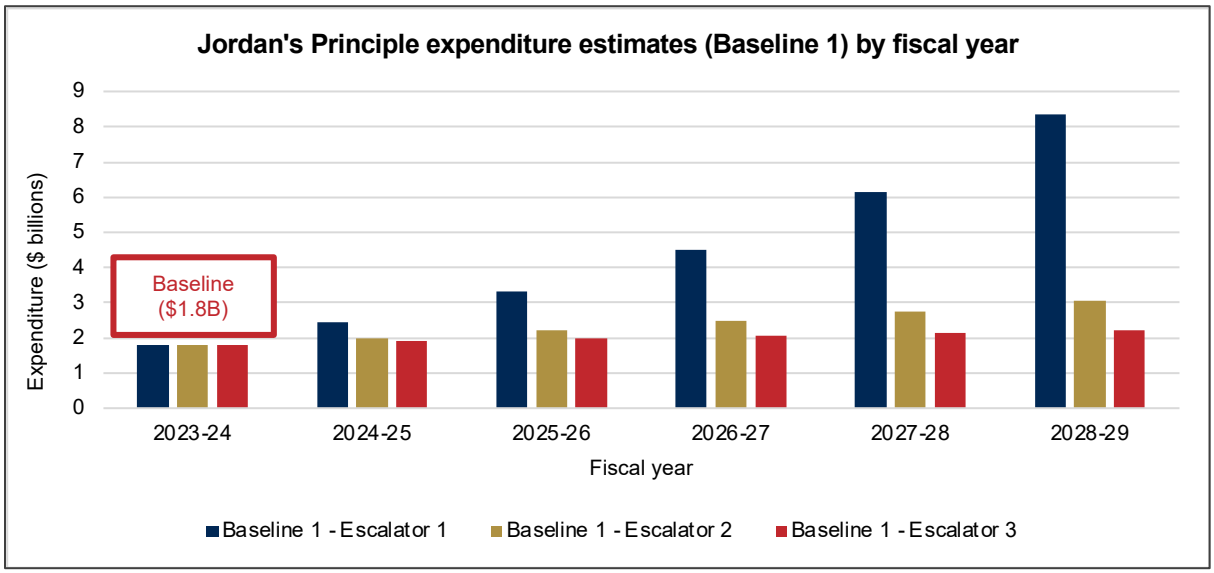
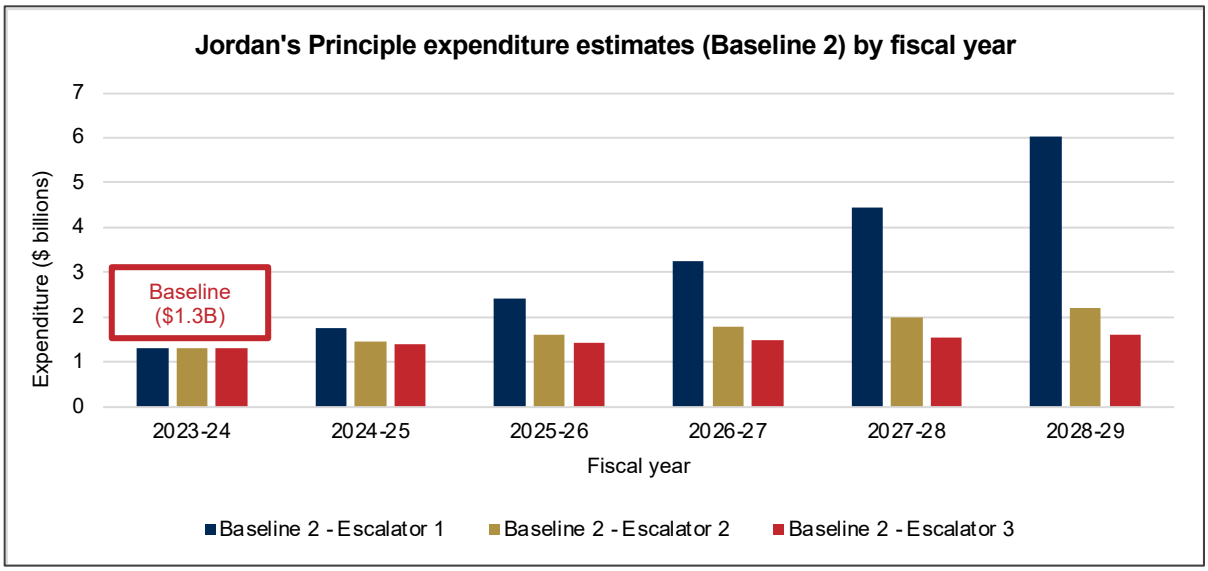


Figure 15



Clear cost-driving factors are lacking in Jordan's Principle. No information links the increase in expenditures to quantifiable factors of demand. We do know that expenditures increased, as did the number of requests. For the sustainability of Jordan's Principle, a baseline should be defined and capped by reasonable escalators tied to the needs of children being served by Jordan's Principle.

Conclusion

Jordan's Principle's current structure, funding, and accountability are concerning from a public financial management perspective. Its administration and delivery are risks for its sustainability and the First Nations children it is intended to serve.

Jordan's Principle is helping children by ensuring they have access to supports and services when they need them. There has been a consistent growth in the number of requests to Jordan's Principle across fiscal years. As Jordan's Principle is concealing gaps in other program and service areas, clarity around its operation and impacts is needed for its sustainability.

Jordan's Principle's current structure, funding, and accountability are concerning from a public financial management perspective. Its administration and delivery are risks for its sustainability and the First Nations children it is intended to serve.

Data gathered by ISC is insufficient to demonstrate results for children or to identify gaps in related program areas. There is no way of knowing through ISC's information if Jordan's Principle is being administered and funded effectively to meet the needs of children. With undefined and insufficiently documented achievements, Jordan's Principle is vulnerable, as any program would be, to adverse funding decisions.

Making Jordan's Principle sustainable means ensuring it can demonstrate results and value for First Nations children. This requires administrative clarity, appropriate funding, documented performance, and consistent delivery.

Recommendations for a path forward

1) **Define and adopt an alternative structure to Jordan's Principle.**
   A legal rule, Jordan's Principle is reliant on administrative decisions for its operations. It merits the same structural parameters that exist for other demand-driven programs in Canada, such as Employment Insurance or Old Age Security. There are options to structure Jordan's Principle to better ensure its sustainable operation and funding are linked to the needs of First Nations children.

2) **Transition to the reformed structure.**
   Once a reformed structure for Jordan's Principle is defined, adopt a two-track approach to its implementation over 3 years. Track 1: Adopt a new data-gathering framework. Track 2: Leverage the collected data in years 2 and 3 to inform parameters and funding for Jordan's Principle.

3) **Build consensus among practitioners and the parties to clarify Jordan's Principle's policy statement and its implementation.**
   ISC's website includes statements, guidelines, and rules around Jordan's Principle. Lacking, however, is a clear policy statement that guides and connects

the structure, delivery, accountability, and funding of Jordan's Principle. The content of a policy statement will inform the rules that govern a restructured approach to Jordan's Principle, guiding the scope and parameters of activity.

4) **Define and implement a performance framework.**
With all the information gathered on Jordan's Principle, we still do not know the reason(s) why children are seeking support and what happens to them following an intervention. With these gaps, there is no way of assessing progress toward formal or substantive equality through Jordan's Principle. To be sustainable, Jordan's Principle's performance must be measurable and its results documented. A national strategic performance framework is an essential component of a sustainable approach to Jordan's Principle.

5) **Define and implement a national data gathering framework, aligned to the spirit and intent of Jordan's Principle.**
Data on Jordan's Principle should be gathered locally, consistently, and with decency. A consistent approach to gathering child-centred data means more relevant data that can be used to both measure and monitor children's needs and identify gaps in existing programs and services.

6) **Stabilize funding for a 3-year transition period.**
A baseline and escalators are essential for estimating the costs of Jordan's Principle. Available information is insufficient to estimate a bottom-up cost based on defined factors. IFSD proposes estimating the cost of Jordan's Principle on an interim basis until such time that data capture is improved sufficiently to inform access parameters and costs.

7) **Maintain the Regional Working Group.**
Support the Regional Working Group (as practitioners) continuing to convene to provide input and oversight on the reform and implementation of Jordan's Principle. The contributions of the Regional Working Group are reflected throughout this report.

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Appendix

Appendix A

Realizing Substantive Equality Through Jordan's Principle

ADDENDUM

Submitted to IFSD by Faisal A. Bhabha
April 29, 2025

Introduction

One year after submitting my report, *Realizing Substantive Equality Through Jordan's Principle*, you reached out to solicit a follow-up report addressing two specific questions:

1. How should the CHRT's orders on substantive equality in Jordan's Principle be interpreted for implementation?; and
2. How have the courts interpreted substantive equality?

I am pleased to present my findings in response to these questions below.

Q1: How should the CHRT's orders on substantive equality in Jordan's Principle be interpreted for implementation?

In the 2016 merits decision, the CHRT ruled that the purpose of the CHRT is to give effect to the goal of equality, which Canadian jurisprudence defines as substantive equality. The Tribunal articulates what a substantive equality analysis to the question of whether the provision of child and family services on reserve meets the equality standard:

> In providing the benefit of the FNCFS Program and the other related provincial/territorial agreements, AANDC is obliged to ensure that its involvement in the provision of child and family services does not perpetuate the historical disadvantages endured by Aboriginal peoples. If AANDC's conduct widens the gap between First Nations and the rest of Canadian society rather than narrowing it, then it is discriminatory.[1]

The CHRT goes on to summarize key international legal instruments, and concludes:

> The international instruments and treaty monitoring bodies referred to above view equality to be substantive and not merely formal. Consequently, they consider that specific measures, including of a budgetary nature, are often required in order to achieve substantive equality. These international legal instruments also reinforce the need for due attention to be paid to the unique situation and needs of children and First

[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 ["Caring Society"] at para 403 [emphasis added].

> Nations people, especially the combination of those two vulnerable groups: First Nations children.[2]

Cases decided at the first instance by tribunals and courts rarely set binding legal precedents that apply broadly. They cannot be expected to clear up general legal questions or provide a systemic remedy for a problem of poor institutional design. Where cases are appealed and upheld at multiple levels, general legal principles are engaged. Through appellate litigation, enforceable standards may emerge, which can have system-wide impact, prompt policy reform, or attract legislative attention. Systemic change rarely comes through cases alone, however; successful advocacy for broad reform typically occurs as a result of the interplay of litigation and political advocacy.

The circumstances in which Jordan's Principle was developed pertained to a factual situation in which there could be no disagreement. A child being left to die without the care he needed because of a jurisdictional dispute over which level of government was responsible for providing the necessary care should never happen to any child. The fact that this particular set of failures could only happen to a First Nations child makes plain and obvious the discriminatory nature of the system which produces this tragic outcome. Jordan's Principle is not directly targeted at any wider purpose than remedying that specific barrier which produces one particular form of discrimination.

A substantive equality approach to the implementation of Jordan's Principle is different from a substantive equality approach to healthcare/social services delivery to indigenous children in general. Jordan's Principle recognizes that substantive equality cannot allow a First Nations child to die as a result of a jurisdictional dispute: the child's care comes first. The result of this is to put First Nations children in the same position as non-indigenous children in terms of their ability to access healthcare without the obstacle of a potentially lethal jurisdictional dispute. This is a narrow way of construing the substantive equality aspect of access to healthcare: the removal of one particular barrier.

A broader understanding of the substantive equality interest in Jordan's Principle might seek to identify and remove all barriers through systemic reform of the healthcare system in First Nations communities or in places where there are high concentrations of indigenous people to ensure more robust access to services. An even broader aim of achieving substantive equality through Jordan's Principle could rest on outcomes-based expectations. The broader the claim for substantive equality in healthcare, however, the more likely it will bump into the practical and fiscal limitations that make outcomes-based targets for substantive equality difficult to achieve.

The right to non-discrimination is bounded by the "undue hardship" defence, which balances the potentially expansive claims of substantive equality against the practical limits of the real world. Courts and tribunals are loath to make orders directing the use of scarce resources. Even in its boldness, the *Caring Society* decision does not go so far as to direct the government to make specific resource allocations, such as increasing funding to health and social services, building infrastructure, hiring staff, recruiting physicians and para-health personnel, and so on.

It is not clear where the undue hardship line lies and whether the government has reached it, but based on the jurisprudence, which holds that even large government expenditures can be required

[2] *Caring Society* at para 453 [emphasis added].

to ensure broad inclusion, the remedial power of the law may not yet be in full flex in the *Caring Society* case.

Q2: How have the courts interpreted substantive equality?

In *Andrews*, decided in 1989, the Supreme Court of Canada had its first occasion to apply s. 15 of the *Canadian Charter of Rights and Freedoms* ("*Charter*"). The Court identified substantive equality as the "philosophical premise" of s. 15.[3] The Court noted that "the fact that identical treatment may frequently produce serious inequality" is the premise of the *Charter*'s equality guarantee, explicated through the recognition in s. 15(2) that "the equality rights in s. 15(1) do not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups."[4]

In the decade following the SCC's decision in *Andrews,* comparison came to be considered "an essential facet of s. 15," whereby the Court considered the equality analysis as comparative "without proposing a rigid conception of how it should be approached."[5] In its 1999 decision in *Law v. Canada (Minister of Employment and Immigration)* ("*Law*"), the SCC declared that "a court must identify differential treatment <u>as compared</u> to one or more other persons or groups," but that it is "inappropriate to attempt to confine analysis under s. 15(1) of the *Charter* to a fixed and limited formula," and that a "purposive and contextual approach" will "permit the realization of the strong remedial purpose of the equality guarantee."[6] In *Law*, the SCC resolved that the equality guarantee "requires a court to establish one or more relevant comparators," through "an examination of the subject-matter of the legislation and its effects, as well as a full appreciation of context."[7]

The non-exhaustive list of contextual factors noted by the Court in *Law* were:

1) "pre-existing disadvantage, stereotyping, prejudice, or vulnerability experienced by the individual or group at issue,"
2) "correspondence, or lack thereof, between the ground or grounds on which the claim is based and the actual need, capacity, or circumstances of the claimant or others,"
3) "the ameliorative purpose or effects of the impugned law upon a more disadvantaged person or group in society," and
4) "the nature and scope of the interest affected by the impugned law."[8]

The comparative and contextual approach persisted, relatively unchanged, in the decade following the Court's decision in *Law*. While "accepting that comparison is at the heart of a s. 15(1) equality analysis," these decisions "emphasized a contextual inquiry into whether the impugned law perpetuated disadvantage or negative stereotyping."[9]

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[3] *Fraser v. Canada (Attorney General)*, [2020] 3 SCR 113 at para 40 [*Fraser*].
[4] *Andrews v. Law Society of British Columbia,* [1989] 1 SCR 143 [*Andrews*] at para 16.
[5] *Andrews* at para 45.
[6] *Law v. Canada (Minister of Employment and Immigration),* [1999] 1 SCR 497 at paras 56, 88 [*Law*].
[7] *Law* at para 88(6).
[8] *Law* at para 88(9).
[9] *Withler v. Canada (Attorney General),* [2011] 1 SCR 396 at para 47.

In 2008, the SCC decided *R. v. Kapp*, in which it moved beyond a mirror comparator group approach, and developed a two-step test, which focused on "the factors that identify impact amounting to discrimination."[10] In *Kapp*, ameliorative programs were at the forefront of the discussion, whereby the Court acknowledged that s. 15(1) and 15(2) must to be read together to allow governments to implement affirmative measures to combat discrimination and "confirm s. 15's purpose of furthering substantive equality."[11] This involved moving away from employing "human dignity" as an "abstract and subjective" legal test, while acknowledging its interpretive value.[12] The two-step test confirmed that:

> A program does not violate the s. 15 equality guarantee if the government can demonstrate that: (1) the program has an ameliorative or remedial purpose; and (2) the program targets a disadvantaged group identified by the enumerated or analogous grounds.[13]

In interpreting ameliorative or remedial purpose, the Court clarified that "laws designed to restrict or punish behaviour would not qualify for s. 15(2) protection," nor "should the focus be on the effect of the law."[14] It confirmed that the plausibility of an ameliorative purpose behind the state's program may also be considered; however, only in relation to the purpose for which it was initiated, rather than for its actual impact.[15] In interpreting disadvantage, the Court did not sway from how it had already been interpreted, where disadvantage is considered as "vulnerability, prejudice and negative social characterization."[16]

Another decade passed and, in 2020, the SCC had an opportunity to restate and clarify equality doctrine in *Fraser v Canada*. The Court split 6-3, with two separate sets of dissenting reasons. The female claimants, who were civil servants, argued that a distinction in their pension plan produced detrimental economic effects for women following maternity leave. While the majority agreed with the claimants and affirmed the SCC's historical approach to substantive equality, the dissent disagreed. Taking aim at the Court's canon, Brown and Rowe JJ. warned: "Substantive equality has become almost infinitely malleable, allowing judges to invoke it as rhetorical cover for their own policy preferences in deciding a given case. This discretion does not accord with, but rather departs from, the rule of law."[17]

The majority, on the other hand, re-affirmed the *Andrews* approach: "*Andrews* provided a robust template for substantive equality that subsequent decisions 'enriched but never abandoned,' whereby substantive equality is the 'animating norm' of the s. 15 framework."[18] Quoting extensively from its own jurisprudence, the SCC confirmed that substantive equality "requires attention to the 'full context of the claimant group's situation', to the 'actual impact of the law on that situation'" and to the "persistent systemic disadvantages [that] have operated to limit the

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[10] *R. v. Kapp*, [2008] 2 SCR 483 at para 23 [*Kapp*].
[11] *Kapp* at para 16.
[12] *Kapp* at paras 21, 22.
[13] *Kapp* at para 41.
[14] *Kapp* at para 54.
[15] *Kapp* at paras 50-52.
[16] *Kapp* at para 55.
[17] *Fraser* at para 227.
[18] *Fraser* at paras 41, 42.

opportunities available" to that group's members.[19] *Fraser* confirmed that "there is no doubt, therefore, that adverse impact discrimination 'violate[s] the norm of substantive equality' which underpins this Court's equality jurisprudence."[20]

Since the SCC's decision in *Fraser*, the SCC has considered substantive equality seven times, in the following cases: *Ontario (Attorney General) v. G* ("*AG v. G*"), *R. v. C.P* ("*C.P.*"), *R. v. Chouhan* ("*Chouhan*"), *R. v. Sharma* ("*Sharma*"), *R. v. Hills* ("*Hills*"), *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families* ("*Youth and Families Reference*"), and *Dickson v. Vuntut Gwitchin First Nation* ("*Dickson*").[21]

Following *Fraser* by two years, *Sharma* appears to have raised the evidentiary burden required to demonstrate a disproportionate impact under the first stage of the s. 15 analysis. In *Fraser*, the Court confirmed that "evidence of statistical disparity and of broader group disadvantage may demonstrate disproportionate impact; but neither is mandatory and their significance will vary depending on the case."[22] However, in *Sharma,* the s. 15 claim was dismissed at the first stage, and the Court provided the following reason for doing so:

> We conclude that Ms. Sharma has not satisfied her burden at the first step. She has not demonstrated that the impugned provisions create or contribute to increased imprisonment of Indigenous offenders for the relevant offences, relative to non Indigenous offenders. The sentencing judge found that Ms. Sharma adduced *no* statistical information showing that the law creates such a distinction. While evidence of statistical disparity may not have been required to advance her s. 15 claim, the sentencing judge was correct to find that Ms. Sharma had not met her evidentiary burden at the first step based on the record presented. The Court of Appeal erred by interfering with the sentencing judge's finding of fact, and compounded this error by saying that no such evidentiary burden need be met.[23]

In continuing its consideration of the evidentiary burden as it pertains to meeting the first stage of the s. 15 test, the Court acknowledged the context-specific inquiry and unwillingness to mandate a particular form of evidence to establish a breach of substantive equality, as per *Fraser*, a focus on statistical data appears to resurface:

> In this case, while Ms. Sharma was not required to adduce a specific type of evidence, she had to demonstrate that the impugned provisions created or contributed to a disproportionate impact. Ms. Sharma, for example, could have presented expert evidence or statistical data showing Indigenous imprisonment disproportionately

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[19] *Fraser* at para 42.
[20] *Fraser* at para 47.
[21] See *Ontario (Attorney General) v. G*, [2020] 3 SCR 629, <https://canlii.ca/t/jbpb4>; *R. v. C.P.,* [2021] 1 SCR 679, <https://canlii.ca/t/jfs3f>; *R. v. Chouhan*, [2021] 2 SCR 136, <https://canlii.ca/t/jgkzb>; *R. v. Sharma*, 2022 SCC 39 (CanLII), <https://canlii.ca/t/jssdp>; *R. v. Hills*, 2023 SCC 2 (CanLII), <https://canlii.ca/t/jv4mz>; *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 (CanLII), <https://canlii.ca/t/k2qhn>; *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10 (CanLII), <https://canlii.ca/t/k3qd5>.
[22] *Fraser* at para 67.
[23] *Sharma* at para 36.

> increased for the specific offences targeted by the impugned provisions, relative to non Indigenous offenders, after the SSCA came into force. Such evidence might establish that the removal of conditional sentences created or contributed to a disproportionate impact on Indigenous offenders.[24]

The contrast between the strong restatement of substantive equality doctrine in *Fraser* followed shortly thereafter by a tepid application in the Court's unwillingness to consider Ms. Sharma's personal condition of disadvantage when holding her to a high standard of objective evidence is rather stark and appears to undermine the Court's stated commitment to substantive equality itself.

Conclusion

While 2020 saw the highwater mark of substantive equality's recent prominence in Canadian jurisprudence, there has been a retreat in subsequent cases that necessarily casts doubt on the strength of using this tool to measure and adjudicate the resolution of complex social problems. The invocation of "substantive equality" in the 2016 CHRT *Caring Society* merits decision did not lead to a prescription or specific remedies, which helps explain the prolonged enforcement disputes in the years since it was decided. The work that substantive equality did for that case was to provide philosophical justification for the finding of discrimination. It is not clear what substantive equality can do, conceptually, beyond identifying a problem and describing its features.

[24] *Sharma* at para 76.

Appendix B

IFSD
IFPD

Eric Guimond
Chief Data Officer
Indigenous Services Canada
10 Wellington Street
Gatineau, Quebec K1A 0H4

April 20, 2023

Dear Dr. Guimond,

The Institute of Fiscal Studies and Democracy (IFSD) is pleased to be working with the First Nations Child & Family Caring Society on the long-term sustainability of Jordan's Principle. The project will make recommendations that Canada may consider to develop and implement structural solutions to achieving substantive equality for First Nations children, youth, and families.

A critical part of this project is reviewing case-level data related to Jordan's Principle to define and understand the point of departure.

To complete our work, we are submitting this letter to initiate our request for detailed Jordan's Principle case-level information for fiscal years 2016-17 to 2022-23.

In addition to any other relevant information this includes:

- Fiscal year or date of request
- Indigenous identity (i.e., First Nation, Inuit, Indigenous)
- Province, territory, or region of request
- First point of contact in submission of request (e.g., Indigenous Services Canada regional office, regional organization, etc.)
- Location of child (i.e., on-/off-reserve)
- Adjudication framework or principles for evaluating requests
- Individual or group request
- Gender
- Age
- Special needs
- Category and sub-category, e.g., child in care, travel, etc.
- Amount requested
- Amount approved
- Decision: approved or denied
- Appeal (date and time appeal received, appeal decision, date and time of appeal decision)
- Time between submission of request, review, and final decision of request
- Source of request (e.g., parent, authorized representative, if representative, specify)

- Request facilitator (e.g., First Nation, health organization, FNCFS agency)
- Number of children covered/included in request
- Duration of requested coverage (e.g., point-in-time, ongoing, six months, etc.)
- COVID-19 related requests
- Urgency of the request
- Date of initial contact and date request has sufficient information
- Regional decision date
- Final decision date
- Date of regional escalation of request and headquarters' final decision date

Our request includes any background and context documents required to understand the definitions of equality and substantive equality applied to the adjudication of Jordan's Principle requests, as well as detailed case-level data.

We understand from previous work that such information can be made available in Excel.

IFSD is accustomed to working with sensitive and confidential data and has the requisite privacy, security, and storage protocols in place to manage such information. All data provided to IFSD for this project will be aggregated to protect the confidentiality of individuals and individual requests. No identifiable information will be reported publicly.

IFSD's work is being undertaken at the request of the parties negotiating long-term reform. Indigenous Services Canada is permitted to disclose the data upon an undertaking under paragraph 8(2)(j) of the *Privacy Act*, as IFSD's research cannot reasonably be completed otherwise. Alternatively, IFSD is entitled to the data as the public interest at stake clearly outweighs any resulting privacy invasion pursuant to sub-paragraph 8(2)(m)(i) of the *Privacy Act.*

I thank you and your team for your attention to this request. With the project timelines, it would be most helpful to have the information by June 30, 2023.

Sincerely,

Kevin Page

Kevin Page
President and CEO

Jordan's Principle's operationalization

Who We Are
IFSD is a research consulting firm hosted at the University of Ottawa that uses public finance tools to analyze and solve public policy challenges. Led by Canada's first Parliamentary Budget Officer, Kevin Page, IFSD works in Canada and abroad to lend decision-support to governments as well as the broader public and private sectors.

Project Overview
The Institute of Fiscal Studies and Democracy (IFSD) has been asked by the First Nations Child and Family Caring Society to undertake additional research on Jordan's Principle pursuant to the Canadian Human Rights Tribunal's (CHRT) orders (2022 CHRT 8).

The project will make recommendations for consideration to develop and implement structural solutions to achieving substantive equality for First Nations children, youth, and families. This work builds on findings from IFSD's September 2022 report, *Data assessment and framing of analysis of substantive equality through the application of Jordan's Principle*.

IFSD's approach will be *bottom-up* with a focus on engagement with those working in capacities related to Jordan's Principle. Other primary data sources and secondary data sources will also be used.

A regionally representative working group has been assembled to provide practitioner input on operating realities, successes/challenges, and considerations for refining/improving matters associated to Jordan's Principle.

IFSD's Mandate for this Project
IFSD's mandate is to respond (in part) to the recommendations made in Part 1, and propose options for the long-term sustainability of Jordan's Principle through the:

1) Development of a policy framework (e.g., approach to measuring/monitoring outcomes for children, evaluating Jordan's Principle, etc.);
2) Review of existing programs and services;
3) Definition of options and considerations for reforming the operationalization of Jordan's Principle; and,
4) Financial analysis and costing of the baseline and any proposed reforms.

IFSD's request to Indigenous Services Canada (ISC)
IFSD is requesting introductions to connect with ISC employees who are working nationally and regionally on Jordan's Principle. The purpose of the exchanges is to help IFSD define how Jordan's Principle is operationalized within government.

IFSD would welcome the opportunity to connect with and learn from those engaged with designing and implementing Jordan's Principle in a variety of ways, e.g., adjudication of requests, policy development, data management, hotline management, etc.

The exchanges with IFSD could take different forms, e.g., one-on-one, group sessions, based on the preference of participating public servants. IFSD will anonymize any summaries of discussions for use in draft or final reports.

Purpose
IFSD is requesting introductions with ISC employees working nationally and regionally in various capacities on Jordan's Principle to engage in dialogue with IFSD so that IFSD may do the following:

1) Map internal processes and practices to operationalize Jordan's Principle nationally and regionally.
2) Capture the internal changes, e.g., staffing, organizational structure, etc., in the evolution of Jordan's Principle nationally and regionally.
3) Capture functions, performance targets, and results from the internal operations of Jordan's Principle nationally and regionally through interviews with staff.

The exercise is an attempt to understand and document what is in place. Gaps can be defined and translated into recommended solutions for a better delivery model.

Guiding questions for participants
IFSD is requesting introductions to engage with ISC employees across the spectrum of Jordan's Principle's operationalization. This may include, but is not limited to, employees managing the hotline, adjudication, appeals, policy, cost analysis, etc., nationally, and regionally. IFSD will work with senior Jordan's Principle staff to reach out to other employees.

The engagement with ISC employees will focus on their professional functions and obligations. The following questions would guide IFSD's engagement with ISC employees:

1) What is your role in Jordan's Principle?
2) Does your role involve direct client interaction, i.e., with individuals or groups outside of government?
3) Does your role intersect with others working Jordan's Principle? If yes, how?
4) Does your role intersect with others working in ISC? If yes, how?
5) Do you have the tools and resources required to execute your mandate?
6) Are there changes that would support you in better executing your mandate?
7) Is the department adequately resourced to discharge Jordan's Principle?

Possible formats
IFSD requests the opportunity to invite employees (from managerial and non-managerial cadres) to participate in this project voluntarily.

IFSD is prepared to engage with ISC employees in different ways. While in-person engagements are preferred, virtual options can also be arranged.

Possible formats include:
1) One-on-one discussions with IFSD
2) Convening a group of ISC employees related to Jordan's Principle, e.g., by activity area
3) IFSD hosts a meeting for ISC employees related to Jordan's Principle, e.g., two days with discussion groups, breakout sessions, etc.

How gathered information will be used
Participation in this project is voluntary.

All information gathered will be anonymized. No participants will be individually identified unless they specifically request it and provide permission to IFSD in writing to do so.

IFSD would review mappings and sequencing of organizational changes during scheduled bi-monthly check-in meetings with ISC. During scheduled bi-monthly check-in meetings with ISC, IFSD would also share summaries of its findings with ISC based on its engagement with ISC employees.

The information shared in writing or during an engagement session will be reviewed by IFSD for use as a case study or informational note. The materials may appear in IFSD's final report.

Requested information
IFSD is requesting the following information, should they be available within ISC:

1) Maps of Jordan's Principle's organizational structure and processes
2) List of roles and functions associated to Jordan's Principle
3) List of staffing boxes with classification and how they are occupied, e.g., indeterminant or other basis, or vacant
4) Internal policy statements and analysis of policy for Jordan's Principle
5) Guidance and decision-support documents for employees, e.g., denial delegation framework, request adjudication, etc.
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7) Programs deemed adjacent to Jordan's Principle that intersect with the operation of Jordan's Principle or that intersect with requests

Appendix C

Jordan's Principle's operationalization

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Appendix D

GCcase Data Analysis
General Methodological Approach

I. Context

The national database for Jordan's Principle, "GCcase," is maintained by ISC. The existing system was introduced in 2019, with data from previous fiscal years included based on availability. As part of its work, IFSD requested GCcase data to analyze trends in requests to Jordan's Principle. Based on its past report1, IFSD understood the limitations of the dataset in assessing substantive equality, as well as the resolution of jurisdictional or other service gaps for First Nations children. GCcase, however, is the only available source of request data on Jordan's Principle and is used to assess trends (with noted limitations).

> On April 20, 2023, IFSD submitted a letter requesting Jordan's Principle data from GCcase. On January 9, 2024 (9 months after the initial request was submitted), IFSD received the data from ISC. This caused delays to overall project timelines. Throughout the analysis process, IFSD submitted questions to ISC and benefitted from the perspective of the GCcase technical team. While technical questions were answered by the team, other questions directed to the non-technical team, e.g., related to expenditures, operational practices, etc., received insufficient responses or remain outstanding.[2]
>
> IFSD made several attempts to engage with federal public servants involved in administering Jordan's Principle. On July 6, 2023, IFSD reached out to ISC to develop an approach to working with public servants. Despite follow-ups by IFSD and attempts by some ISC officials, engagement with public servants never occurred. It is regrettable that ISC would not support engagement with their public servants. Their perspectives would have been valuable in framing the current operations of Jordan's Principle and areas for improvement.

The data being requested by IFSD was classified as "Protected B," meaning that it contained personal information. IFSD was only interested in non-identifiable data, as the aggregate portrait of Jordan's Principle requests had explanatory value for the project (not individual requests to Jordan's Principle). To provide the necessary information for IFSD's work, ISC de-identified and clustered variables that would be shared in the dataset. This meant that ranges rather than exact variables were provided for certain variables, e.g., age, expenditure, etc... Along with the de-identification and use of

[1] Institute of Fiscal Studies and Democracy (IFSD), "Data assessment and framing of an analysis of substantive equality through the application of Jordan's Principle," September 2022, https://ifsd.ca/wp-content/uploads/2024/06/ifsd-report-2022-09-data-assessment-and-framing-analysis-of-substantive-equality-through-the-application-of-jordans-principle.pdf.

[2] As a recent example, in January 2025, IFSD requested Jordan's Principle expenditures by region from ISC. ISC responded, indicating they did not have the resources to provide such granular information to IFSD. However, in a January 10, 2025, letter to the CHRT, ISC provided regional breakdowns of expenditures (for contribution approaches) for Jordan's Principle. IFSD again followed-up with ISC given the similarities of its request and the published data, and no response was provided.

ranges for the variables, there were strict information and technological management protocols that ISC required of IFSD to receive the information.

II. Limitations

The subset of GCcase data obtained by IFSD does not contain all available information. Some of the variables were aggregated to protect privacy. For instance, in the data provided to IFSD, there is no information on the context of the child making a request to Jordan's Principle beyond geographic location, e.g., province/territory, on/off reserve. Other variables such as the age of the child and the cost (requested and approved or denied) are presented as ranges, i.e., no specific values are provided. This means analysis of GCcase data is limited to describing requests and associated characteristics.

GCcase data includes only requests with a decision. This means unopened requests or those in a backlog are not included in the dataset. The data to which IFSD has access is for the period 2017-18 to 2022-23 with different variables and varying completeness across fiscal years. Variables are increasingly consistent, complete, and broader in scope from fiscal year 2020-21 onwards. However, given the dataset to which IFSD has access terminates in fiscal year 2022-23, the impact of guidelines and decisions after that date, as well as the inclusion of unopened/backlogged requests may impact the trends observed.

The limitations of GCcase mean that the data cannot assess substantive equality or whether needs from jurisdictional or other service gaps are met.

Significant gaps in information from GCcase include:

- No information on *why* a child is seeking support from Jordan's Principle. The root cause of the request, e.g., insufficient funds, refusal from existing federal program, lack of service availability, etc., is not defined. This information is necessary for assessing substantive equality and service gaps.
- No information on the child's context. Such information would include considerations on geography, e.g., road access, states of emergency, service availability, etc.
- No data on outcomes for children who received support through Jordan's Principle, i.e., how the child is doing post intervention.

IFSD has also noted the following data gaps exist in GCcase that apply to all analysis of this data:

- GCcase data reports on requests where ISC has already made a decision. It does not include requests in the backlog.

- GCcase data does not report consistently on requests for service co-ordination. According to ISC, "Service co-ordination requests are typically not managed through the request based process. However, some regions have entered select

records. These entries are not reflective of all service co-ordination funding in Jordan's Principle.

- ISC did not provide IFSD with precise cost estimates for each item. Rather, they provided IFSD with the range of the item's cost (e.g., $0-25, $250,000+).

- The GCcase data IFSD received does not clarify if the request contained a professional letter of support.

- GCcase data does not distinguish whether a group request is for children who normally reside on or off reserve.

- Using GCcase, IFSD cannot report the number of children who benefit from group requests. GCcase data does not identify each child who benefits from a group request. Instead, they report an estimate of the number of children who may benefit from the request.

  There are two limitations with this approach:

1) It cannot tell us the distinct number of children who benefit from group requests. There is no indication of any overlap between the children who benefited from one group request and the children who benefitted from another.
2) It cannot tell us how many children benefitted from each group request, only the number of children expected to benefit before ISC funds the product, service, or support.

III. Availability of variables

IFSD had access to GCcase data from fiscal year (FY) 2016-17 to 2022-23. However, some variables were only available for the last three fiscal years (Table 1).

Table 1

IFSD requested Data Element	ISC Sub-elements	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
Fiscal year or date of request		Yes	Yes	Yes	Yes	Yes	Yes	Yes
Indigenous identity, i.e., First Nation, Inuit, Indigenous		No	Yes	Yes	Yes	Yes	Yes	Yes
Province and Region of request		Yes	Yes	Yes	Yes	Yes	Yes	Yes

Source of review and adjudication: regional office, headquarters	Decision / Regional Decision	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	HQ Decision	Yes	Yes (Individual Only)	Yes	Yes	Yes	Yes	Yes
Adjudication considerations /principles aligned to individual requests - HQ Decision	HQ Best Interest of Child	No	No	No	Yes (HQDecisionRationale)	Yes	Yes	Yes
	HQ Culturally Appropriate	No	No	No		Yes	Yes	Yes
	HQ Eligibility	No	No	No		Yes	Yes	Yes
	HQ Normative Standard	No	No	No		Yes	Yes	Yes
	HQ Substantive Equality	No	No	No		Yes	Yes	Yes
Adjudication considerations /principles aligned to individual requests - Regional Decision	Regional Best Interest of Child	No	No	No	Yes (RegionalDecisionRationale)	Yes	Yes	Yes
	Regional Culturally Appropriate	No	No	No		Yes	Yes	Yes
	Regional Eligibility	No	No	No		Yes	Yes	Yes
	Regional Normative Standard	No	No	No		Yes	Yes	Yes
	Regional Substantive Equality	No	No	No		Yes	Yes	Yes
Adjudication considerations /principles aligned to individual requests - Normative Standard		No	Yes	Yes	Yes	No	No	No
Adjudication considerations /principles aligned to		No	Yes (Individual Only)	Yes	Yes	Yes	Yes	Yes

individual requests - Urgency								
Adjudication considerations /principles aligned to individual requests - Ordinarily OnReserve		No	No	Yes	Yes	Yes	Yes	Yes
Individual or group request		Yes	Yes	Yes	Yes	Yes	Yes	Yes
Gender		No	Yes	Yes	Yes	Yes	Yes	Yes
Age_ccategory		No	Yes	Yes	Yes	Yes	Yes	Yes
Needs		No	No	No	Yes	Yes	Yes	Yes
Care type i.e., Federally Funded Child / Family Services, Provincially Funded Child /Family Services, Not in care, etc.		No	No	No	No	Yes	Yes	Yes
Category_old, e.g., travel, capital (provide as much detail as possible)		Yes	Yes	Yes	Yes	Yes	Yes	No
Sub-category_old		Yes	No	No	Yes	Yes	Yes	No
category_tier_1		No	No	No	Yes	Yes	Yes	Yes
category_tier_2		No	No	No	No	Yes	Yes	Yes
category_tier_3		No	No	No	No	Yes	Yes	Yes
Amount_requested_category		No	Yes (Individual Only)	Yes	Yes	Yes	Yes	Yes
approved_funds_category		No	Yes	Yes	Yes	Yes	Yes	Yes

Decision: Approved or denied		Yes (Decision & HQ Decision)	Yes (Decision & HQ Decision)	Yes	Yes	Yes	Yes	Yes
Denial rationale		No	No	No	No	No	No	Yes
Rereview	rereview_item_submitted_date	No	No	No	Yes	Yes	Yes	Yes
	rereview_typerereview_subtype	No	No	No	Yes	Yes	Yes	Yes
	rereview_regional_decision_date_time	No	No	No	Yes	Yes	Yes	Yes
	rereview_regional_decision	No	No	No	Yes	Yes	Yes	Yes
	rereview_hq_decision_date_time	No	No	No	Yes	Yes	Yes	Yes
	rereview_hq_decision	No	No	No	Yes	Yes	Yes	Yes
	rereview_final_decision_date	No	No	No	Yes	Yes	Yes	Yes
	rereview_final_decision	No	No	No	Yes	Yes	Yes	Yes
	rereview_denial_rationale	No	No	No	Yes	Yes	Yes	Yes
	rereview_approved_funds_category	No	No	No	Yes	Yes	Yes	Yes
Appeal	appeal_submitted_date	No	No	Yes	Yes	Yes	Yes	Yes
	appeal_submitted_time	No	No	Yes	Yes	Yes	Yes	Yes
	appeal_decision	No	No	Yes	Yes	Yes	Yes	Yes
	appeal_denial_rationale	No	No	No	Yes	Yes	Yes	Yes

	appeal_decision_date	No	No	Yes	Yes	Yes	Yes	Yes
	appeal_decision_time	No	No	Yes	Yes	Yes	Yes	Yes
	appeal_approved_funds_category	No	No	No	Yes	Yes	Yes	Yes
Time between submission, review, and final decision	Initial Contact: Date	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Initial Contact: Time	No	Yes	Yes	Yes	No	Yes	Yes
	Decision: Date	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Decision: Time	No	Yes	Yes	Yes	Yes	Yes	Yes
	HQ Decision: Date	Yes	Yes (Individual Only)	Yes	Yes	Yes	Yes	Yes
	HQ Decision: Time	No	No	Yes	Yes	Yes	Yes	Yes
	Sufficient Information: Date	No	Yes (Individual Only)	Yes	Yes	Yes	Yes	Yes
	Sufficient Information: Time	No	Yes (Individual Only)	Yes	Yes	Yes	Yes	Yes
relation_to_child: Source of submission, e.g., family member, Health Professional, etc.		No	No	No	No	Yes	Yes	Yes
Number of children covered /Included in request	Estimated # of Children	Yes (Individual Only)	Yes (Group Only)	Yes	Yes	Yes	Yes	Yes
	ChildUniqueIdentifier	No	Yes (Individual Only)	Yes	Yes	Yes	Yes	Yes
	UniqueID	No	No	No	Yes	Yes	Yes	Yes
	PRS	No	No	No	No	Yes	Yes	Yes
	CaseID	No	No	No	Yes	Yes	Yes	Yes

	ItemID	No	No	No	No	Yes	Yes	Yes
Duration of requested coverage, e.g., point-in-time, ongoing, six months, etc.	StartDate EndDate	No	Yes (Individual Only)	Yes	Yes	Yes	Yes	Yes
COVID-19 related request		No	No	No	Yes	Yes	Yes	Yes
child_chrt36_eligibility		No	No	No	No	Yes	Yes	Yes
child_chrt36_recognized_by_nation		No	No	No	No	Yes	Yes	Yes
item_chrt_order		No	No	No	No	Yes	Yes	Yes
Heritage		No	No	No	No	Yes	Yes	Yes

IV. Available approaches to analyze GCcase data

GCcase data records requests that individuals and groups made for funding from Jordan's Principle. Each request refers to one, single item that an individual or a group is requesting. One child can be associated to multiple requests and one request can be associated to multiple children.

There are four different lenses IFSD uses when analyzing GCcase data (Table 2):

1) Number of children
2) Number of requests
3) Products, Services, and Supports (PSS)
4) Row count

Table 2

Measure	Description	Considerations
Number of requests	• The items people request from Jordan's Principle. • This approach counts each item once even if it is associated with multiple children.	• No count of individual children. • Limited alignment to administrative practice, i.e., clusters instances of requests.
Number of children	• The children associated to requests, when defined.	• Not defined for all group requests.

	• This approach counts each child once even if they are associated with multiple requests.	
Products, Services, and Supports (PSS)	• Estimated number of instances of children requesting support through Jordan's Principle.	• Risks overestimating the impact/reach of Jordan's Principle (by using an estimated number of children who benefit from a group request without actual numbers).
Row count	• Defined number of instances of children requesting support through Jordan's Principle.	• Risks underestimating the impact/reach of Jordan's Principle (by assuming only one child benefits from group requests that do not define the number of associated children).

Number of children v. number of requests

GCcase data contains two useful units of measurement: the child and the request. It is possible to measure only the children, ignoring the number of requests, or to measure only the number of requests, ignoring the number of children.

Number of children counts how many children are associated to Jordan's Principle requests. If one child is associated to multiple requests, this approach counts that child only once. For some group requests, ISC does not identify each child who needs the requested item. It is not possible to calculate the number of children for these group requests. Number of children is not defined for all individual requests, but only some group requests. In several instances, group requests include estimates of children associated to the request.

Number of requests refers to the total number of items requested from Jordan's Principle. If multiple children are associated to a single item, this approach counts that item once. Number of requests captures the output of Jordan's Principle, by measuring the total number of items it provides to children in a given year.

Instances of a child needing Jordan's Principle: PSS v. row count

Measuring the number of instances of a child needing support from Jordan's Principle is a way to tie number of requests to number of children. For example, if a family has three children and is requesting support for basic necessities, there were three instances of a child needing support from Jordan's Principle. Alternatively, if a child needs an appointment with a therapist and needs funding to travel to that therapist, there were two instances where that child needed support from Jordan's Principle. This approach provides insight into the magnitude and frequency of the need for Jordan's Principle.

IFSD measures the number of instances in two different ways: PSS and row count. PSS uses an estimated number of instances, while row count uses the defined number of instances. See Table 3 for a summary of the difference between PSS and row count.

For individual requests, PSS and row count are equivalent. They count each child associated with each request. They count the same child multiple times for each request/item associated to that child and it count the same request/item multiple times for each child associated to that request/item.

For some group requests, ISC identifies each child who needs the requested item. For these requests, PSS and row count are equivalent and function the same way as they would for individual requests.

However, for most group requests, ISC does not identify each child who needs the requested item. Instead, they provide an estimate for the number of children who could benefit from the requested item. For these group requests that use an estimated number of children, PSS and row count differ. PSS is equal to the estimated number of children. Row count only measures the defined number of instances, and for group requests that provide an estimated number of children, the instance is counted once, i.e., row count equals one for these group requests, for one instance of a child needing Jordan's Principle.

There are trade-offs between PSS and row count. PSS captures the magnitude and frequency of need for Jordan's Principle because it can tie number of children to number of requests for all group requests. However, PSS relies on the estimated number of children benefitting from group requests. Since GCcase data does not confirm whether these children needed the requested item, PSS risks overcounting the instances of a child needing Jordan's Principle.

Row count is more precise because it does not rely on estimated numbers of children. However, it only counts some group requests once, even when it is possible that multiple children benefit. While PSS risks overcounting the instances of a child needing Jordan's Principle, row count risks undercounting the instances of a child need Jordan's Principle (Table 3).

Table 3

	Individual requests	Group request with known number of children	Group request with estimated number of children
PSS	Count of all children associated with a request/item Counts the same child multiple times for each request/item associated with that child Count the same request/item multiple times for each child associated with that request/item	Same as PSS for individual requests	Equals the estimated number of children
Row count	Same as PSS for individual requests	Same as PSS for individual requests	Each request/item is equal to 1, for 1 defined instance of a group of children needing Jordan's Principle

IFSD used the following approached, which ISC provided, to calculate each of the four measures in relevant fiscal years (Table 4).

Table 4

Measure	Year	Calculation methods (direct quote from ISC)
Number of requests	2016-17 to 2017-18	Mix of dataset and aggregated table that ISC provided. Not possible to calculate or approximate number of requests.
	2018-19	Exact request counts unknown. Can approximate by using row counts. Calculate: Row count (count of unique_id)
	2019-20	Dataset is a mixture of GCCase data and pre-GCCase data. Because of this, requets can be enumerated where item_id_masked is present, otherwise, item count can be used as an approximation. Calculate: if item_id_masked = blank then unique_id else item_id_masked

	2020-21 to 2022-23	Datasets all contain item_id_masked. Calculate: Distinct count of item_id_masked
Number of children	2016-17 to 2019-20	Datasets do not contain complete PRS data. Number of children is not able to be calculated
	2020-21 to 2022-23	All datasets contain PRS data. Calculate for Individual requests: Exclude entries with missing PRS Exclude group requests distinct count of PRS Calculate for group requests - group requests that have identified a specific number of children who will benefit from the product or services requested: Exclude individual requests Exclude Report_est_2 >1 Distinct count of PRS for each item_id_masked Calculate for group requests - group requests that have identified an estimated number of children who will benefit from the product or services requested: Exclude individual requests Exclude Report_est_2 =1 Distinct count of Report_est_2 for each item_id_masked
Products, Services, and Supports (PSS)	2016-17	Only aggregate tables of approved products, services, and supports are available. Calculate for Individual requests: Sum of Number of products and services Calculate for group requests: Sum of Estimated # of children
	2017-18	Mixture of aggregate tables of approved products, services, and supports and fiscal year datasets. Calculate for Individual requests: Sum of Approved products and services + row count Calculate for group requests: Sum of Approved products and services + sum Estimated # of children
	2018-19 to 2022-23	Calculate: Sum of Report_est_2
Row count	2016-17 to 2017-18	Mix of dataset and table. Not possible to calculate or approximate number of rows.
	2018-19 to 2022-23	Calculate: count number of rows in each dataset

V. Global/descriptive analysis

Data Source: Indigenous Services Canada (ISC)

Fiscal years: 2016-17 to 2022-23

Data Preparation:

1) IFSD clustered ISC's variables ***AmountRequestedCategory*** and ***Approved_FundsCategory*** using the list in Appendix B. Instead of using the 145 categories reported originally, IFSD clustered the categories in two ways:
First approach: $0-$99; $100-$999; $1,000-$4,999; and $5,000+;
Second approach: $0-$499; $500-$999; $1,000-$2,999; $3,000-$4,999; and $5,000+;

   Note: According to Indigenous Services Canada (ISC), ***"Blank"*** values in the Amount Requested Category or Approved Funds Category have one of two explanations: a data entry issue where no approved funding was recorded or that more than one child is using the requested product/services, i.e., they are part of the same family. According to Indigenous Services Canada (ISC), the latter should account for the majority, if not all, the "blank" values in these categories.

2) IFSD clustered ISC's variables ***RelationtoChild*** using the list in Appendix C. Instead of using the 9 categories reported originally, IFSD clustered the categories in two ways:
   - First clustering: Professional, Non-Professional, and Other.
   - Second clustering: Professional, Navigator, Non-Professional (family), and Other.

iv. Notes:

1) Some data is only available for individual requests, and it is not available for group requests, including age, sex, residency (i.e., on/off-reserve), etc.
2) Each request refers to a single item that an individual or a group is requesting (i.e., one submission can contain multiple requests).
3) One child can be associated to multiple requests and one request can be associated to multiple children.
4) Data field "Region" was used for regional analysis.

Calculation method: IFSD used four different lenses when analyzing GCcase data.

Calculation methods

1) IFSD Counted the number of requests by following ISC variables in the data set for each fiscal year:

- *Fiscal Year*
- *Final decision*
- *Region*
- *Heritage*
- *Ordinarily_on_reserve*
- *Sex*
- *Urgency*
- *Needs clusters*
- *Child chrt36 eligibility*
- *Child chrt36 recognized by nation*
- *Amount Requested Category*
- *Approved Funds Category*
- *Dataset (Individual v. Group)*
- *Regional Decision*
- *Regional Decision Rationale: Regional Eligibility, Regional Normative Standard, Regional Substantive Equality, Regional Best Interest of Child, and Regional Culturally Appropriate.*
- *HQ Decision*
- *HQ Decision Rationale: HQ Eligibility, HQ Normative Standard, HQ Substantive Equality, HQ Best Interest of Child, and HQ Culturally Appropriate.*
- *Denial rationale*
- *Rereview subtype*
- *Rereview denial rationale*
- *report_est_2*
- *Age Category*
- *Days Between Initial Contact and Sufficient Information*
- *Days Between Sufficient Information and Final Decision*
- *Days Between item_submitted_date and Final Decision*
- *Days Between rereview_item_submitted_date and rereview_final_decision_date*
- *Days Between appeal_submission and appeal_decision*
- *Appeal Decision*
- *Category_tier_1*
- *Category_tier_2*
- *Category_tier_3*
- *Relation_to_child*
- *Care_type*

2) Percentage Breakdown: Divide the number of requests in each category by the total number of requests.

3) Percentage change by year =

$$\frac{Number\ of\ Requests\ in\ the\ second\ year\ - \text{Number of Requests in the first year}}{\text{Number of Requests in the first year}}$$

VI. Methodology notes for "needs" analysis

1) IFSD built two sets of needs clusters: (1) IFSD needs clusters and (2) IFSD condensed needs clusters, using the "Needs" column in the data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B (Appendix A).
2) Each ISC need can only be assigned to one IFSD needs cluster.
3) In ISC's data file, multiple needs can be selected for the same request. In this case, we would assign the same request to multiple IFSD needs clusters. As a result, when we sort all needs from all requests, we cannot add the numbers up (to avoid double-counting).
4) ISC did not provide definitions for the "Needs" column in the data file and, where the data file lists multiple needs for a single request and child, they did not specify the primary need.

VII. Methodology notes for estimated range of the total amount approved

1) Since ISC provides amount approved as a range (e.g., $0-24), IFSD cannot calculate the exact total amount approved for all requests. But IFSD can estimate the upper and lower bound of the total amount approved for all ranges.
2) IFSD used the minimum value in each range multiplied by the number of requests in each range to calculate the lower bound of the amount approved for each range. And IFSD applied the maximum value in each range multiplied by the number of requests in each range to calculate the upper bound of the amount approved in each range.
3) To calculate upper and lower bounds of the total amount approved by year, IFSD summed upper and lower bounds of the amount approved for all ranges.
4) Note: Most requests over $250,000 were group requests. In this case, the upper bound for group requests likely undercounts the true estimate. ISC does not report the amount approved for requests above $250,000, so IFSD must assume that the upper bound for these requests was equal to $250,000 even when it could have been higher.
5) Note: Most requests $0-$24 were individual requests. The lower bound for individual requests likely undercounts the true estimate. ISC reports requests that were $0-$24. IFSD takes $0 as the lower bound for these requests, even though it is unlikely there were any requests for that amount.

VIII. Methodology notes for timeline analysis

IFSD calculated number of days between different dates variables.

1) IFSD calculated Days Between Date of Initial_Contact and Date of sufficient_information **= *sufficient_information*** - ***InitialContact***, excluding any entry where either of the two dates was blank; and then clustered the days into: 0-7, 8-30, 31-90, and 91+ days.
2) IFSD calculated Days Between Date of sufficient_information and Date of final_decision_datetime = ***Final_decision_datetime*** - ***sufficient_information***, excluding any entry where either of the two dates was blank; and then clustered the days into both:
    a. 0-7, 8-30, 31-90, and 91+ days
    b. 0, 1, 2, 3-7, and 8+ days.
3) IFSD calculated Days Between Date of item_submitted_date and Date of final_decision_datetime = ***Final_decision_datetime*** – ***item_submitted_date***, excluding any entry where either of the two dates was blank; and then clustered the days into: 0-7, 8-30, 31-90, and 91+ days.
4) IFSD calculated Days Between Date of appeal_submission and Date of appeal_decision = ***appeal_decision_date - appeal_submission_date***, excluding any entry where either of the two dates was blank; and then clustered the days into: 30days or less, 31-90 days, and over 90 days.
5) IFSD calculated Days Between rereview_item_submitted_date and rereview_final_decision_date = ***rereview_final_decision_date – rereview_item_submitted_date***, excluding any entry where either of the two dates was blank; and then clustered the days into: 30days or less, 31-90 days, and over 90 days.
6) IFSD conducted analysis for date clusters above by urgency, by dataset (individual v. group), and by final decision.

Note: Analysis using the variable initial contact date should be interpreted with caution. According to ISC, “The variable is populated for each Case in the CMS [Case Management System or GCcase]. In some instances, new items/requests may be added to existing Cases from the same family/child/requestor, while preserving the original contact date.”

VI. Methodology notes for FNCFS analysis

IFSD filtered the “Needs” column in data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B and tagged a request as related to First Nations Child and Family Services (FNCFS) if any of the following were values for the Needs variable:

1) Child Apprehension Prevention
2) Preserving Family Integrity

3) Unspecified Familial
4) Unspecified Family Integrity

IFSD then conducted a set of analyses for all FNCFS requests by applying the same sorting approaches documented in section II. Global/Descriptive Analysis.

VII. Methodology notes for age 18+ analysis

IFSD filtered the “age_category” column in data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B and selected value 18+.

IFSD then conducted a set of analyses for all age 18+ requests by applying the same sorting approaches documented in section II. Global/Descriptive Analysis.

VIII. Methodology notes for denied requests analysis

IFSD filtered the “final_decision” column in data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B and selected value denied.

IFSD then conducted a set of analyses for all denied requests by applying the same sorting approaches documented in section II. Global/Descriptive Analysis.

IX. Methodology notes for crisis intervention and suicide prevention analysis

IFSD filtered the “category_tier_2” column in data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B and selected value Crisis intervention and suicide prevention.

IFSD then sorted Crisis intervention and suicide prevention requests by region and dataset (individual v. group).

X. Methodology notes for residential health care treatment analysis

IFSD filtered the “category_tier_3” column in data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B and selected value Residential health care treatment.

IFSD then sorted Residential health care treatment requests by urgency.

XI. Methodology notes for infrastructure analysis

IFSD filtered the “category_tier_1” column in data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B and selected value infrastructure.

IFSD then sorted infrastructure requests by category_tier_2, by category_tier_3, and by final decision.

XII. Methodology notes for Substance use treatment Analysis

IFSD filtered the “category_tier_2” column in data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B and selected value substance use treatment.

IFSD then sorted substance use treatment requests by category_tier_3, by final decision, and by dataset (individual v. group). category_tier_3 values include:

1) Non-residential programs for substance use treatment
2) Residential program for substance use treatment
3) Other substance use treatment
4) Administration fees for substance use treatment

XIII. Methodology notes for addiction analysis

IFSD filtered the “Needs” column in data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B and tagged a request as related to Addiction if any of the following were values for the Needs variable:

1) Opioid-use Disorder (Opioid Addiction)
2) Stimulant-use Disorder (Stimulant Addiction)
3) Substance-Induced
4) Unspecified Substance-use Disorder (Unspecified Addiction)
5) Alcohol-use Disorder (Alcohol Addiction)
6) Nicotine-use Disorder (Nicotine Addiction)

IFSD then sorted addiction requests by final decision.

XIV. Methodology notes for appeal analysis

IFSD filtered the “appeal_submitted_date” column in data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B and only kept non-blank cells.

IFSD then conducted a set of analyses for all appeal requests by applying the same sorting approaches documented in section II. Global/Descriptive Analysis.

XV. Methodology notes for Re-reviews

Term	Definition
Re-review	"a previously denied item which has been re-reviewed due to new information or the implementation of the *Back-to-Basics(B2B)* policies"
Re-assessment	"an item currently in escalations, not yet denied, which may be eligible for re-assessment/approval due to new information or B2B."

IFSD filtered the "rereview_item_submitted_date" column in data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B and only kept non-blank cells.

IFSD then conducted a set of analyses for all rereview requests by applying the same sorting approaches documented in section II. Global/Descriptive Analysis.

XVI. Methodology notes for reasonable first point of contact for off-reserve First Nations child

IFSD created an additional code for each entry of "category_tier_1" (e.g., education) and "category_tier_2" (e.g., education supplies) in data file FY 2016-17 to 2022-23 Jordans Principle First Nations Datasets - PROTECTED B. The code reflects the reasonable first point of contact for off-reserve First Nations child. Possible codes for reasonable first point of contact were: provincial, federal, and neither.

Using information from federal and provincial/territorial government websites, IFSD coded the categories using the question in a typical situation, which level of government would be a reasonable first point of contact for a First Nations child off-reserve requiring this product or service?

IFSD presents this information on a best-efforts basis for illustrative purposes only, assuming a general case. There are circumstances in which one or more order of government would offer or make accessible financial and/or other supports to meet the differentiated needs of a citizen.

Limitations with this approach include:

1) IFSD was required to make assumptions about categories of need as some definitions were not clear.
2) ISC's categories of need do not necessarily map to either provincial/territorial or federal programs.
3) The extent of services offered by provinces/territories may vary.
4) Not all federal and provincial programs are universal. Some may target specific sub-populations, particularly low-income and disabled children/families.

XVII. Methodology notes for reasonable first point of contact for off-reserve First Nations child

Using the actual data for fiscal years 2017-18 to 2020-21, IFSD extrapolated the trend in row count for subsequent fiscal years using the trend function in Excel. The aim was to compare the 2021-22 and 2022-23 data with the extrapolated value.

Appendix A

Dsitinct needs 2022-23	IFSD Needs clusters	IFSD Condensed Needs Clusters
Opioid-use Disorder (Opioid Addiction)	Addiction	Health
Stimulant-use Disorder (Stimulant Addiction)	Addiction	Health
Substance-Induced	Addiction	Health
Unspecified Substance-use Disorder (Unspecified Addiction)	Addiction	Health
Alcohol-use Disorder (Alcohol Addiction)	Addiction	Health
Nicotine-use Disorder (Nicotine Addiction)	Addiction	Health
Malocclusion (Misaligned/Crooked Teeth)	Dental/Orthodontic	Health
Oral Infection (Dental Abscess)	Dental/Orthodontic	Health
Tooth Decay (Cavity)	Dental/Orthodontic	Health
Unspecified Dental	Dental/Orthodontic	Health
Unspecified Dental/Orthodontic	Dental/Orthodontic	Health
Unspecified Orthodontic	Dental/Orthodontic	Health
Affordability	Deprivation/poverty	Social
Lack of Access to Service	Deprivation/poverty	Social
Malnutrition	Deprivation/poverty	Social
Unsafe Living Conditions	Deprivation/poverty	Social
Unspecified Financial	Deprivation/poverty	Social
Unspecified Low Income	Deprivation/poverty	Social
Assisting Student in Surpassing Academic Standards	Education	Education
Difficulty Interpreting Visual Information	Education	Education
Difficulty with Fine Motor Skills	Education	Education
Difficulty with Math	Education	Education
Difficulty with Reading	Education	Education
Difficulty with Writing	Education	Education
Ensuring Participation in School Activities	Education	Education
Ensuring Student Meets Academic Standards	Education	Education
Specific Language Impairment	Education	Education
Speech Sound Disorder	Education	Education
Stuttering	Education	Education
Unspecified Academic Performance (Grades)	Education	Education
Unspecified Education	Education	Education
Unspecified Language Disorder	Education	Education
Unspecified Learning Assistance	Education	Education
Unspecified Learning Disorder	Education	Education
Unspecified Speech and Language Impairment	Education	Education
Unspecified Speech Disorder	Education	Education

Child Apprehension Prevention	First Nations child and family services (FNCFS)	Social
Preserving Family Integrity	First Nations child and family services (FNCFS)	Social
Unspecified Familial	First Nations child and family services (FNCFS)	Social
Unspecified Family Integrity	First Nations child and family services (FNCFS)	Social
COVID-19	COVID-19	Health
Acne	Health	Health
Angelman Syndrome	Health	Health
Ankyloglossia (Tongue-tie)	Health	Health
Aphasia	Health	Health
Apneic Spells	Health	Health
Apparent Life-Threatening Event (ALTE)	Health	Health
Apraxia of Speech	Health	Health
Arthritis	Health	Health
Arthrogryposis Multiplex Congenita	Health	Health
Asperger Syndrome	Health	Health
Asthma	Health	Health
Autistic Disorder	Health	Health
Avoidant/Restrictive Food intake Disorder	Health	Health
Back Pain	Health	Health
Binge Eating Disorder	Health	Health
Bone Fracture	Health	Health
Brain Tumor	Health	Health
Bronchiolitis	Health	Health
Celiac	Health	Health
Cerebral Palsy	Health	Health
Change in Chromosome Number	Health	Health
Change in Chromosome Structure	Health	Health
Chiari Malformation	Health	Health
Chronic Motor or Vocal Tic Disorder	Health	Health
Clubfoot	Health	Health
Concussion	Health	Health
Congenital Heart Disease	Health	Health
Constipation	Health	Health
Cough	Health	Health
Craniofacial Abnormalities	Health	Health
Craniosynostosis	Health	Health
Crohns Disease	Health	Health

Cystic Fibrosis	Health	Health
Developmental Verbal Dyspraxia	Health	Health
Diabetes	Health	Health
Diarrhea	Health	Health
Difficulty Hearing Differences Between Sounds	Health	Health
Downs Syndrome	Health	Health
Due to a general medical condition	Health	Health
Dysarthria	Health	Health
Eczema	Health	Health
Encephalopathy	Health	Health
Encopresis	Health	Health
Ensuring Physical Health	Health	Health
Enuresis	Health	Health
Environmental Allergy	Health	Health
Failure to Thrive	Health	Health
Febrile Seizures	Health	Health
Fecal Incontinence	Health	Health
Fetal alcohol spectrum disorders (FASD)	Health	Health
Focal and Multifocal Seizures	Health	Health
Food Allergy	Health	Health
Functional Abdominal Pain	Health	Health
Gait / Walking Disorders	Health	Health
Gene Abnormality	Health	Health
Growth Disorder	Health	Health
Hearing Loss	Health	Health
Heart Attack	Health	Health
Heart Failure	Health	Health
Heart Valve Problem	Health	Health
Human Immunodeficiency	Health	Health
Hydrocephalus	Health	Health
Hyperinsulinemia	Health	Health
Hypotonia	Health	Health
Immunization	Health	Health
Infantile Spasms	Health	Health
Insomnia	Health	Health
Iron Deficiency	Health	Health
Juvenile Rheumatoid Arthritis	Health	Health
Kidney Failure	Health	Health
Kidney Stones	Health	Health
Leukemia	Health	Health
Lice	Health	Health
Lymphoma	Health	Health
Meningitis	Health	Health

Migraine	Health	Health
Multiple Sclerosis	Health	Health
Myelomeningocele (Spina Bifida)	Health	Health
Neurofibromatosis Type 1 (NF1)	Health	Health
Obesity	Health	Health
Onychocryptosis (Ingrown Nail)	Health	Health
Orofacial Myofunctional Disorder	Health	Health
Osteosarcoma	Health	Health
Paralysis	Health	Health
Paraplegia	Health	Health
Plagiocephaly	Health	Health
Pneumonia	Health	Health
Post-Concussion Syndrome	Health	Health
Posttraumatic Stress Disorder (PTSD)	Health	Health
Potential Neurological Disorder	Health	Health
Pregnancy/Prenatal Screening	Health	Health
Premature Birth	Health	Health
Premenstrual Dysmorphic Disorder	Health	Health
Prenatal	Health	Health
Psoriasis	Health	Health
Quadriplegia	Health	Health
Reflux	Health	Health
Scoliosis	Health	Health
Short Bowel Syndrome	Health	Health
Sleep Apnea	Health	Health
Spasticity	Health	Health
Specific Phobia	Health	Health
Spinal Cord Injury	Health	Health
Spine Tumor	Health	Health
Stroke	Health	Health
Sudden Infant Death Syndrome (SIDS)	Health	Health
Temporomandibular Joint Dysfunction	Health	Health
Thyroid Disease	Health	Health
Torticollis	Health	Health
Tourettes Syndrome	Health	Health
Transport Injuries	Health	Health
Tremor	Health	Health
Tuberculosis	Health	Health
Tuberculosis Sclerosis Complex	Health	Health
Unintentional Injuries (Non-Transport)	Health	Health
Unspecified Acute or Chronic Respiratory Diseases	Health	Health
Unspecified Allergy	Health	Health
Unspecified Anemia	Health	Health

Unspecified Autism Spectrum Disorder (ASD)	Health	Health
Unspecified Autoimmune and Autoinflammatory Diseases	Health	Health
Unspecified Bacterial or Viral Infections	Health	Health
Unspecified Blood Disease/ Disorder	Health	Health
Unspecified Bone Cancers	Health	Health
Unspecified Brain Cancer	Health	Health
Unspecified Calculi	Health	Health
Unspecified Cancer	Health	Health
Unspecified Cardiovascular and Circulatory Disease	Health	Health
Unspecified Change in Chromosome	Health	Health
Unspecified Congenital and Genetic Disease	Health	Health
Unspecified Congenital Malformation	Health	Health
Unspecified Developmental Disorders	Health	Health
Unspecified Diets and Other Dietary Therapies	Health	Health
Unspecified Digestive Disease	Health	Health
Unspecified Disruptive Behavior Disorders (DBD)	Health	Health
Unspecified Ear Disease	Health	Health
Unspecified Ear, Nose, and Throat Diseases	Health	Health
Unspecified Eating Disorders	Health	Health
Unspecified Elimination Disorder	Health	Health
Unspecified Endocrine and Metabolic Diseases/Disorders	Health	Health
Unspecified Endocrine Disease	Health	Health
Unspecified Environmental Disease	Health	Health
Unspecified Eye Disease	Health	Health
Unspecified Genetic Disorder	Health	Health
Unspecified Headache	Health	Health
Unspecified Health	Health	Health
Unspecified Infectious Disease	Health	Health
Unspecified Injury	Health	Health
Unspecified Kidney and Urinary Disease	Health	Health
Unspecified Metabolic Disorders	Health	Health
Unspecified Mouth Disease	Health	Health
Unspecified Musculoskeletal Disorders	Health	Health
Unspecified Neoplasm	Health	Health
Unspecified Nerve and Muscle Diseases	Health	Health
Unspecified Neurological Disorder	Health	Health
Unspecified Newborn	Health	Health
Unspecified Nose Disease	Health	Health
Unspecified Nutritional Disorder	Health	Health
Unspecified Pediatric Condition	Health	Health

Unspecified Physical Access	Health	Health
Unspecified Physical Illness	Health	Health
Unspecified Pregnancy	Health	Health
Unspecified Rare Cancer	Health	Health
Unspecified Renal Failure	Health	Health
Unspecified Respiratory Disease	Health	Health
Unspecified Screening	Health	Health
Unspecified Seizure	Health	Health
Unspecified Skin Disease	Health	Health
Unspecified Sleep Disorder	Health	Health
Unspecified Spine Disease	Health	Health
Unspecified Throat Disease	Health	Health
Unspecified Tic Disorders	Health	Health
Unspecified Viral Infection	Health	Health
Upper Respiratory Tract Infection (UTRI - Common Cold)	Health	Health
Urinary Incontinence	Health	Health
Urinary Tract Infection (UTI)	Health	Health
Voice Disorder	Health	Health
Vomiting	Health	Health
Global Developmental Delays	Health	Health
Agoraphobia	Mental health	Health
Bipolar Disorder	Mental health	Health
Conduct Disorder (CD)	Mental health	Health
Schizophrenia	Mental health	Health
Selective Mutism	Mental health	Health
Social Anxiety Disorder	Mental health	Health
Unspecified Anxiety or Panic Disorder	Mental health	Health
Unspecified Mental Disorder	Mental health	Health
Unspecified Mental Health Disorder	Mental health	Health
Unspecified Mood Disorders	Mental health	Health
Unspecified Psychotic Disorder	Mental health	Health
Anorexia Nervosa	Mental health	Health
Attention-Deficit Hyperactivity Disorder (ADHD)	Mental health	Health
Bulimia Nervosa	Mental health	Health
Generalized Anxiety Disorder	Mental health	Health
Major Depressive Disorder (Depression)	Mental health	Health
Nightmares / Night Terrors (Parasomnias)	Mental health	Health
Oppositional Defiant Disorder (ODD)	Mental health	Health
Panic Disorder	Mental health	Health
Persistent Depressive Disorder (Dysthymia)	Mental health	Health
Pervasive Developmental Disorder	Mental health	Health
Separation Anxiety Disorder	Mental health	Health

Socialization Issue	Mental health	Health
NA	N/A	N/A
Missing Status Registration	Unspecified	Social
Unspecified Access	Unspecified	Other
Unspecified Need	Unspecified	Other
Unspecified Safety Concerns	Unspecified	Social
Unspecified Treaty Rights	Unspecified	Social
Retro 2020 CHRT 36	Retro 2020 CHRT 36	Social
Furthering Cultural Awareness	Social well-being	Social
Unspecified Cultural	Social well-being	Social
Unspecified Healthy Relationships	Social well-being	Social
Unspecified Participation	Social well-being	Social
Unspecified Reconciliation	Social well-being	Social
Unspecified Relationships	Social well-being	Social
Unspecified Social	Social well-being	Social
Hyperopia (far-sightedness)	Vision	Health
Myopia (near-sightedness)	Vision	Health
Unspecified Vision Impairment	Vision	Health

Appendix B - 1

AmountRequestedCategory	Approved_FundsCategory	IFSD Clusters
0-24	0-24	$0-$99
25-49	25-49	$0-$99
50-74	50-74	$0-$99
75-99	75-99	$0-$99
100-124	100-124	$100-$999
125-149	125-149	$100-$999
150-174	150-174	$100-$999
175-199	175-199	$100-$999
200-224	200-224	$100-$999
225-249	225-249	$100-$999
250-274	250-274	$100-$999
275-299	275-299	$100-$999
300-324	300-324	$100-$999
325-349	325-349	$100-$999
350-374	350-374	$100-$999
375-399	375-399	$100-$999
400-424	400-424	$100-$999
425-449	425-449	$100-$999
450-474	450-474	$100-$999

475-499	475-499	$100-$999
500-524	500-524	$100-$999
525-549	525-549	$100-$999
550-574	550-574	$100-$999
575-599	575-599	$100-$999
600-624	600-624	$100-$999
625-649	625-649	$100-$999
650-674	650-674	$100-$999
675-699	675-699	$100-$999
700-724	700-724	$100-$999
725-749	725-749	$100-$999
750-774	750-774	$100-$999
775-799	775-799	$100-$999
800-824	800-824	$100-$999
825-849	825-849	$100-$999
850-874	850-874	$100-$999
875-899	875-899	$100-$999
900-924	900-924	$100-$999
925-949	925-949	$100-$999
950-974	950-974	$100-$999
975-999	975-999	$100-$999
1000-1049	1000-1049	$1,000-$4,999
1050-1099	1050-1099	$1,000-$4,999
1100-1149	1100-1149	$1,000-$4,999
1150-1199	1150-1199	$1,000-$4,999
1200-1249	1200-1249	$1,000-$4,999
1250-1299	1250-1299	$1,000-$4,999
1300-1349	1300-1349	$1,000-$4,999
1350-1399	1350-1399	$1,000-$4,999
1400-1449	1400-1449	$1,000-$4,999
1450-1499	1450-1499	$1,000-$4,999
1500-1549	1500-1549	$1,000-$4,999
1550-1599	1550-1599	$1,000-$4,999
1600-1649	1600-1649	$1,000-$4,999
1650-1699	1650-1699	$1,000-$4,999
1700-1749	1700-1749	$1,000-$4,999
1750-1799	1750-1799	$1,000-$4,999
1800-1849	1800-1849	$1,000-$4,999
1850-1899	1850-1899	$1,000-$4,999

1900-1949	1900-1949	$1,000-$4,999
1950-1999	1950-1999	$1,000-$4,999
2000-2049	2000-2049	$1,000-$4,999
2050-2099	2050-2099	$1,000-$4,999
2100-2149	2100-2149	$1,000-$4,999
2150-2199	2150-2199	$1,000-$4,999
2200-2249	2200-2249	$1,000-$4,999
2250-2299	2250-2299	$1,000-$4,999
2300-2349	2300-2349	$1,000-$4,999
2350-2399	2350-2399	$1,000-$4,999
2400-2449	2400-2449	$1,000-$4,999
2450-2499	2450-2499	$1,000-$4,999
2500-2599	2500-2599	$1,000-$4,999
2600-2699	2600-2699	$1,000-$4,999
2700-2799	2700-2799	$1,000-$4,999
2800-2899	2800-2899	$1,000-$4,999
2900-2999	2900-2999	$1,000-$4,999
3000-3099	3000-3099	$1,000-$4,999
3100-3199	3100-3199	$1,000-$4,999
3200-3299	3200-3299	$1,000-$4,999
3300-3399	3300-3399	$1,000-$4,999
3400-3499	3400-3499	$1,000-$4,999
3500-3599	3500-3599	$1,000-$4,999
3600-3699	3600-3699	$1,000-$4,999
3700-3799	3700-3799	$1,000-$4,999
3800-3899	3800-3899	$1,000-$4,999
3900-3999	3900-3999	$1,000-$4,999
4000-4099	4000-4099	$1,000-$4,999
4100-4199	4100-4199	$1,000-$4,999
4200-4299	4200-4299	$1,000-$4,999
4300-4399	4300-4399	$1,000-$4,999
4400-4499	4400-4499	$1,000-$4,999
4500-4599	4500-4599	$1,000-$4,999
4600-4699	4600-4699	$1,000-$4,999
4700-4799	4700-4799	$1,000-$4,999
4800-4899	4800-4899	$1,000-$4,999
4900-4999	4900-4999	$1,000-$4,999
5000-5249	5000-5249	$5,000+
5250-5499	5250-5499	$5,000+

5500-5749	5500-5749	$5,000+
5750-5999	5750-5999	$5,000+
6000-6249	6000-6249	$5,000+
6250-6499	6250-6499	$5,000+
6500-6749	6500-6749	$5,000+
6750-6999	6750-6999	$5,000+
7000-7249	7000-7249	$5,000+
7250-7499	7250-7499	$5,000+
7500-7749	7500-7749	$5,000+
7750-7999	7750-7999	$5,000+
8000-8249	8000-8249	$5,000+
8250-8499	8250-8499	$5,000+
8500-8749	8500-8749	$5,000+
8750-8999	8750-8999	$5,000+
9000-9249	9000-9249	$5,000+
9250-9499	9250-9499	$5,000+
9500-9749	9500-9749	$5,000+
9750-9999	9750-9999	$5,000+
10000-10999	10000-10999	$5,000+
11000-11999	11000-11999	$5,000+
12000-12999	12000-12999	$5,000+
13000-13999	13000-13999	$5,000+
14000-14999	14000-14999	$5,000+
15000-15999	15000-15999	$5,000+
16000-16999	16000-16999	$5,000+
17000-17999	17000-17999	$5,000+
18000-18999	18000-18999	$5,000+
19000-19999	19000-19999	$5,000+
20000-20999	20000-20999	$5,000+
21000-21999	21000-21999	$5,000+
22000-22999	22000-22999	$5,000+
23000-23999	23000-23999	$5,000+
24000-24999	24000-24999	$5,000+
25000-29999	25000-29999	$5,000+
30000-34999	30000-34999	$5,000+
35000-39999	35000-39999	$5,000+
40000-44999	40000-44999	$5,000+
45000-49999	45000-49999	$5,000+
50000-59999	50000-59999	$5,000+

60000-69999	60000-69999	$5,000+
70000-79999	70000-79999	$5,000+
80000-89999	80000-89999	$5,000+
90000-99999	90000-99999	$5,000+
100000-149999	100000-149999	$5,000+
150000-199999	150000-199999	$5,000+
200000-249999	200000-249999	$5,000+
250000+	250000+	$5,000+
(blank)	(blank)	(blank)

Appendix B - 2

AmountRequestedCategory	Approved_FundsCategory	IFSD Clusters
0-24	0-24	$0-$499
25-49	25-49	$0-$499
50-74	50-74	$0-$499
75-99	75-99	$0-$499
100-124	100-124	$0-$499
125-149	125-149	$0-$499
150-174	150-174	$0-$499
175-199	175-199	$0-$499
200-224	200-224	$0-$499
225-249	225-249	$0-$499
250-274	250-274	$0-$499
275-299	275-299	$0-$499
300-324	300-324	$0-$499
325-349	325-349	$0-$499
350-374	350-374	$0-$499
375-399	375-399	$0-$499
400-424	400-424	$0-$499
425-449	425-449	$0-$499
450-474	450-474	$0-$499
475-499	475-499	$0-$499
500-524	500-524	$500-$999
525-549	525-549	$500-$999
550-574	550-574	$500-$999
575-599	575-599	$500-$999
600-624	600-624	$500-$999
625-649	625-649	$500-$999
650-674	650-674	$500-$999

675-699	675-699	$500-$999
700-724	700-724	$500-$999
725-749	725-749	$500-$999
750-774	750-774	$500-$999
775-799	775-799	$500-$999
800-824	800-824	$500-$999
825-849	825-849	$500-$999
850-874	850-874	$500-$999
875-899	875-899	$500-$999
900-924	900-924	$500-$999
925-949	925-949	$500-$999
950-974	950-974	$500-$999
975-999	975-999	$500-$999
1000-1049	1000-1049	$1,000-$2,999
1050-1099	1050-1099	$1,000-$2,999
1100-1149	1100-1149	$1,000-$2,999
1150-1199	1150-1199	$1,000-$2,999
1200-1249	1200-1249	$1,000-$2,999
1250-1299	1250-1299	$1,000-$2,999
1300-1349	1300-1349	$1,000-$2,999
1350-1399	1350-1399	$1,000-$2,999
1400-1449	1400-1449	$1,000-$2,999
1450-1499	1450-1499	$1,000-$2,999
1500-1549	1500-1549	$1,000-$2,999
1550-1599	1550-1599	$1,000-$2,999
1600-1649	1600-1649	$1,000-$2,999
1650-1699	1650-1699	$1,000-$2,999
1700-1749	1700-1749	$1,000-$2,999
1750-1799	1750-1799	$1,000-$2,999
1800-1849	1800-1849	$1,000-$2,999
1850-1899	1850-1899	$1,000-$2,999
1900-1949	1900-1949	$1,000-$2,999
1950-1999	1950-1999	$1,000-$2,999
2000-2049	2000-2049	$1,000-$2,999
2050-2099	2050-2099	$1,000-$2,999
2100-2149	2100-2149	$1,000-$2,999
2150-2199	2150-2199	$1,000-$2,999
2200-2249	2200-2249	$1,000-$2,999
2250-2299	2250-2299	$1,000-$2,999

2300-2349	2300-2349	$1,000-$2,999
2350-2399	2350-2399	$1,000-$2,999
2400-2449	2400-2449	$1,000-$2,999
2450-2499	2450-2499	$1,000-$2,999
2500-2599	2500-2599	$1,000-$2,999
2600-2699	2600-2699	$1,000-$2,999
2700-2799	2700-2799	$1,000-$2,999
2800-2899	2800-2899	$1,000-$2,999
2900-2999	2900-2999	$1,000-$2,999
3000-3099	3000-3099	$3000-$4,999
3100-3199	3100-3199	$3000-$4,999
3200-3299	3200-3299	$3000-$4,999
3300-3399	3300-3399	$3000-$4,999
3400-3499	3400-3499	$3000-$4,999
3500-3599	3500-3599	$3000-$4,999
3600-3699	3600-3699	$3000-$4,999
3700-3799	3700-3799	$3000-$4,999
3800-3899	3800-3899	$3000-$4,999
3900-3999	3900-3999	$3000-$4,999
4000-4099	4000-4099	$3000-$4,999
4100-4199	4100-4199	$3000-$4,999
4200-4299	4200-4299	$3000-$4,999
4300-4399	4300-4399	$3000-$4,999
4400-4499	4400-4499	$3000-$4,999
4500-4599	4500-4599	$3000-$4,999
4600-4699	4600-4699	$3000-$4,999
4700-4799	4700-4799	$3000-$4,999
4800-4899	4800-4899	$3000-$4,999
4900-4999	4900-4999	$3000-$4,999
5000-5249	5000-5249	$5,000+
5250-5499	5250-5499	$5,000+
5500-5749	5500-5749	$5,000+
5750-5999	5750-5999	$5,000+
6000-6249	6000-6249	$5,000+
6250-6499	6250-6499	$5,000+
6500-6749	6500-6749	$5,000+
6750-6999	6750-6999	$5,000+
7000-7249	7000-7249	$5,000+
7250-7499	7250-7499	$5,000+

7500-7749	7500-7749	$5,000+
7750-7999	7750-7999	$5,000+
8000-8249	8000-8249	$5,000+
8250-8499	8250-8499	$5,000+
8500-8749	8500-8749	$5,000+
8750-8999	8750-8999	$5,000+
9000-9249	9000-9249	$5,000+
9250-9499	9250-9499	$5,000+
9500-9749	9500-9749	$5,000+
9750-9999	9750-9999	$5,000+
10000-10999	10000-10999	$5,000+
11000-11999	11000-11999	$5,000+
12000-12999	12000-12999	$5,000+
13000-13999	13000-13999	$5,000+
14000-14999	14000-14999	$5,000+
15000-15999	15000-15999	$5,000+
16000-16999	16000-16999	$5,000+
17000-17999	17000-17999	$5,000+
18000-18999	18000-18999	$5,000+
19000-19999	19000-19999	$5,000+
20000-20999	20000-20999	$5,000+
21000-21999	21000-21999	$5,000+
22000-22999	22000-22999	$5,000+
23000-23999	23000-23999	$5,000+
24000-24999	24000-24999	$5,000+
25000-29999	25000-29999	$5,000+
30000-34999	30000-34999	$5,000+
35000-39999	35000-39999	$5,000+
40000-44999	40000-44999	$5,000+
45000-49999	45000-49999	$5,000+
50000-59999	50000-59999	$5,000+
60000-69999	60000-69999	$5,000+
70000-79999	70000-79999	$5,000+
80000-89999	80000-89999	$5,000+
90000-99999	90000-99999	$5,000+
100000-149999	100000-149999	$5,000+
150000-199999	150000-199999	$5,000+
200000-249999	200000-249999	$5,000+
250000+	250000+	$5,000+

(blank)	(blank)	(blank)

Appendix C - 1

ISC Cluster – Relation to Child	IFSD Cluster – Relation to Child
Community-Based Worker	Professional
Education Professional	
Health Professional	
Navigator	
Social Professional	
Family Member	Non-Professional
Other	Other and blank
(blank)	
Family Member | Navigator	

Appendix C - 2

ISC Cluster – Relation to Child	IFSD Cluster – Relation to Child
Community-Based Worker	Professional
Education Professional	
Health Professional	
Social Professional	
Navigator	Navigator
Family Member	Non-Professional (family)
Other	Other and blank
(blank)	
Family Member | Navigator	

Appendix E

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Jordan's Principle: GCcase data analysis (Part 1)

DRAFT – For discussion only

November 2024
Revised January 2025

uOttawa

Notice to reader

- GCcase data records **opened** requests that individuals and groups made for funding from Jordan's Principle. **This means that unopened requests are not included in the dataset.**

- Unopened or backlogged requests can impact findings. In **December 2024**, Canada reported **140,000 backlogged requests**, of which **25,000 requests were self-declared as urgent**.

- The application of the Back to Basics approach cannot be verified with GCcase data. For instance, there is no way of determining if a professional letter supported an application.

- GCcase records requests that have been processed. There are gaps in understanding:
  - The size of the "backlog" regionally and nationally;
  - The impact of the unopened requests on analysis and findings using GCcase data.

GCcase overview

- Each request refers to a single item that an individual or a group is requesting.

- One child can be associated to multiple requests and one request can be associated to multiple children.

- There are four different lenses IFSD will use when analyzing GCcase data:
  1) Number of children
  2) Number of requests
  3) Products, Services, and Supports (PSS)
  4) Row count

Approaches to analyzing GCcase data

Measure	Description	Considerations
Number of requests	▪ The items people request from Jordan's Principle. ▪ This approach counts each item once even if it is associated with multiple children.	▪ No count of individual children. ▪ Limited alignment to administrative practice, i.e., clusters instances of requests.
Number of children	▪ The children associated to requests, when defined. ▪ This approach counts each child once even if they are associated with multiple requests.	▪ Not defined for all group requests.
Products, Services, and Supports (PSS)	▪ Estimated number of instances of children requesting support through Jordan's Principle.	▪ Risks overestimating the impact/reach of Jordan's Principle (by using an estimated number of children who benefit from a group request without actual numbers).
Row count	▪ Defined number of instances of children requesting support through Jordan's Principle.	▪ Risks underestimating the impact/reach of Jordan's Principle (by assuming only 1 child benefits from group requests that do not define the number of associated children).

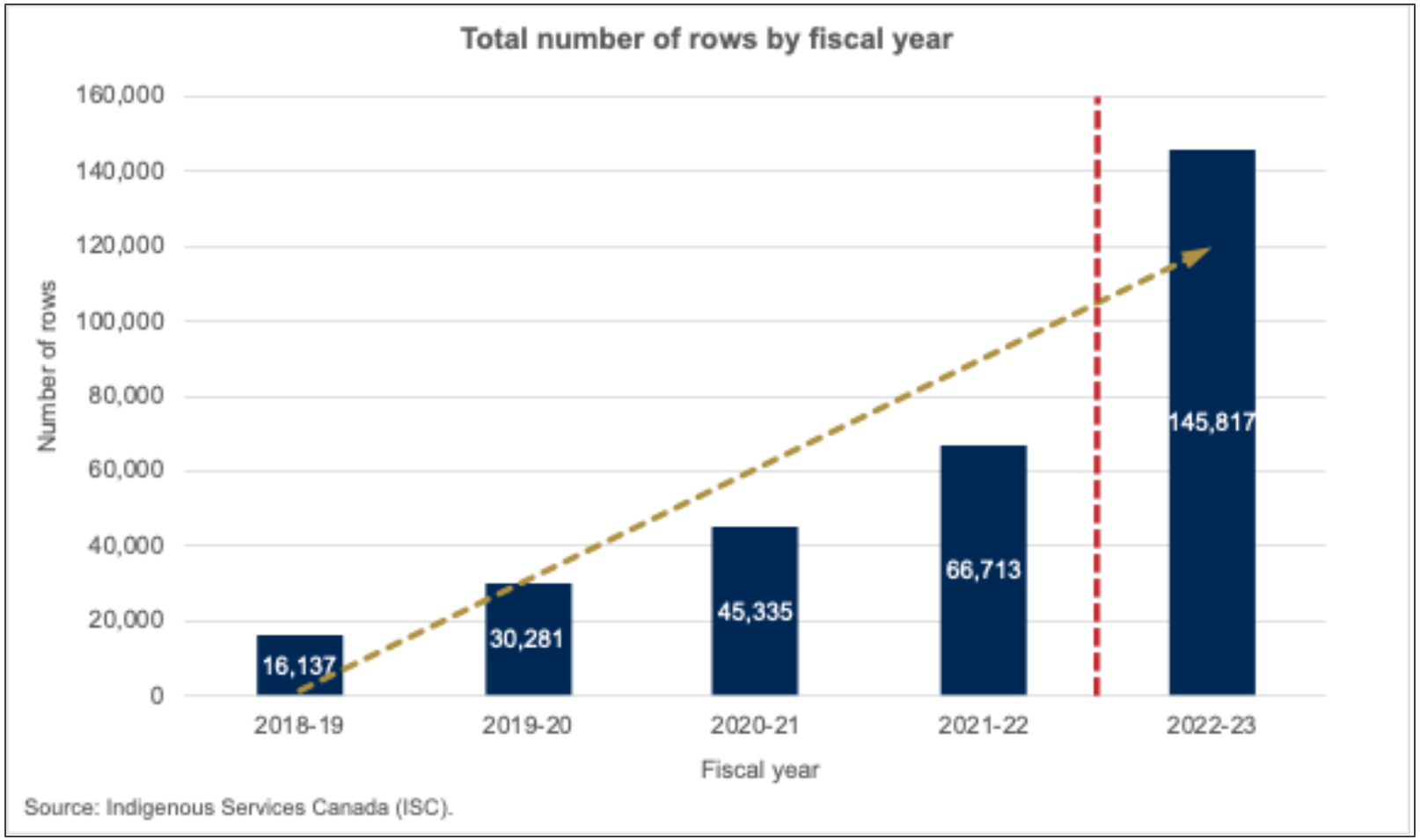
Row count for general analysis

- IFSD uses row count for general analysis.
- Counting rows = counting instances of a request. The row count is the administrative point of origin.
- IFSD recognizes that this counts the same child multiple times **if they make multiple requests**.
- IFSD is agnostic to the number of children and estimated children associated to a group request.
- The row count is crucial because it aligns to the administrative approach, i.e., one request, one requirement to evaluate and respond, regardless of the nature of the request.

General analysis

Growth in requests by row count

- There was a significant growth in requests between FY 2021-22 and 2022-23.
- Back to Basics was introduced in 2022. IFSD cannot verify if/how the implementation of Back to Basics in 2022 impacted the increase in number of requests. The data is untethered to ISC's administration, i.e., rules, evaluation, and public understanding of Jordan's Principle.



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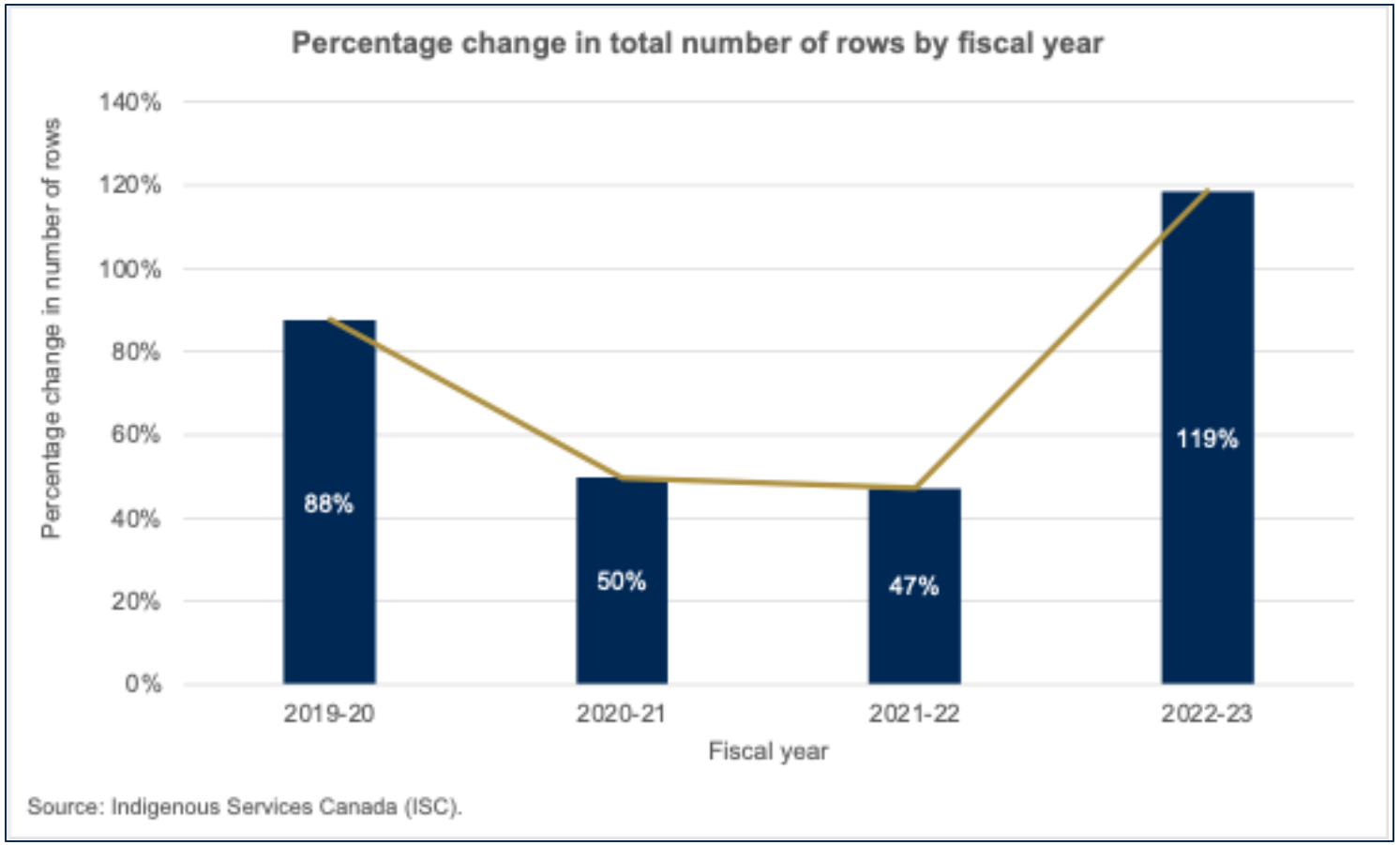
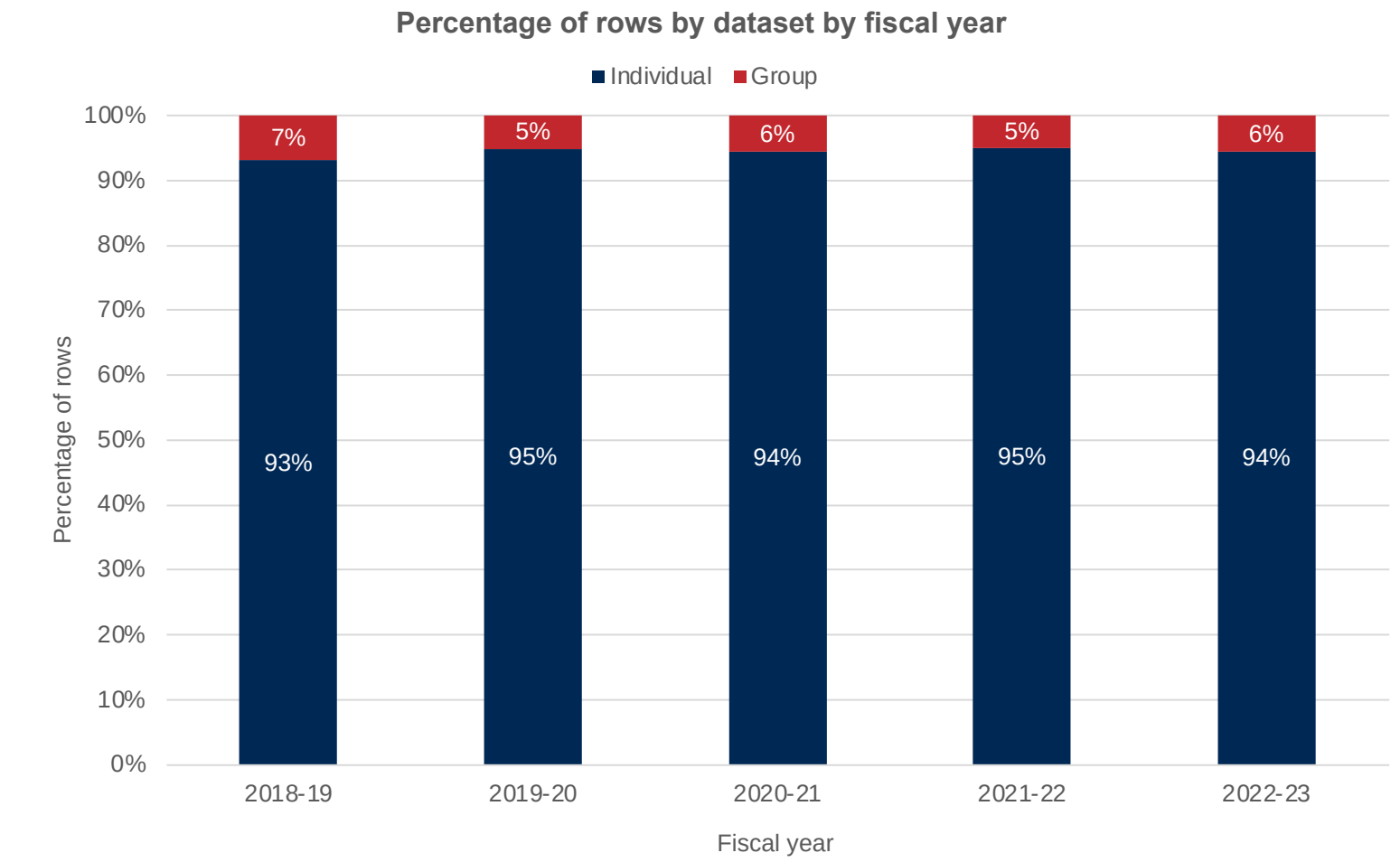
- The change represents a 119% percentage increase between the fiscal years.



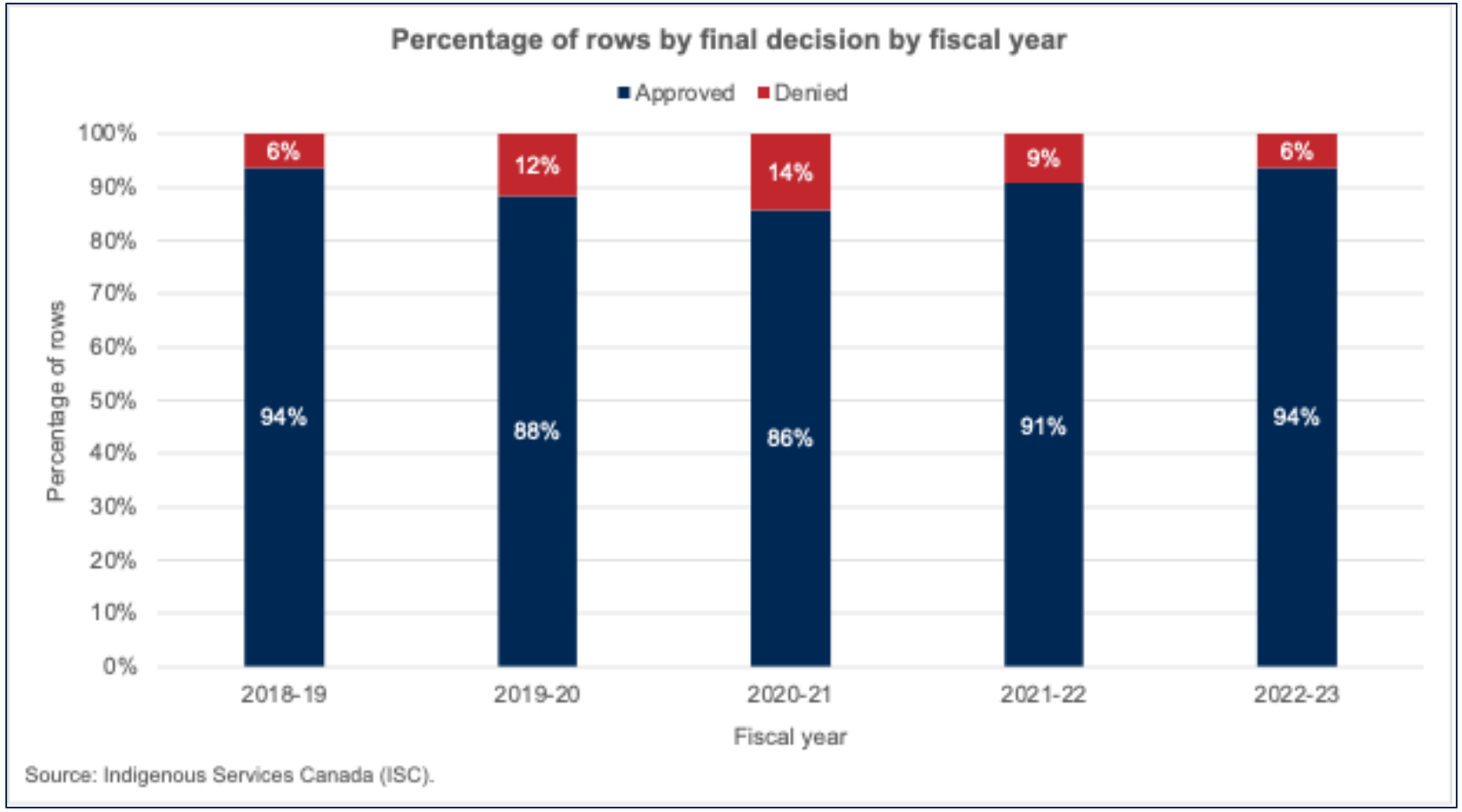
Analysis of requests by row count

- A significant majority of instances of requests are for individuals.



Source: Indigenous Services Canada (ISC).

- Over 90% of all instances of requests are approved across fiscal years.



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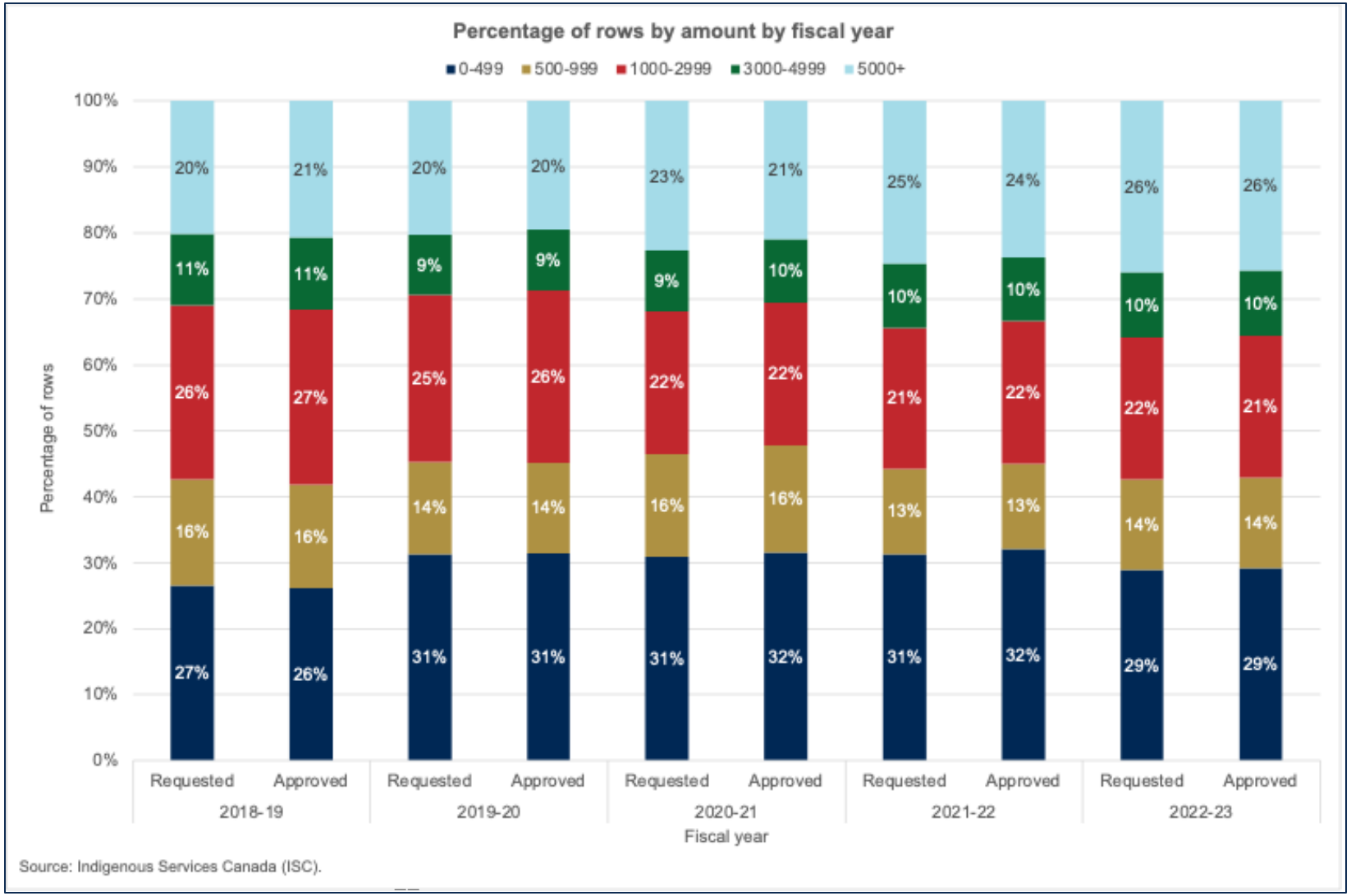
Amounts requested v. approved by row count

- Approximately 3/4 of instances of requests and approved amounts are less than $5,000.



Source: Indigenous Services Canada (ISC).

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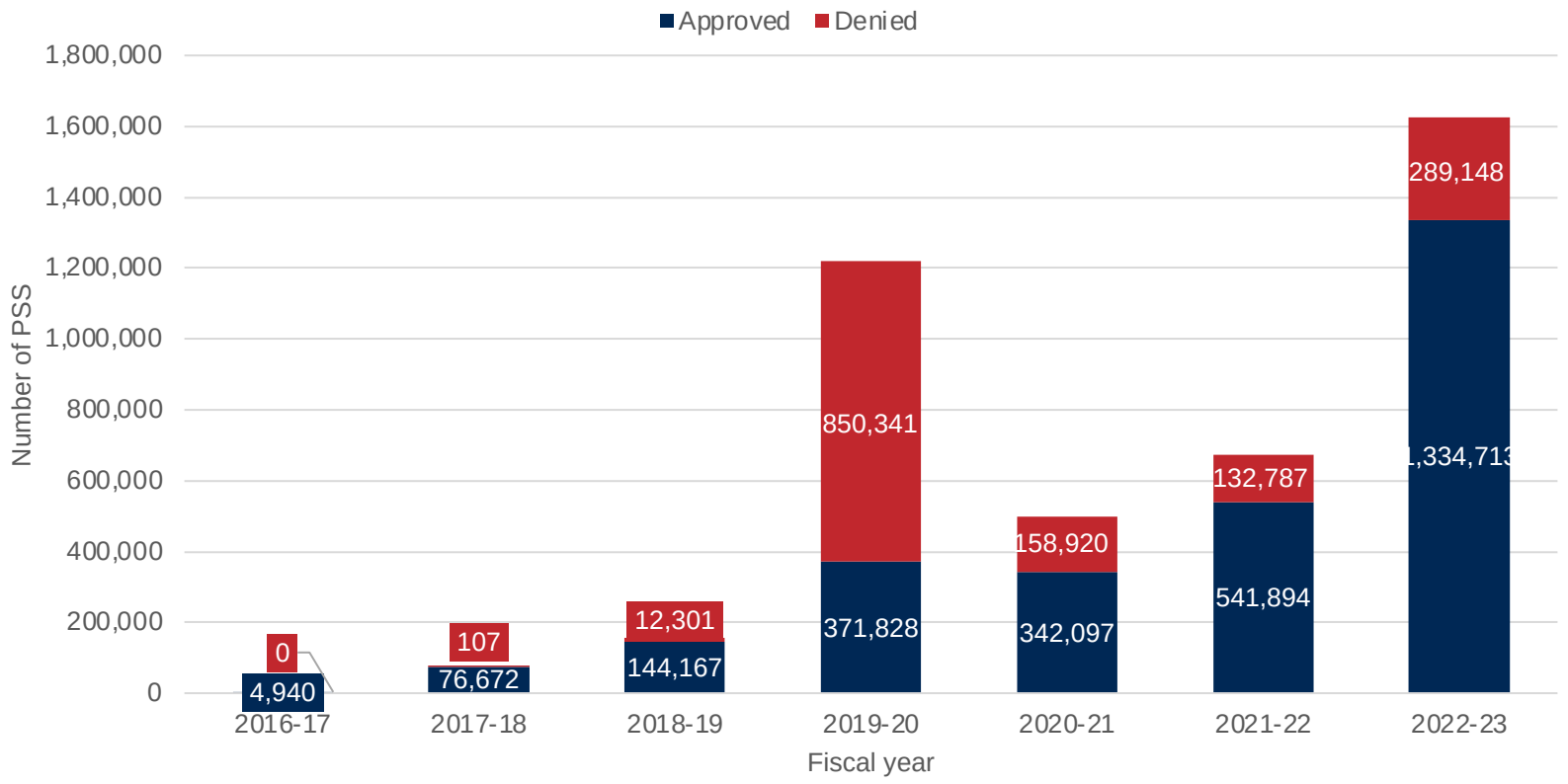
PSS v. row count

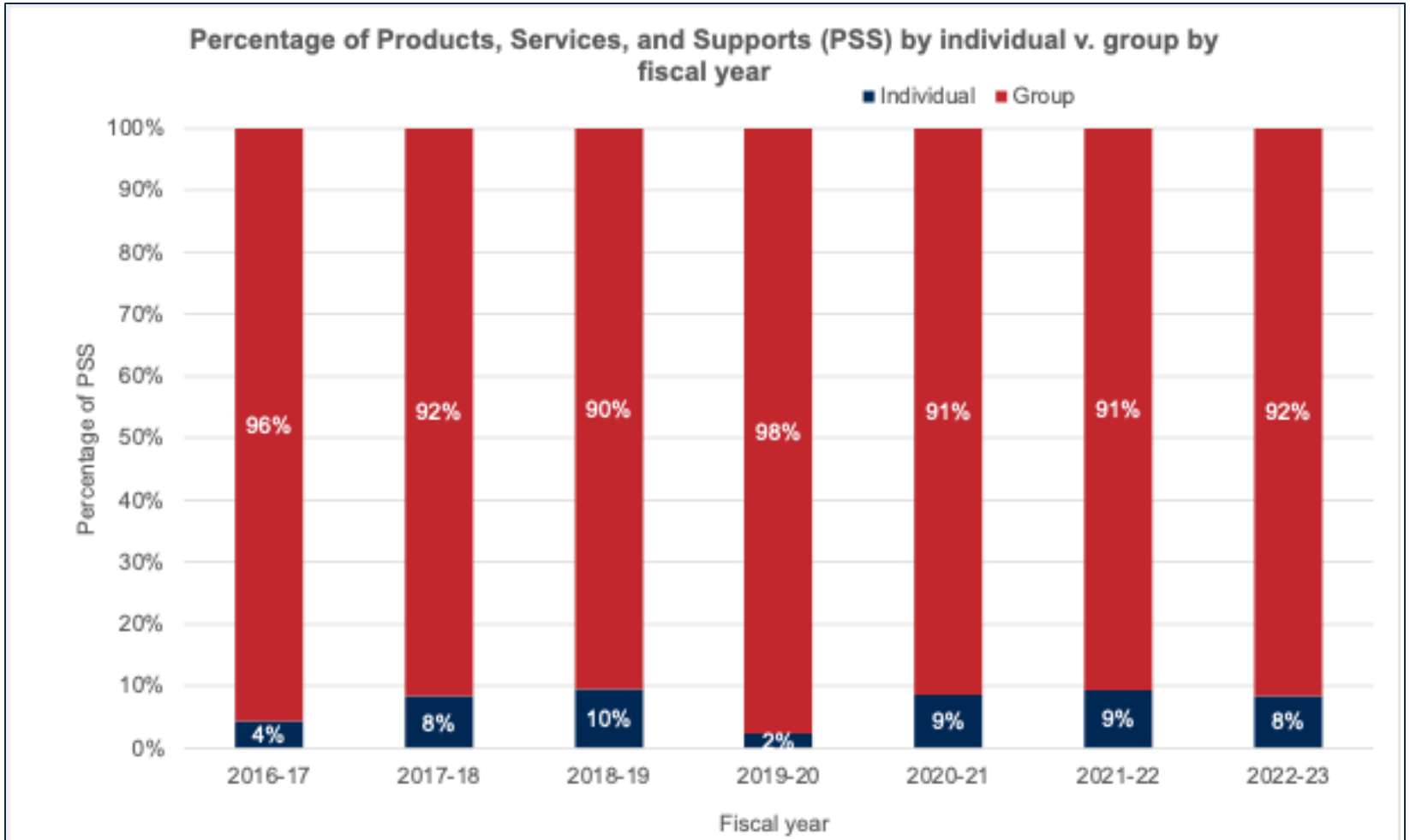
- In FY 2022-23, the count of Products, Supports, and Services (PSS) (1,623,861), is **11x greater** than the number of rows (145,817).



Source: Indigenous Services Canada (ISC).

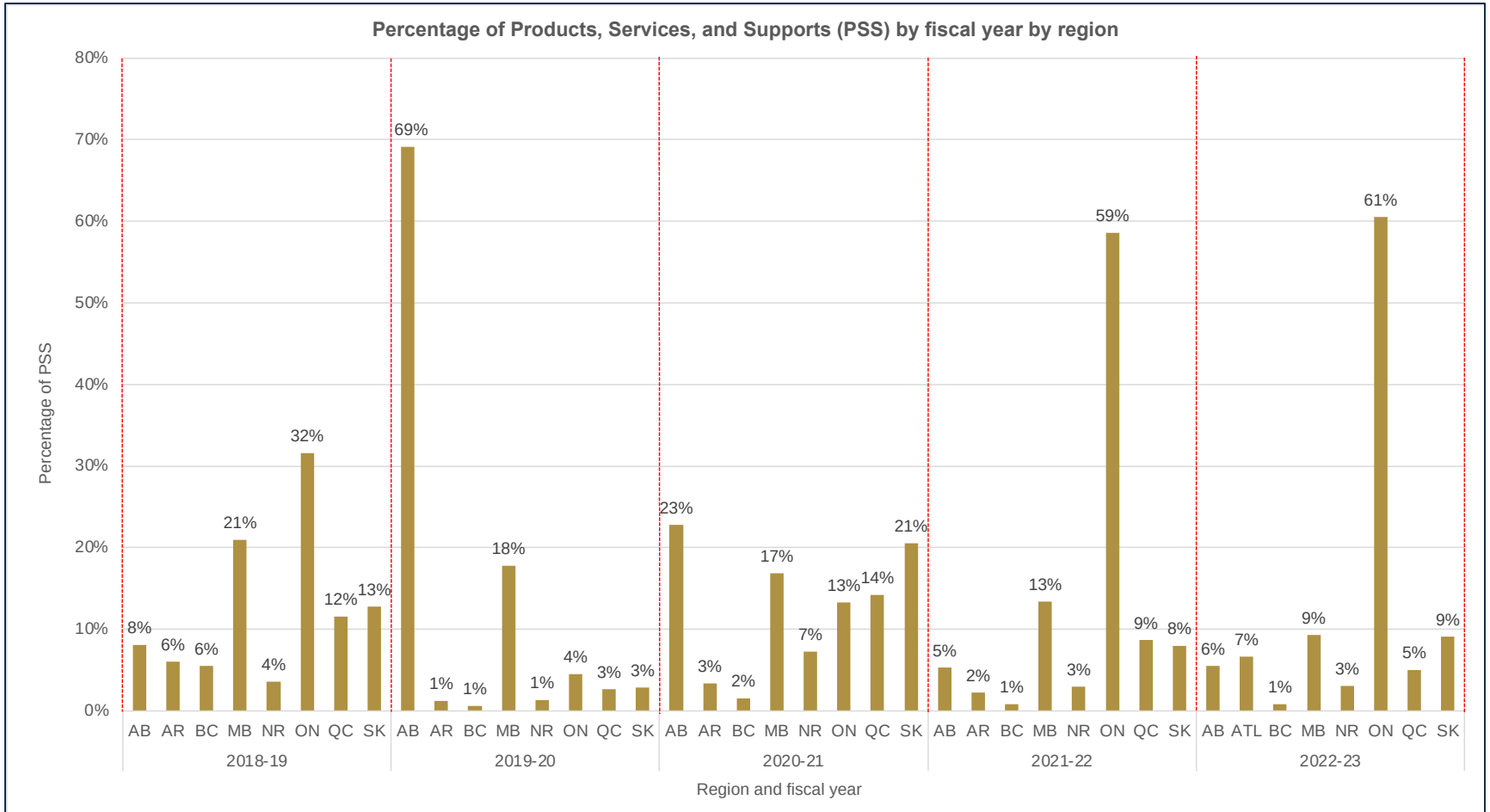
PSS: individual v. group requests

- Over 90% of PSS are associated to group requests.
- Using PSS alone distorts the instances of requests and their association to children.



Source: Indigenous Services Canada (ISC).

- In the last two fiscal years, Ontario has requested approximately 60% of products, supports, and services through Jordan's Principle (this includes all requests, i.e., approved and denied).



Source: Indigenous Services Canada (ISC).
Notes: 1) AR and ATL stand for Atlantic Region. 2) NR stands for Northern Region. 3) Entries with fewer than 15 records were suppressed.

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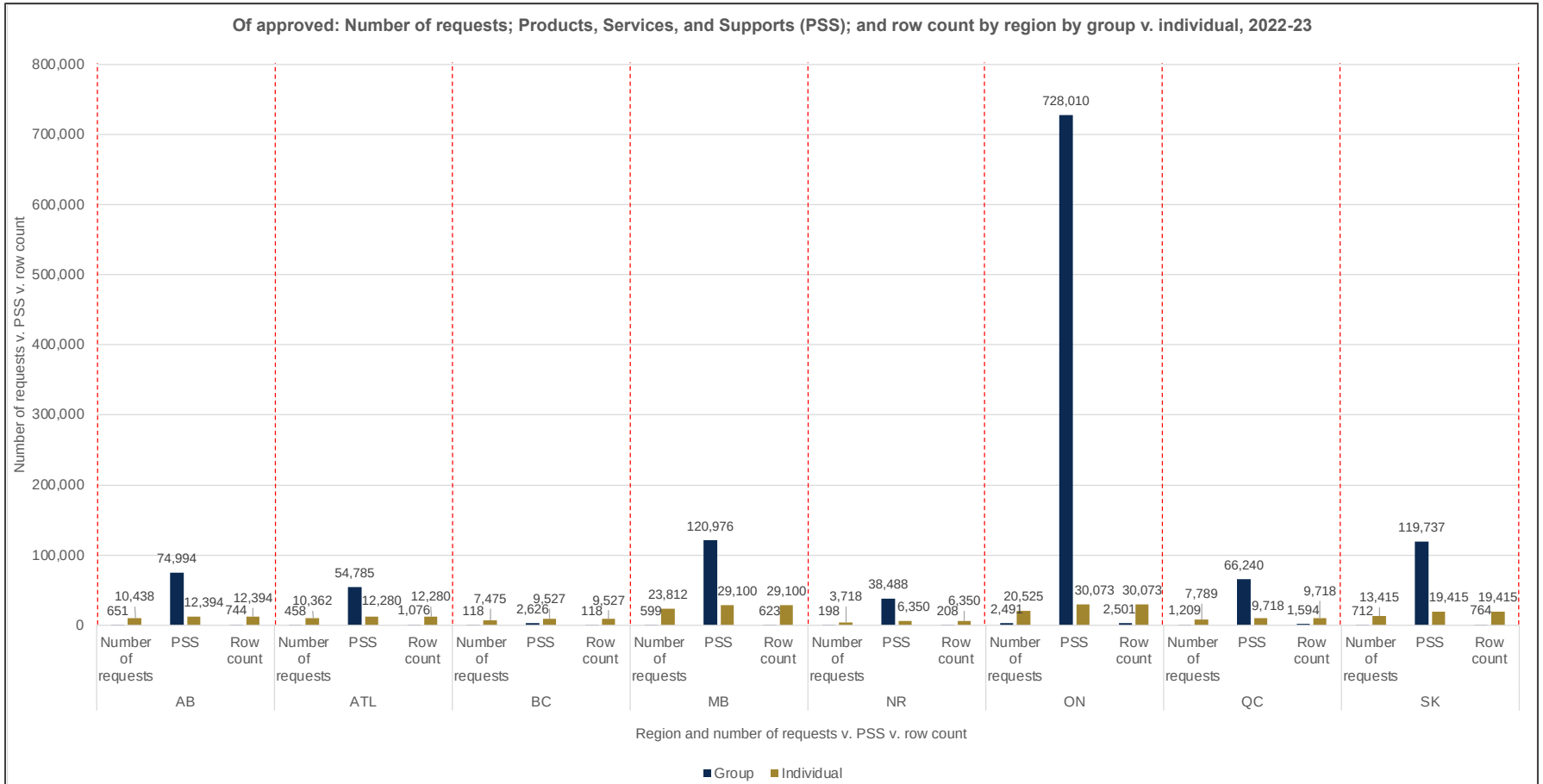
- In FY 2022-23, Ontario had the highest number of approved group requests, which reflects its significant share of overall requests through PSS.



Source Indigenous Services Canada (ISC).
Notes: 1) AR and ATL stand for Atlantic Region. 2) NR stands for Northern Region.

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Categories of need

Categories of need in GCcase

- GCcase identifies three tiers of needs
  - Tier 1: Broad categories of needs, based on aggregated Tier 2 categories or need.
  - Tier 2: Detailed categories of needs, grouped to form broader Tier 1 categories of need.
  - Tier 3: Specific categories of needs, grouped to form broader Tier 2 categories of need. (*There are several needs, e.g., 366 unique needs identified in fiscal year 2022-23. IFSD uses Tier 3 information to build its own categories of needs or for specific analysis, e.g., requests tagged to children in care.*)

- Consider the table below, distinguishing Tier 1 and Tier 2 categories of need and their composition.
  - The Tier 1 "Medical travel" need is composed of several Tier 2 needs, some of which are indicated in the table below.

Tier 1	Tier 2	Tier 3
Medical travel	Meals and accommodations for medical travel	Meals for medical travel Etc.
Medical travel	Non-emergency medical transportation	Ground travel (non-emergency medical transportation) Etc.
Medical travel	Emergency medical transportation	Ground ambulance (emergency medical transportation) Etc.
Etc.	Etc.	Etc.

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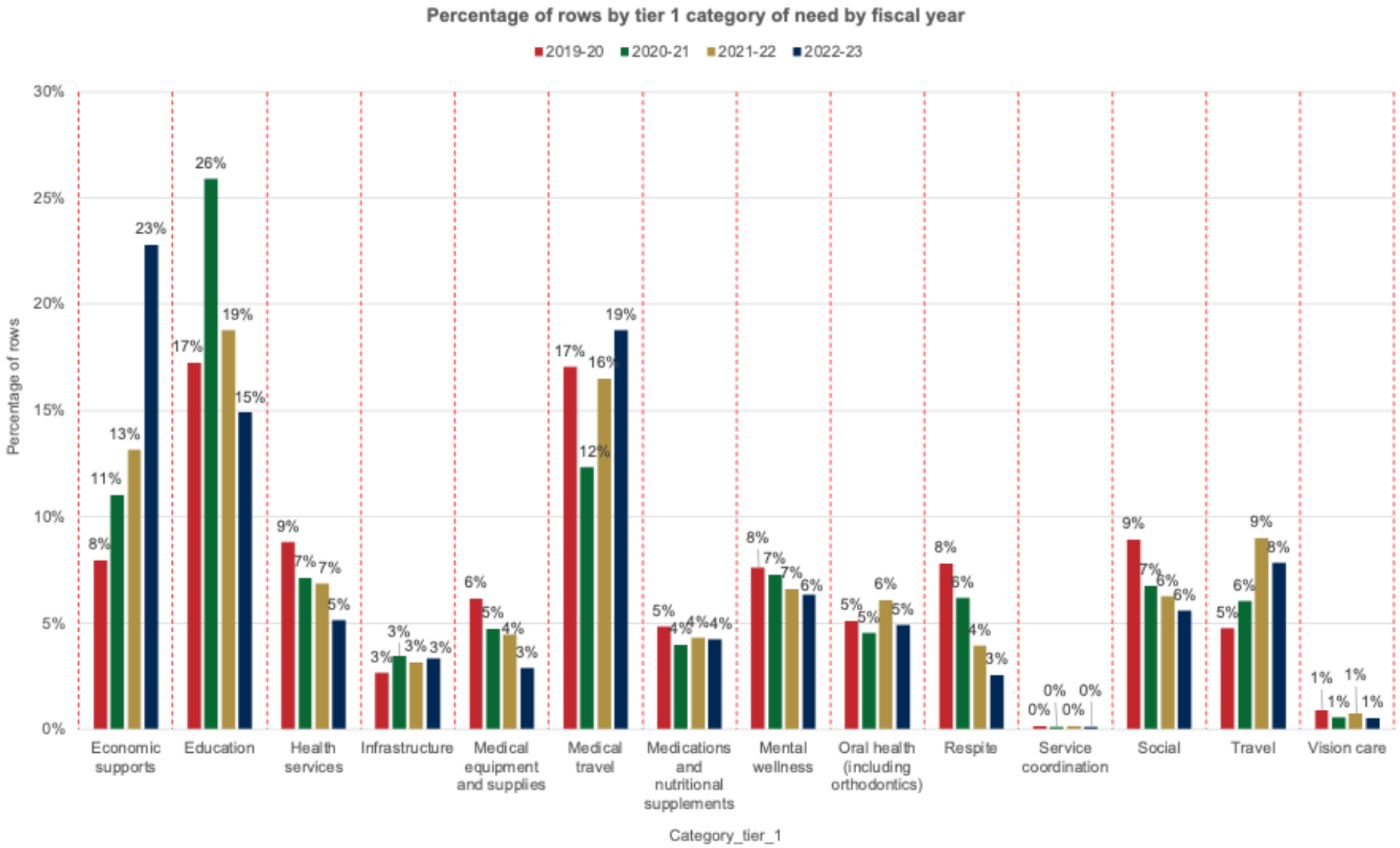
Tier 1 category of need by approach

- The share of tier 1 category of needs for **all requests** (i.e., not only those approved) varies by analytic approach in FY 2022-23:
  - Row count: economic supports (23%), followed by medical travel (19%)
  - PSS: health services (27%), followed by education (23%)
  - Number of requests: medical travel (20%), followed by education (18%)

- Each of the approaches indicate a different share of need based on the count they emphasize. PSS emphasizes group requests, while rows capture the instances of all needs, and the number of requests a unique item.



Source: Indigenous Services Canada (ISC).

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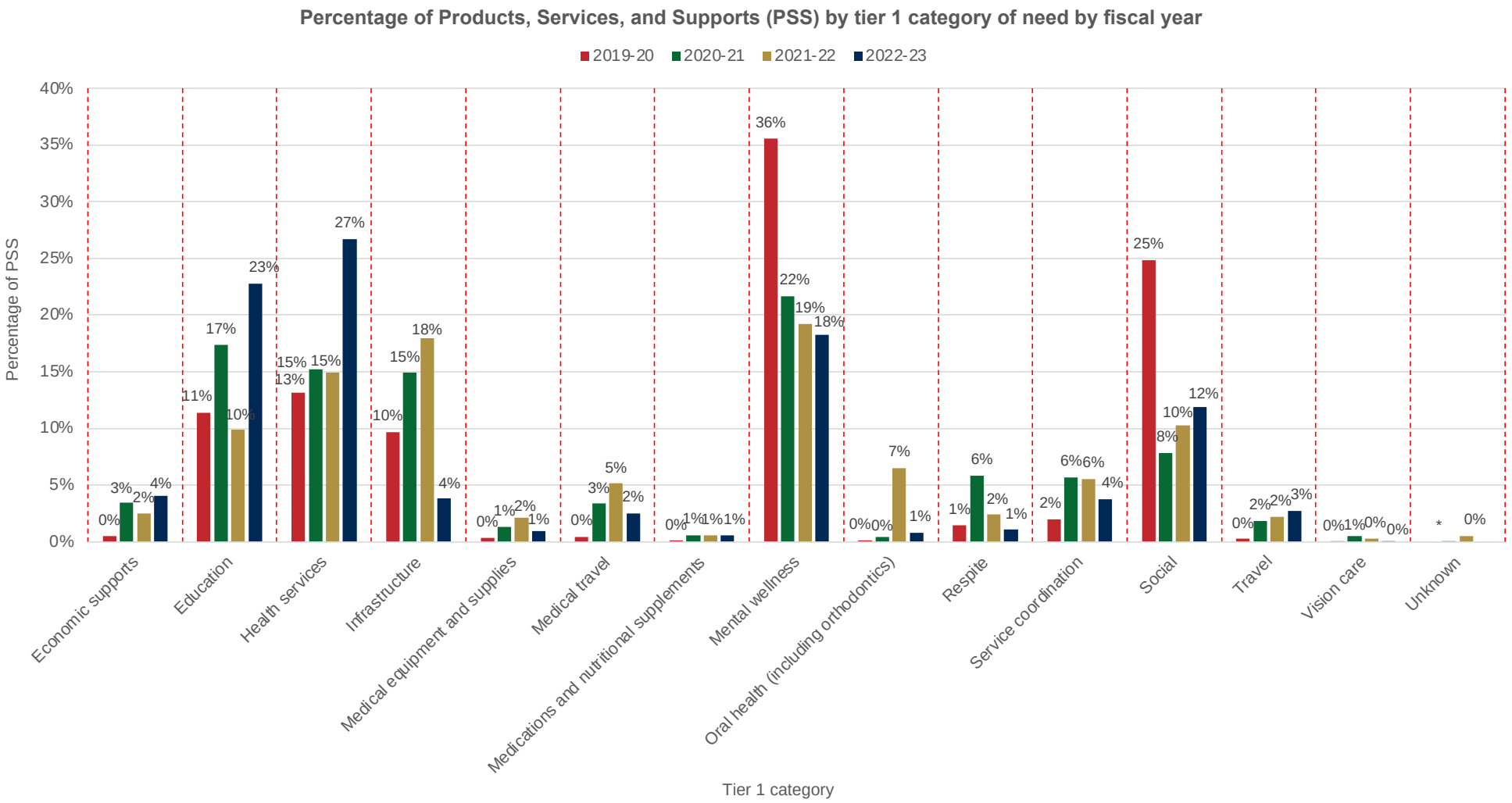
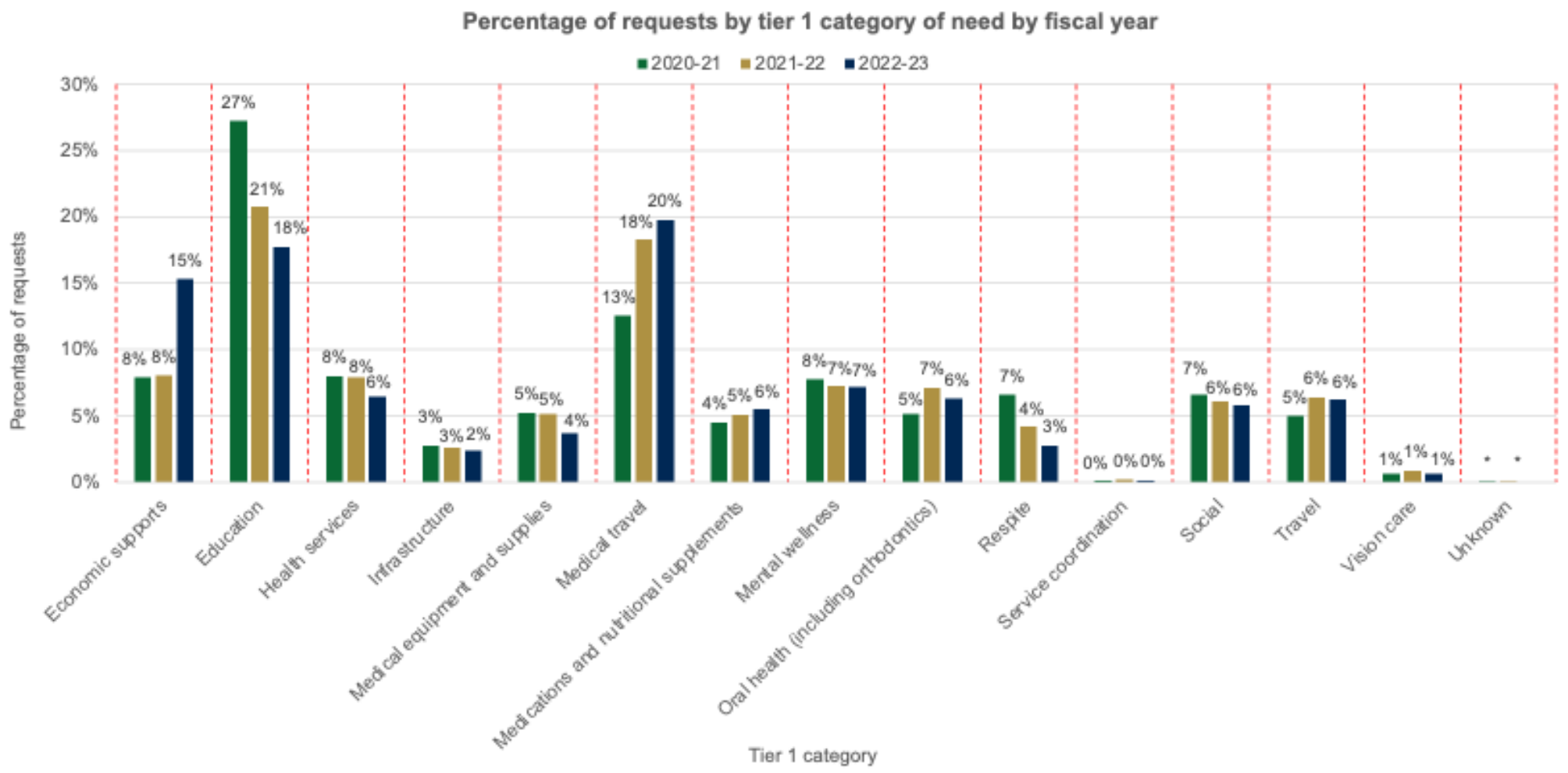


Source: Indigenous Services Canada (ISC).
Notes: Entries with fewer than 15 records were suppressed.

IFSD IFPD



Source: Indigenous Services Canada (ISC).
Notes: Entries with fewer than 15 records were suppressed.

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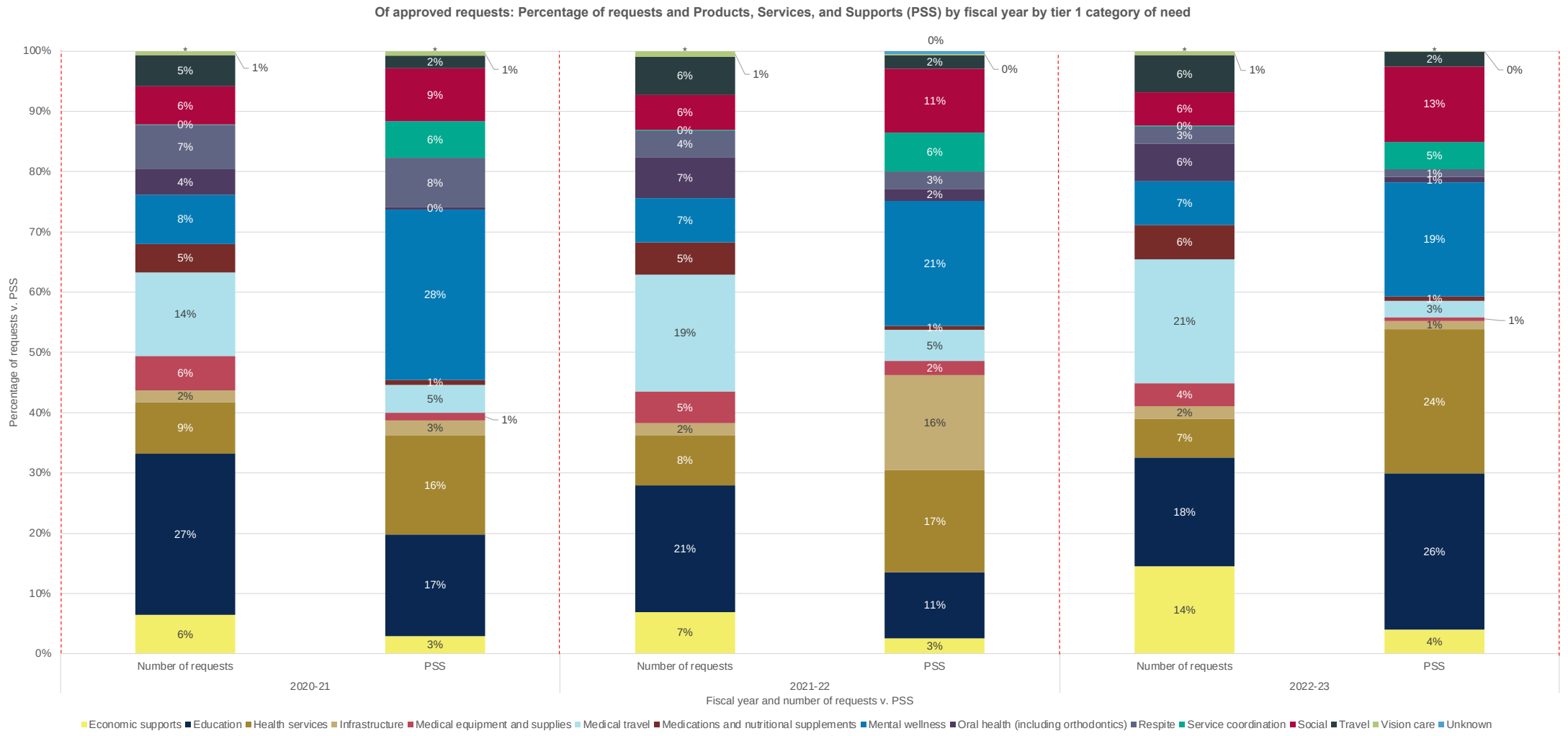
PSS v. number of requests: Tier 1 category of needs

- There are differences in the tier 1 category of needs for approved requests in FY 2022-23:
  - PSS = education (26%), followed by health services (24%)
  - Number of requests = medical travel (21%), followed by education (18%)

- Both approaches are different than the row count in which economic supports are the largest tier 1 category in FY 2022-23.



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

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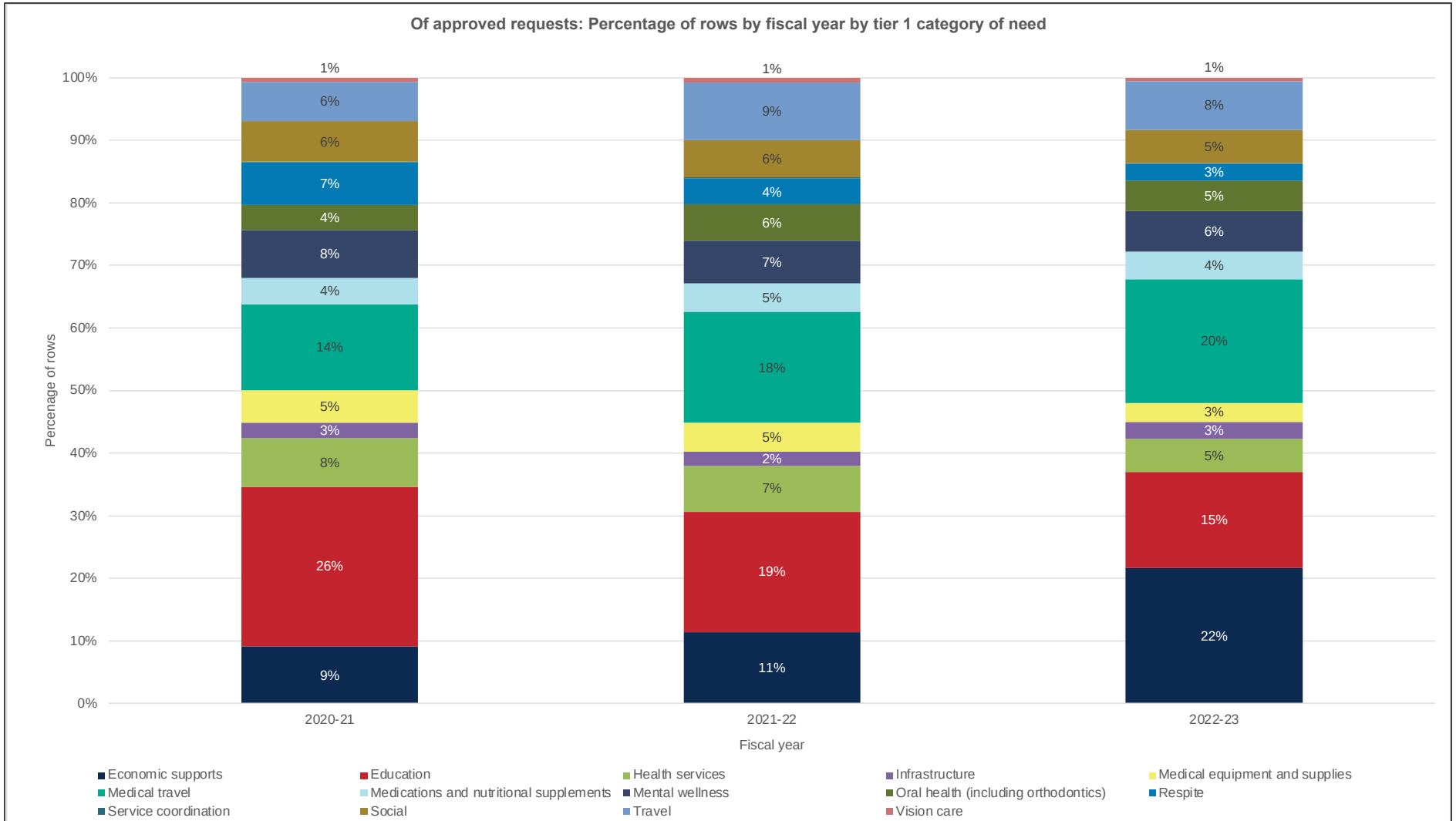

Source Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

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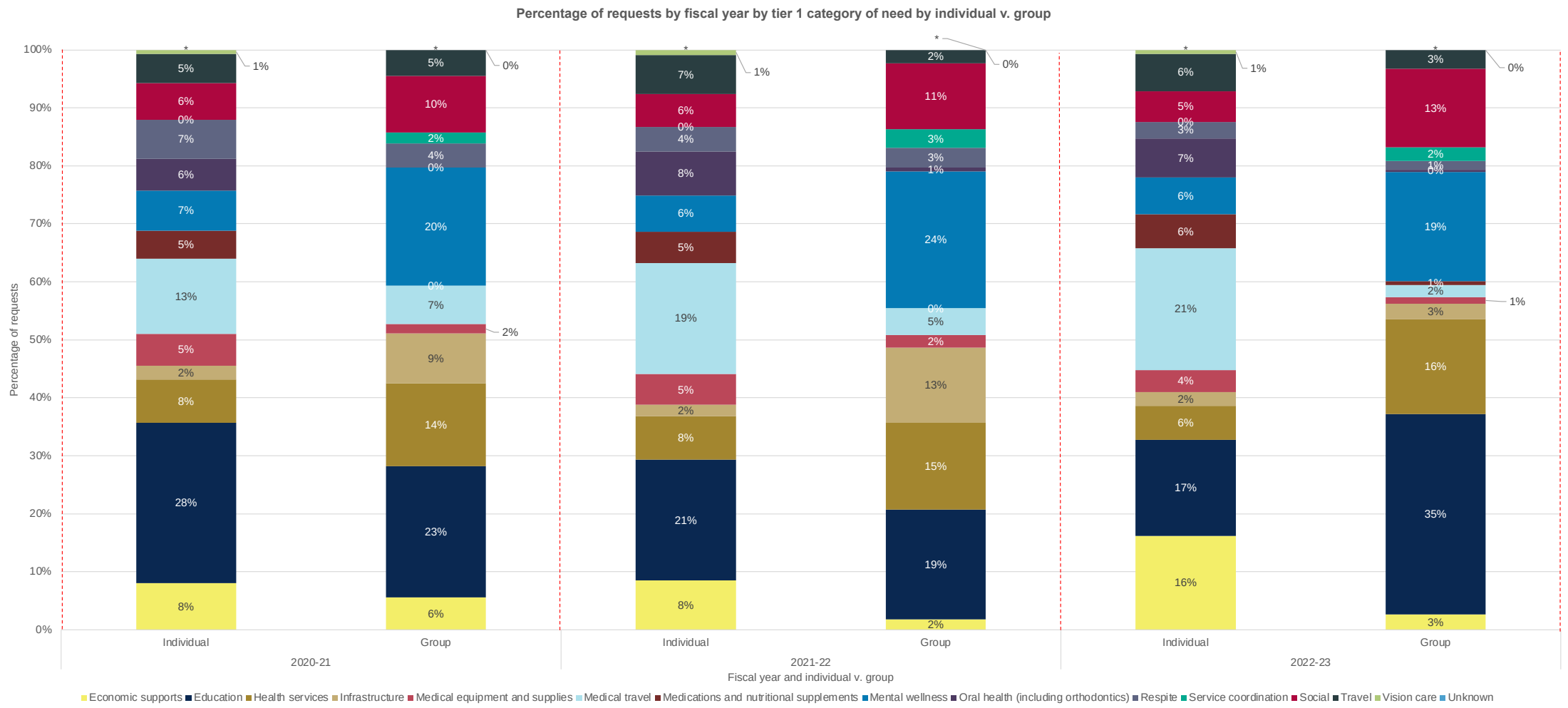
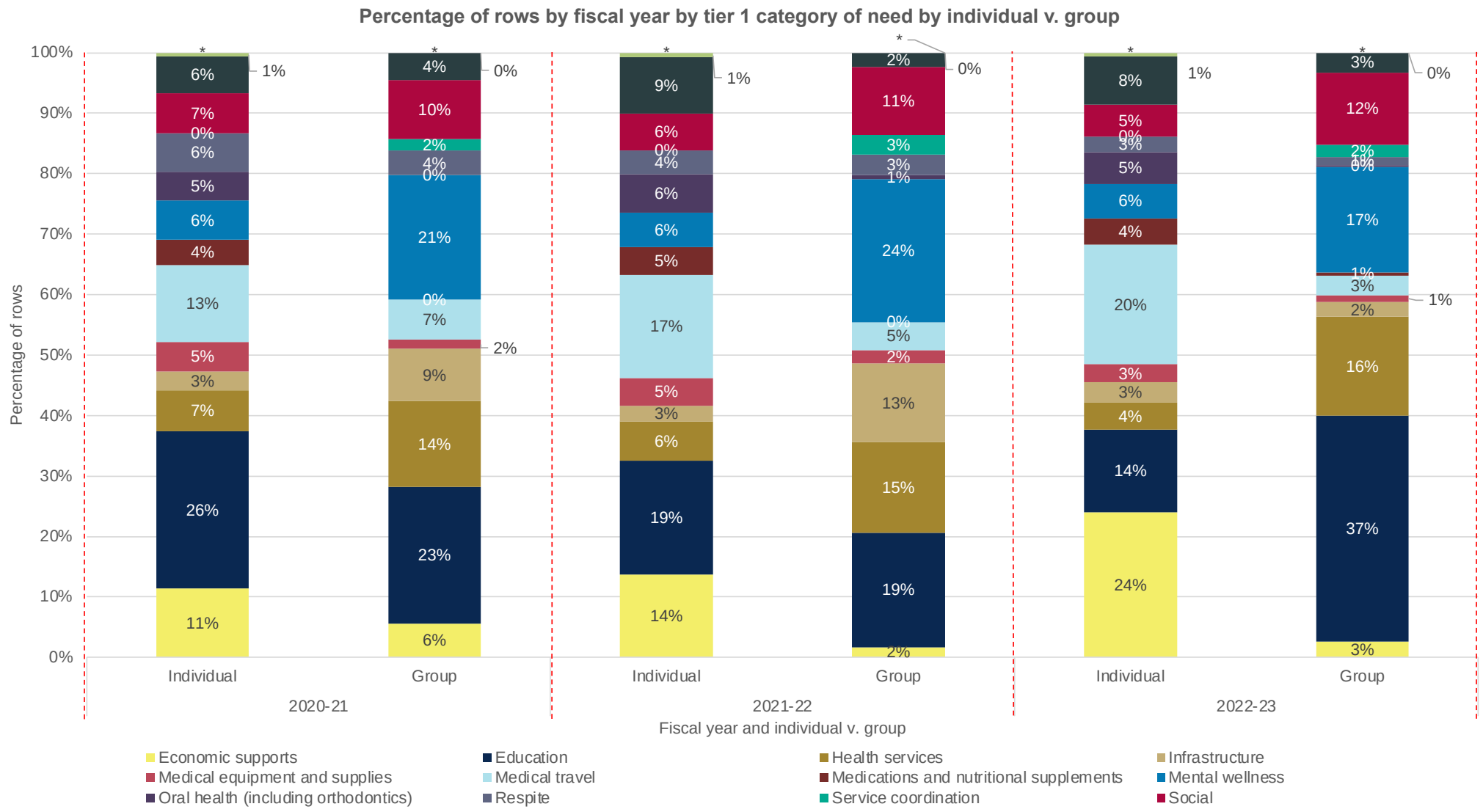
Individual v. group analysis by tier 1 category of need

- In FY 2022-23, most group requests were for education, while for individuals, they were for medical travel, when using the number of requests (i.e., unique item ID).
- In previous fiscal years, mental health figured prominently in group requests. The prominence of education in FY 2022-23 is different.
- By contrast, when using rows for FY 2022-23, economic supports figure prominently for individual requests, followed by medical travel. For group requests, education figures prominently.
- When using PSS for FY 2022-23, individual requests are mostly for economic supports, followed by medical travel (consistent with row count). Most group requests are for health services, followed by education.



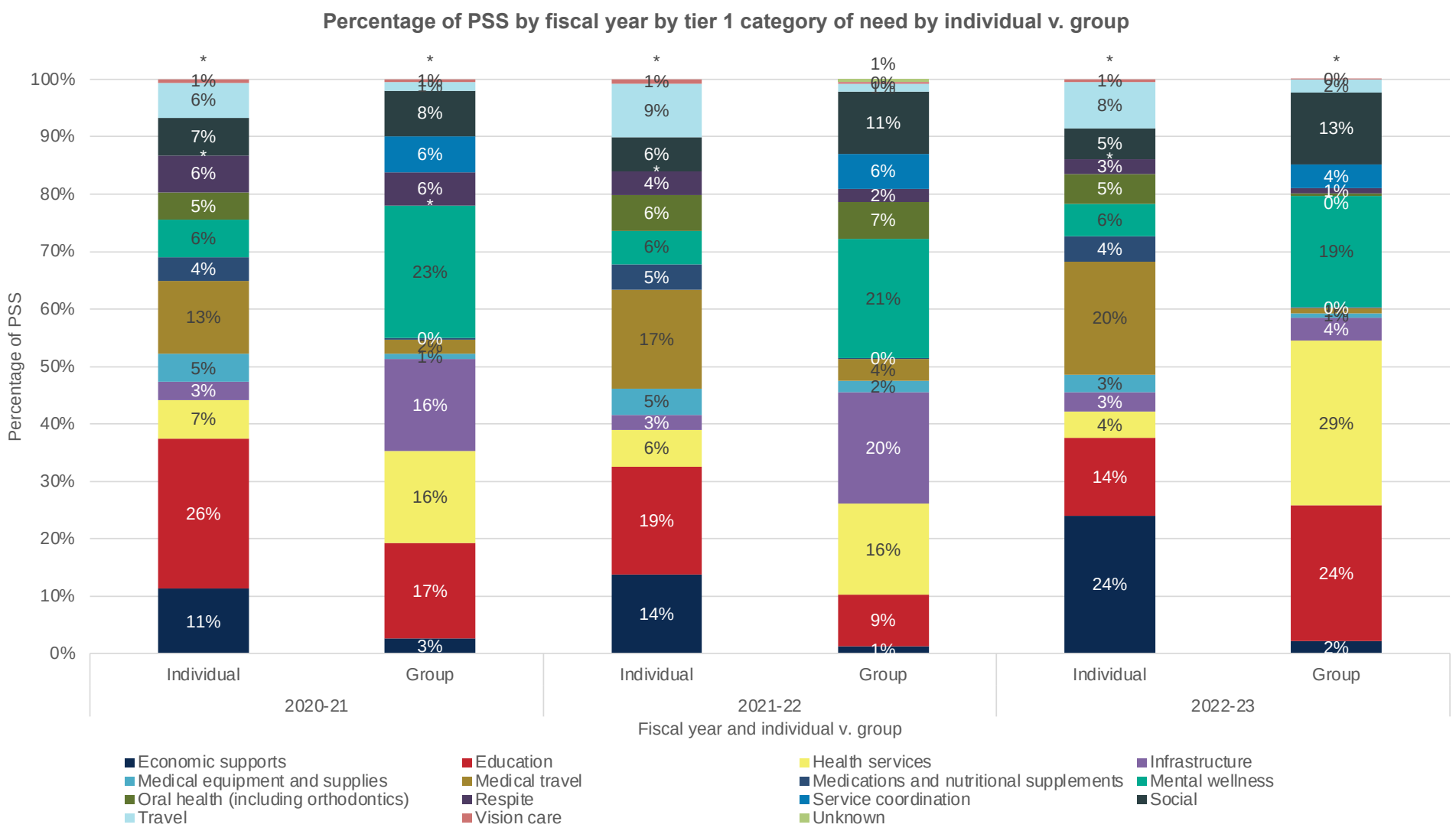
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

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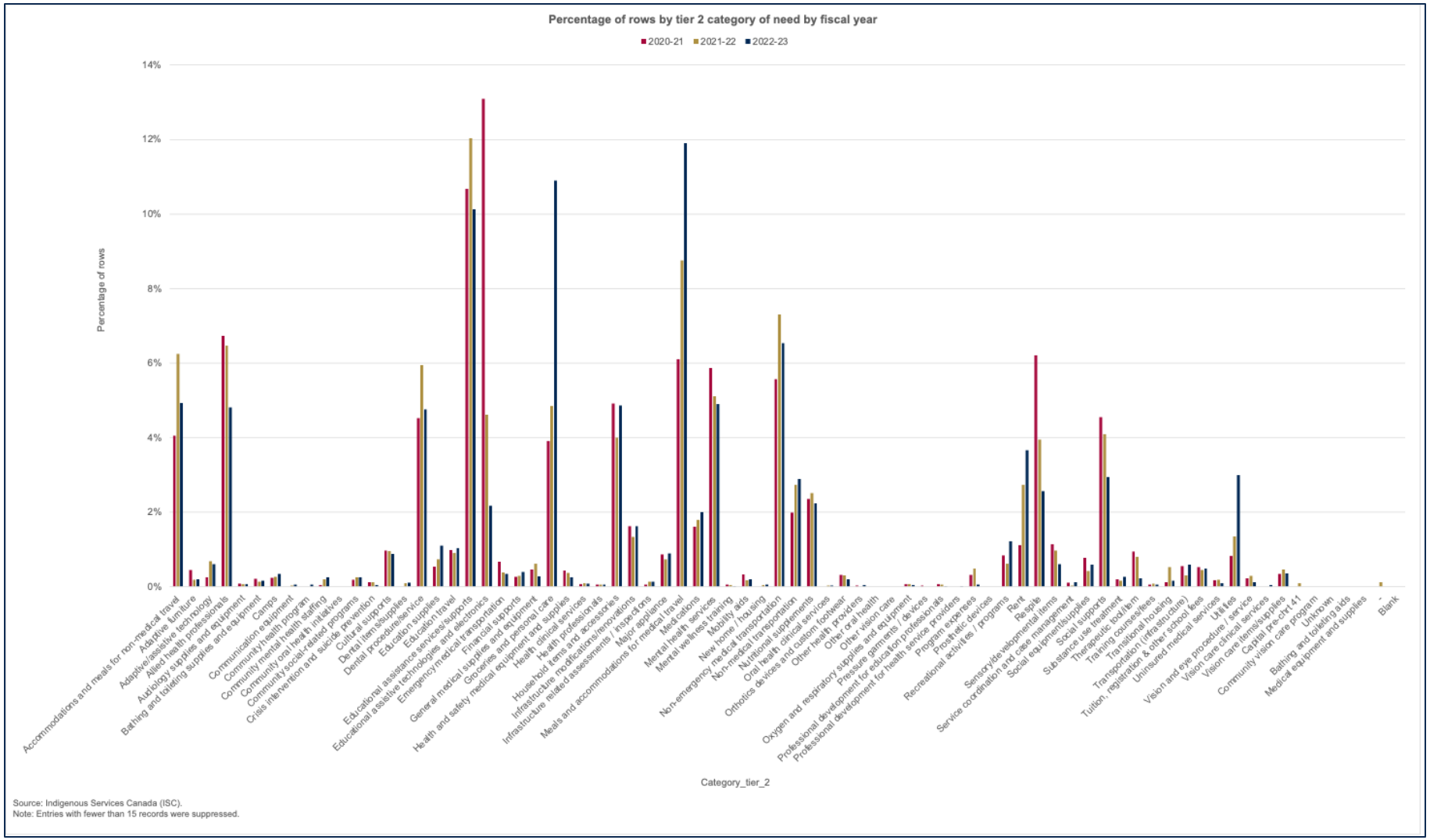
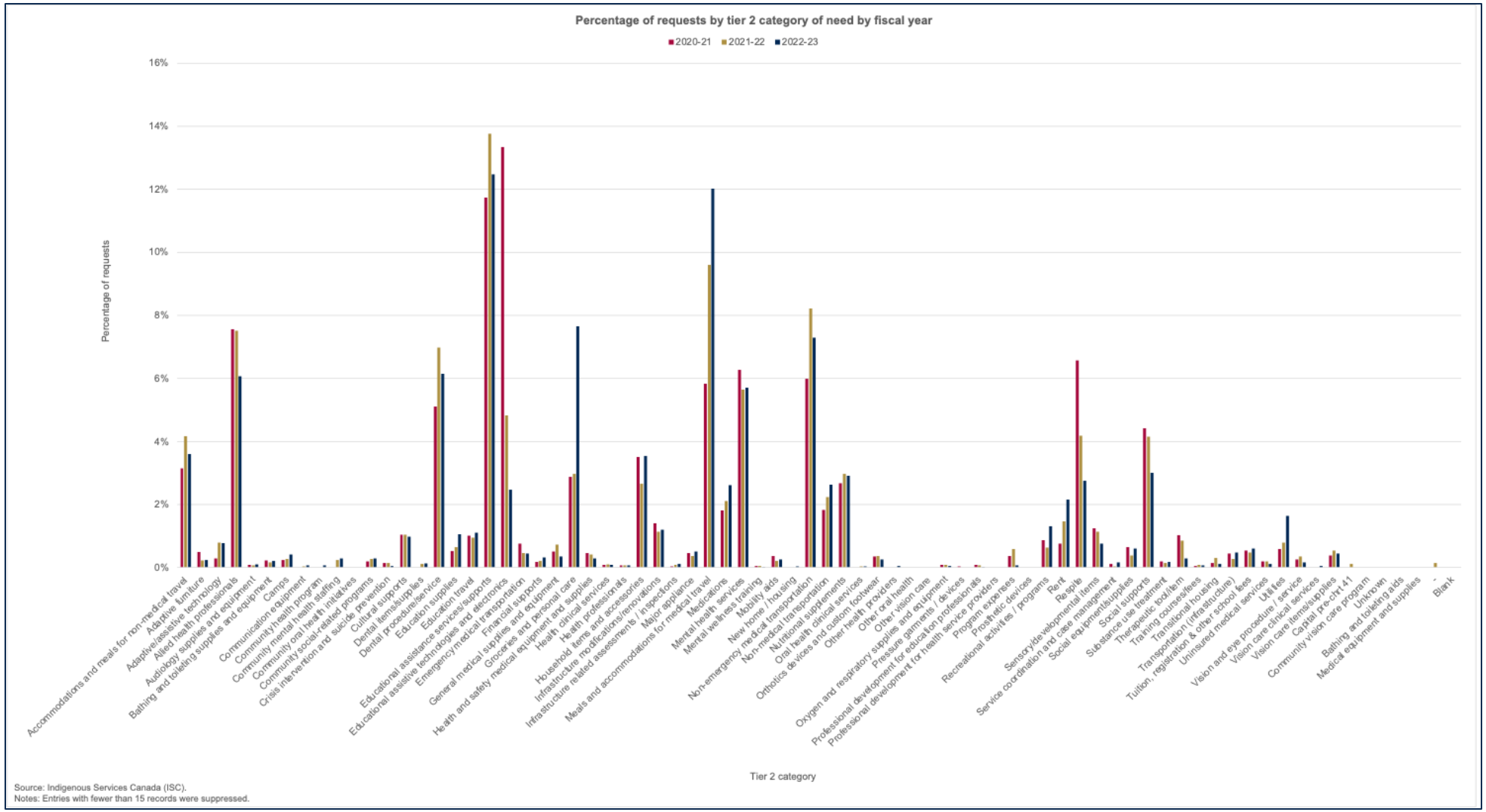
Tier 2 category of needs

- The different approaches to analysis indicate different clusters of tier 2 categories of need for <u>all</u> <u>requests</u> (i.e., not only approved requests). The top 2 areas of need for the approaches are:
  - Row count: meals and accommodations for medical travel; groceries and personal care.
  - Count request/unique item ID: educational assistance services and supports; meals and accommodations for medical travel.
  - PSS: allied health professional services; education assistance services and supports.

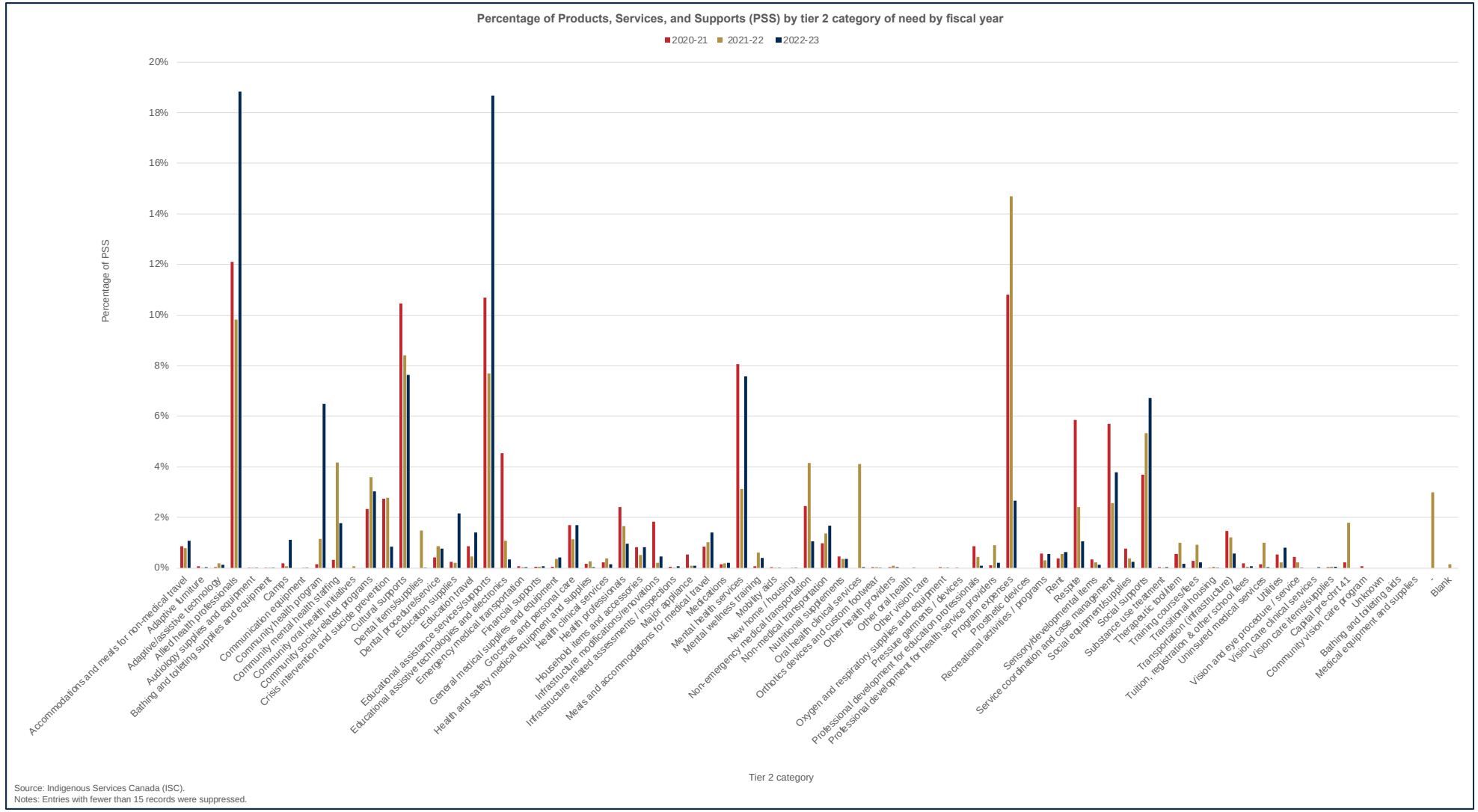

Percentage of rows by tier 2 category of need by fiscal year
2020-21
2021-22
2022-23
Percentage of rows
14%
12%
10%
8%
6%
4%
2%
0%
Accommodations and meals for non-medical travel
Adaptive furniture
Adaptive/assistive technology
Allied health professionals
Audiology supplies and equipment
Bathing and toileting supplies and equipment
Camps
Communication equipment
Community health program
Community mental health staffing
Community oral health initiatives
Community social-related programs
Crisis intervention and suicide prevention
Cultural supports
Dental item/supplies
Dental procedure/service
Education supplies
Education travel
Educational assistance services/supports
Educational assistive technologies and electronics
Emergency medical transportation
Financial supports
General medical supplies and equipment
Groceries and personal care
Health and safety medical equipment and supplies
Health clinical services
Health professionals
Household items and accessories
Infrastructure modifications/renovations
Infrastructure related assessments / inspections
Meals and accommodations for medical travel
Major appliance
Medications
Mental health services
Mental wellness training
Mobility aids
New home / housing
Non-emergency medical transportation
Non-medical transportation
Nutritional supplements
Oral health clinical services
Orthotics devices and custom footwear
Other health providers
Other oral health
Other vision care
Oxygen and respiratory supplies and equipment
Professional development for education professionals
Pressure garments / devices
Professional development for health service providers
Program expenses
Prosthetic devices
Recreational activities / programs
Rent
Respite
Sensory/developmental items
Service coordination and case management
Social equipment/supplies
Social supports
Substance use treatment
Therapeutic tool/item
Training courses/fees
Transitional housing
Transportation (infrastructure)
Tuition, registration & other school fees
Uninsured medical services
Utilities
Vision and eye procedure / service
Vision care clinical services
Vision care items/supplies
Capital pre-ch141
Community vision care program
Unknown
Bathing and toileting aids
Medical equipment and supplies
-
Blank
Category_tier_2
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Notes: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Notes: Entries with fewer than 15 records were suppressed.

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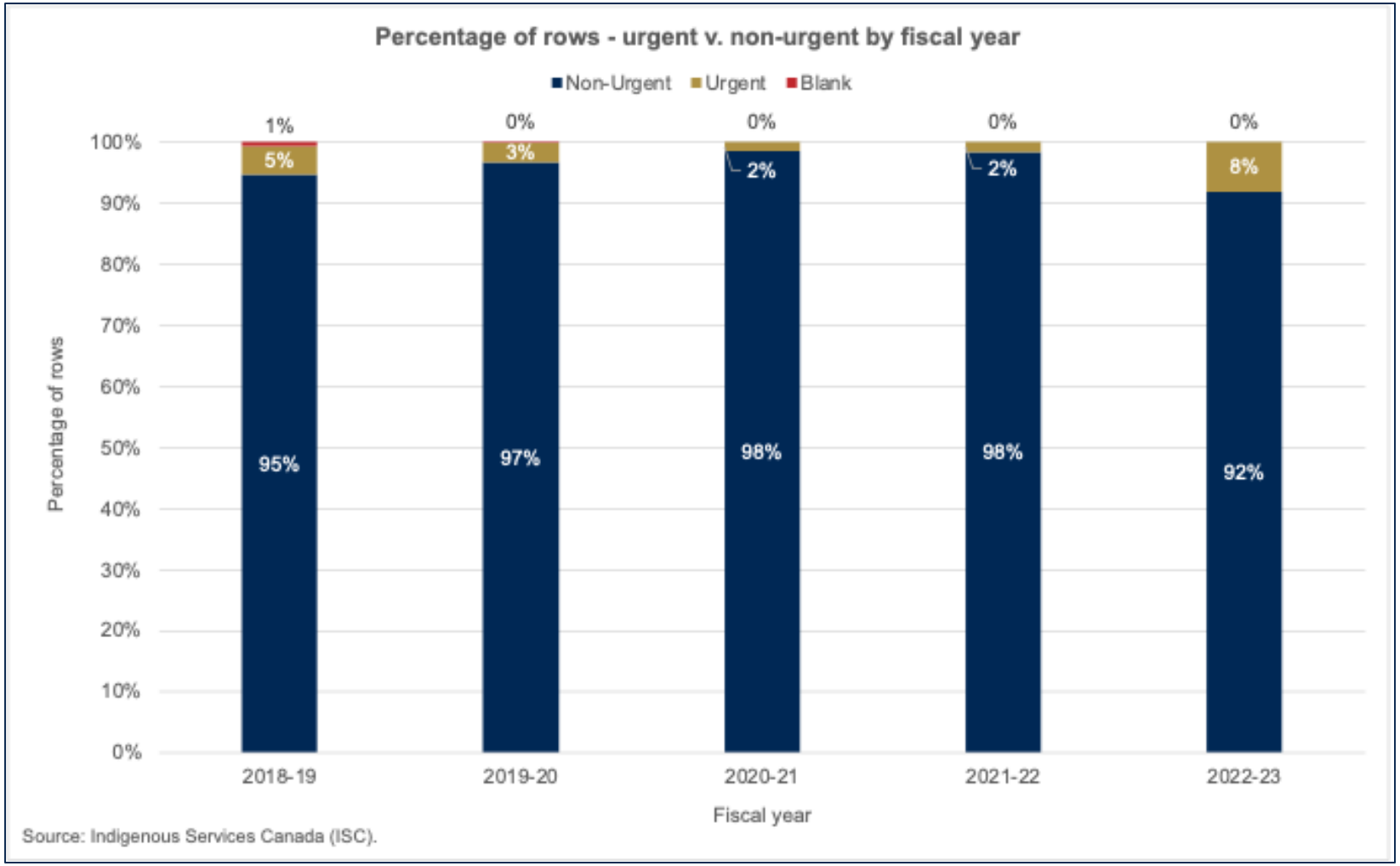
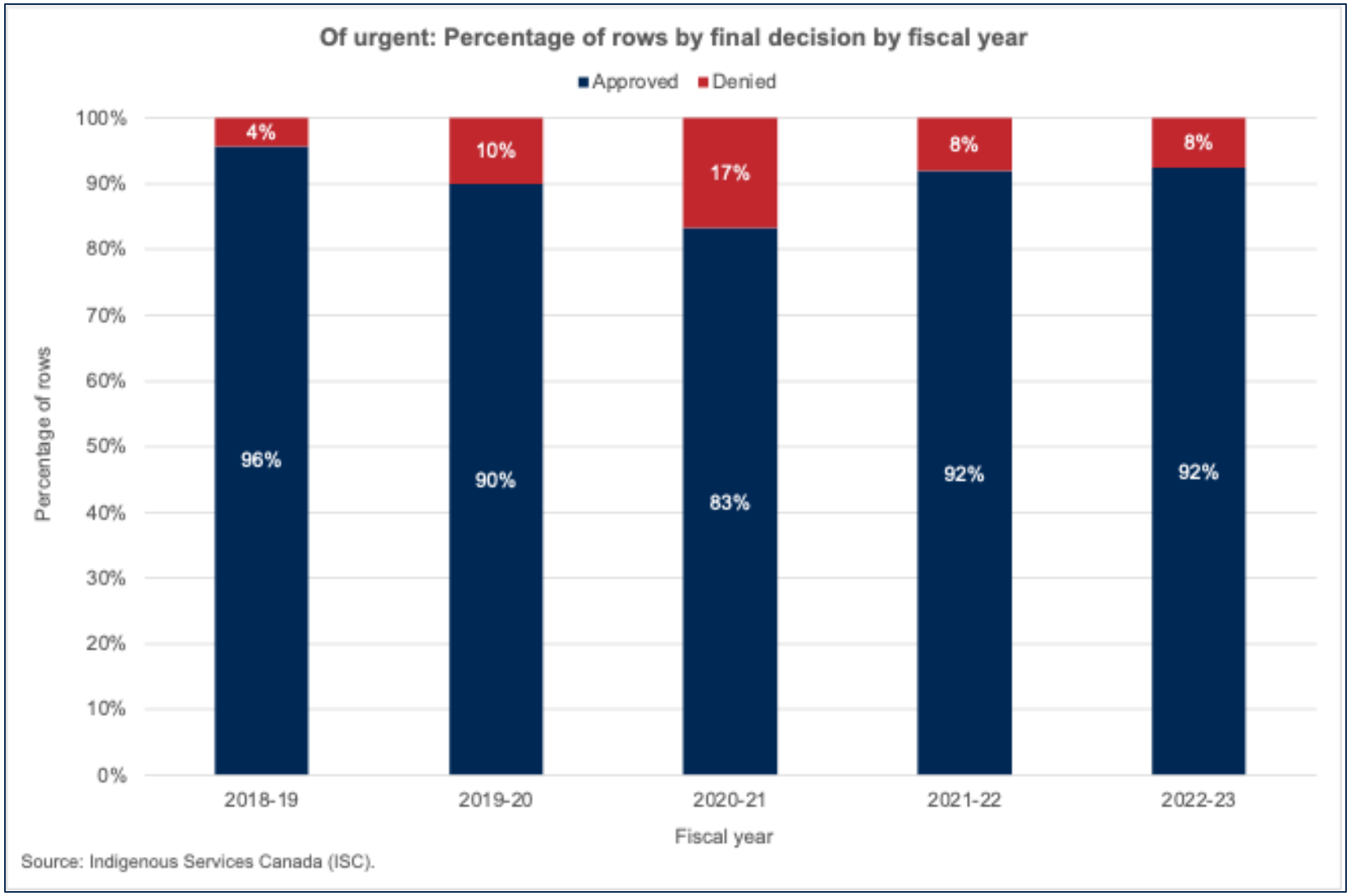
Urgency of requests

Urgent requests (row count)

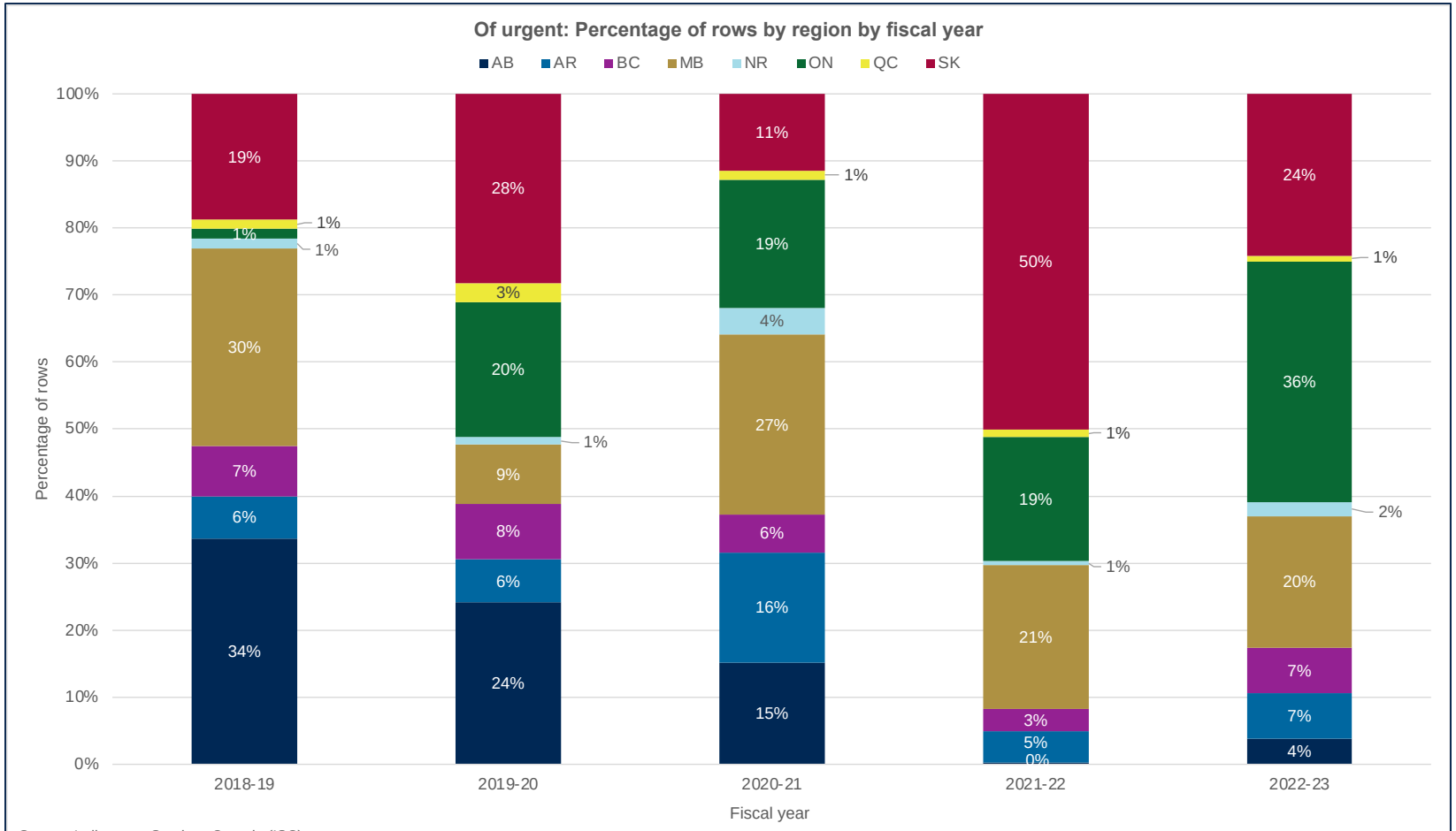
- GCcase data records **opened** requests that individuals and groups made for funding from Jordan's Principle. **This means that unopened requests are not included in the dataset.**
- The application of the Back to Basics approach cannot be verified with GCcase data. For instance, there is no way of determining if a professional letter supported an application.
- In FY 2022-23, 8% of **all requests** (i.e., not only approved requests) were deemed urgent. Following the implementation of Back to Basics, requestors could identify urgency.
- Over 90% of urgent requests are approved across fiscal years, other than FY 2020-21.
- In the last two fiscal years, most urgent requests have been from Ontario, Manitoba, and Saskatchewan.
- Most urgent requests were for economic supports in the last two fiscal years (2021-22, 40% and 2022-23, 42%). These categories were followed distantly by travel (13% in both fiscal years).


Percentage of rows - urgent v. non-urgent by fiscal year
Non-Urgent
Urgent
Blank
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of rows
1%
5%
95%
0%
3%
97%
0%
2%
98%
0%
2%
98%
0%
8%
92%
2018-19
2019-20
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

IFSD
IFPD

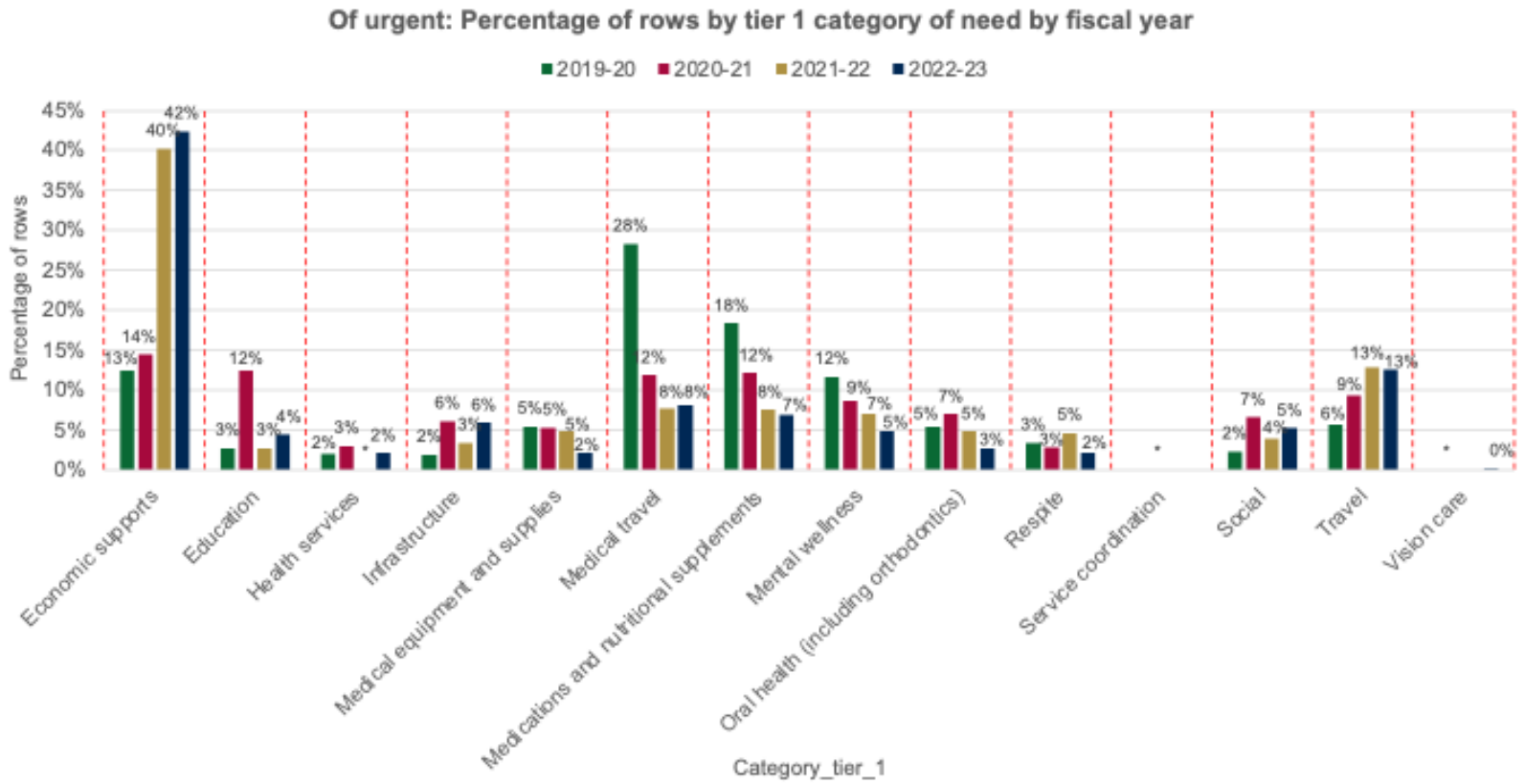

Of urgent: Percentage of rows by final decision by fiscal year
Approved
Denied
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of rows
4%
96%
10%
90%
17%
83%
8%
92%
8%
92%
2018-19
2019-20
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Notes: 1) AR stands for Atlantic Region. 2) NR stands for Northern Region.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
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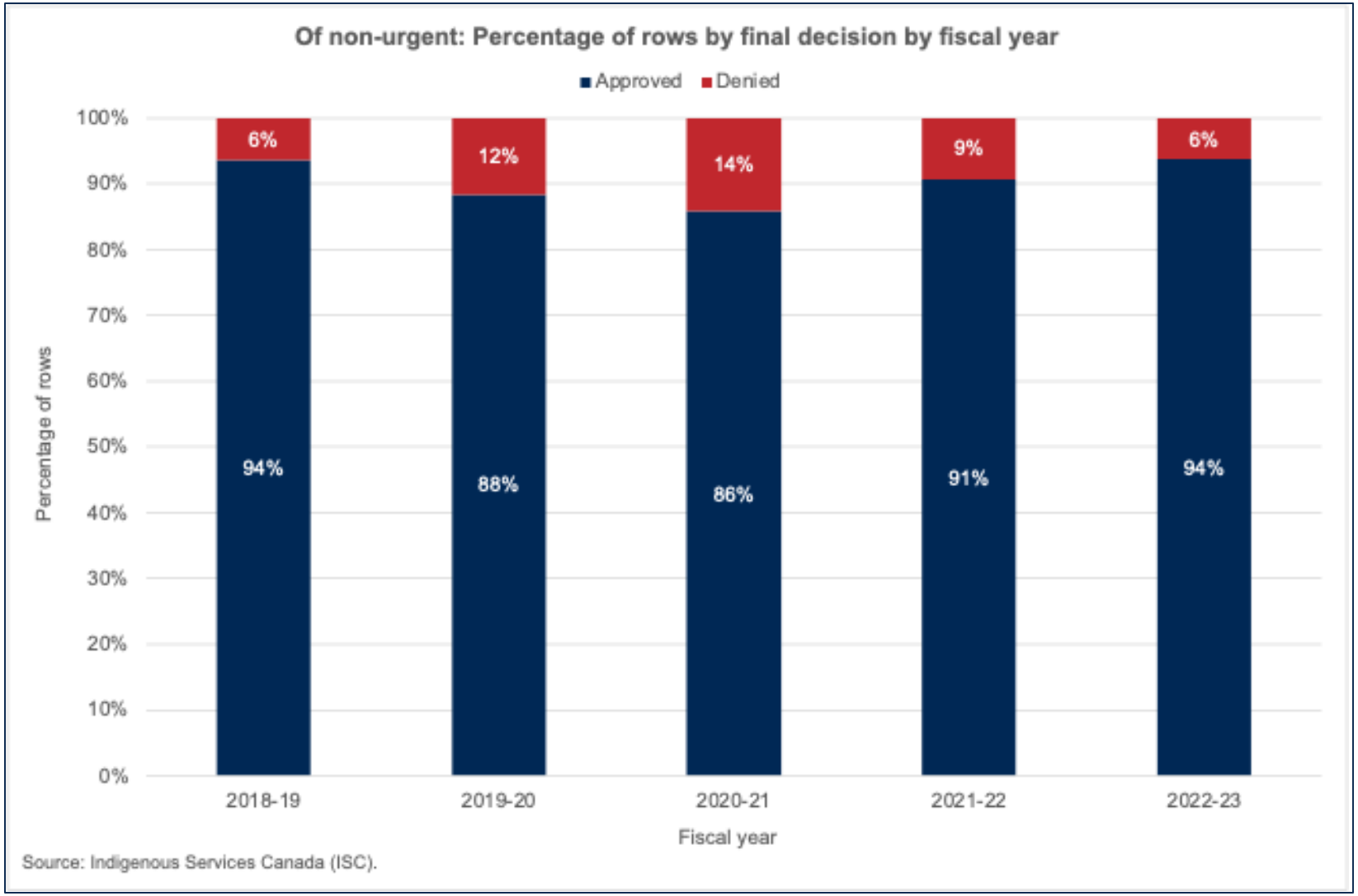
Non-urgent requests (row count)

- In the last two fiscal years, over 90% of non-urgent requests were approved.
- Tier 1 categories of need for non-urgent requests in FY 2022-23 were economic supports (21%), followed closely by medical travel (20%), and educational supports (16%).


Of non-urgent: Percentage of rows by final decision by fiscal year
Approved
Denied
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of rows
6%
12%
14%
9%
6%
94%
88%
86%
91%
94%
2018-19
2019-20
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

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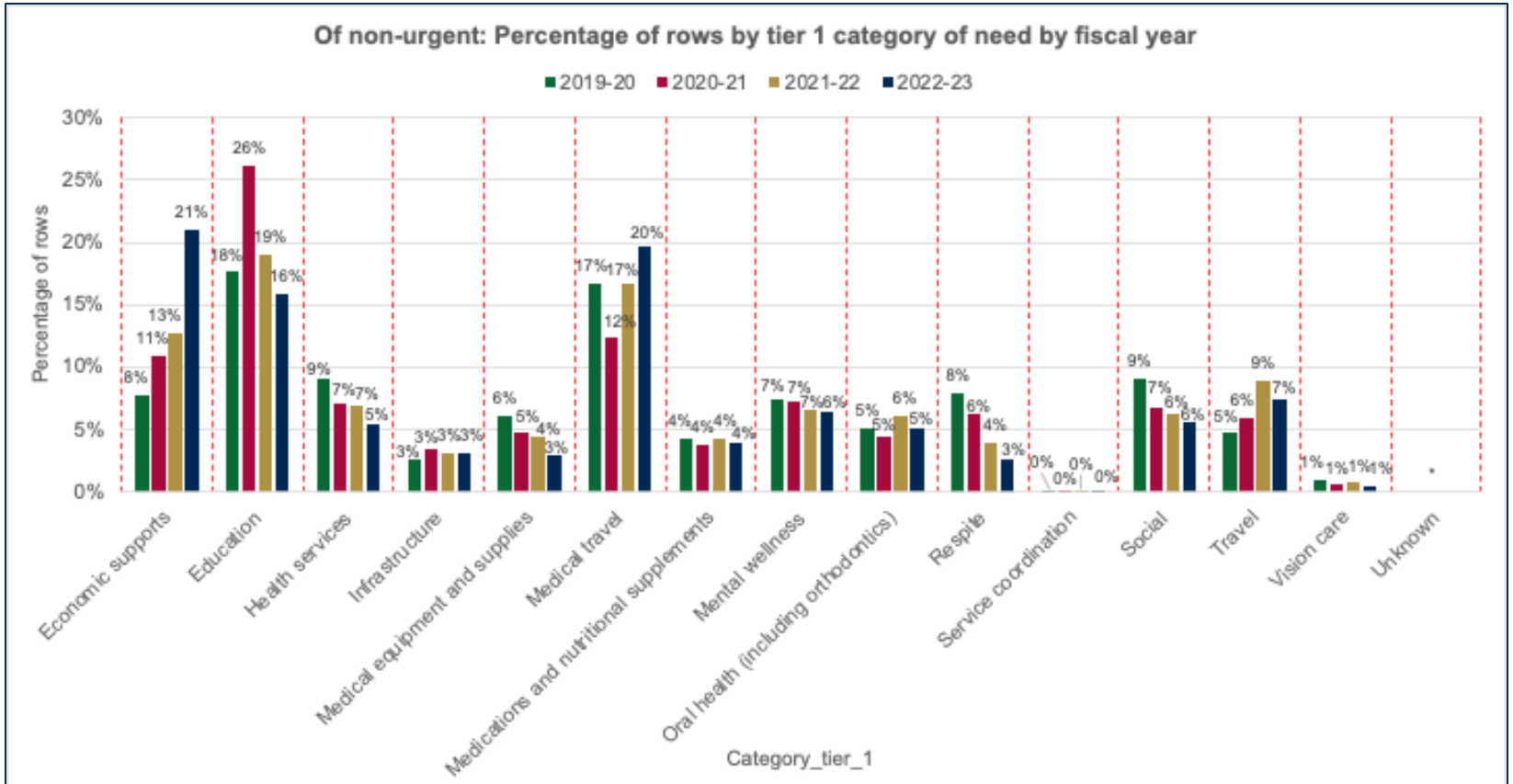

Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

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Analysis of requests for children in care and relation to child

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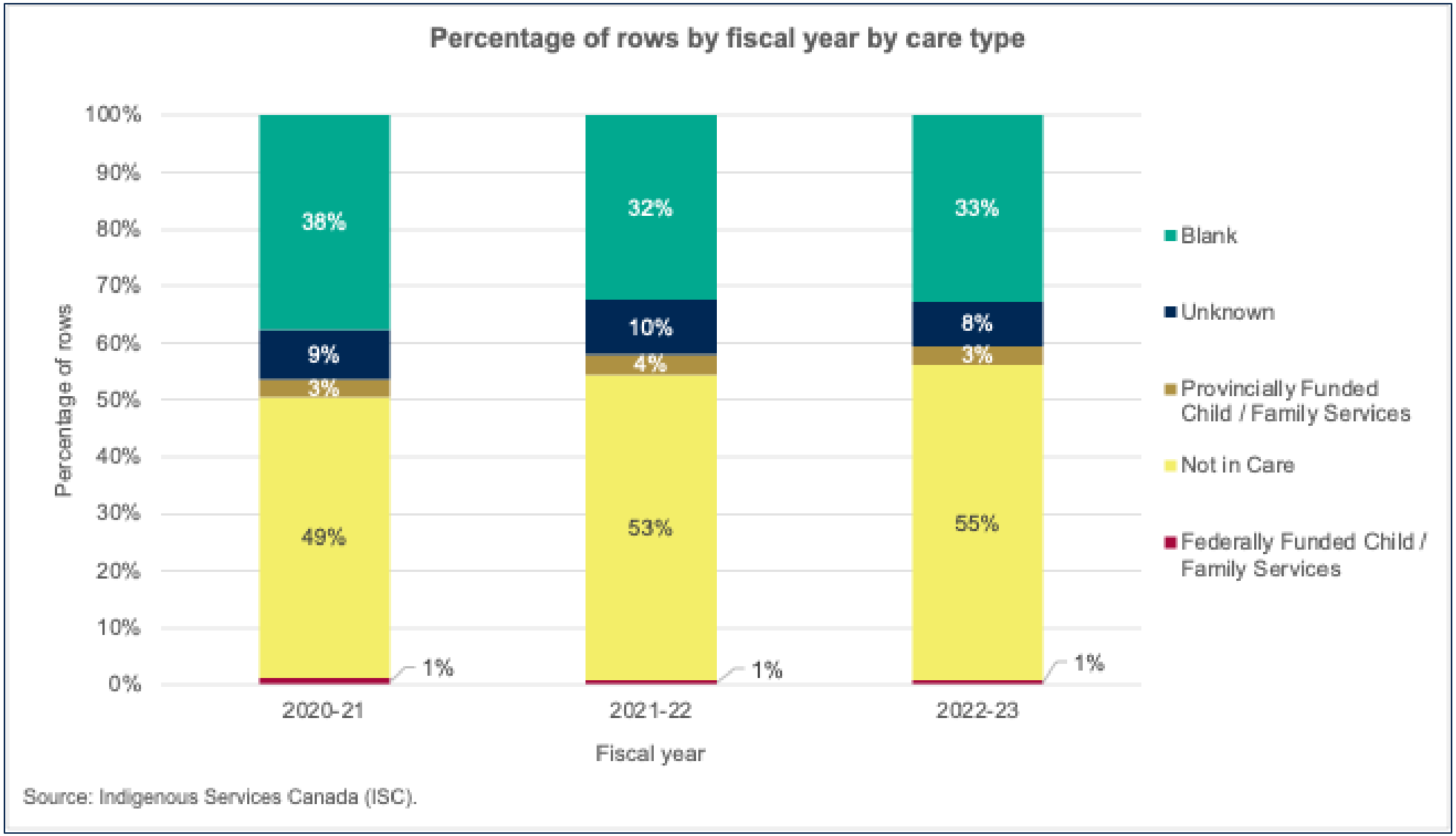
Jordan's Principle requests and children in care

- There are significant data gaps (over 30% per fiscal year) that have no information/coding for requests for children in care. Between 8%-10% of requests per fiscal year are unknown.

- Of requests with known information on whether a child is in care:
  - Most requests are **not** for children in care.
  - In FY 2022-23, 3% of requests were for children in provincial/territorial care.


Percentage of rows by fiscal year by care type
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of rows
38%
9%
3%
49%
1%
32%
10%
4%
53%
1%
33%
8%
3%
55%
1%
2020-21
2021-22
2022-23
Fiscal year
Blank
Unknown
Provincially Funded Child / Family Services
Not in Care
Federally Funded Child / Family Services
Source: Indigenous Services Canada (ISC).

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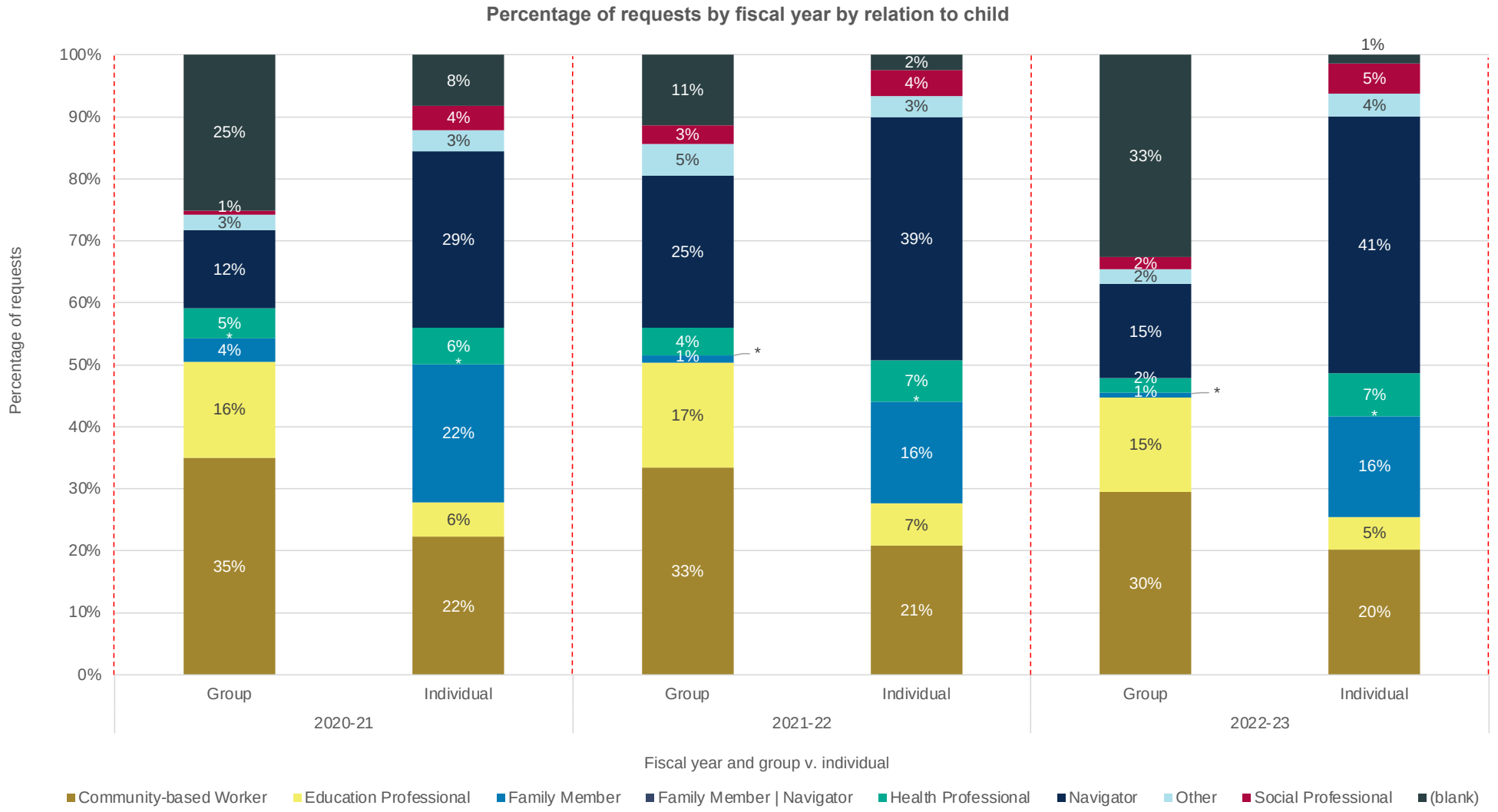
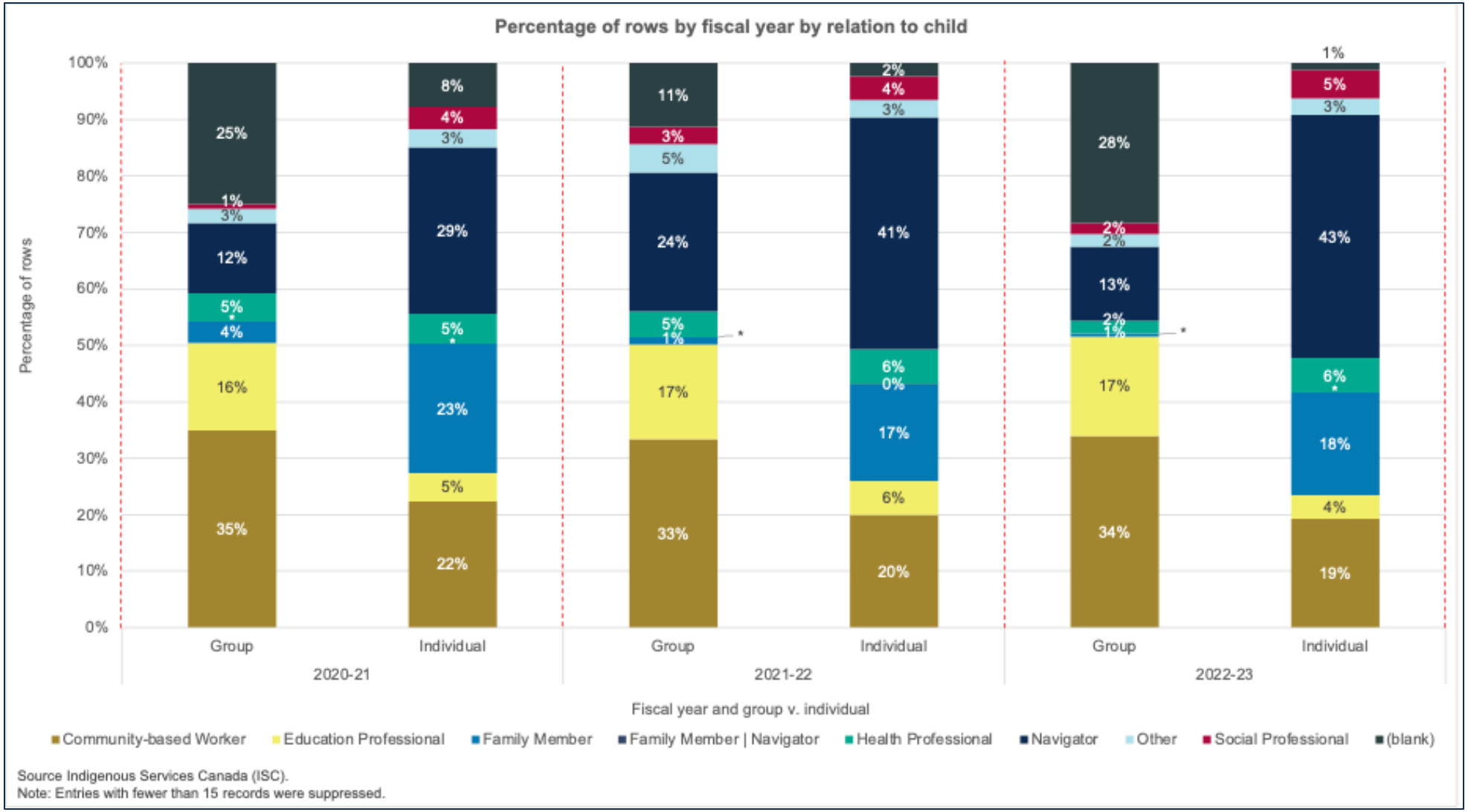
Relation to child

- Note that the tags for relation to child come from the GC case dataset and may not reflect the terminology used in First Nations.
- Using **requests** (unique item ID) in FY 2022-23, most individual requests come through navigators, while group requests come through a community-based worker.
- Consistent with analysis by requests, when using **row count**, most group requests in FY 2022-23 are through a community-based worker, and individual requests through a navigator.



Source Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD IFPD



Source Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

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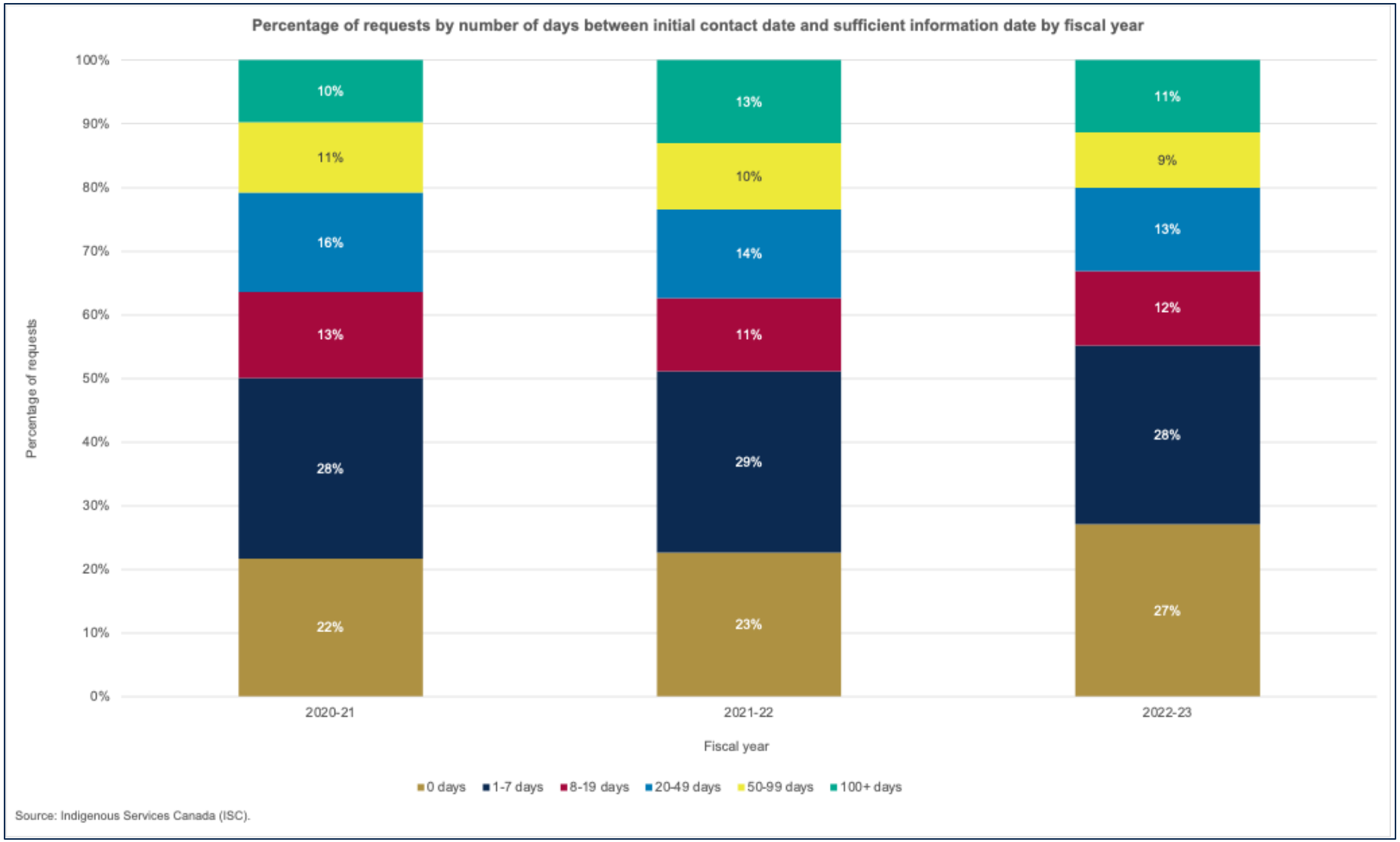
Timing of the evaluation and response to requests

Time for evaluating requests (all number of requests)

- GCcase data records **opened** requests that individuals and groups made for funding from Jordan's Principle. **This means that unopened requests are not included in the dataset.**

- In FY 2022-23, nearly 60% of requests were deemed to have sufficient information in 7 days or less from the initial contact date **(this is the date the requestor associated with a particular case first contacted ISC**).
  - On average, there are 39 days between **initial contact** and **sufficient information** in FY 2022-23.

- In the last two fiscal years, nearly 70% of requests had a final decision in 0 days after requests were deemed to have sufficient information.
  - On average, there are 8 days between the date of **sufficient information** and **final decision** in FY 2022-23 (generally consistent across three fiscal years).


Percentage of requests by number of days between initial contact date and sufficient information date by fiscal year
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of requests
10%
11%
16%
13%
28%
22%
13%
10%
14%
11%
29%
23%
11%
9%
13%
12%
28%
27%
2020-21
2021-22
2022-23
Fiscal year
0 days
1-7 days
8-19 days
20-49 days
50-99 days
100+ days
Source: Indigenous Services Canada (ISC).

IFSD
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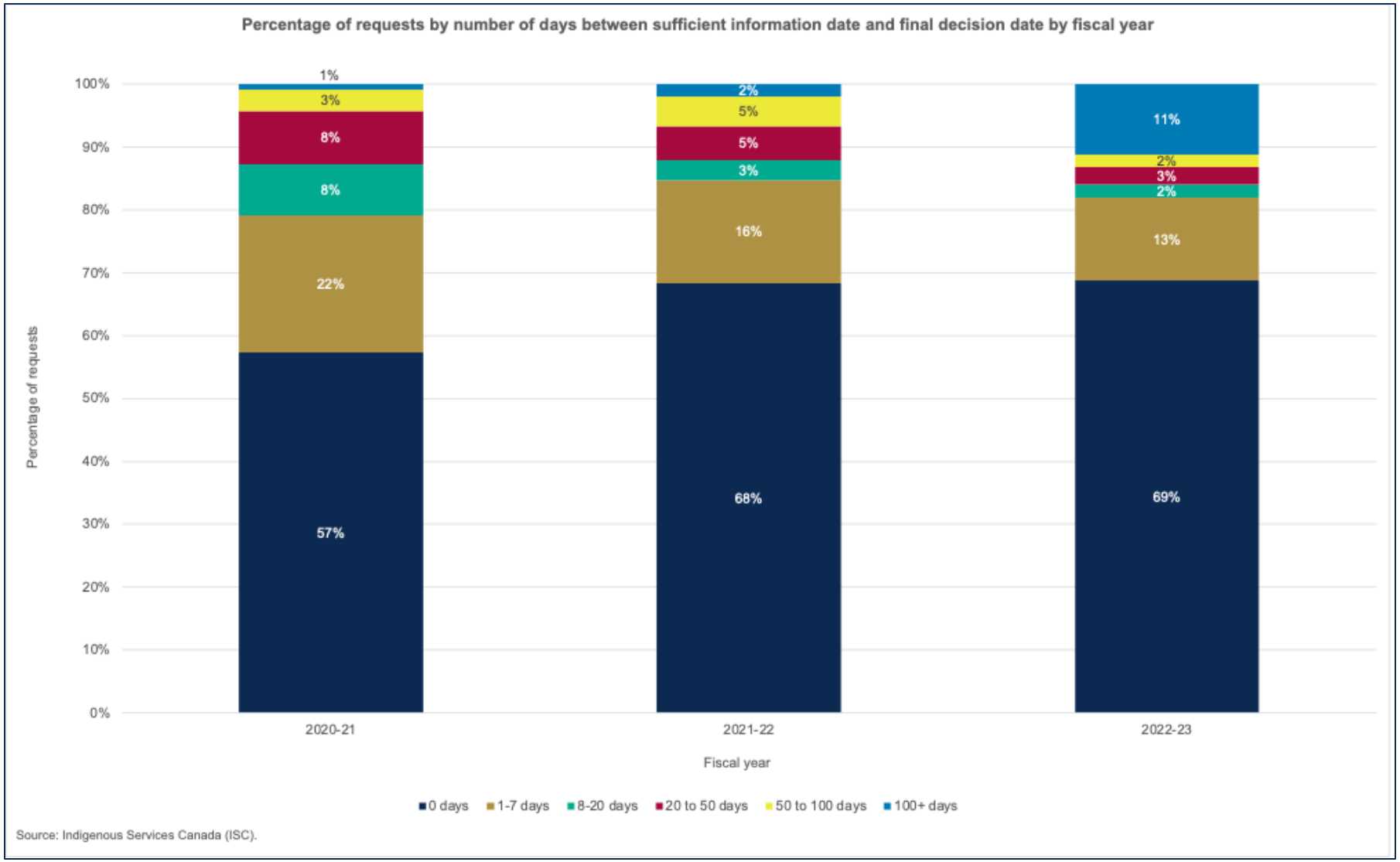
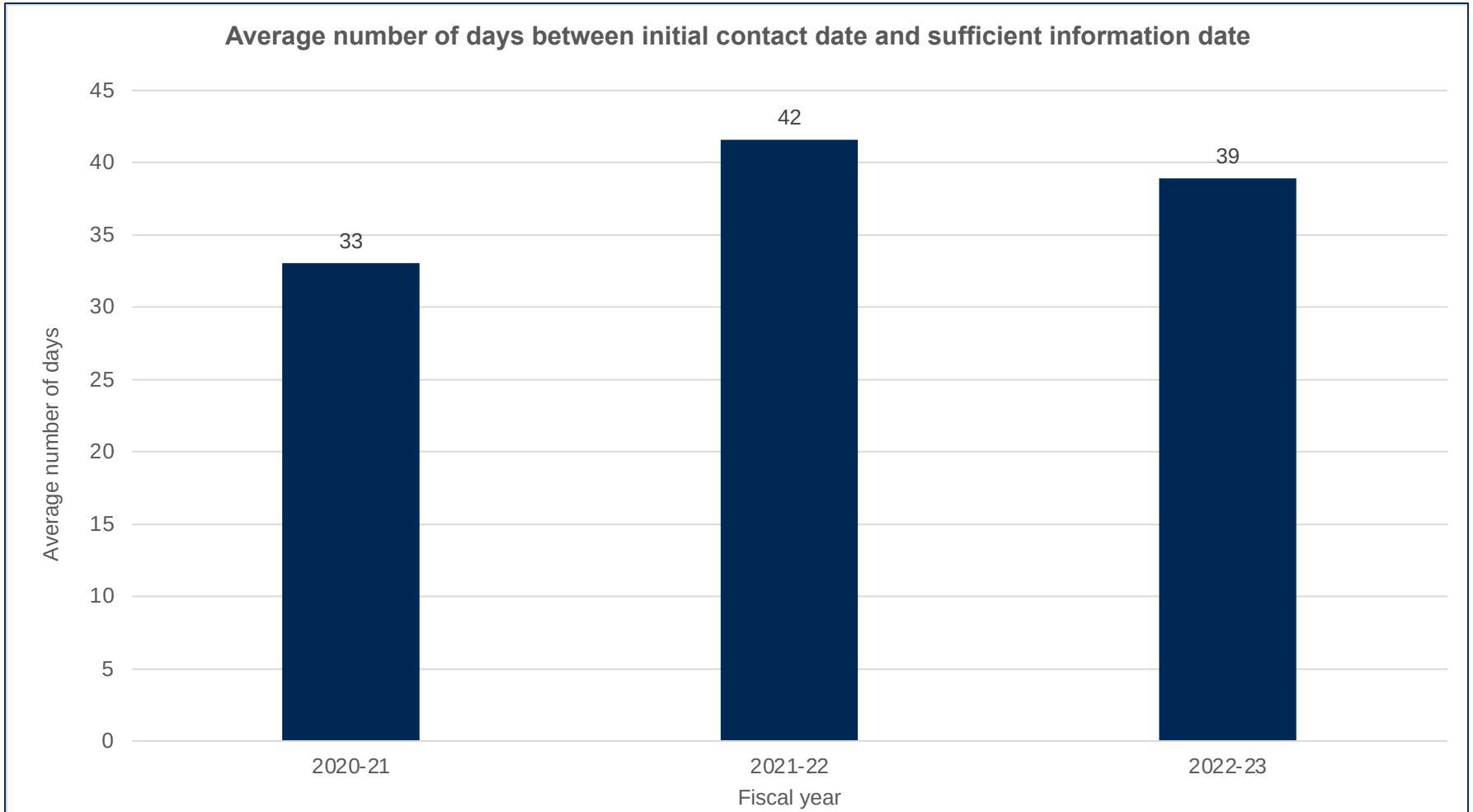
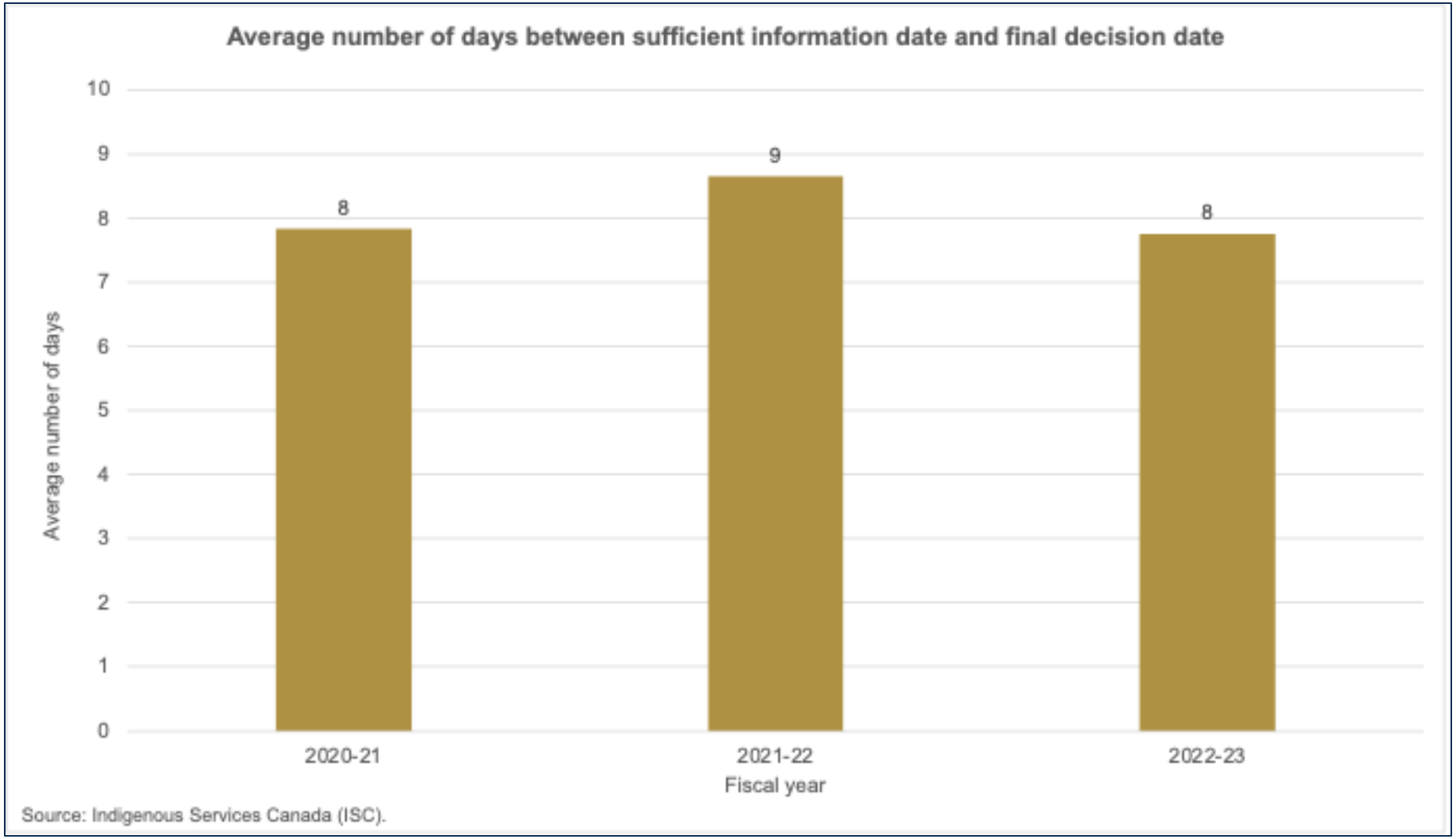

Percentage of requests by number of days between sufficient information date and final decision date by fiscal year
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of requests
1%
3%
8%
8%
22%
57%
2%
5%
5%
3%
16%
68%
11%
2%
3%
2%
13%
69%
2020-21
2021-22
2022-23
Fiscal year
0 days
1-7 days
8-20 days
20 to 50 days
50 to 100 days
100+ days
Source: Indigenous Services Canada (ISC).

IFSD
IFPD



Source: Indigenous Services Canada (ISC).

IFSD
IFPD


Average number of days between sufficient information date and final decision date
10
9
8
7
6
5
4
3
2
1
0
Average number of days
8
9
8
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

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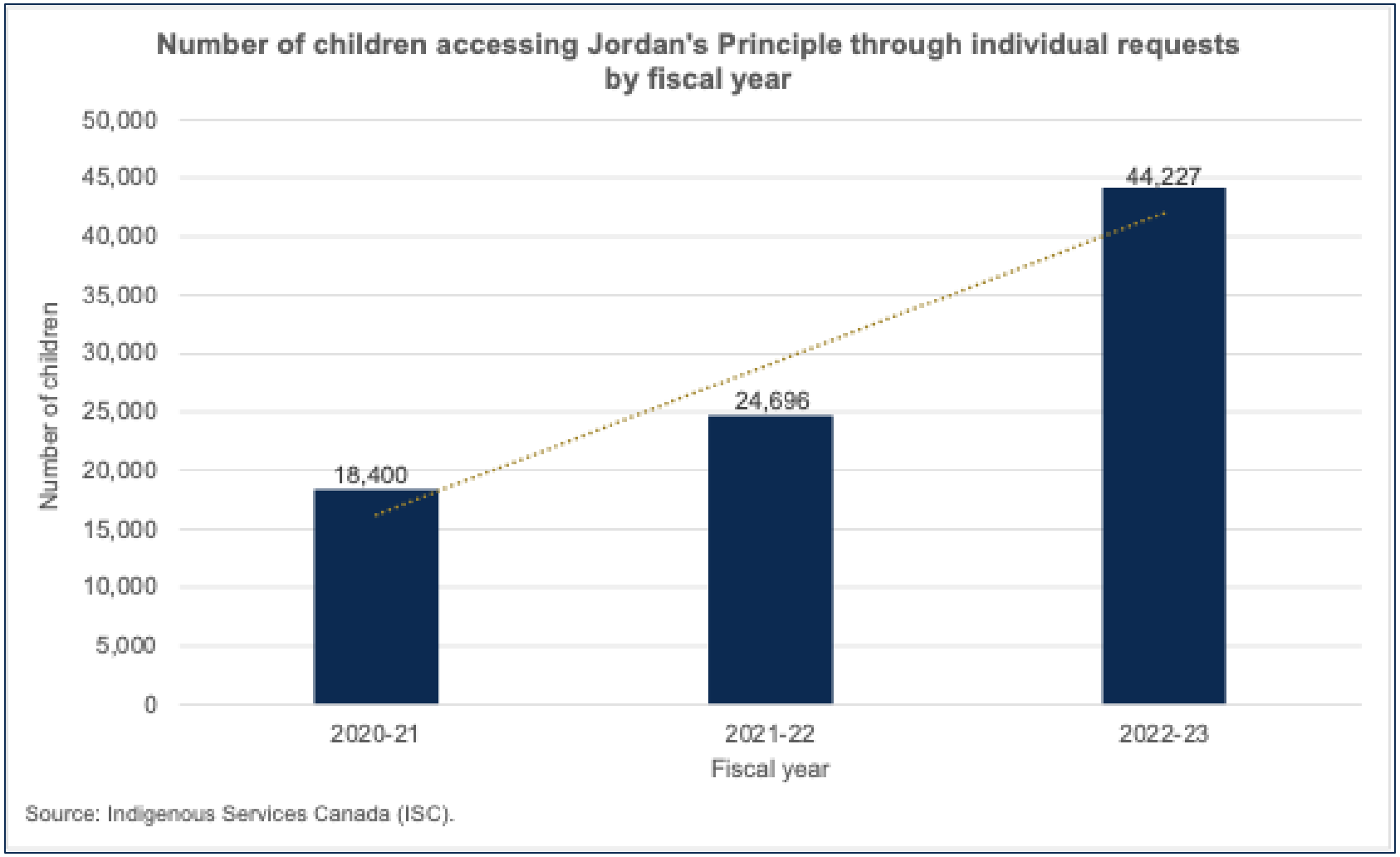
Individual requests

Children accessing Jordan's Principle through individual requests

- The number of children accessing Jordan's Principle has increased across fiscal years, with a significant increase between FY 2021-22 and 2022-23.
- The share of children accessing Jordan's Principle is highest in Manitoba and Ontario in the last two fiscal years.
- In the last two fiscal years, nearly 50% of children accessing Jordan's Principle are 7 years old and younger.
- Most children accessing Jordan's Principle are male.


Number of children accessing Jordan's Principle through individual requests by fiscal year
50,000
45,000
40,000
35,000
30,000
25,000
20,000
15,000
10,000
5,000
0
Number of children
18,400
24,696
44,227
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

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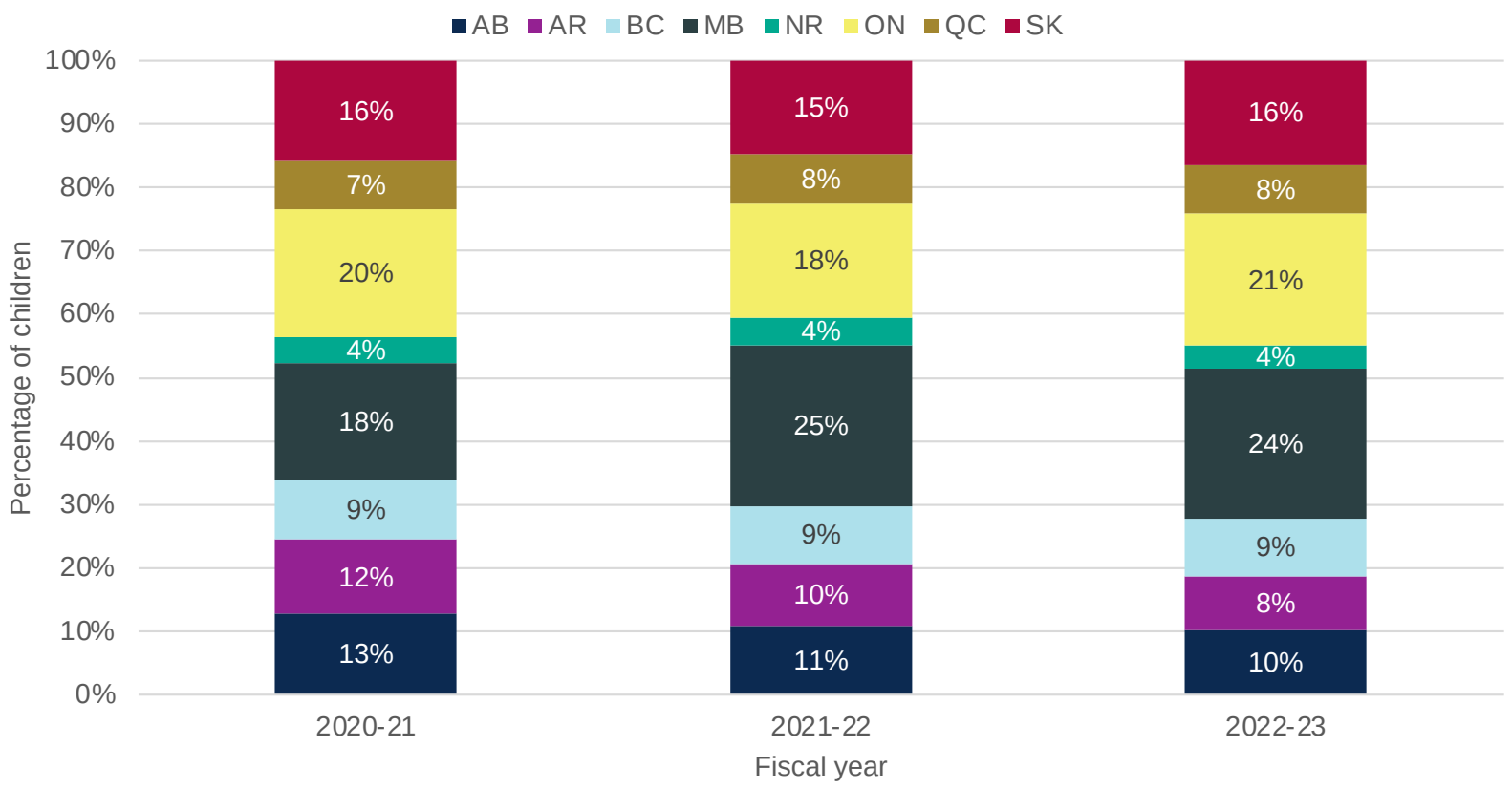
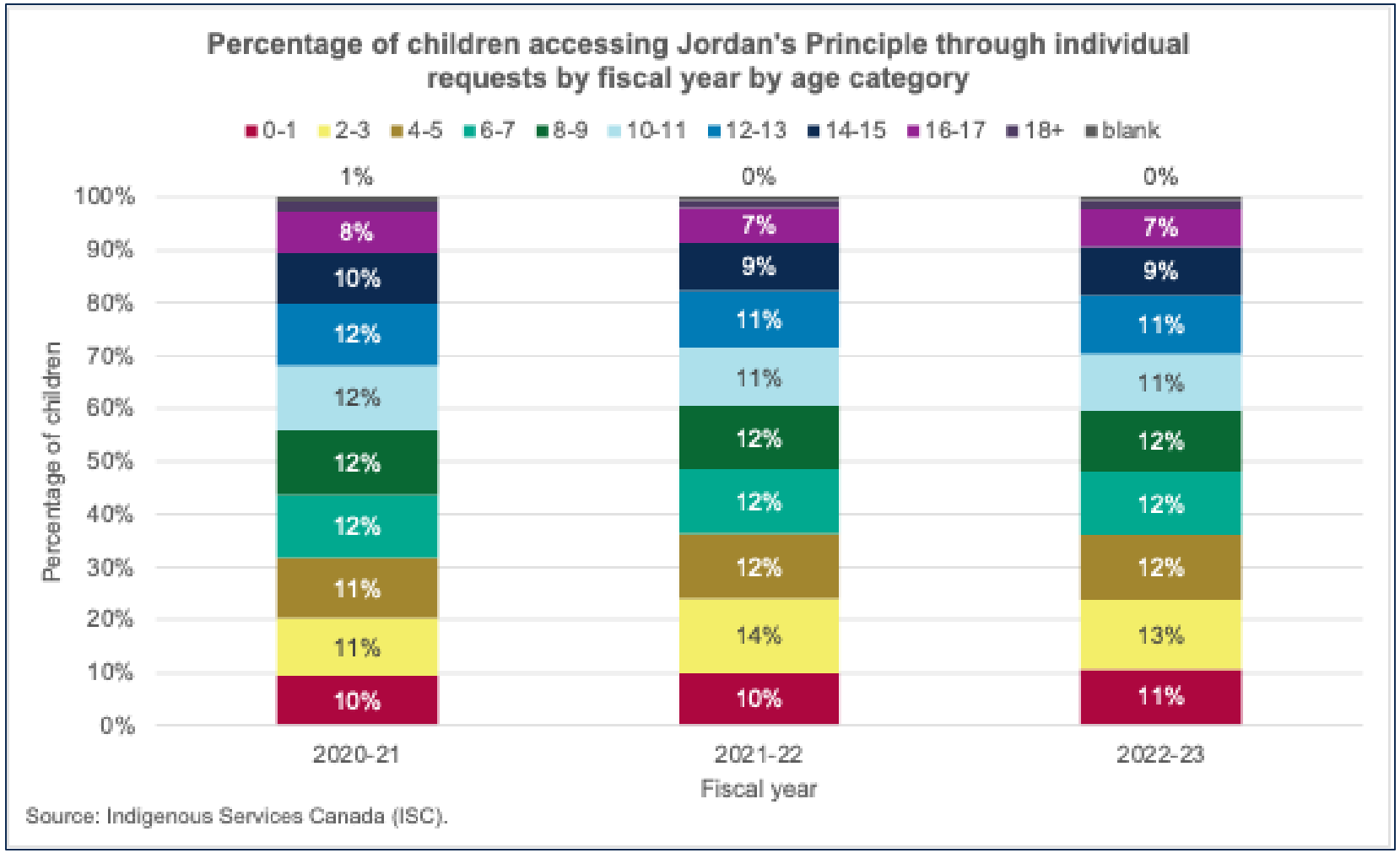
IFPD



Source: Indigenous Services Canada (ISC).
Notes: 1) ATL and AR stand for Atlantic Region. 2) NR stands for Northern Region.


Percentage of children accessing Jordan's Principle through individual requests by fiscal year by age category
0-1
2-3
4-5
6-7
8-9
10-11
12-13
14-15
16-17
18+
blank
Percentage of children
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
1%
8%
10%
12%
12%
12%
12%
11%
11%
10%
0%
7%
9%
11%
11%
12%
12%
12%
14%
10%
0%
7%
9%
11%
11%
12%
12%
12%
13%
11%
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

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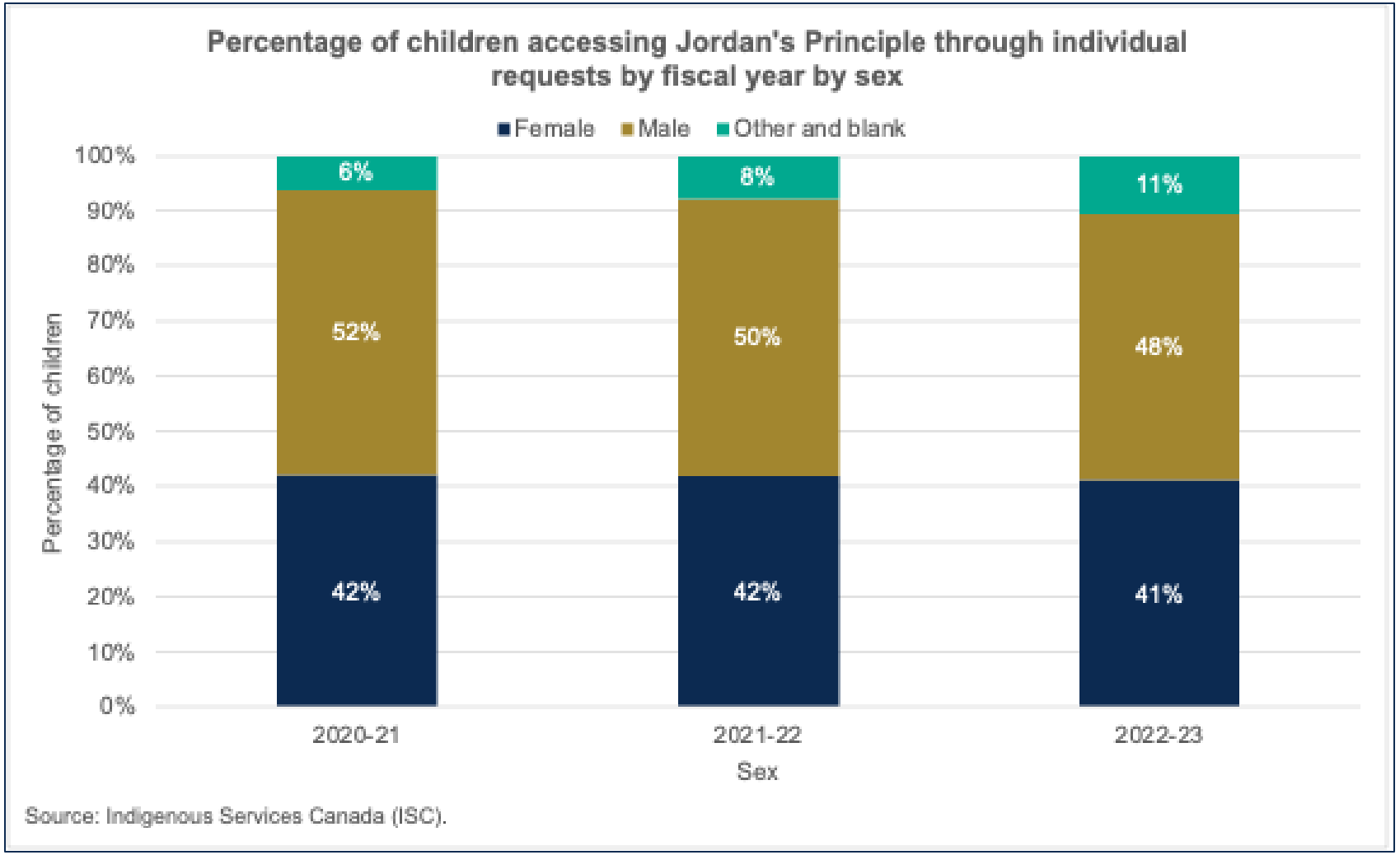
Percentage of children accessing Jordan's Principle through individual requests by fiscal year by sex
Female
Male
Other and blank
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of children
6%
52%
42%
8%
50%
42%
11%
48%
41%
2020-21
2021-22
2022-23
Sex
Source: Indigenous Services Canada (ISC).

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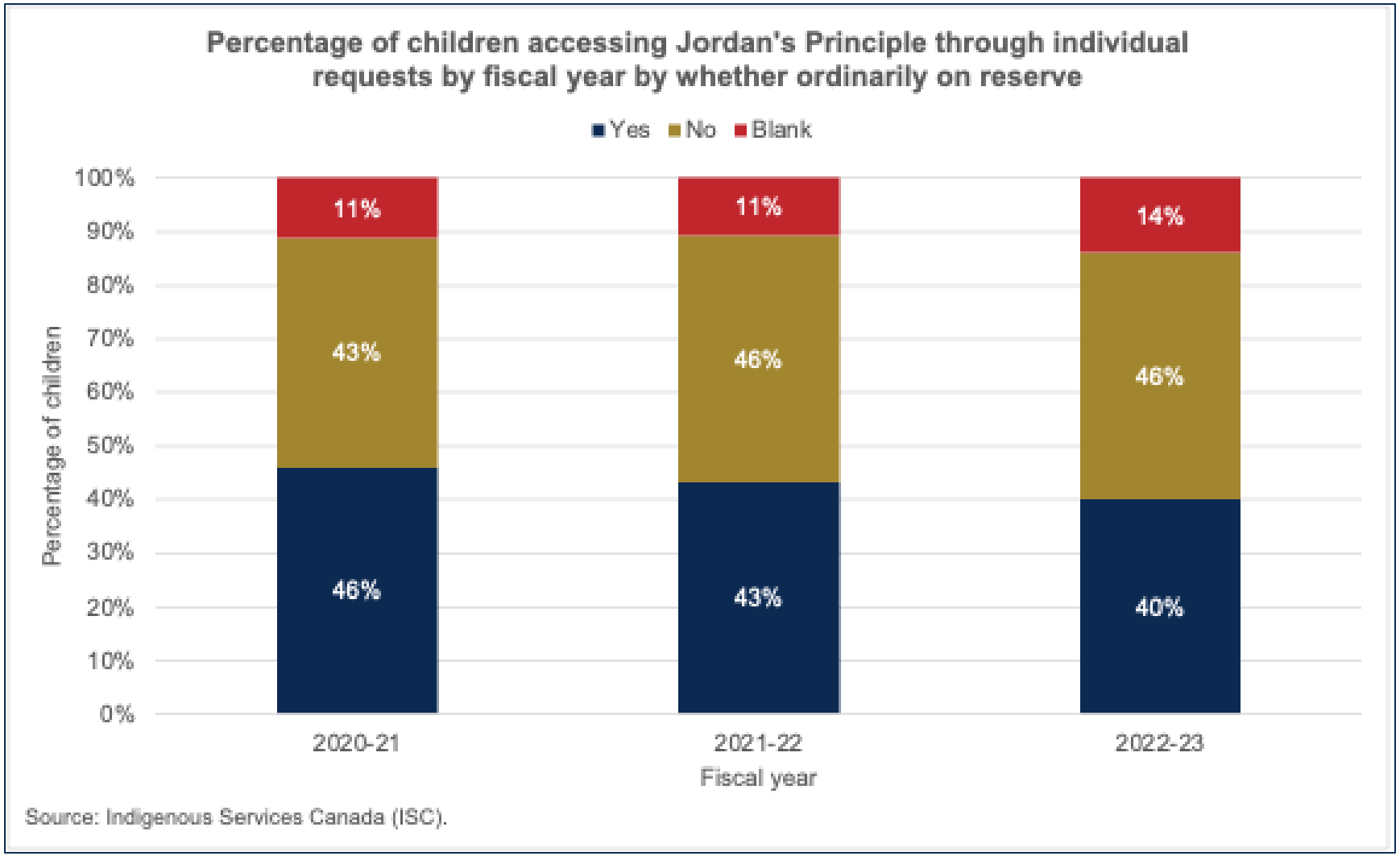
Location and affiliation of children accessing Jordan's Principle

- In the last two fiscal years, 46% of children accessing Jordan's Principle were mainly resident off-reserve.

- CHRT 36 eligibility is blank/N/A for over 80% of all requests across fiscal years.
  - CHRT 36 eligibility refers to the Tribunal's four criteria for eligibility under Jordan's Principle:
    - Child is registered or eligible to be registered under the Indian Act;
    - Child has a parent/guardian registered or eligible to be registered under the Indian Act;
    - Child is recognized by their First Nation;
    - Child is ordinarily resident on-reserve.

- Of CHRT 36 eligibility requests, 2% in FY 2022-23 were for children recognized by their First Nation, all others were blank/N/A.


Percentage of children accessing Jordan's Principle through individual requests by fiscal year by whether ordinarily on reserve
Yes
No
Blank
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of children
11%
43%
46%
11%
46%
43%
14%
46%
40%
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

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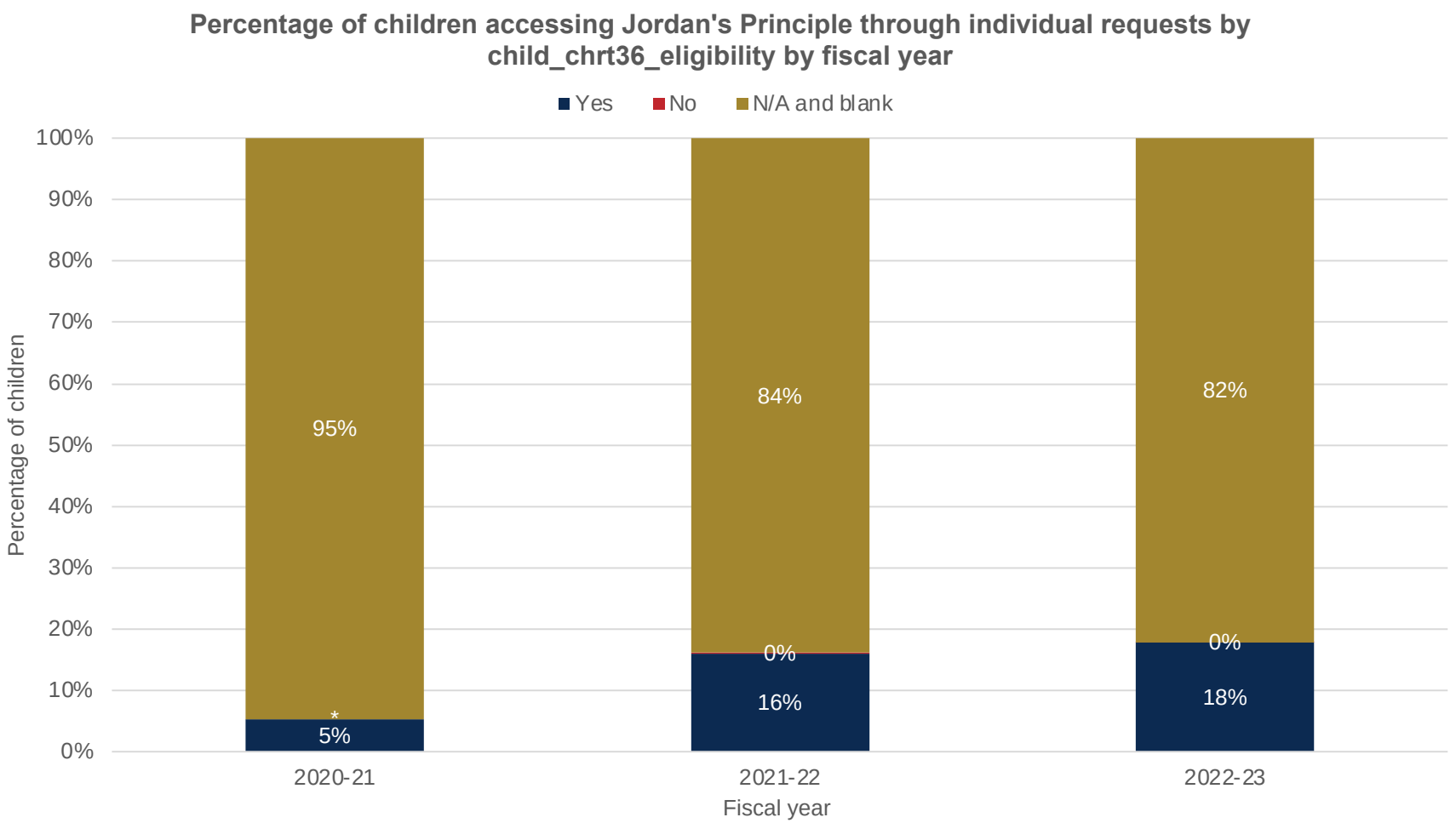

Source: Indigenous Services Canada (ISC).
Notes: 1) Entries with fewer than 15 records were suppressed. 2) According to ISC, child_chrt36_eligibility "describes if the child is eligible through a parent/guardian who is registered or eligible to be registered under the Indian Act."

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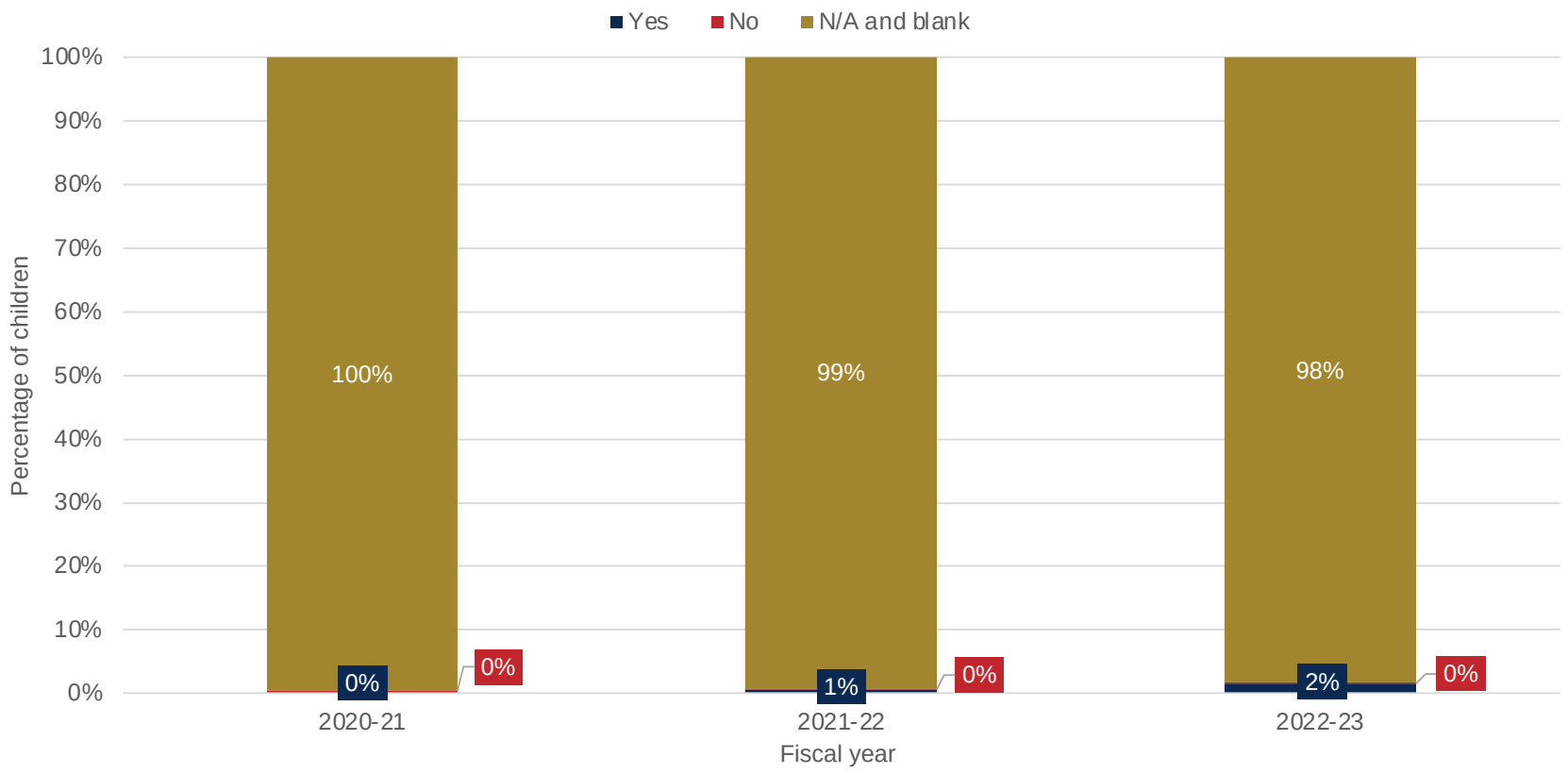

Source: Indigenous Services Canada (ISC).
Notes: 1) Entries with fewer than 15 records were suppressed. 2) Describes if the child is eligible through recognition by their nation for the purposes of Jordan's Principle.

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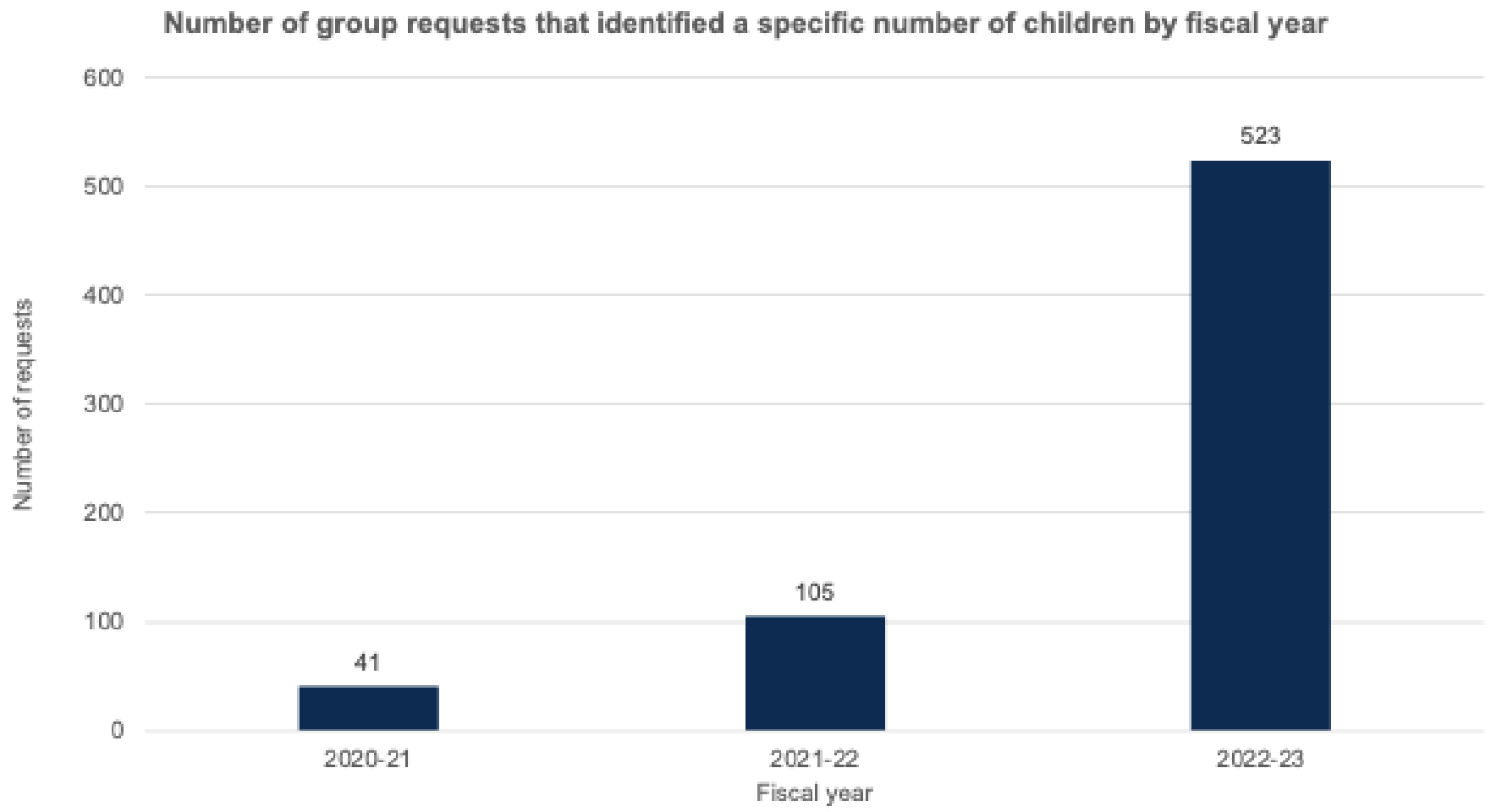
Group requests

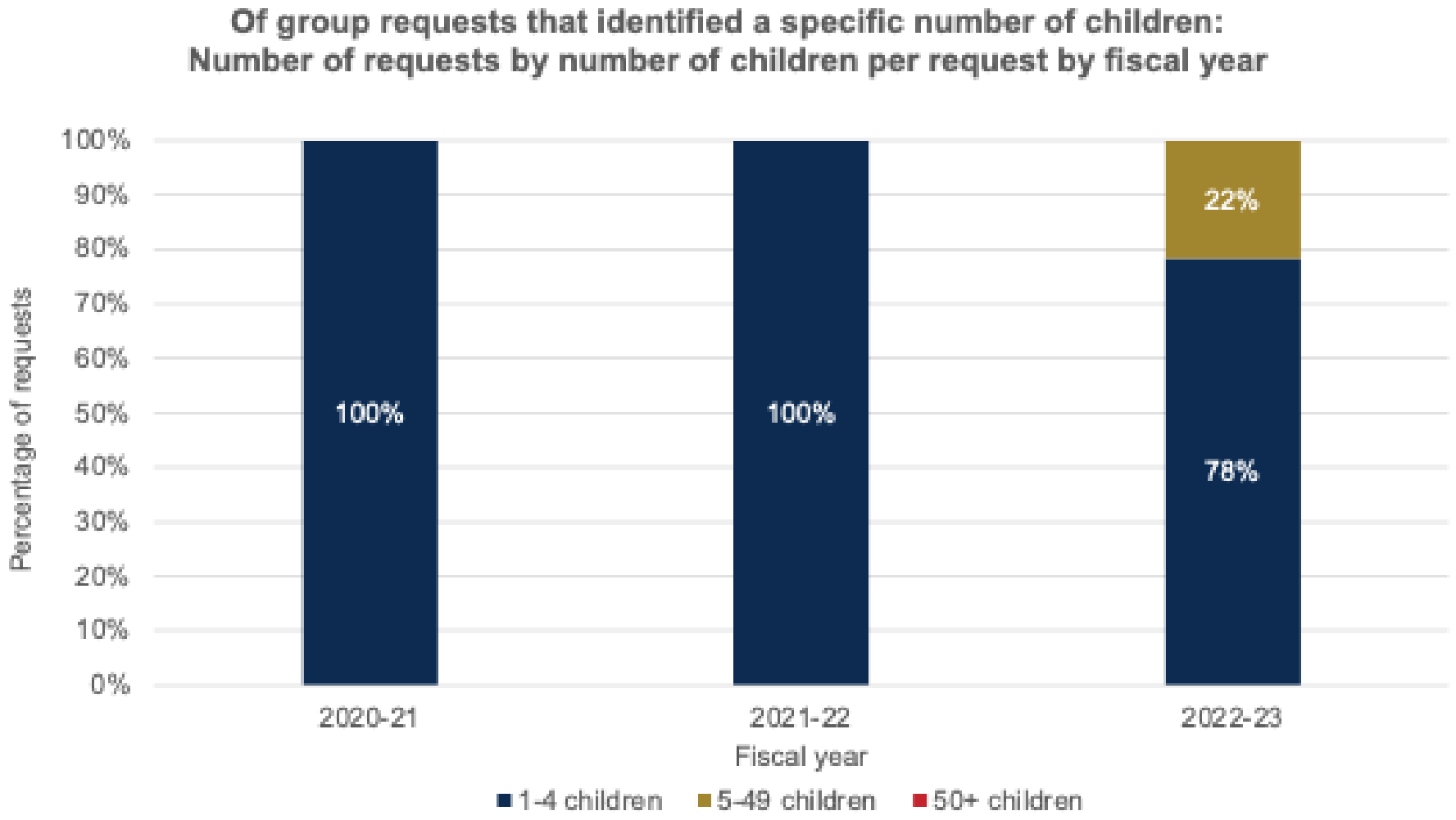
Group requests (number of requests)

- There are 523 group requests in FY 2022-23 that had a defined number of children associated to the request.
  - 78% were for 1-4 children
  - 22% were for 5-49 children

- There were roughly 6,300 group requests in FY 2022-23 that had an estimated number of children associated to the request.
  - 38% were for fewer than 50 children
  - 57% were for fewer than 100 children



Source: Indigenous Services Canada (ISC).



Source: Indigenous Services Canada (ISC).
Note: This chart excludes requests where the estimated number of children that will benefit is 0 or blank.

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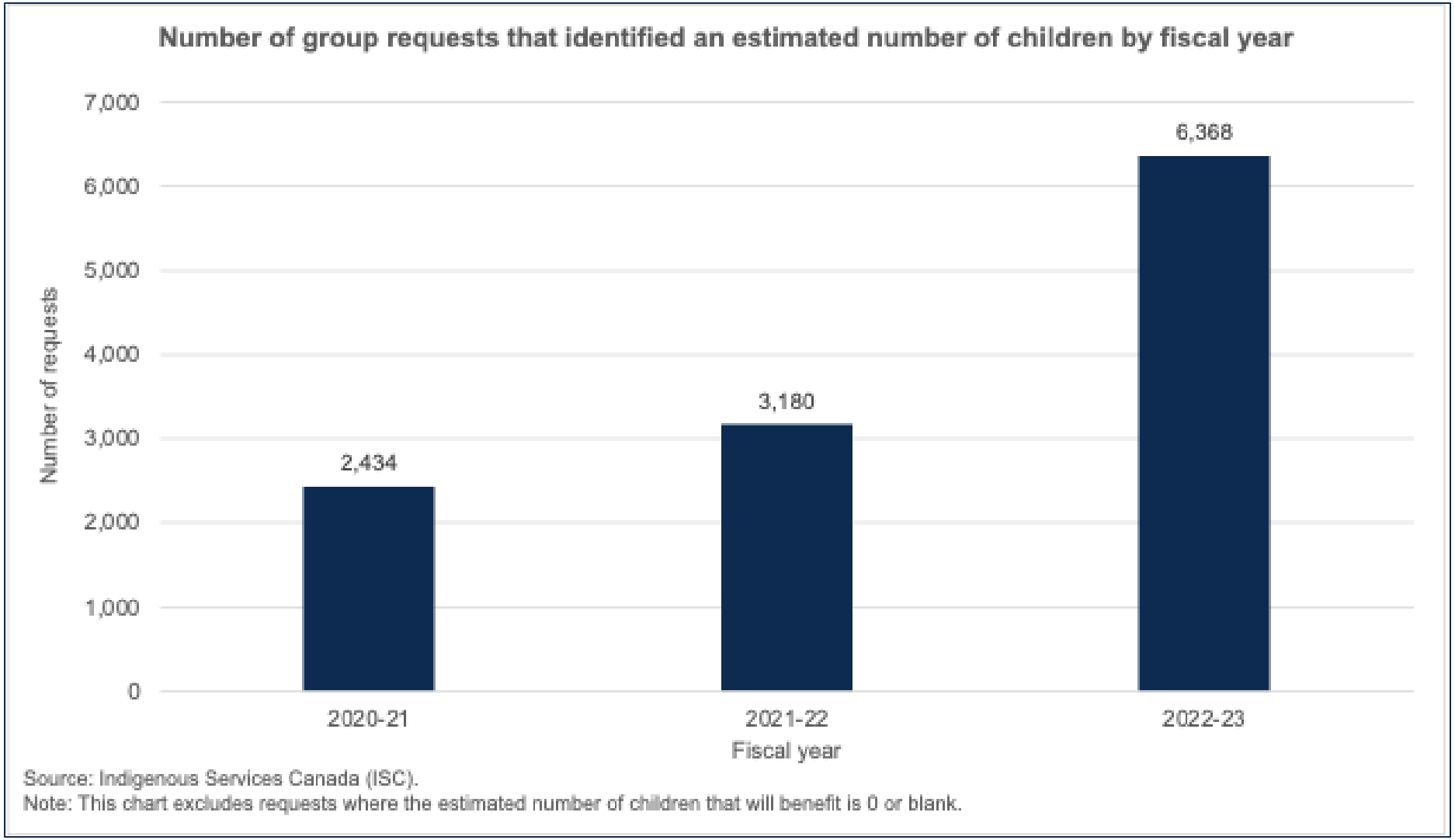
Number of group requests that identified an estimated number of children by fiscal year
7,000
6,000
5,000
4,000
3,000
2,000
1,000
0
Number of requests
2,434
3,180
6,368
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).
Note: This chart excludes requests where the estimated number of children that will benefit is 0 or blank.

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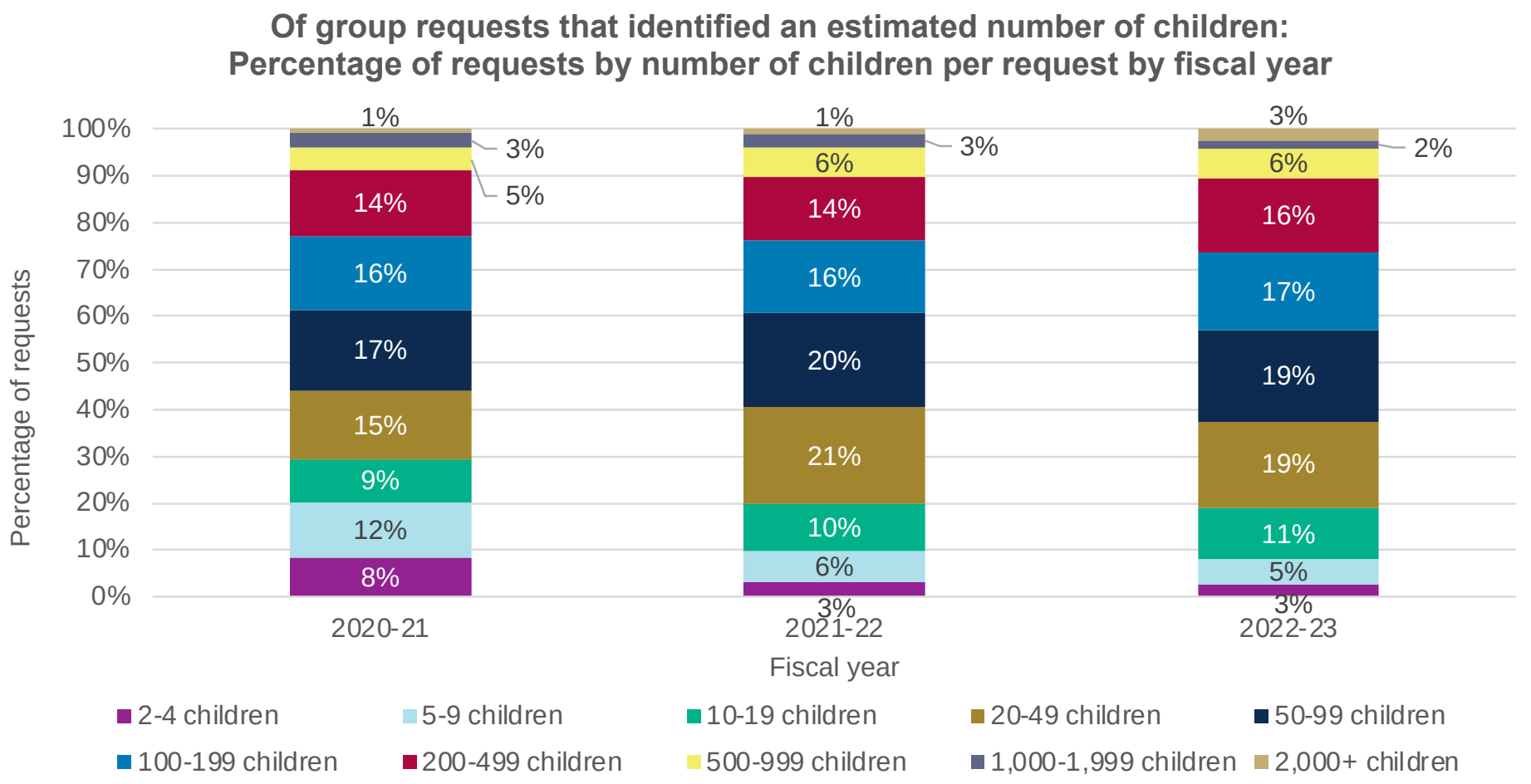

Source: Indigenous Services Canada (ISC).
Note: This chart excludes requests where the estimated number of children that will benefit is 0 or blank.

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Next steps

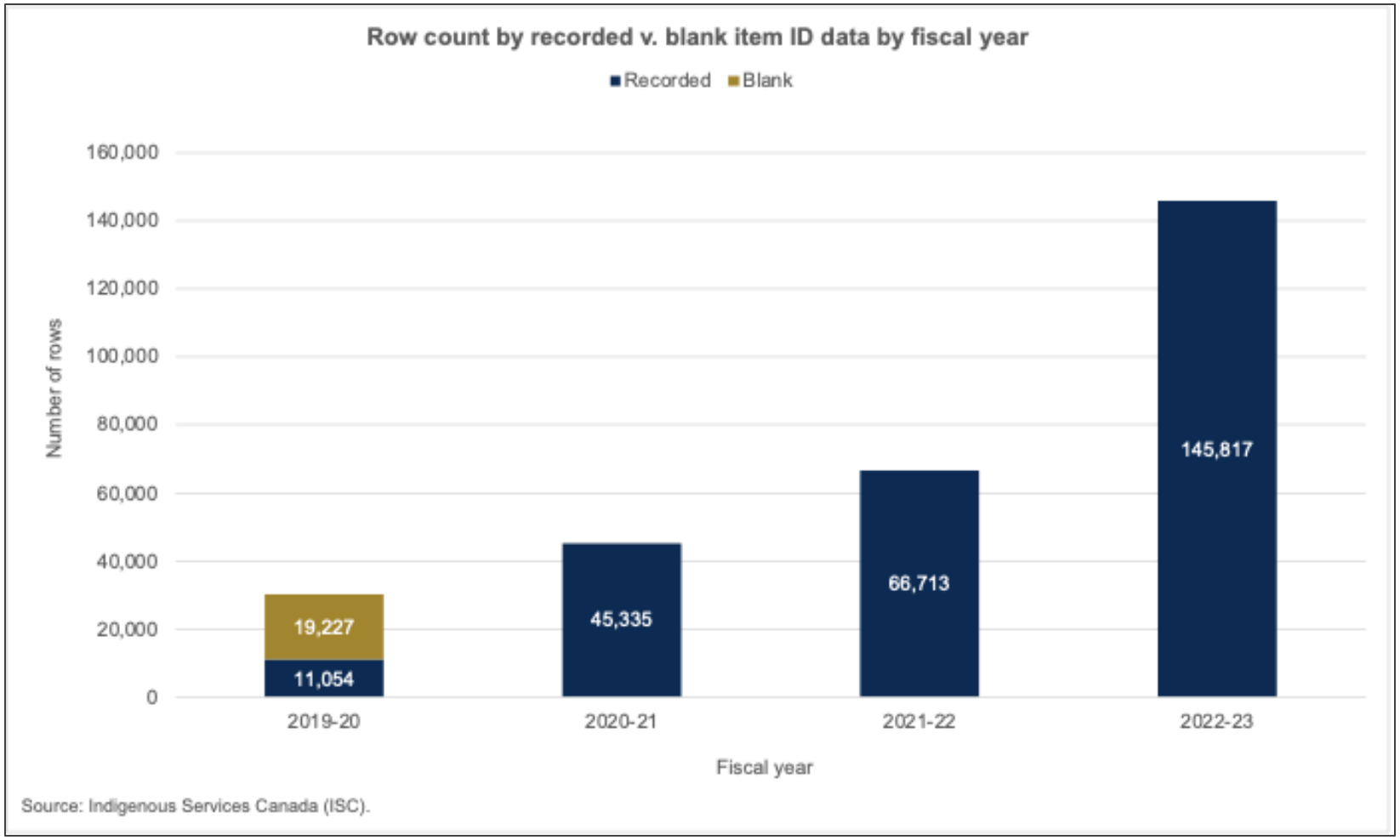
- IFSD is continuing its analysis of GCcase data.
- IFSD anticipates analysis of GCcase data to be complete by December 31, 2024.

Get in touch

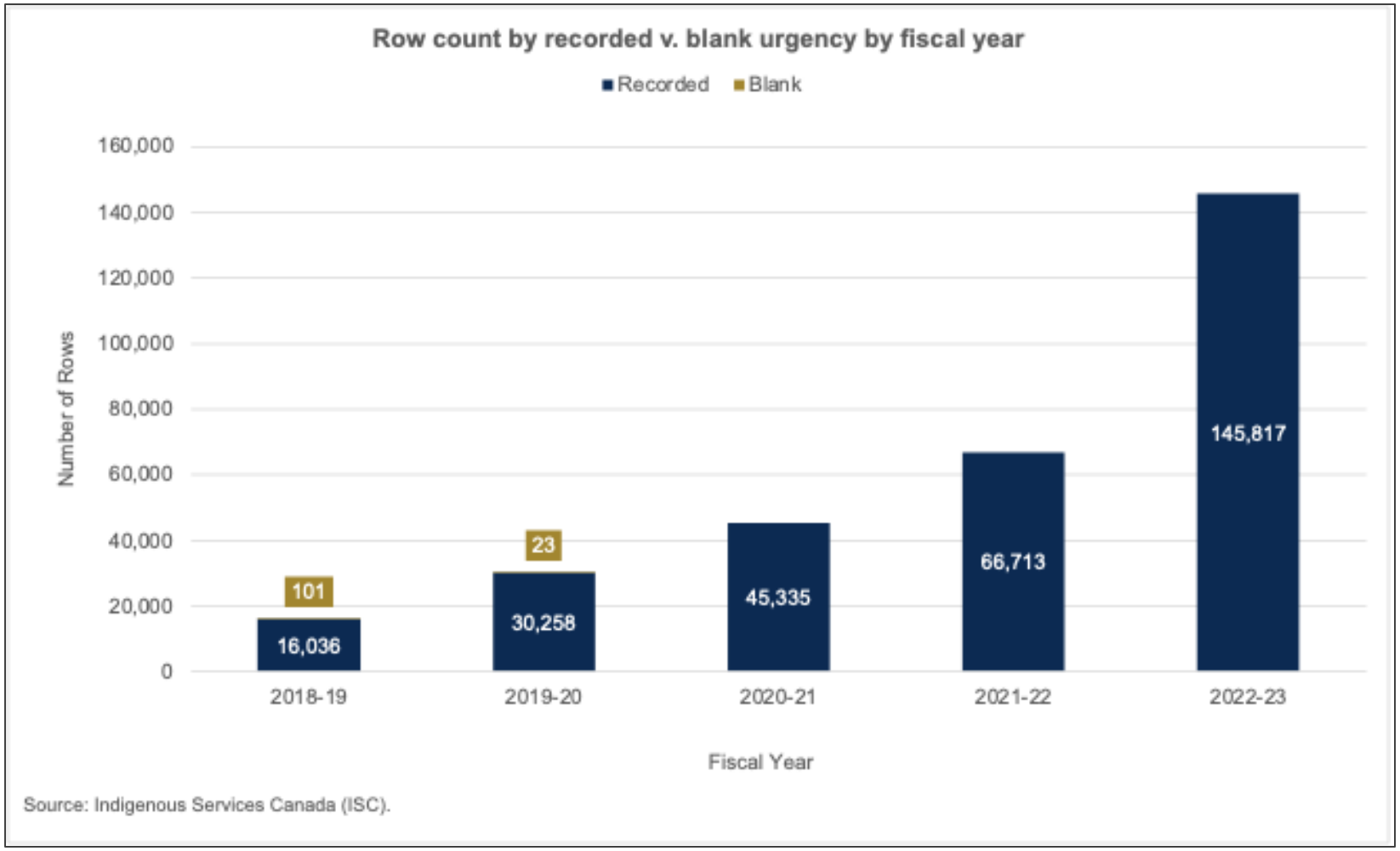
Helaina Gaspard, Ph.D.
Managing Director
helaina.gaspard@ifsd.ca
www.ifsd.ca

Appendix

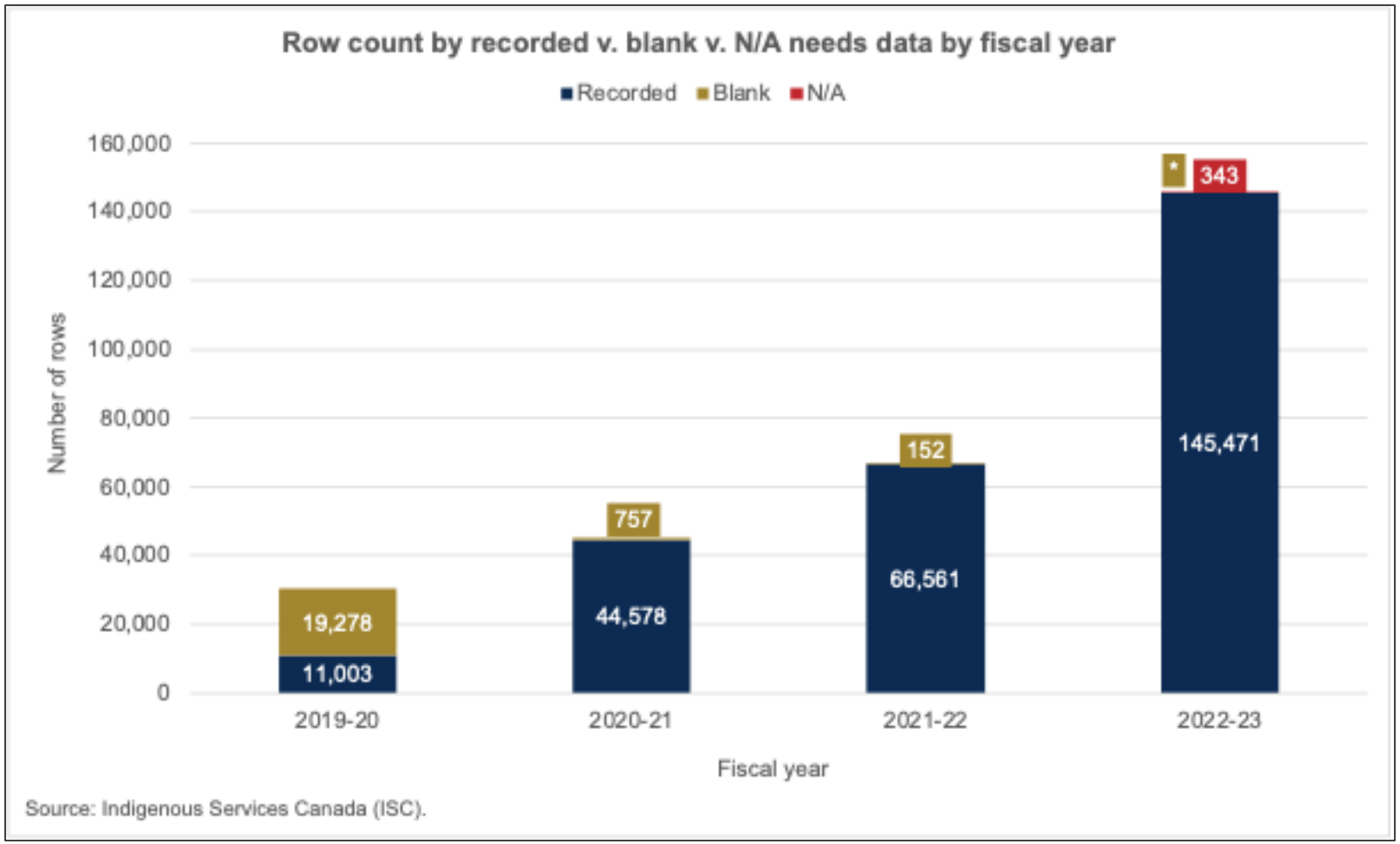
Completeness of entries (row count)


Row count by recorded v. blank item ID data by fiscal year
Recorded
Blank
160,000
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0
Number of rows
19,227
11,054
45,335
66,713
145,817
2019-20
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

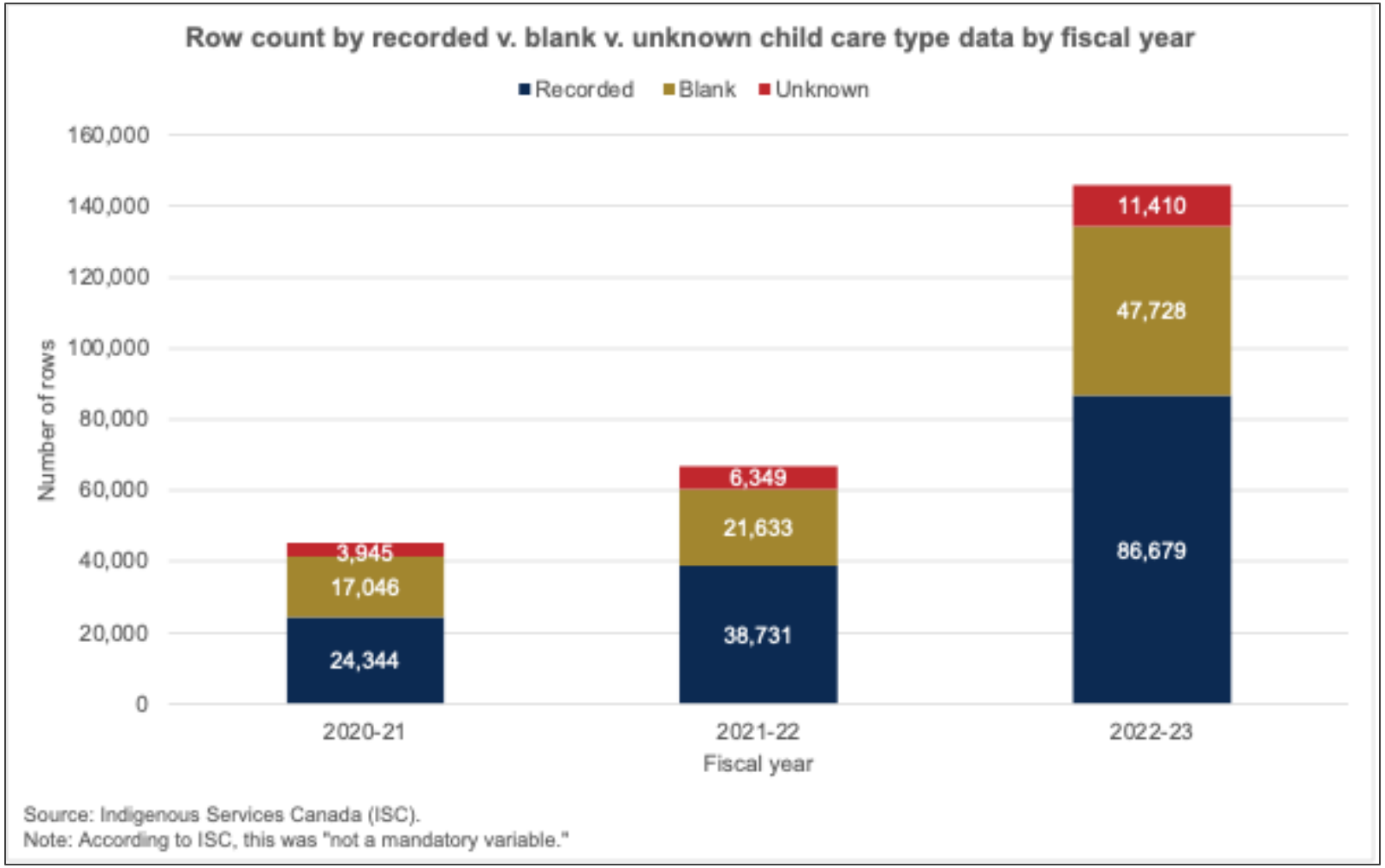
IFSD
IFPD


Row count by recorded v. blank urgency by fiscal year
Recorded
Blank
160,000
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0
Number of Rows
101
16,036
23
30,258
45,335
66,713
145,817
2018-19
2019-20
2020-21
2021-22
2022-23
Fiscal Year
Source: Indigenous Services Canada (ISC).

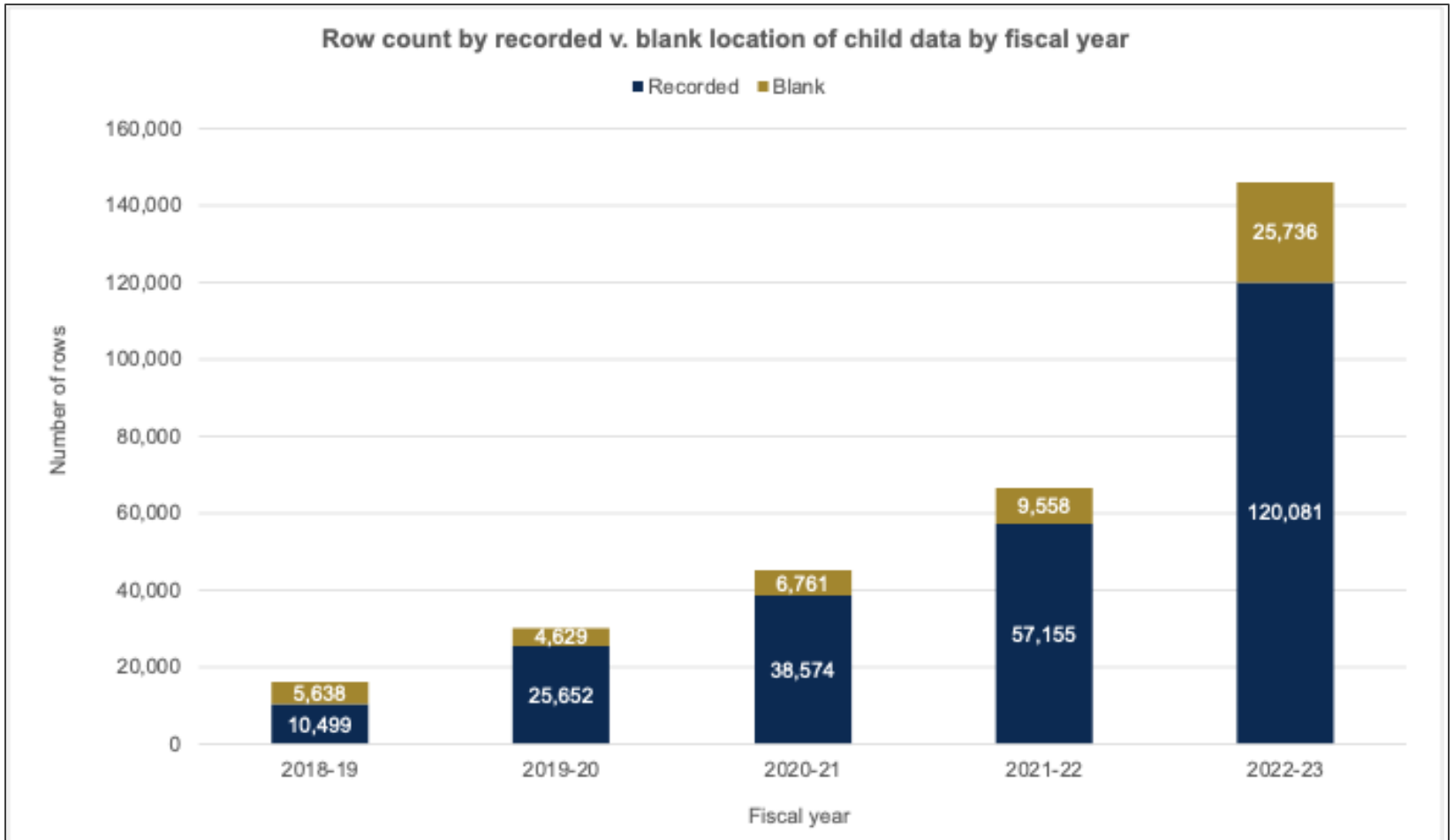
IFSD
IFPD


Row count by recorded v. blank v. N/A needs data by fiscal year
Recorded
Blank
N/A
160,000
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0
Number of rows
19,278
11,003
757
44,578
152
66,561
*
343
145,471
2019-20
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

IFSD
IFPD


Row count by recorded v. blank v. unknown child care type data by fiscal year
Recorded
Blank
Unknown
160,000
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0
Number of rows
3,945
17,046
24,344
6,349
21,633
38,731
11,410
47,728
86,679
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).
Note: According to ISC, this was "not a mandatory variable."

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Note: According to ISC, "on or off reserve status is not always required to make a decision" and "data entry practices may influence completeness of record."

IFSD
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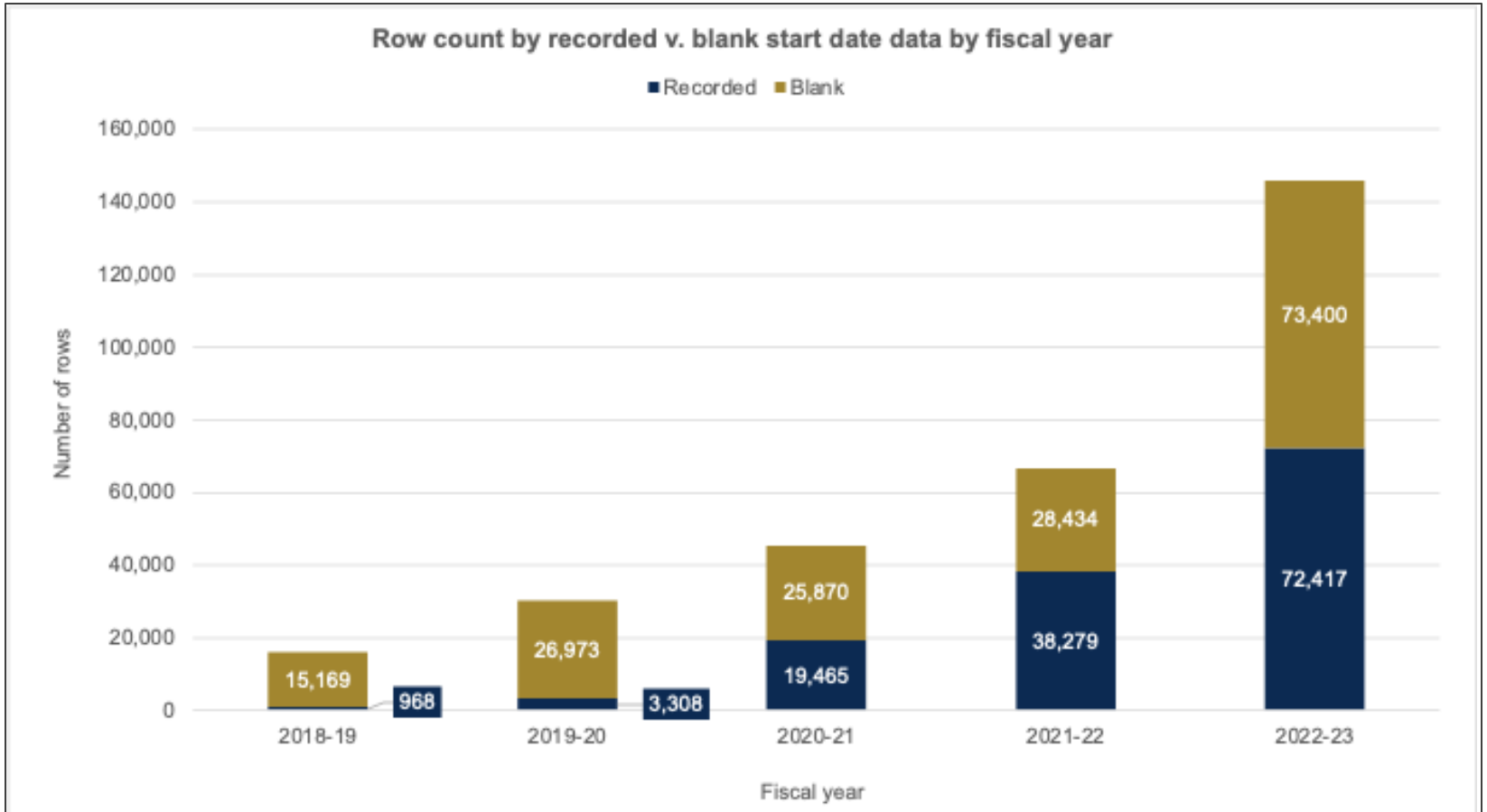
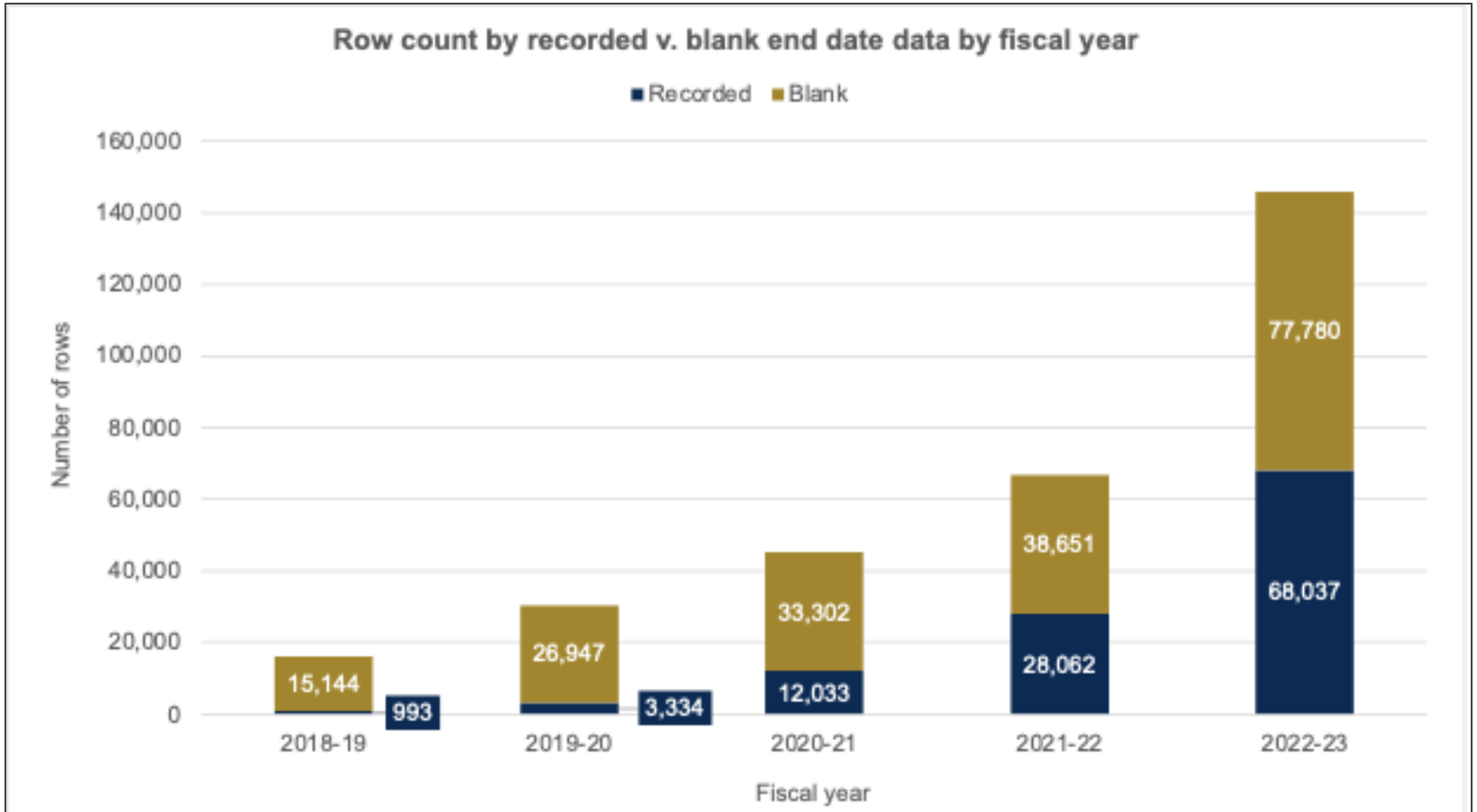


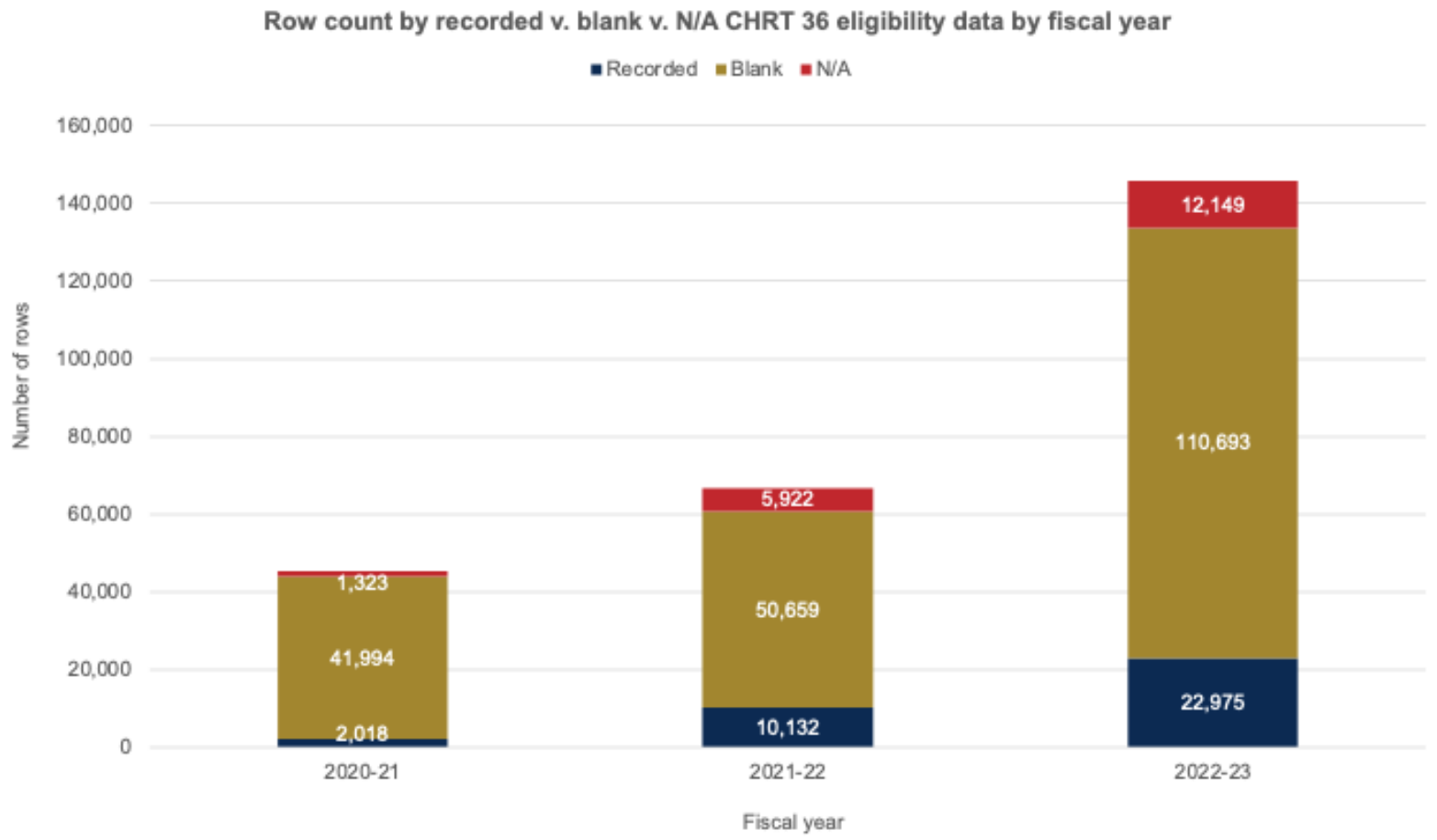
Source: Indigenous Services Canada (ISC).
Note: According to ISC, this was "not a mandatory variable and frequently not entered by the user."

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Note: According to ISC, this was "not a mandatory variable and frequently not entered by the user."

IFSD
IFPD



Source: Indigenous Services Canada (ISC)
Notes: 1) According to ISC, this was "not a mandatory data field." 2) According to ISC, this variable, "[d]escribes if the child is eligible through a parent/guardian who is registered or eligible to be registered under the Indian Act.

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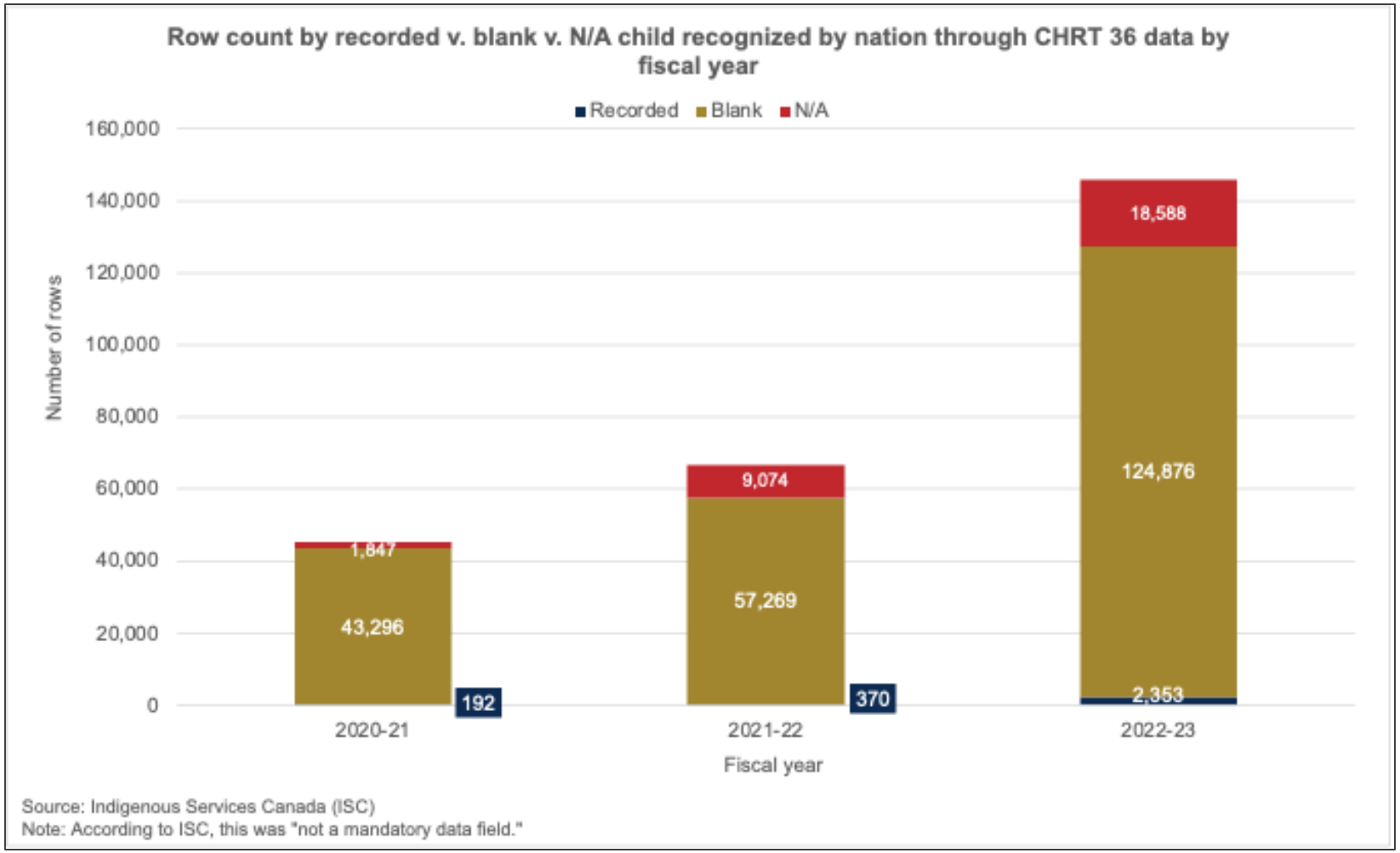
Row count by recorded v. blank v. N/A child recognized by nation through CHRT 36 data by fiscal year
Recorded
Blank
N/A
160,000
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0
Number of rows
1,847
43,296
192
9,074
57,269
370
18,588
124,876
2,353
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC)
Note: According to ISC, this was "not a mandatory data field."

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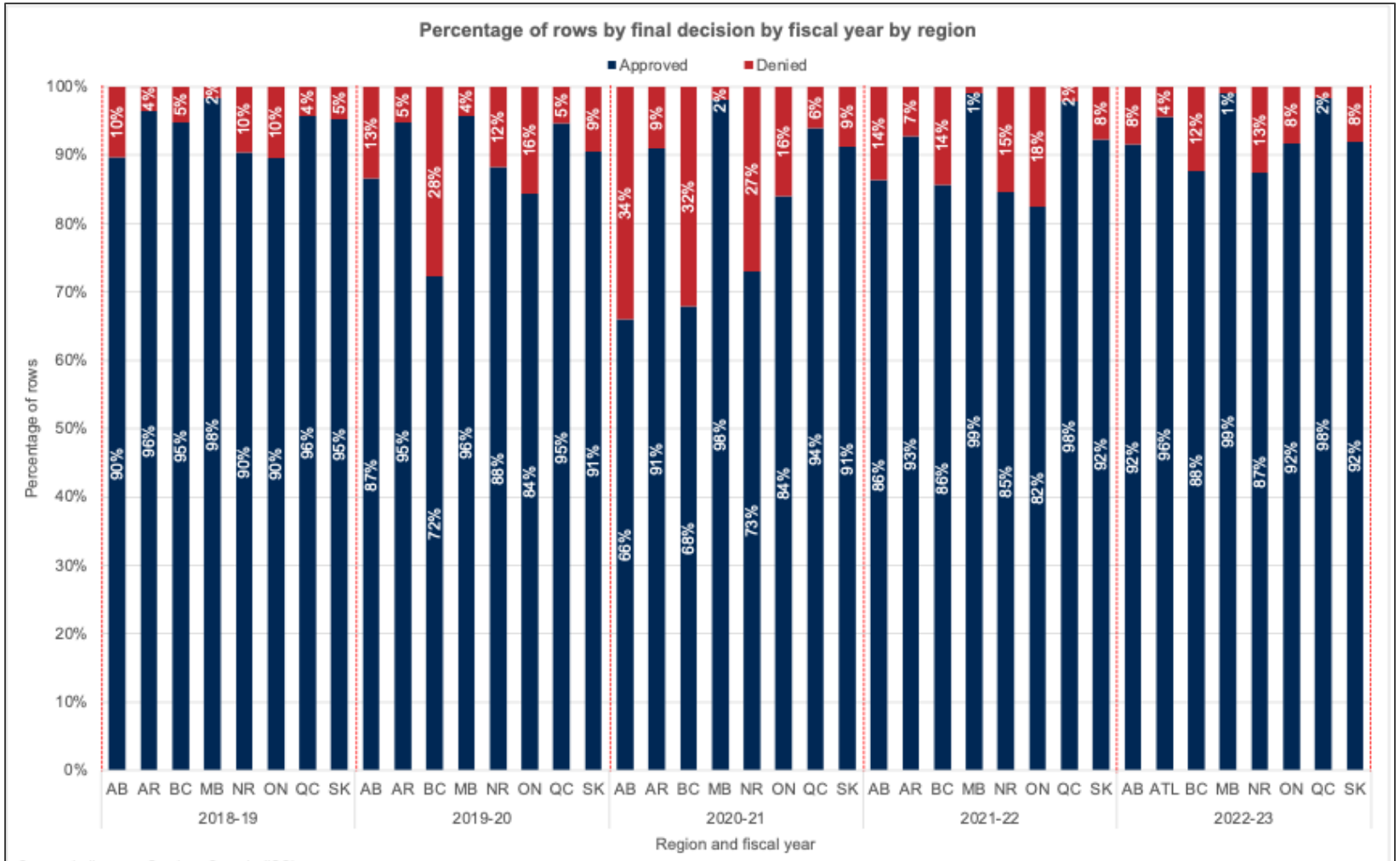
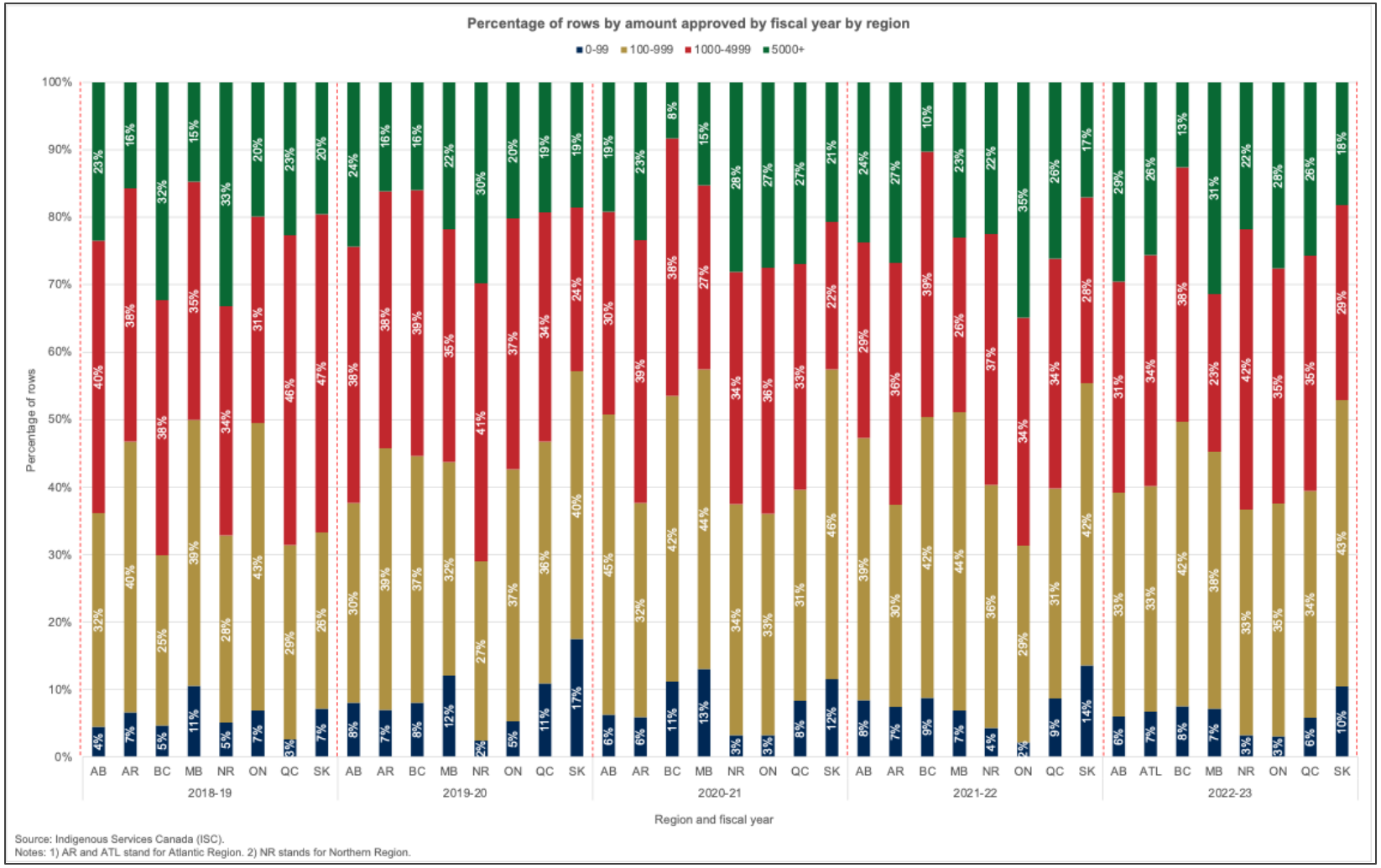
General analysis (row count)



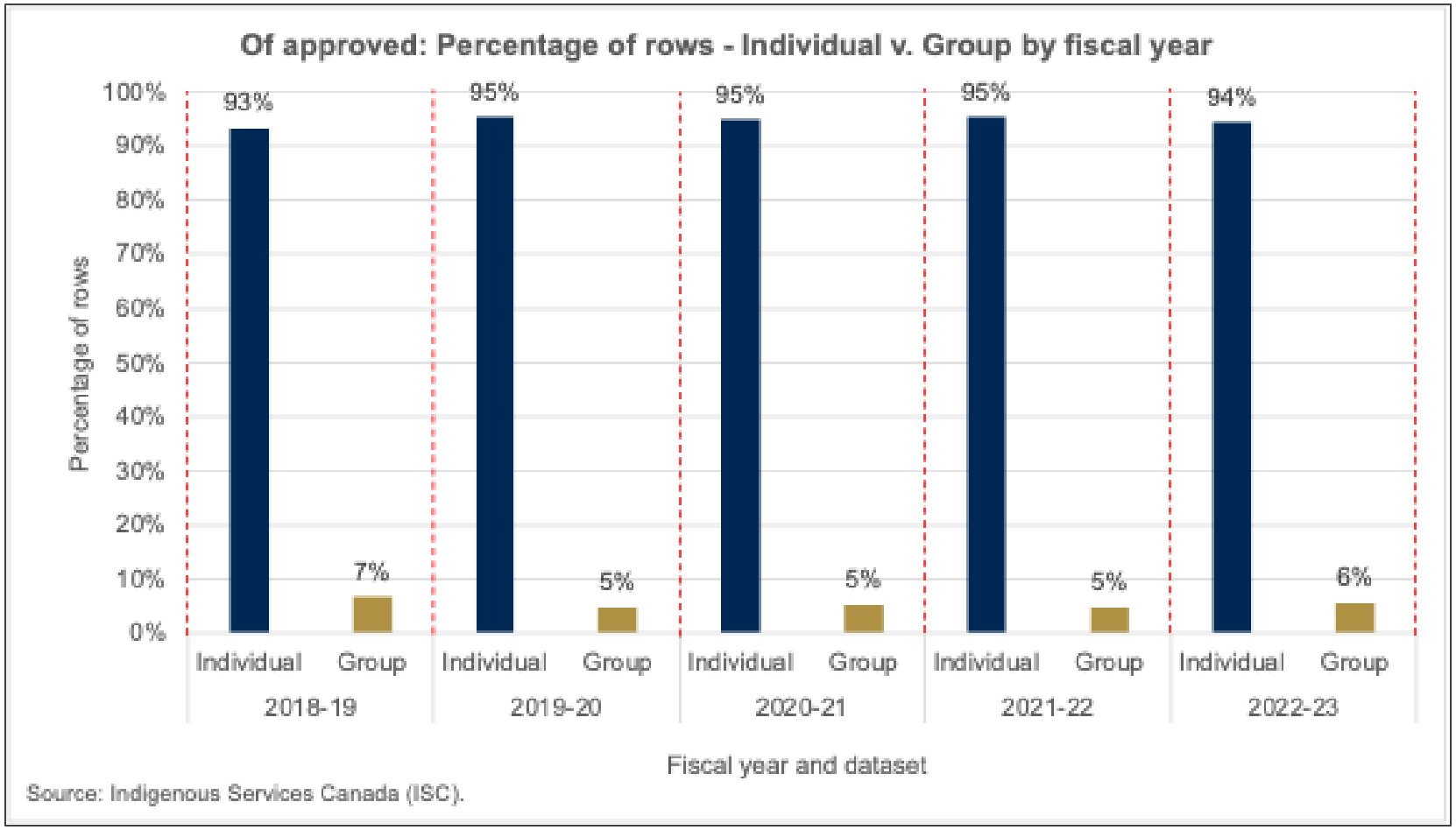
Source: Indigenous Services Canada (ISC).
Notes: 1) AR and ATL stand for Atlantic Region. 2) NR stands for Northern Region.

IFSD
IFPD

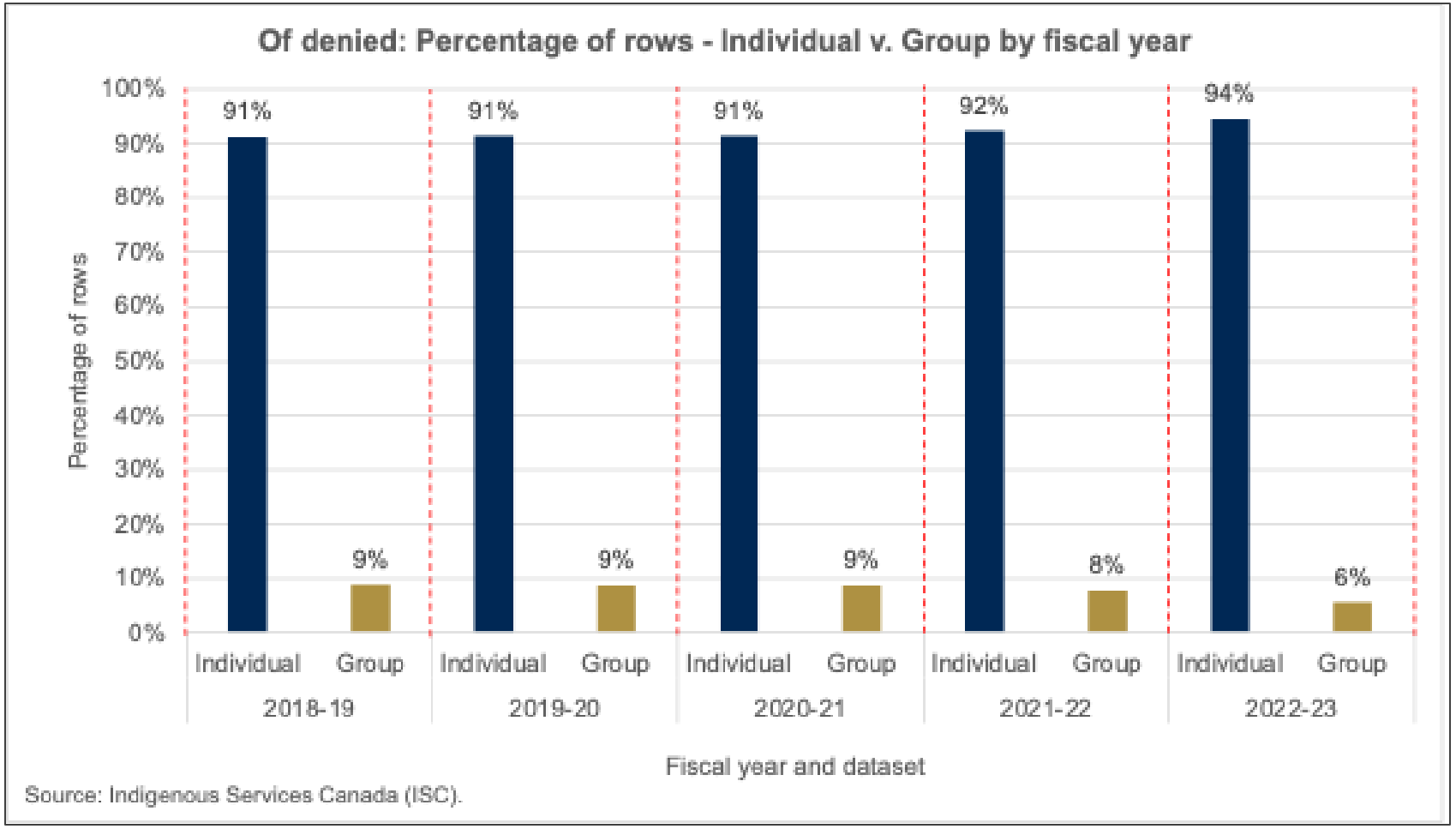


Source: Indigenous Services Canada (ISC).
Notes: 1) AR and ATL stand for Atlantic Region. 2) NR stands for Northern Region.

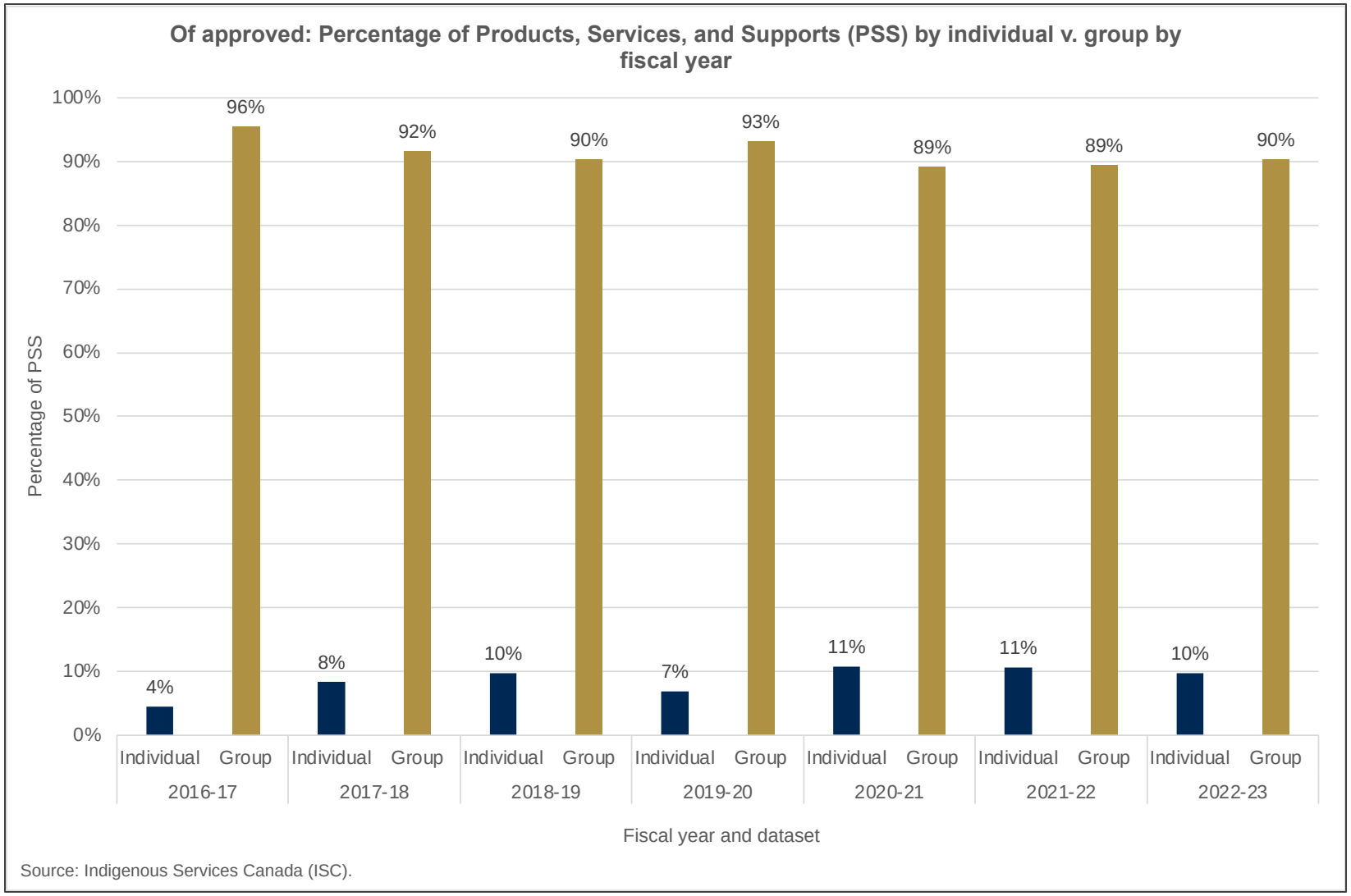
IFSD
IFPD


Of approved: Percentage of rows - Individual v. Group by fiscal year
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of rows
93%
7%
95%
5%
95%
5%
95%
5%
94%
6%
Individual
Group
2018-19
2019-20
2020-21
2021-22
2022-23
Fiscal year and dataset
Source: Indigenous Services Canada (ISC).

IFSD
IFPD


Of denied: Percentage of rows - Individual v. Group by fiscal year
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of rows
91%
9%
91%
9%
91%
9%
92%
8%
94%
6%
Individual
Group
Individual
Group
Individual
Group
Individual
Group
Individual
Group
2018-19
2019-20
2020-21
2021-22
2022-23
Fiscal year and dataset
Source: Indigenous Services Canada (ISC).

IFSD
IFPD


Of approved: Percentage of Products, Services, and Supports (PSS) by individual v. group by fiscal year
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of PSS
4%
96%
8%
92%
10%
90%
7%
93%
11%
89%
11%
89%
10%
90%
Individual
Group
2016-17
2017-18
2018-19
2019-20
2020-21
2021-22
2022-23
Fiscal year and dataset
Source: Indigenous Services Canada (ISC).

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Jordan’s Principle: GC case analysis

DRAFT – FOR DISCUSSION ONLY

February 12, 2025

uOttawa

GCcase overview

- Each request refers to a single item that an individual or a group is requesting.

- One child can be associated to multiple requests and one request can be associated to multiple children.

- There are four different lenses IFSD will use when analyzing GCcase data:
  1) Number of children
  2) Number of requests
  3) Products, Services, and Supports (PSS)
  4) Row count

Approaches to analyzing GCcase data

Measure	Description	Considerations
Number of requests	▪ The items people request from Jordan's Principle. ▪ This approach counts each item once even if it is associated with multiple children.	▪ No count of individual children. ▪ Limited alignment to administrative practice, i.e., clusters instances of requests.
Number of children	▪ The children associated to requests, when defined. ▪ This approach counts each child once even if they are associated with multiple requests.	▪ Not defined for all group requests.
Products, Services, and Supports (PSS)	▪ Estimated number of instances of children requesting support through Jordan's Principle.	▪ Risks overestimating the impact/reach of Jordan's Principle (by using an estimated number of children who benefit from a group request without actual numbers).
Row count	▪ Defined number of instances of children requesting support through Jordan's Principle.	▪ Risks underestimating the impact/reach of Jordan's Principle (by assuming only 1 child benefits from group requests that do not define the number of associated children).

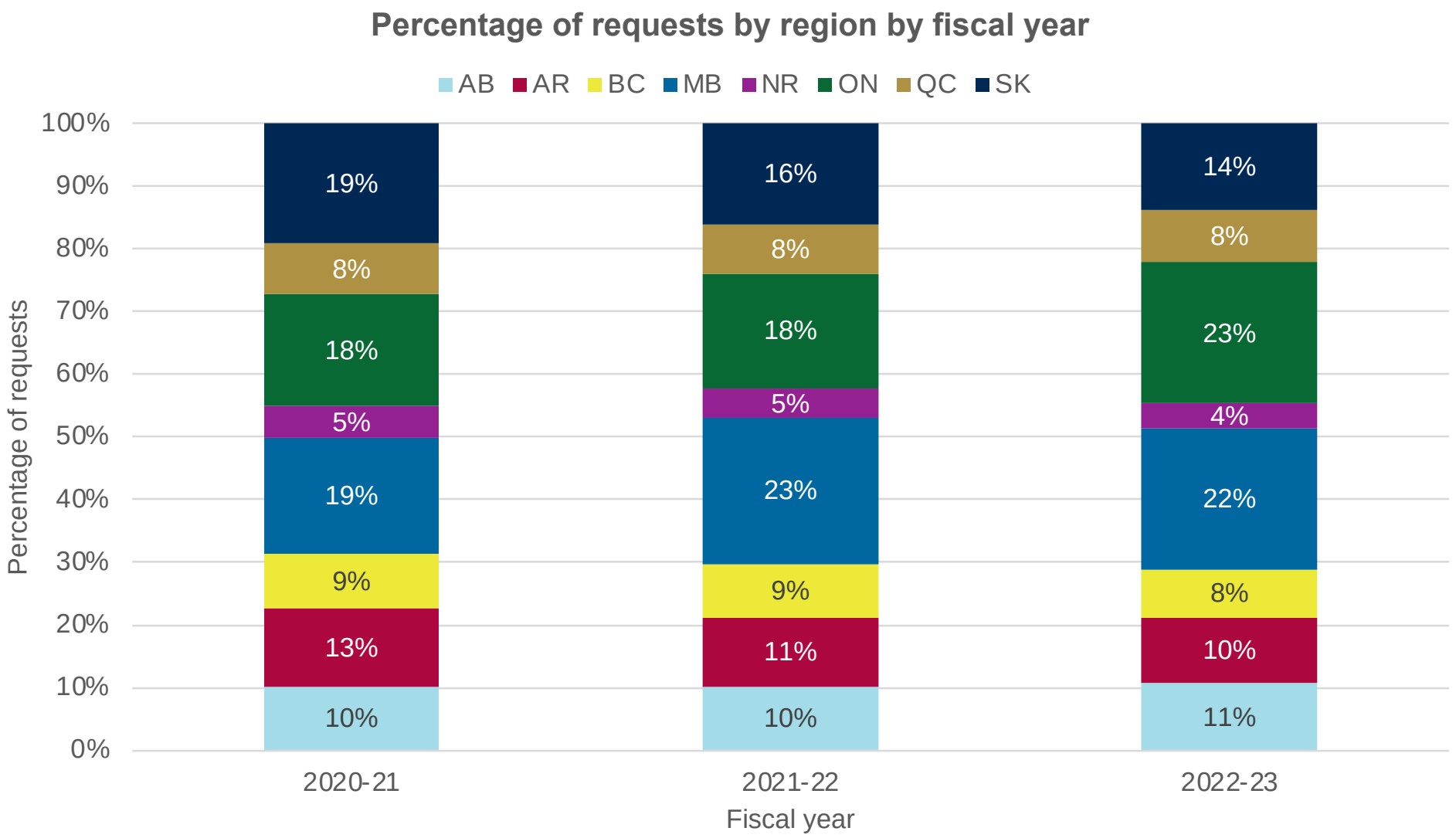
Outstanding questions submitted to ISC

- Inclusions in GCcase
  - For instance, according to ISC, service coordination requests “are typically not managed through the request based process. However, some regions have entered select records.” This means that not all service coordination funding is reflected in GCcase.
- Definitions
- Administrative practices associated to definitions
- Etc.
- IFSD has requested clarification on which requests are and are not included in the GCcase dataset.

Regional analysis

Regional analysis

- The largest shares of requests in fiscal years 2021-22 and 2022-23 are from Ontario and Manitoba.
- In fiscal year 2022-23, Ontario had the largest share of group requests and Manitoba the largest share of individual requests.
- The largest shares of approved requests are from Manitoba and Ontario in fiscal year 2022-23.
- Ontario had the largest share of denied requests in fiscal year 2022-23.
- A share of 70% or more of requests by region were for amounts below $5,000, consistent with shares of amounts approved.



Source: Indigenous Services Canada (ISC).
Notes: 1) AR stands for Atlantic Region. 2) NR stands for Northern Region.

IFSD
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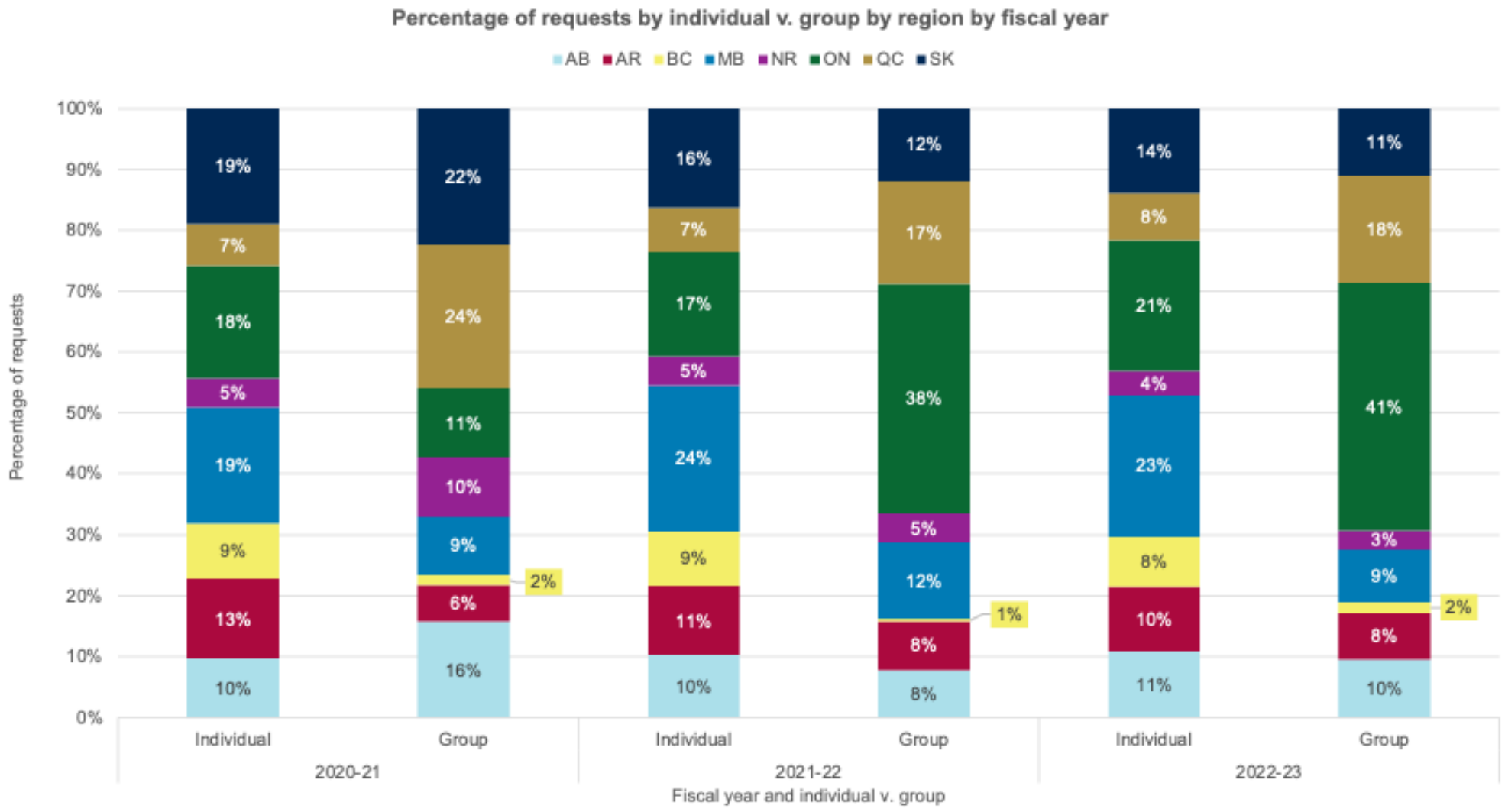

Source: Indigenous Services Canada (ISC).
Notes: 1) AR stands for Atlantic Region. 2) NR stands for Northern Region.

IFSD
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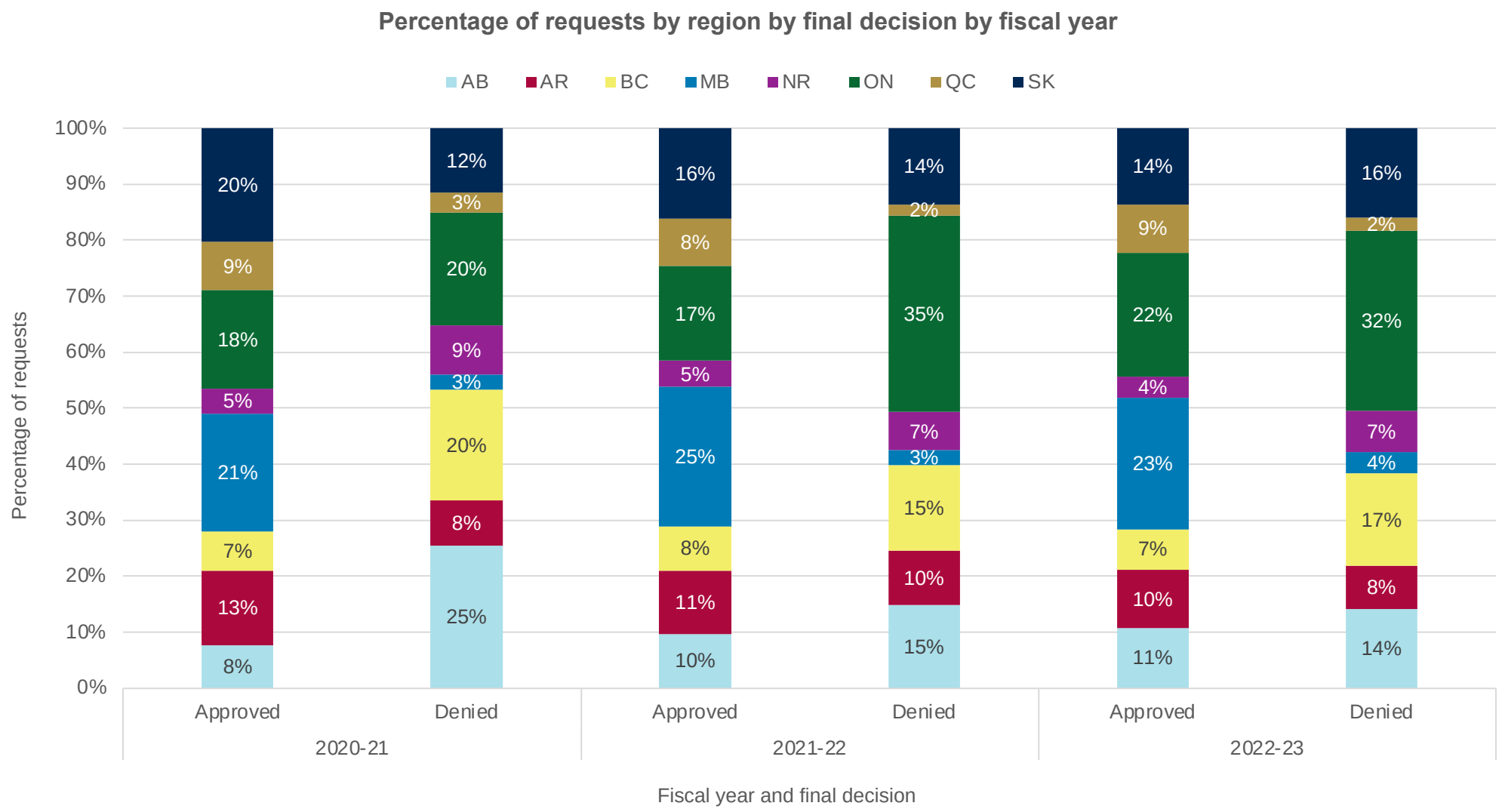
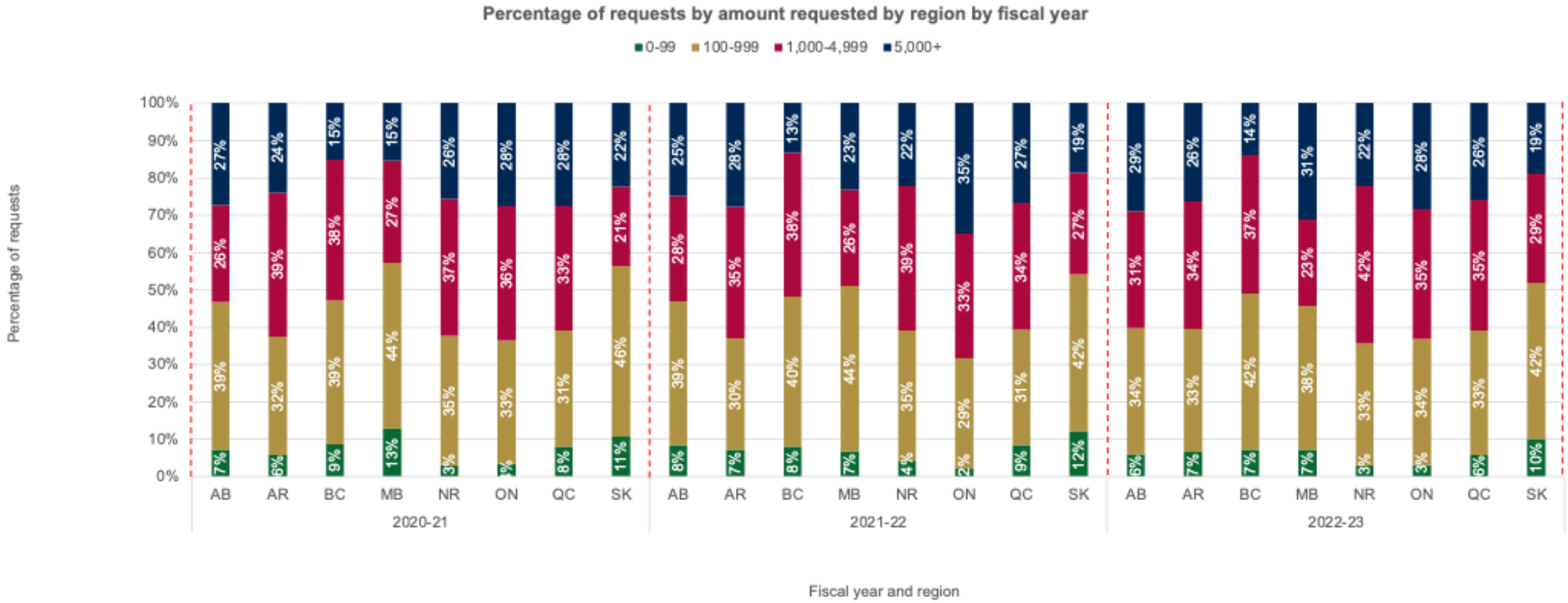


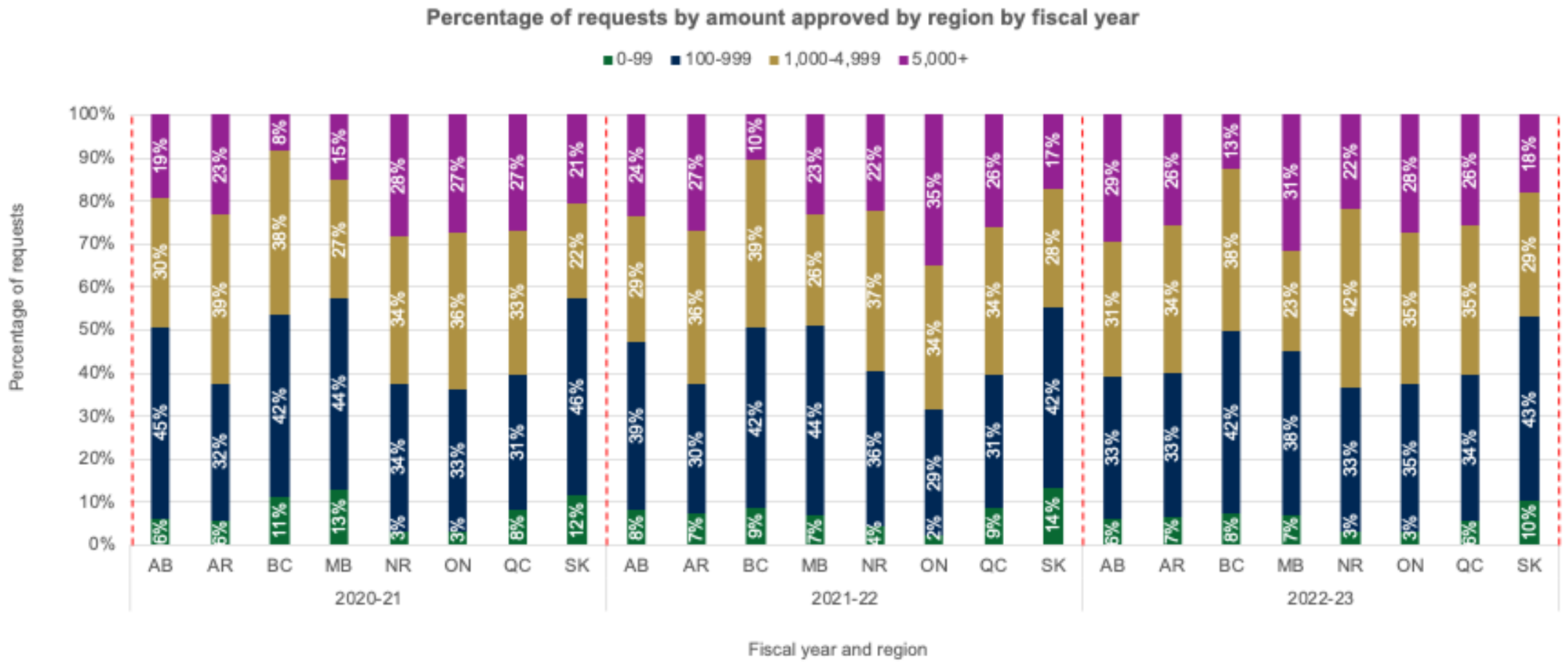
Source: Indigenous Services Canada (ISC).
Notes: 1) AR stands for Atlantic Region. 2) NR stands for Northern Region.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Notes: 1) AR stands for Atlantic Region. 2) NR stands for Northern Region. 3) This chart excludes blank values.

IFSD
IFPD

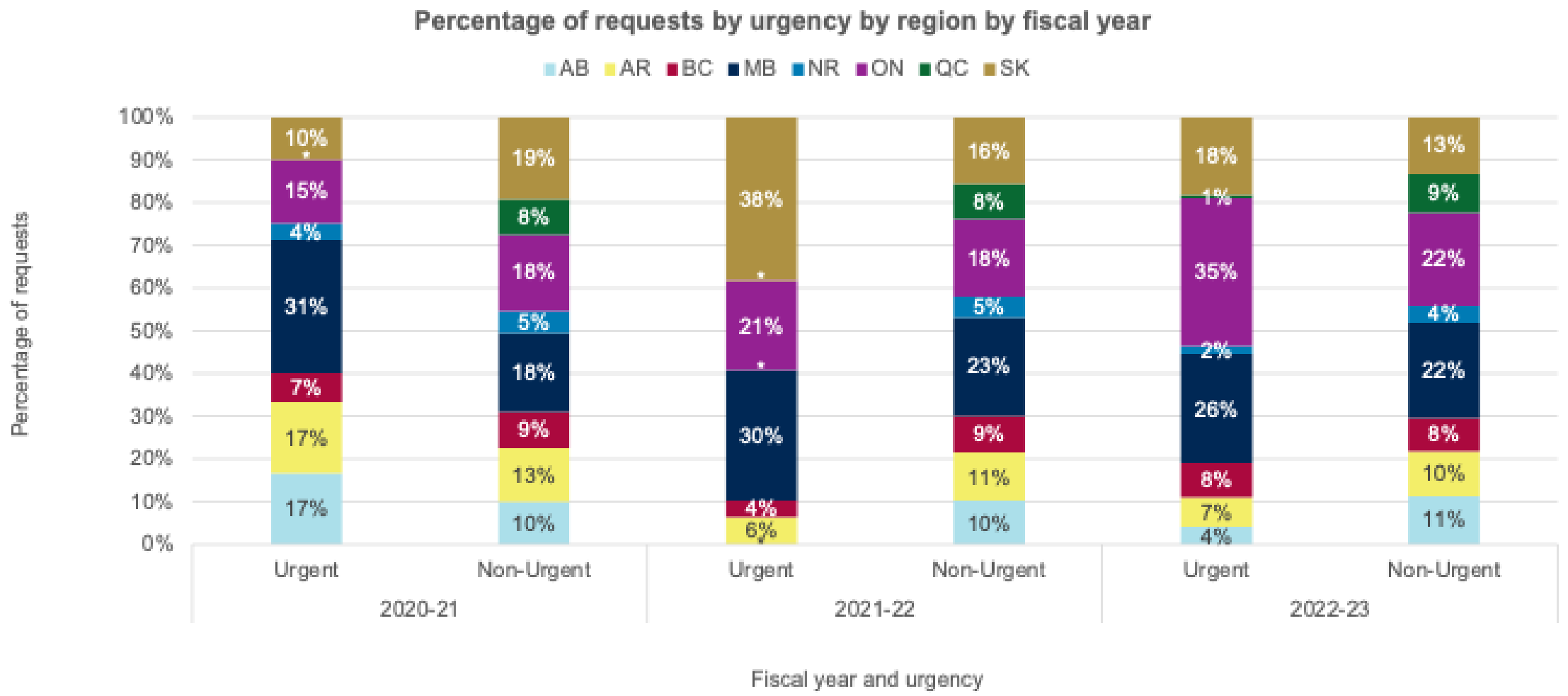


Source: Indigenous Services Canada (ISC).
Notes: 1) AR stands for Atlantic Region. 2) NR stands for Northern Region.

IFSD
IFPD

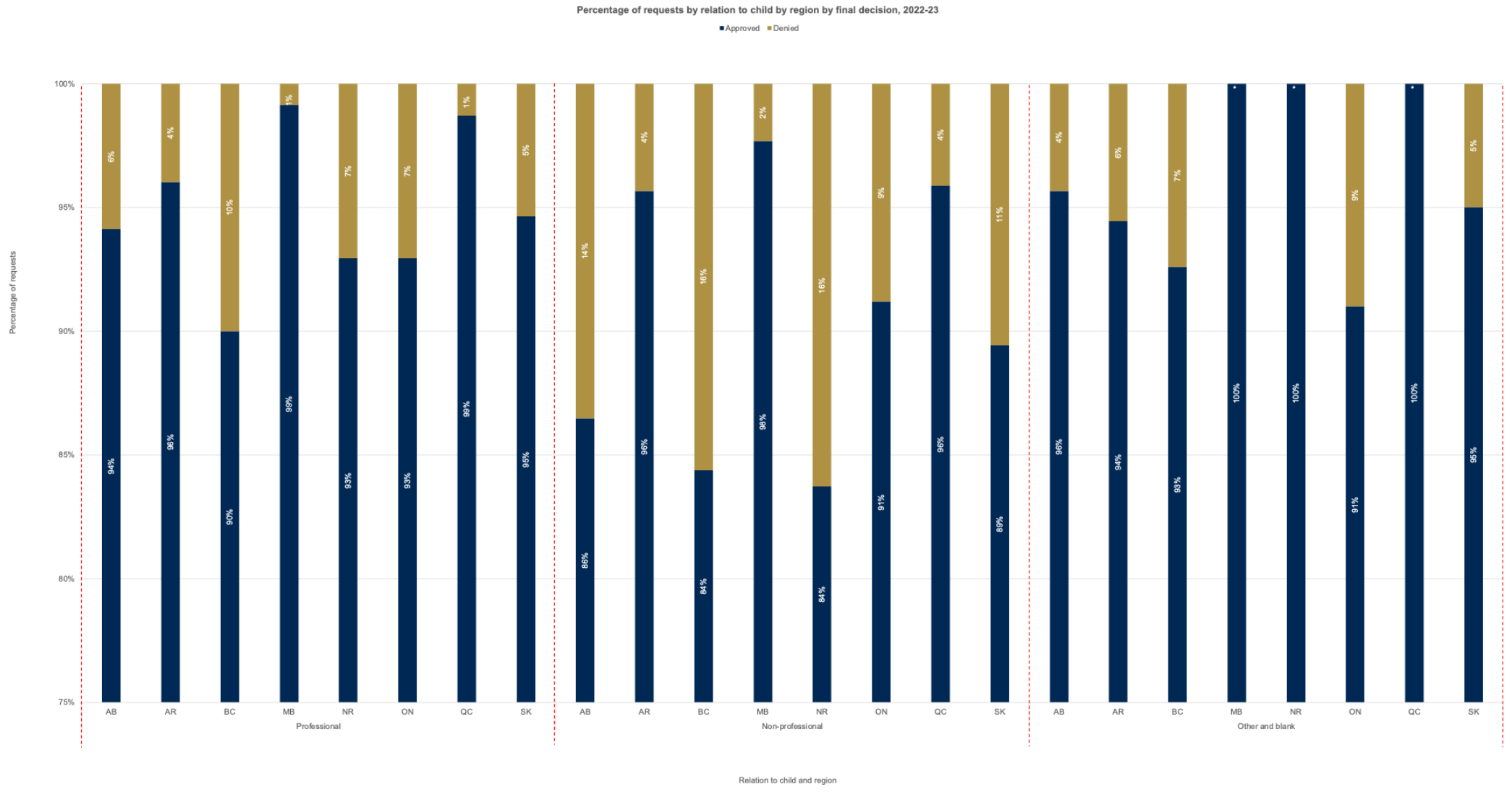
Regional analysis

- In fiscal year 2022-23, most urgent requests were from Ontario (35%).
- Requests where the requester is a non-professional (i.e., family member) had the largest shares of denials across regions.
- In Manitoba, requests are mainly for children residing on-reserve.
- Most regional requests are approved. The largest shares of escalated requests in fiscal year 2022-23 are from British Columbia and the Northern Region.
- Nearly 80% of regionally escalated requests in fiscal years 2021-22 and 2022-23 were denied.



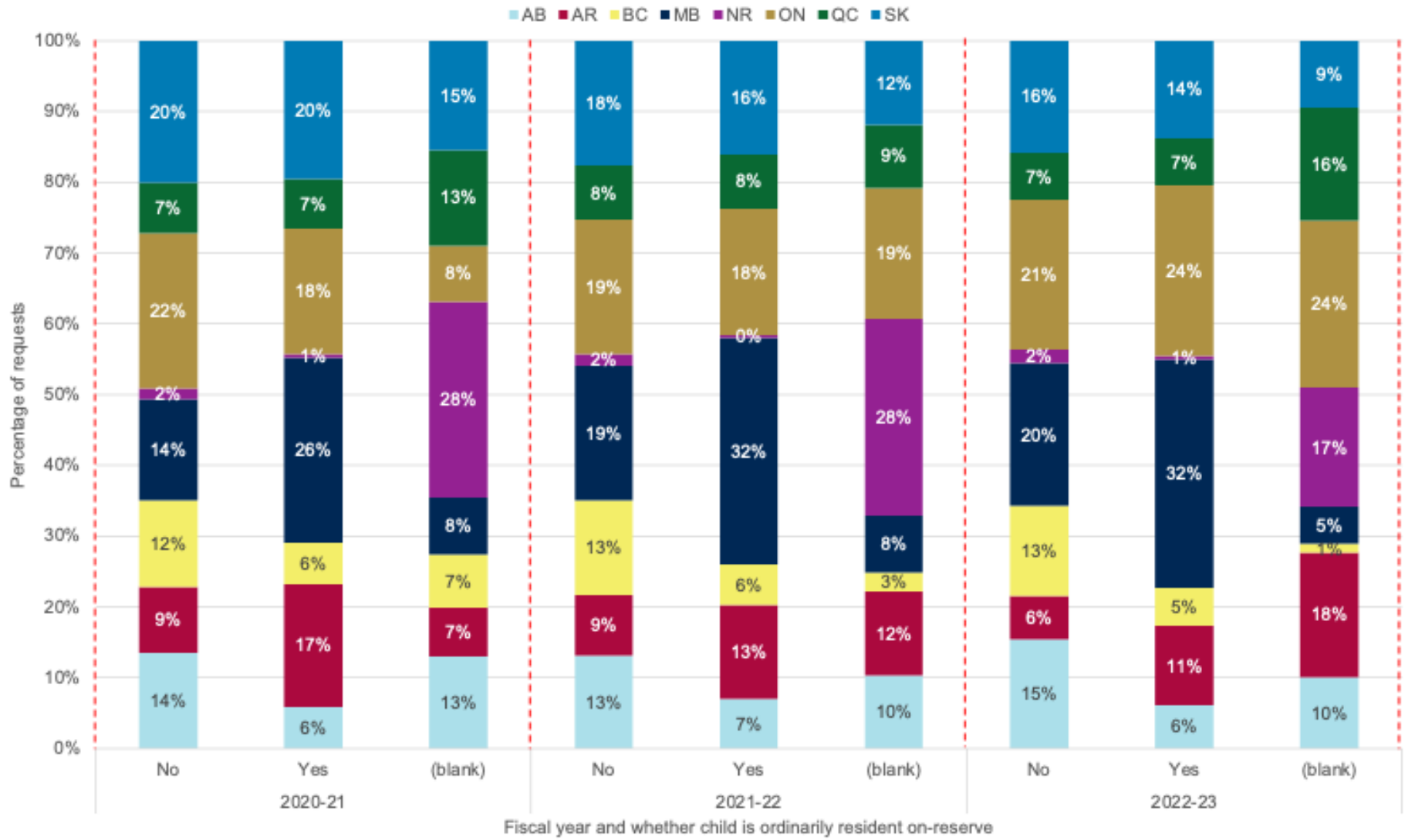
Source: Indigenous Services Canada (ISC).
Notes: 1) AR stands for Atlantic Region. 2) NR stands for Northern Region. 3) Entries with fewer than 15 records were suppressed.

IFSD
IFPD



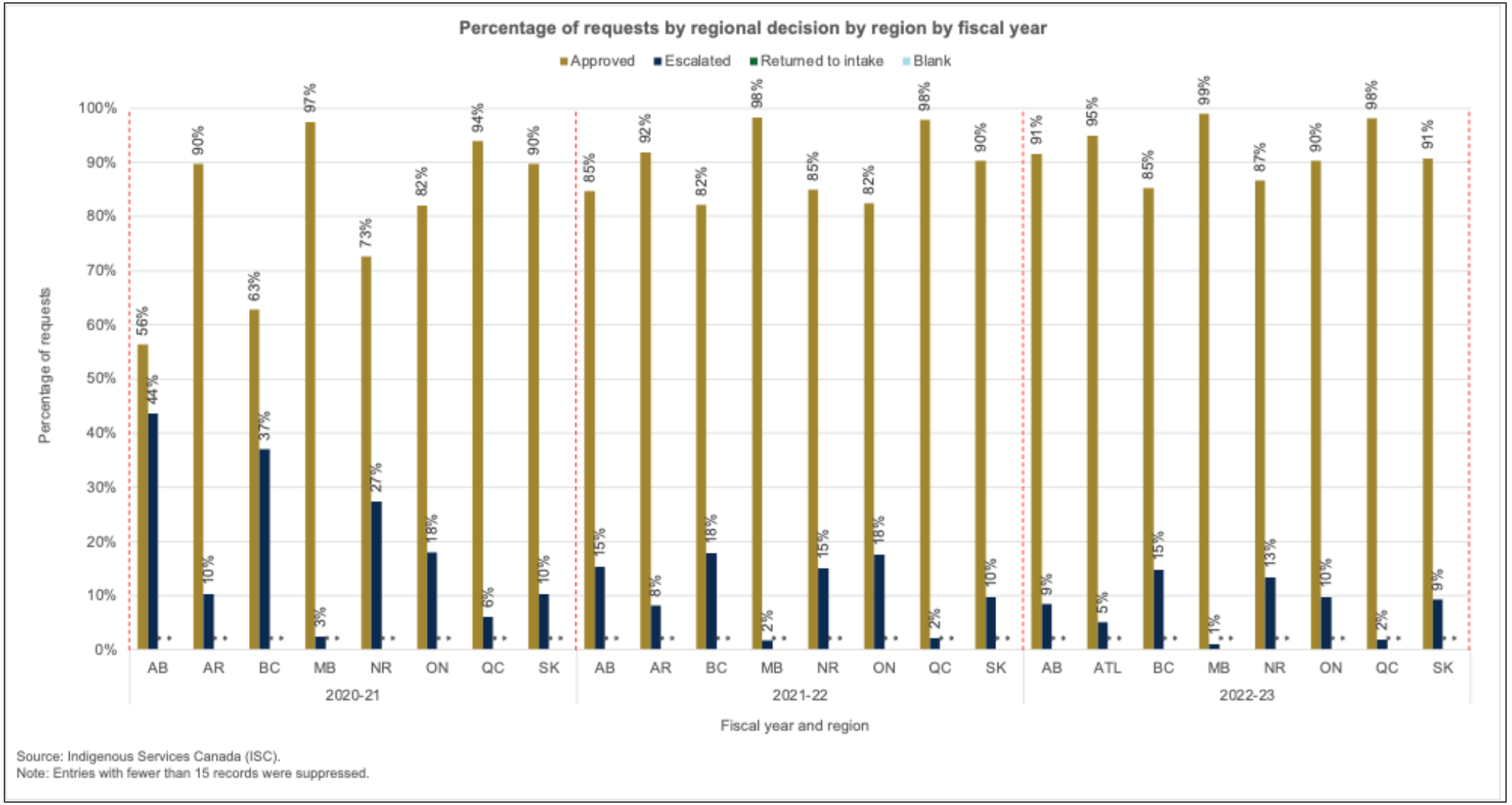
Source: Indigenous Services Canada (ISC).
Notes: 1) AR stands for Atlantic Region. 2) NR stands for Northern Region. 3) IFSD created the categories Professional, Non-professional, and Other and blank. Professional includes: Health Professional, Education Professional, Social Professional, Community-based Worker, and Navigator. Non-professional refers only to Family Member. Other and blank refers to: Family Member | Navigator, Other, and blank values. 4) Entries with fewer than 15 records were suppressed.

IFSD
IFPD



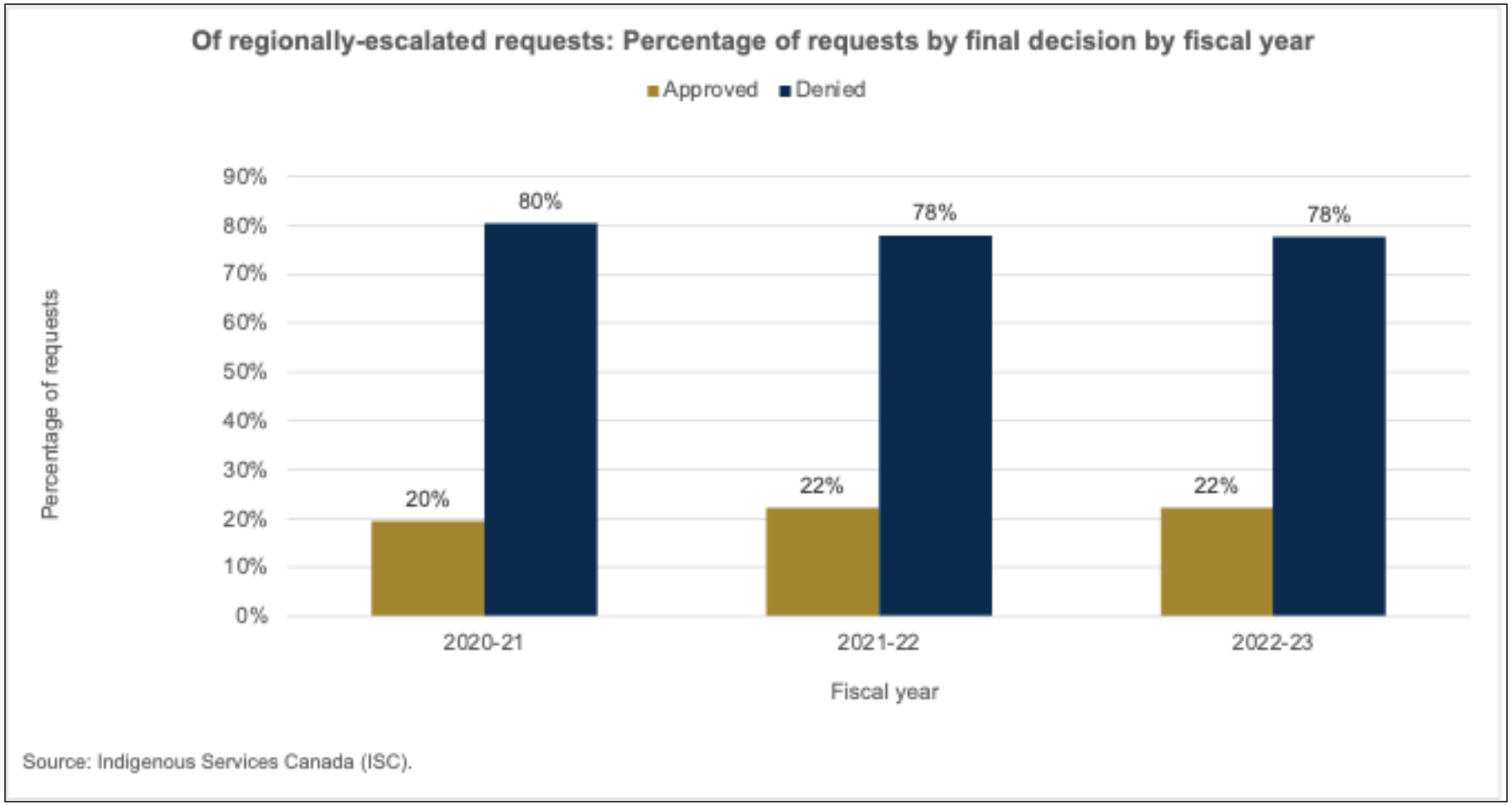
Source: Indigenous Services Canada (ISC).
Notes: 1) AR stands for Atlantic Region. 2) NR stands for Northern Region.

IFSD IFPD



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD

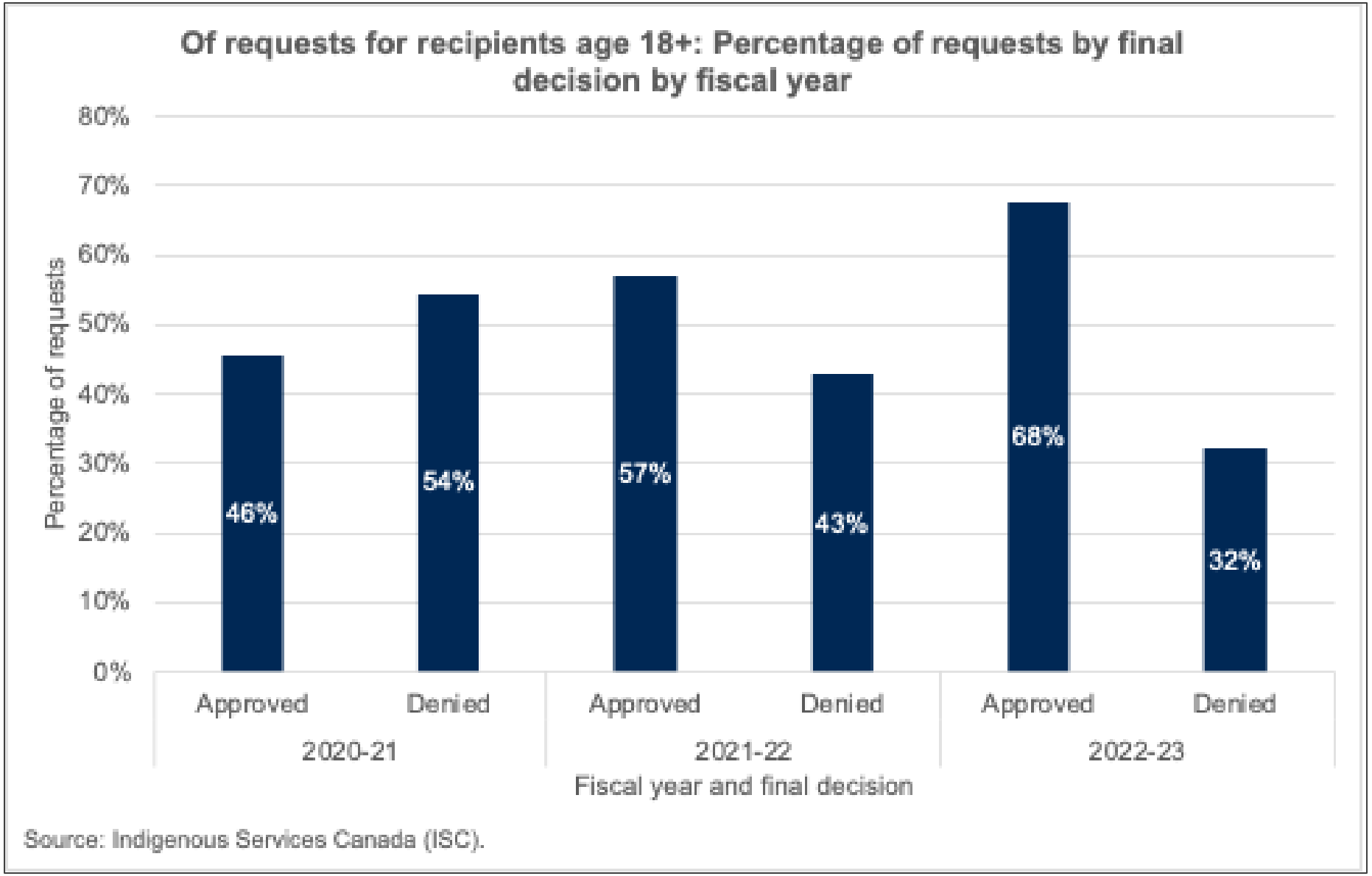

Of regionally-escalated requests: Percentage of requests by final decision by fiscal year
Approved
Denied
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of requests
80%
78%
78%
20%
22%
22%
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

IFSD
IFPD

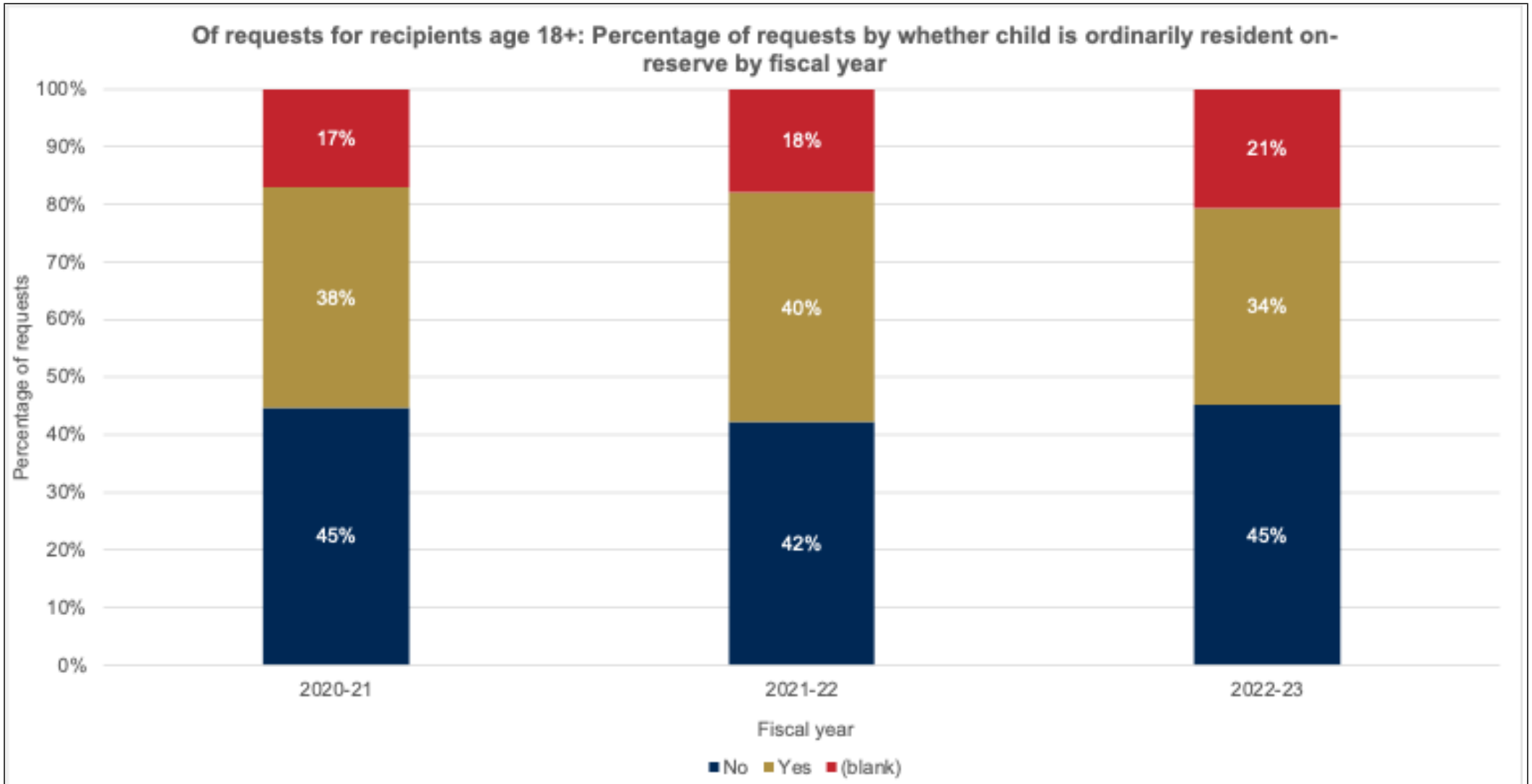
Requests for 18+

18+ analysis

- The largest shares of requests for youth aged 18+ were approved, were for youth residing off-reserve, and were not urgent in fiscal year 2022-23.
- 7% or a smaller share of 18+ requests were tagged for FNCFS in fiscal years 2020-21, 2021-22, and 2022-23.
- Most 18+ requests were for economic supports and education.

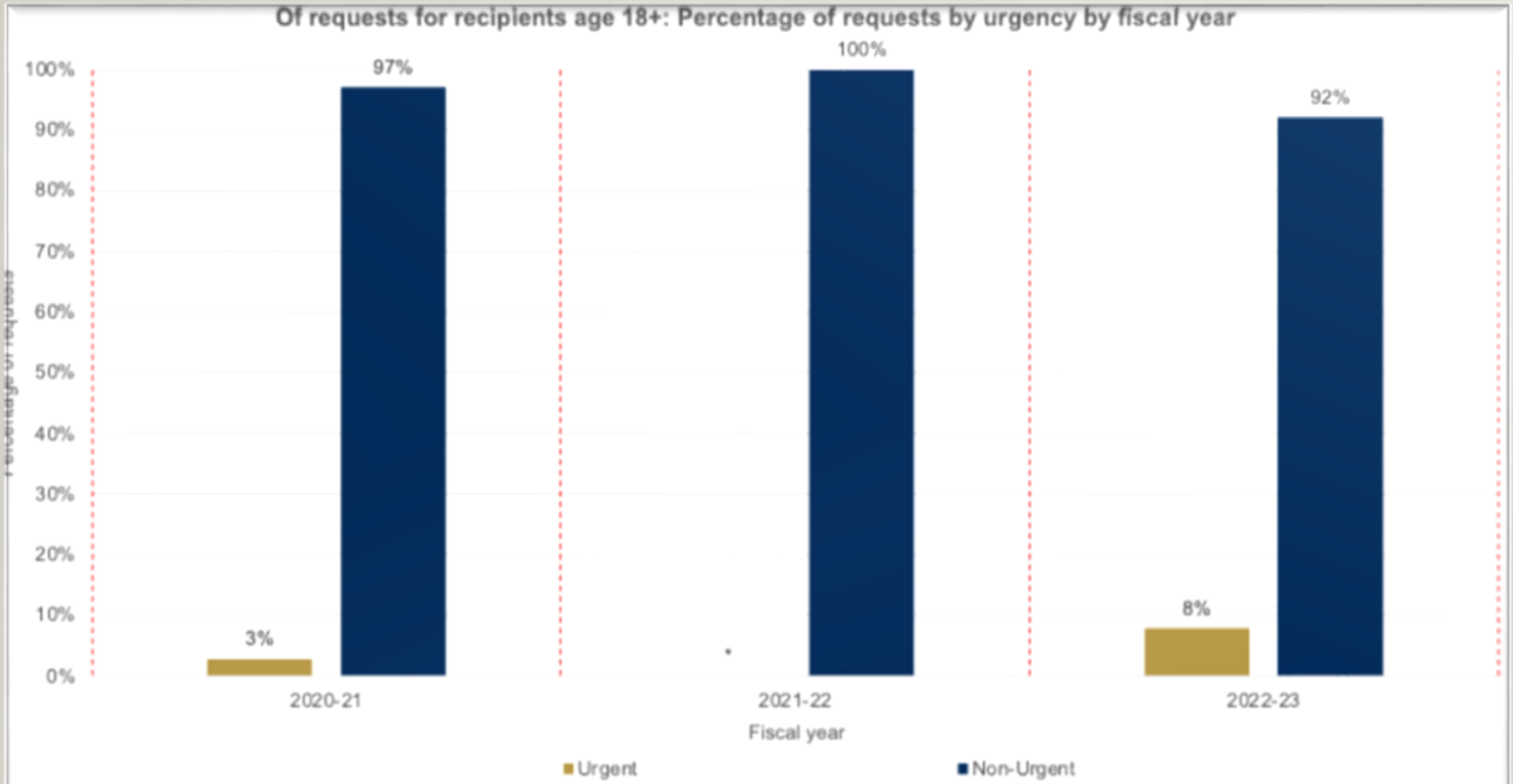

Of requests for recipients age 18+: Percentage of requests by final decision by fiscal year
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of requests
46%
54%
57%
43%
68%
32%
Approved
Denied
Approved
Denied
Approved
Denied
2020-21
2021-22
2022-23
Fiscal year and final decision
Source: Indigenous Services Canada (ISC).

IFSD
IFPD



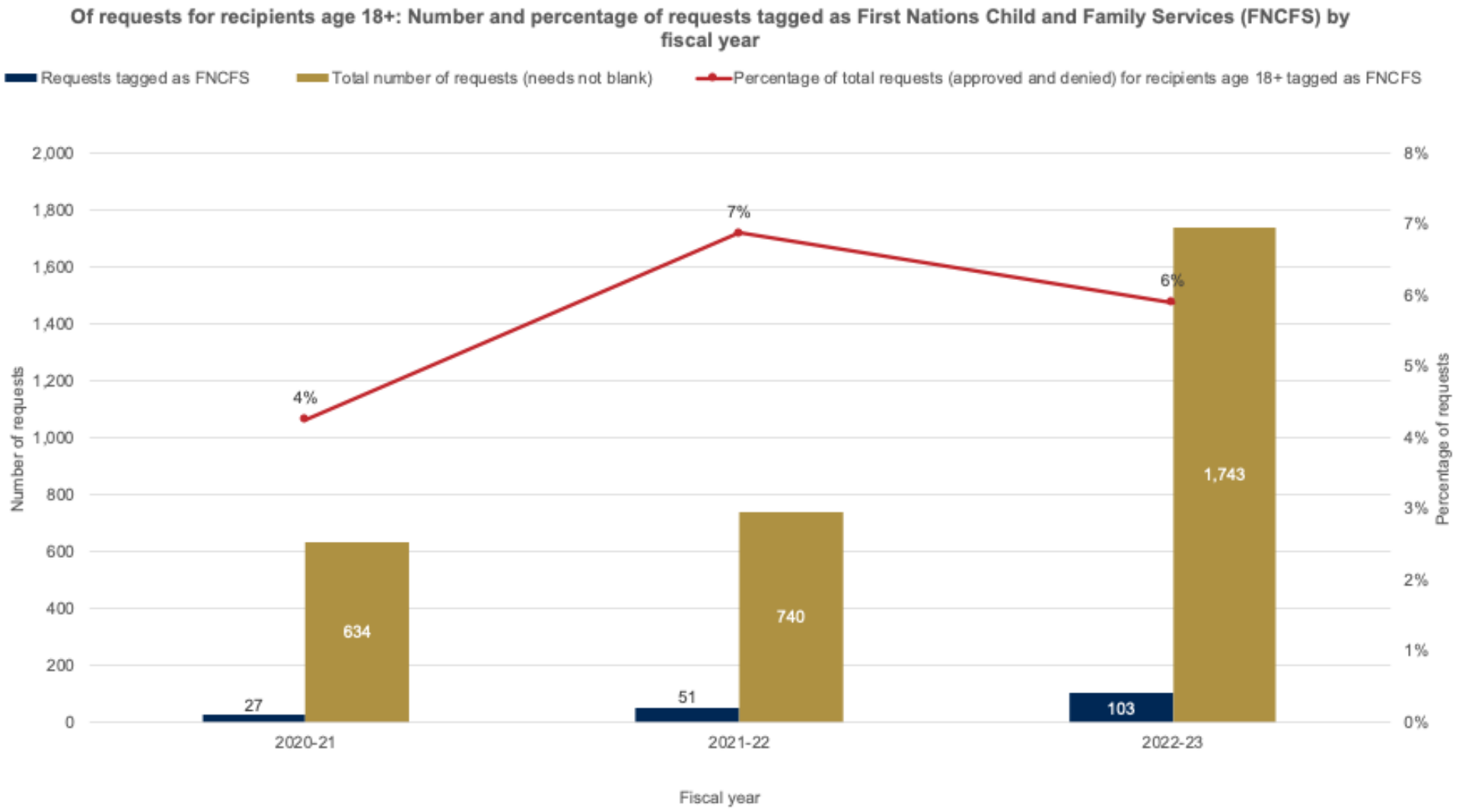
Source: Indigenous Services Canada (ISC).

IFSD
IFPD



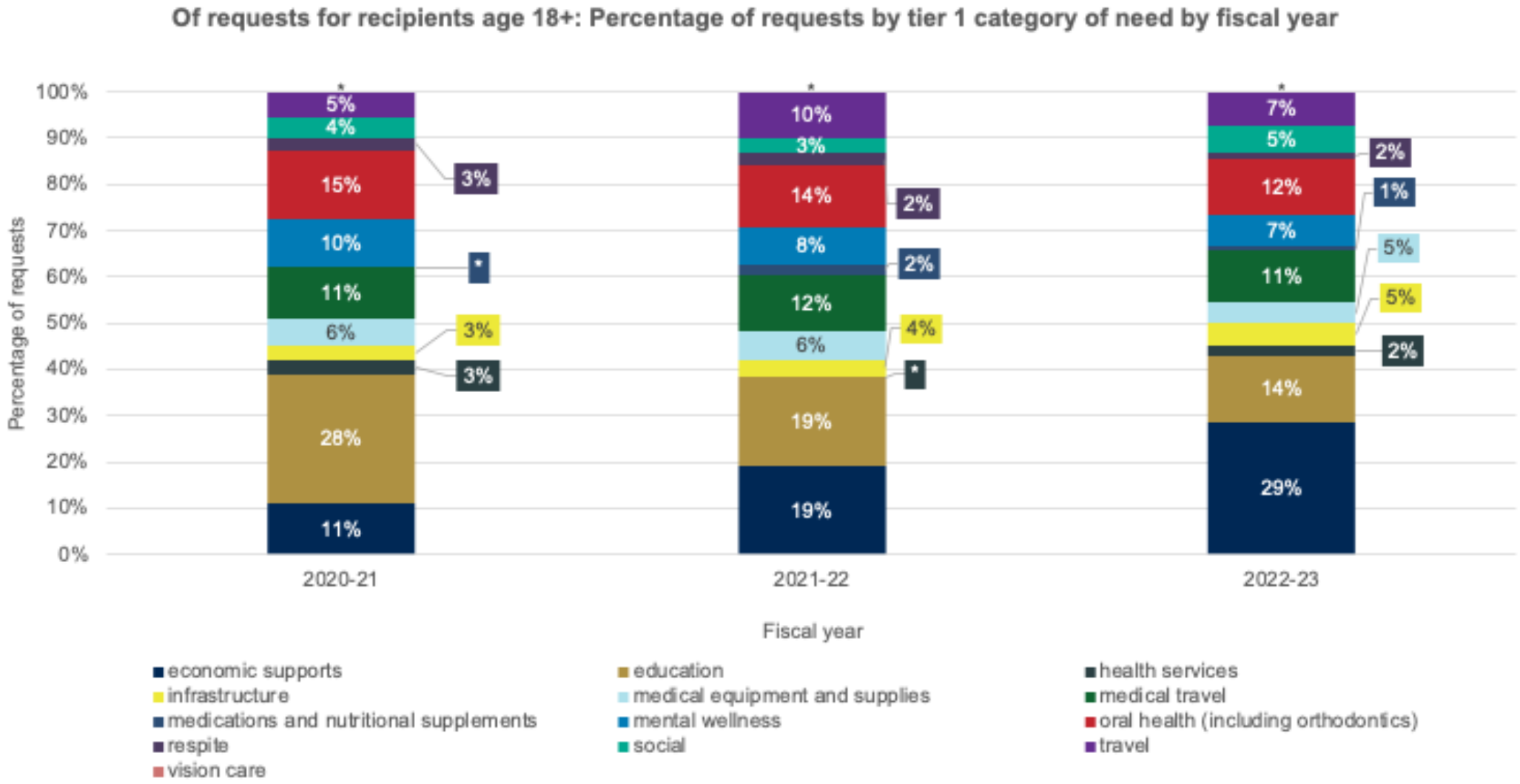
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).

IFSD
IFPD



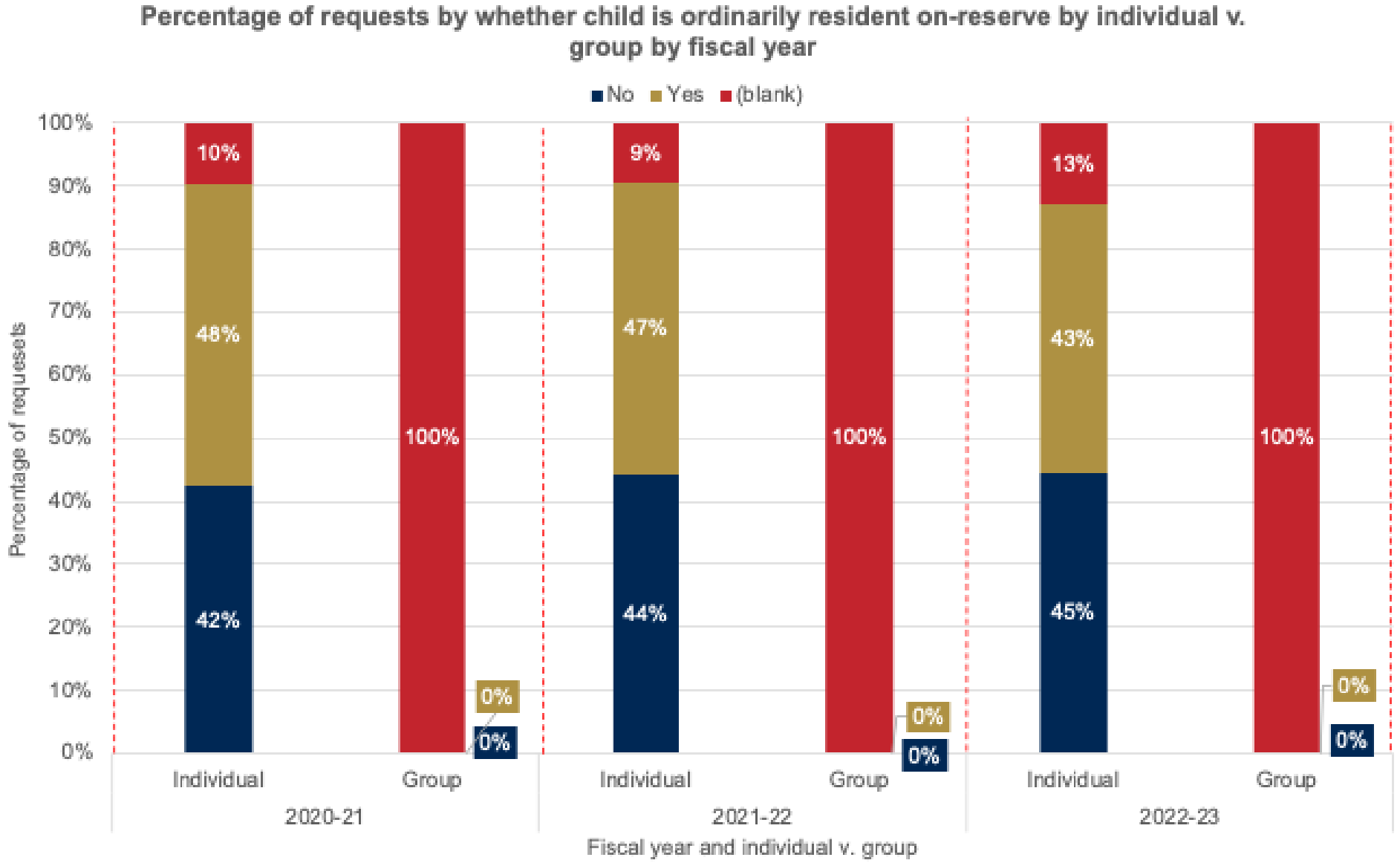
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD

Residency

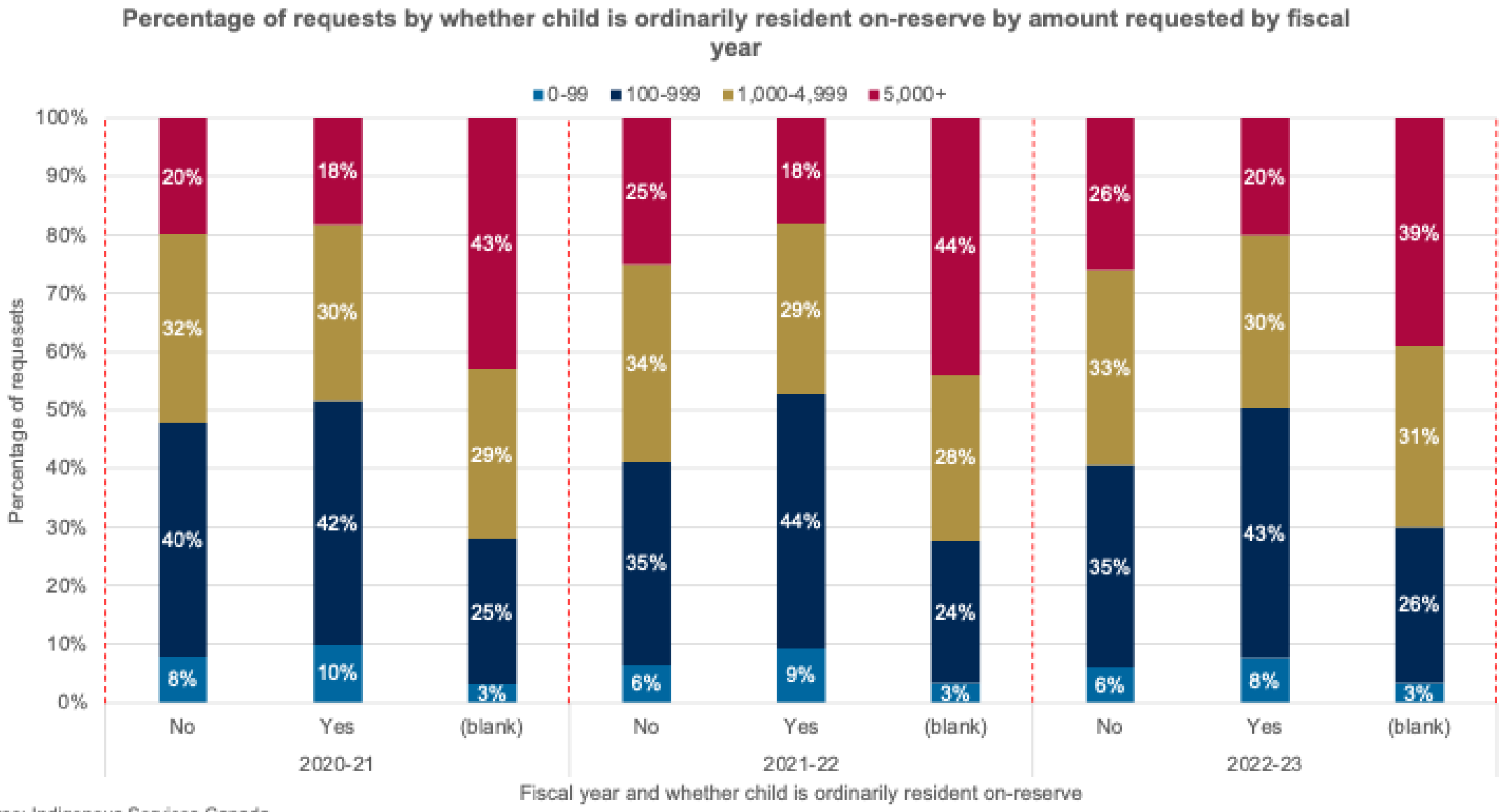
Residency

- Residency for group requests is blank.
  - “Blank” entries in the Residency Category have one of two explanations: (1) a data entry issue where no residency was recorded; or (2) residency data is not available for group requests (as residency for group requests is blank).
- Increasing shares of children making requests reside off-reserve.
- Most amounts approved on- and off-reserve are for less than $5,000. However, blank requests have the largest shares of requests over $5,000 (assumed to be attributed to associated group requests).
- In fiscal year 2022-23, most requests on-reserve were related to medical travel. Off-reserve, requests were associated to education and economic supports.
- Navigators are most likely to support requests for children on- and off-reserve. Community based workers are most likely to support requests for blank residency.



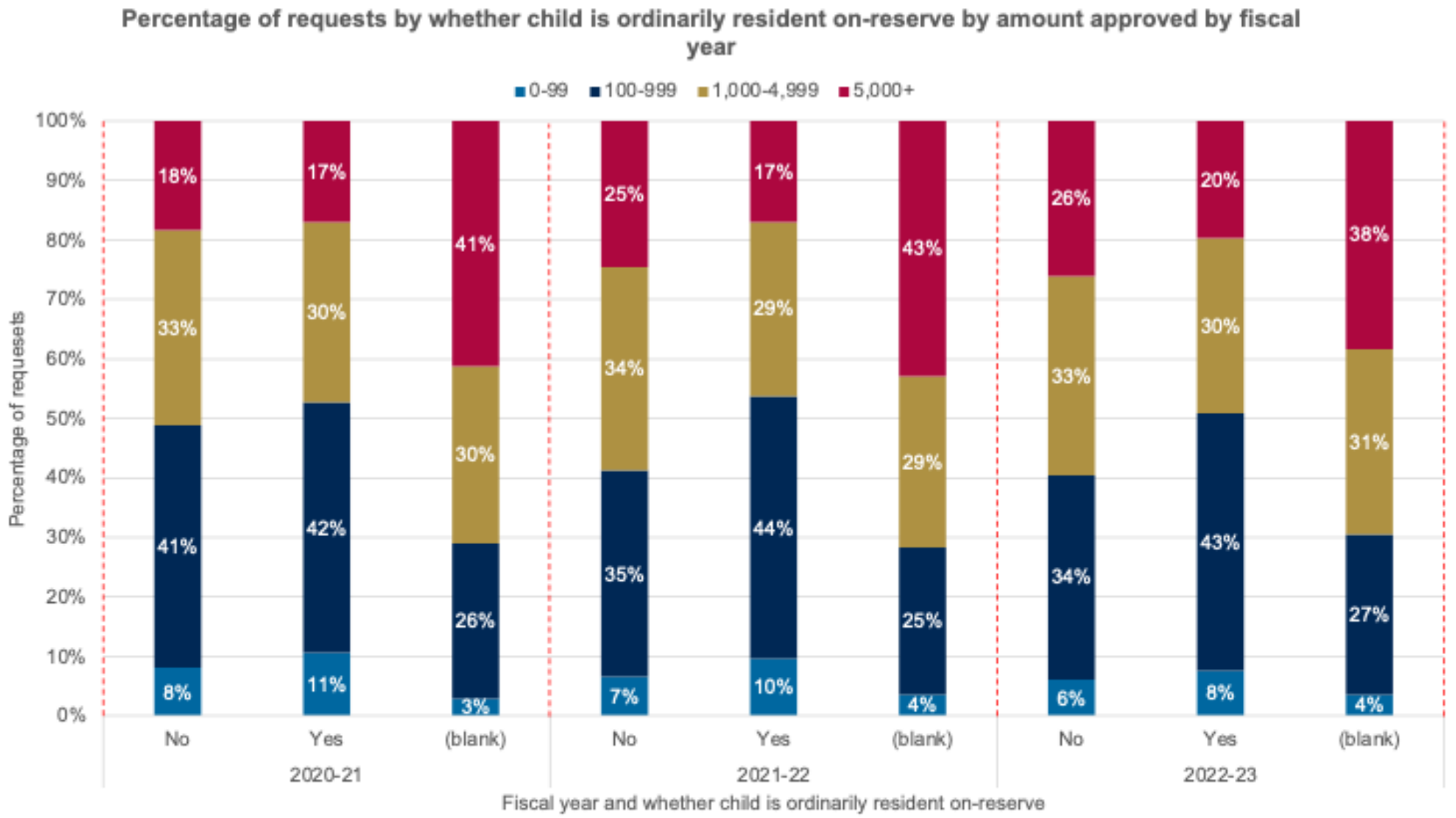
Source: Indigenous Services Canada.
Note: Information on whether child is ordinarily resident on-reserve is only available for individual requests.

IFSD
IFPD



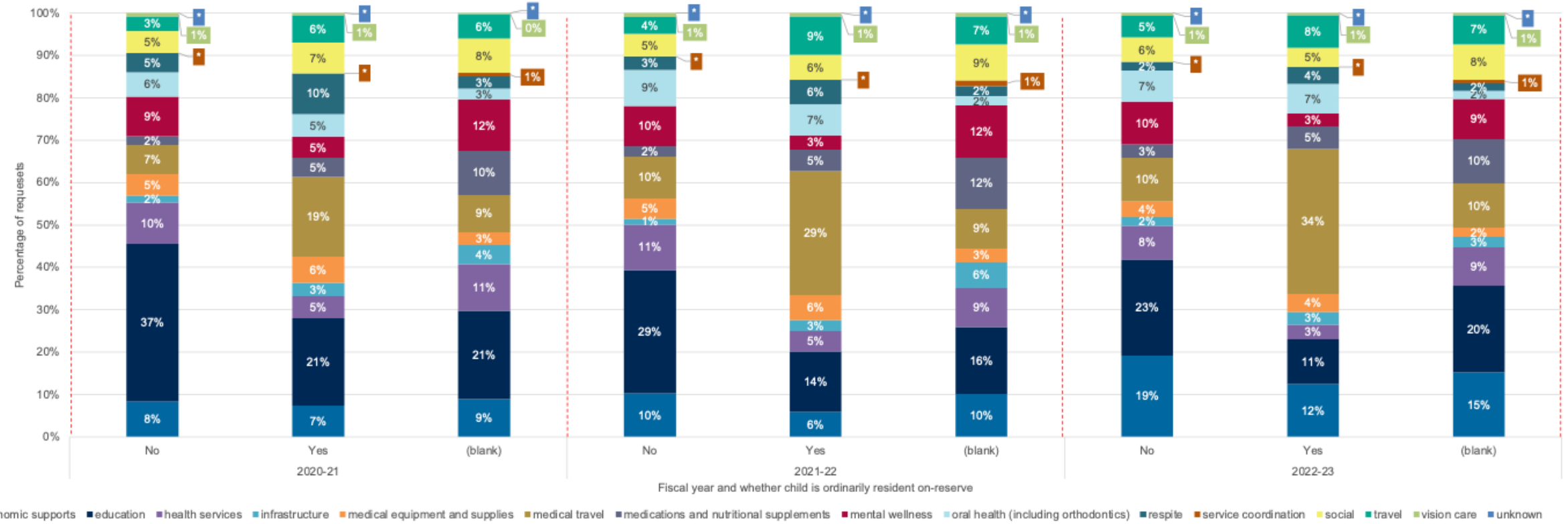
Source: Indigenous Services Canada.
Note: This chart excludes blank values.

IFSD
IFPD



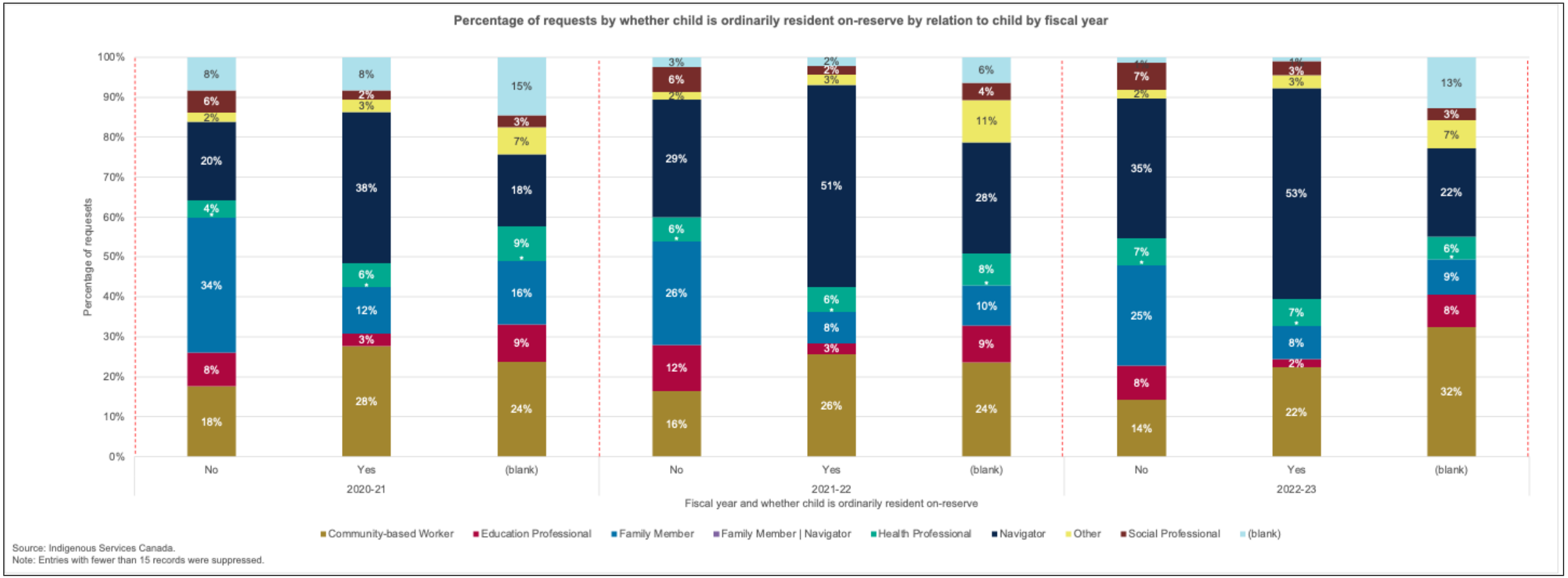
Source: Indigenous Services Canada.
Note: This chart excludes blank values.

IFSD
IFPD



Source: Indigenous Services Canada.
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



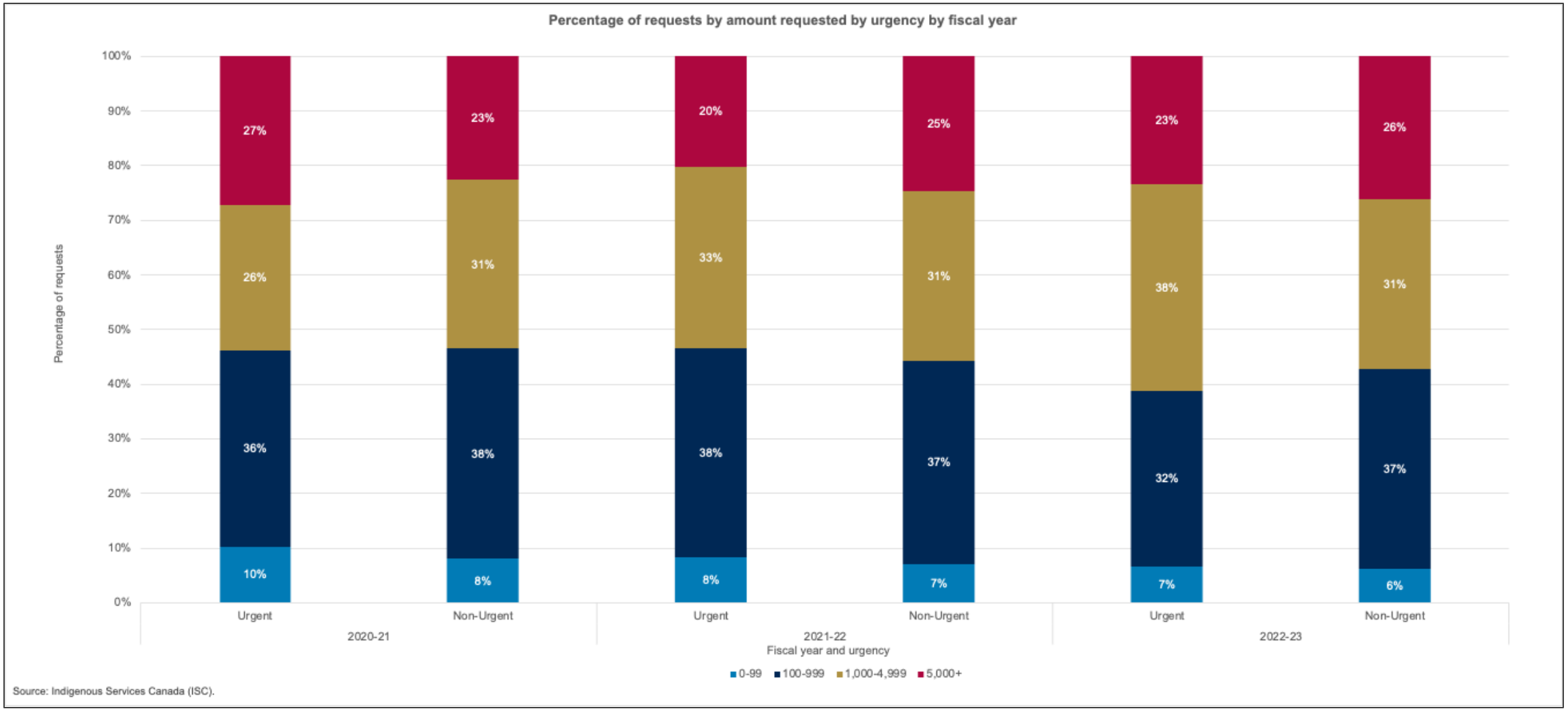
Source: Indigenous Services Canada.
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD

Amount requested

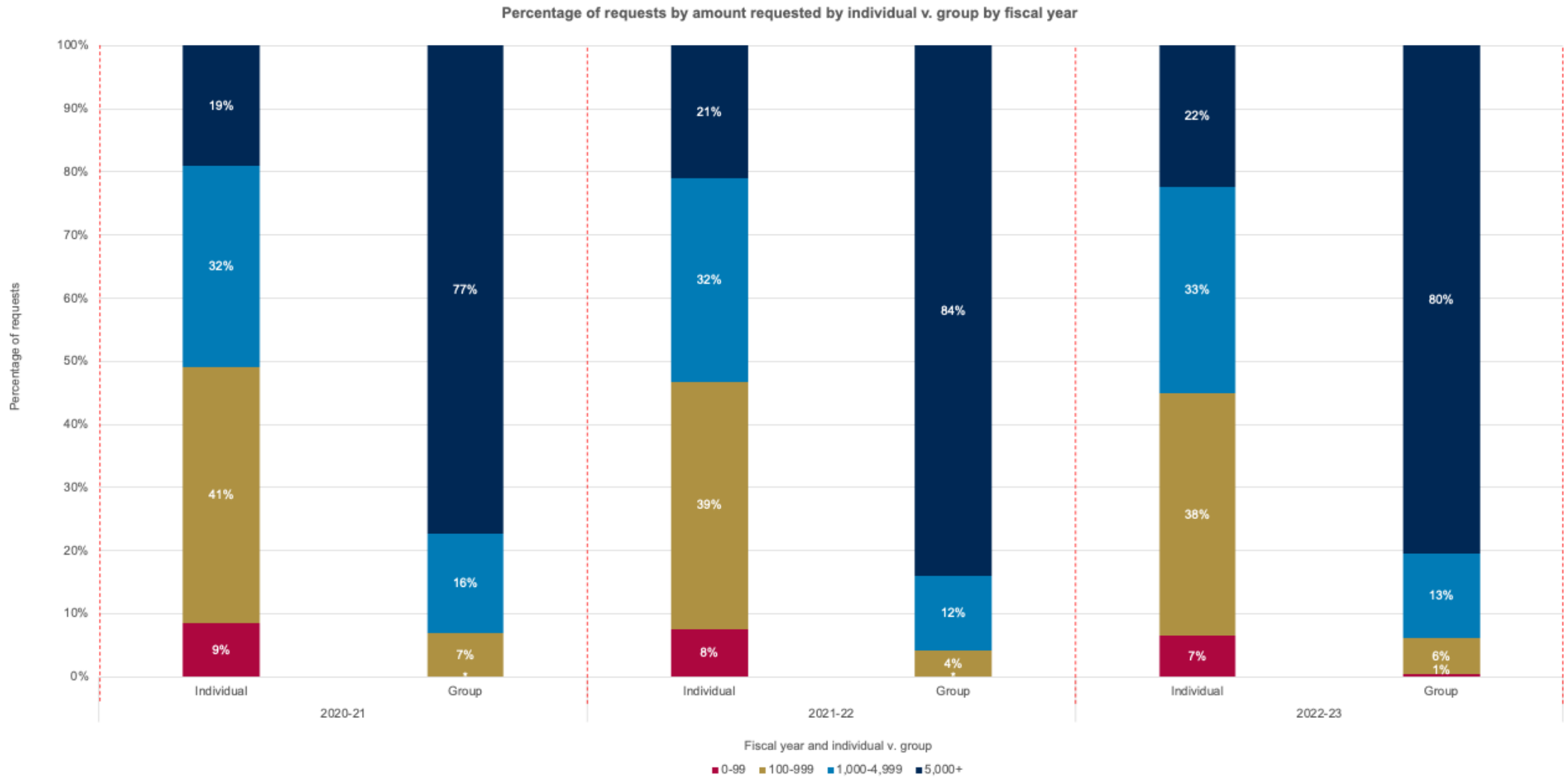
Amounts requested

- Note: IFSD has requested clarification on which requests are and are not included in the GCcase dataset.
  - For instance, according to ISC, service coordination requests “are typically not managed through the request based process. However, some regions have entered select records.” This means that not all service coordination funding is reflected in GCcase.
- The largest shares of all requests are for amounts below $5,000.
- Group requests across fiscal years are mostly for amounts $5,000 and above.
- For tier 1 categories of need:
  - Fiscal year 2020-21: Service coordination followed distantly by infrastructure and mental wellness have the largest shares of requests over $5,000 for tier 1 categories of need.
  - Fiscal year 2021-22: Service coordination followed distantly by infrastructure, social, and respite have the largest shares of requests over $5,000 for tier 1 categories of need.
  - Fiscal year 2022-23: Service coordination followed distantly by respite and oral health.



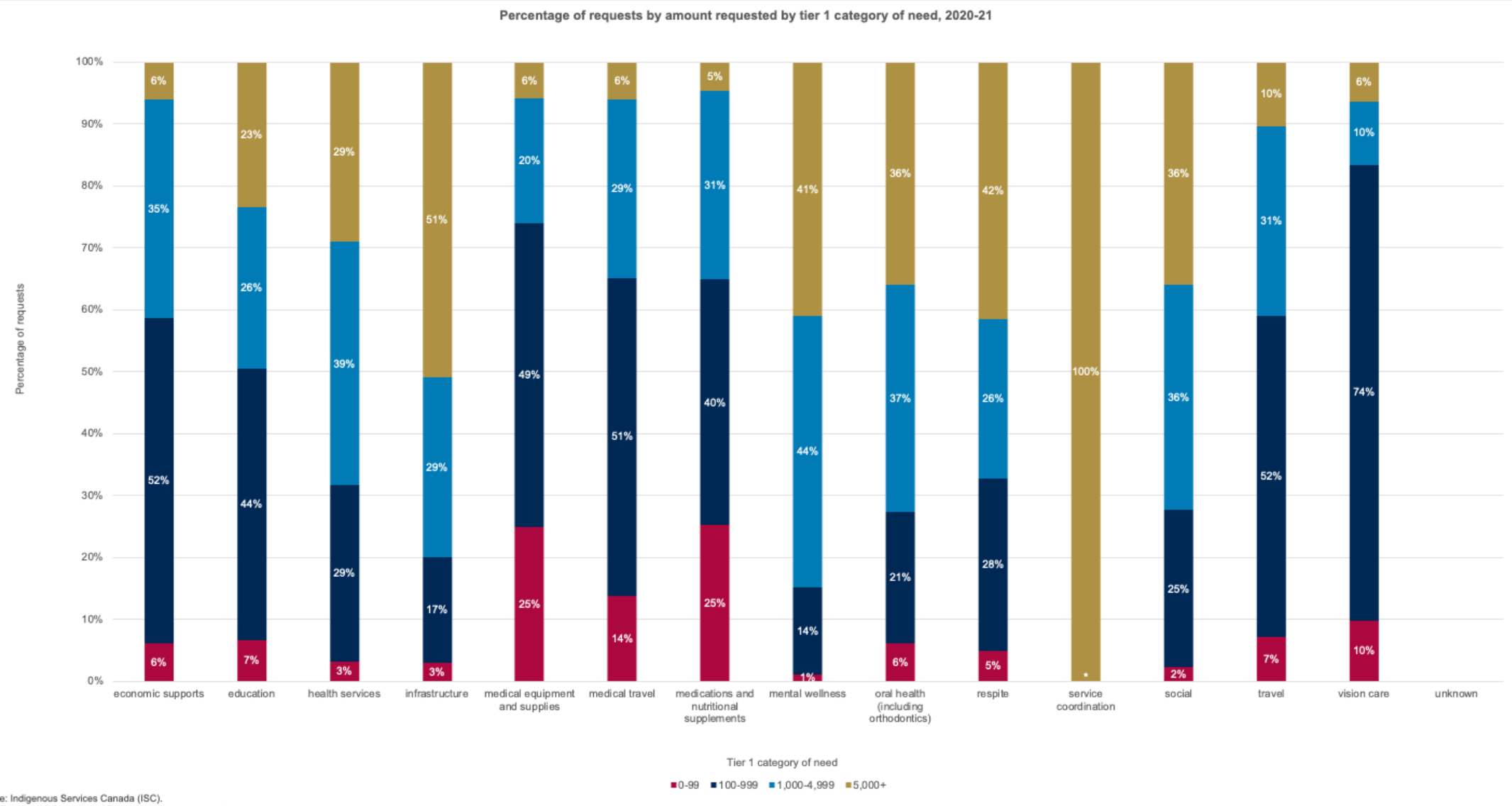
Source: Indigenous Services Canada (ISC).

IFSD
IFPD



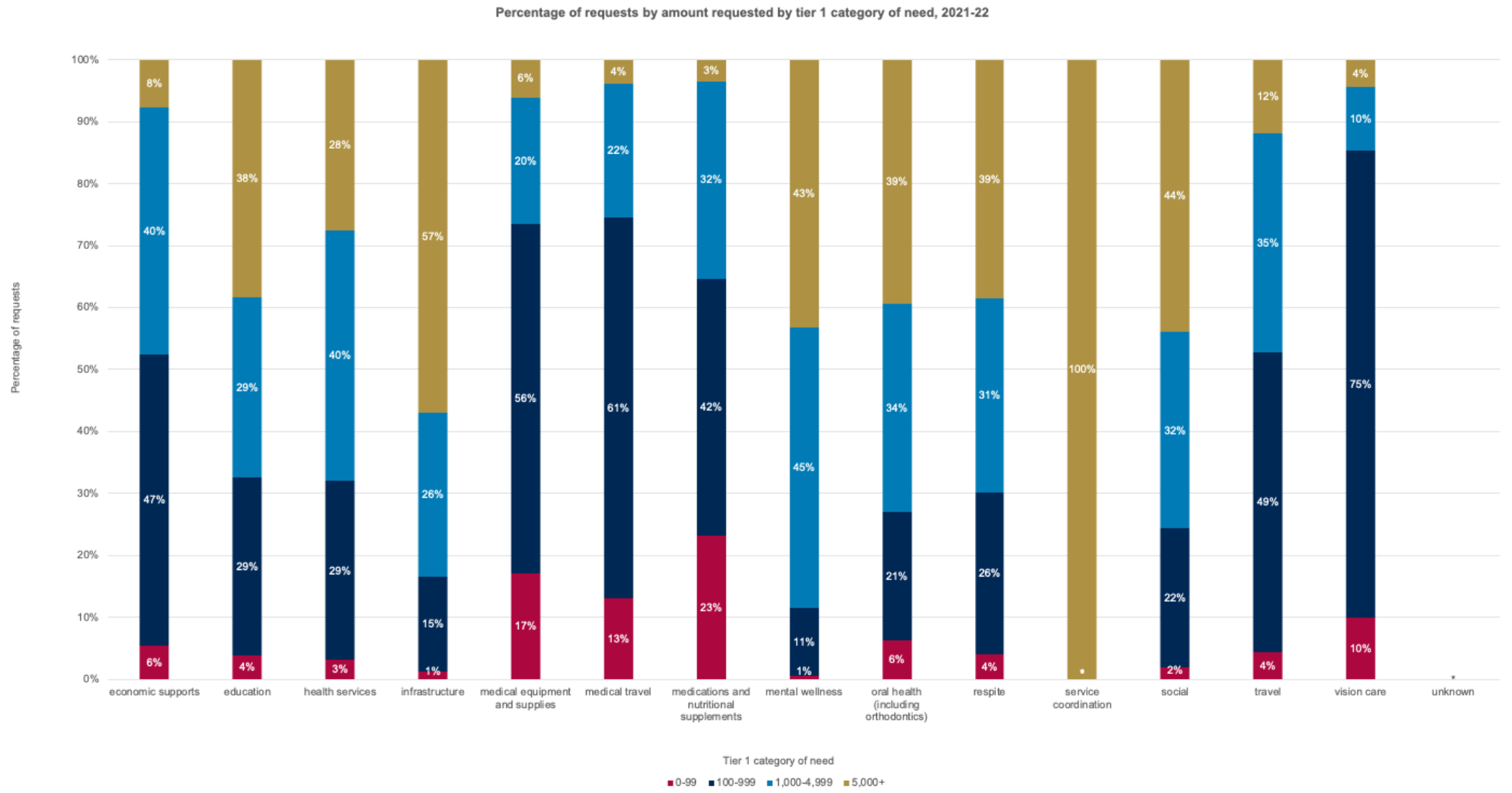
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



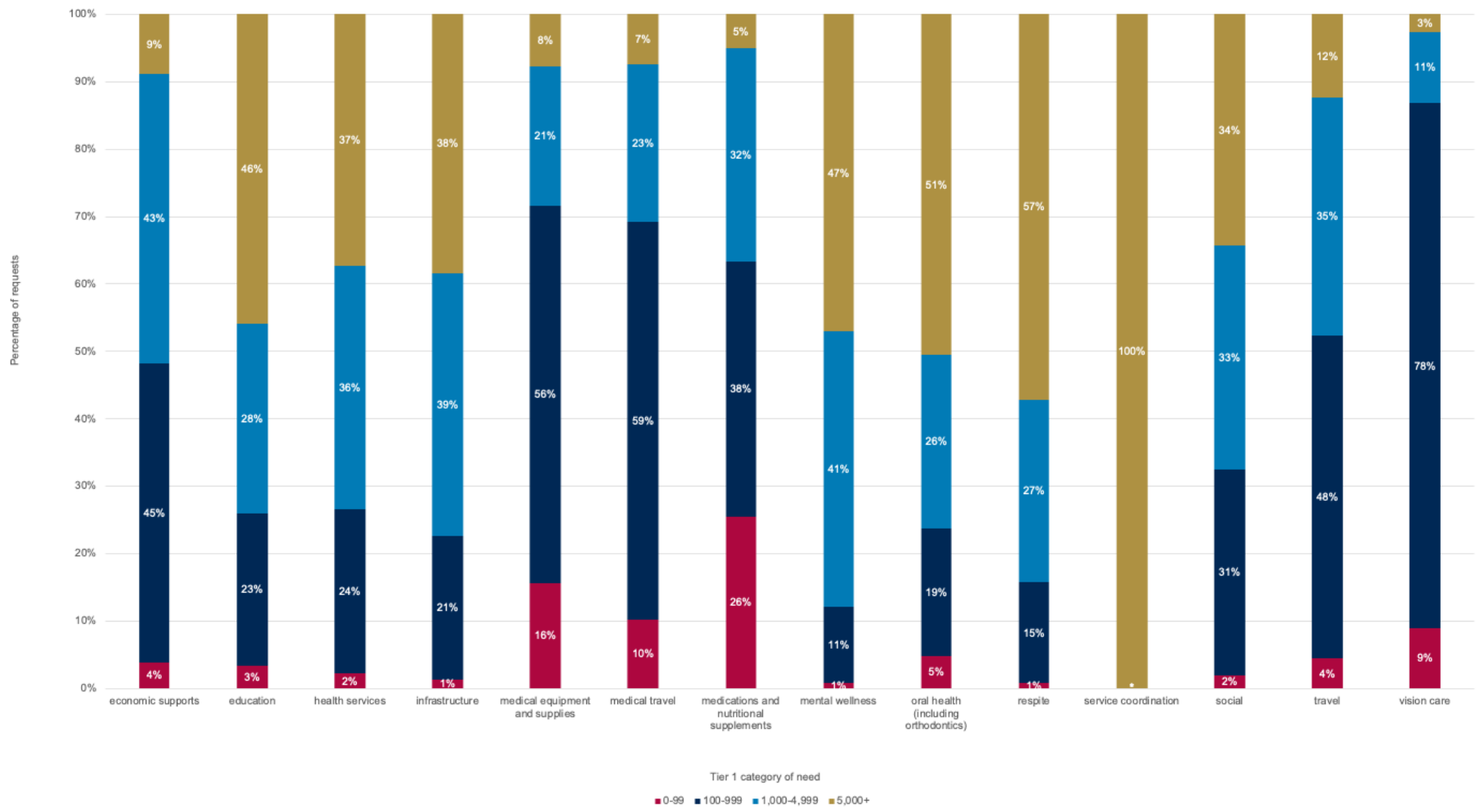
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD

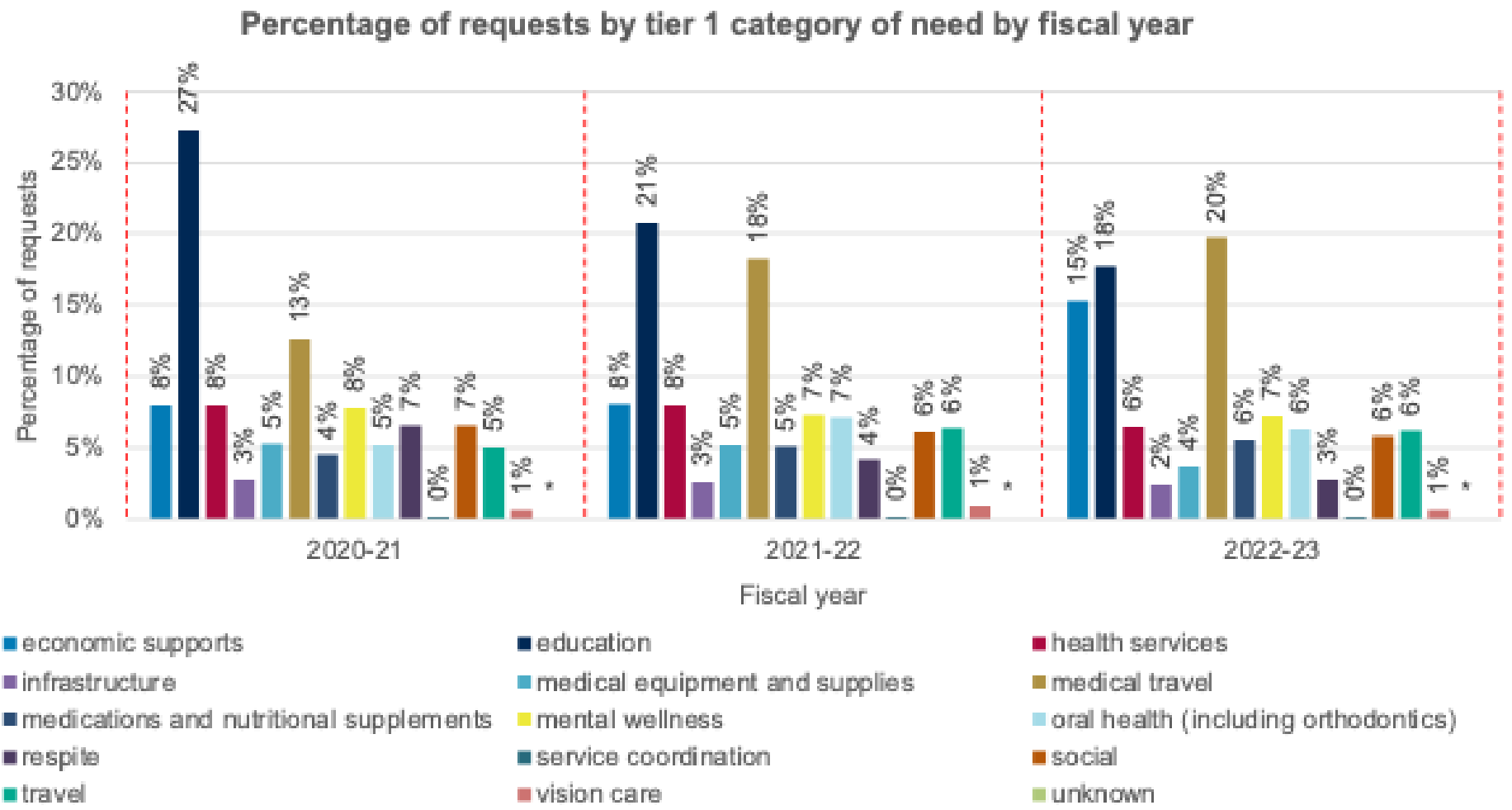
Categories of need

Categories of need and IFSD needs clusters

- In fiscal year 2022-23:
  - Medical travel followed by education and economic supports had the largest shares of needs.
  - Economic supports had a 276% percentage change over the prior fiscal year.
  - Roughly one third of urgent requests were for economic supports.
  - Economic supports had the largest share of denials (30%).

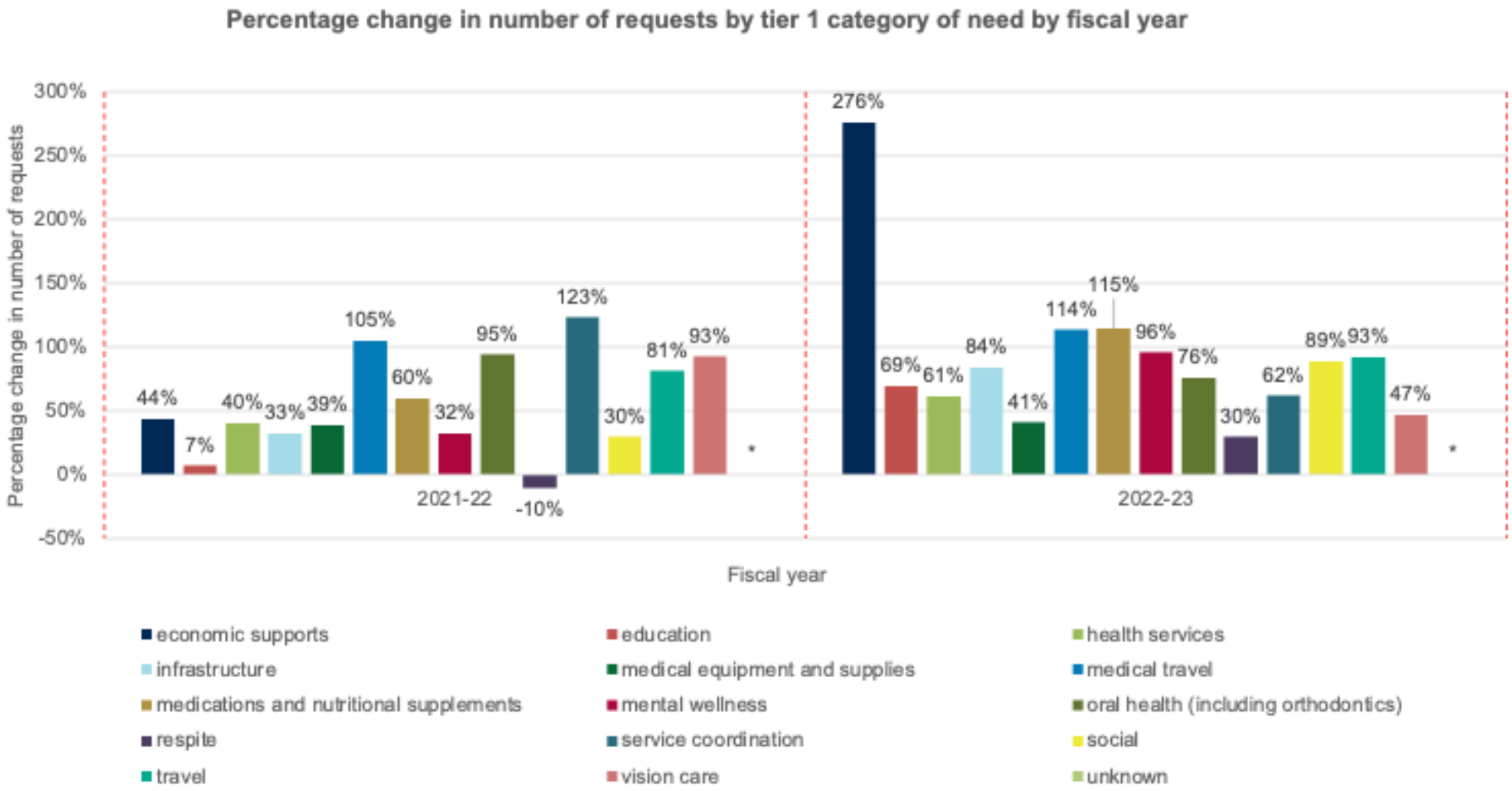
- Requests for economic supports were most prevalent in the Northern Region, Saskatchewan and Ontario in fiscal year 2022-23. Manitoba had the largest share of medical travel requests. Alberta, Quebec, and the Atlantic Region had the largest shares of education-related requests.

- GCcase data also contains more detailed information on the special needs of the child. IFSD used this to create “IFSD needs clusters”. IFSD needs clusters suggest that a significant portion of requests are attributed to health and deprivation/economic supports.



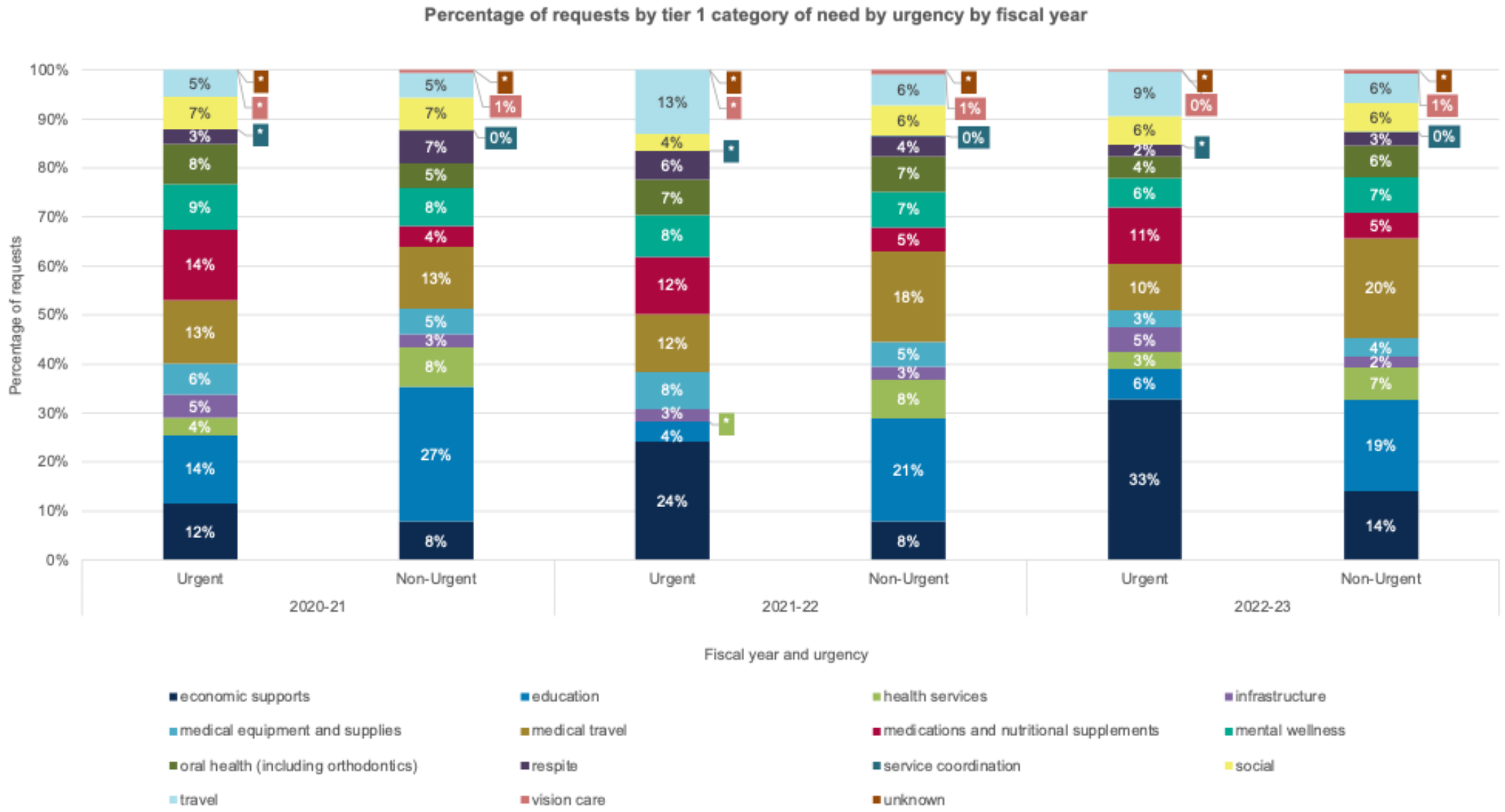
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
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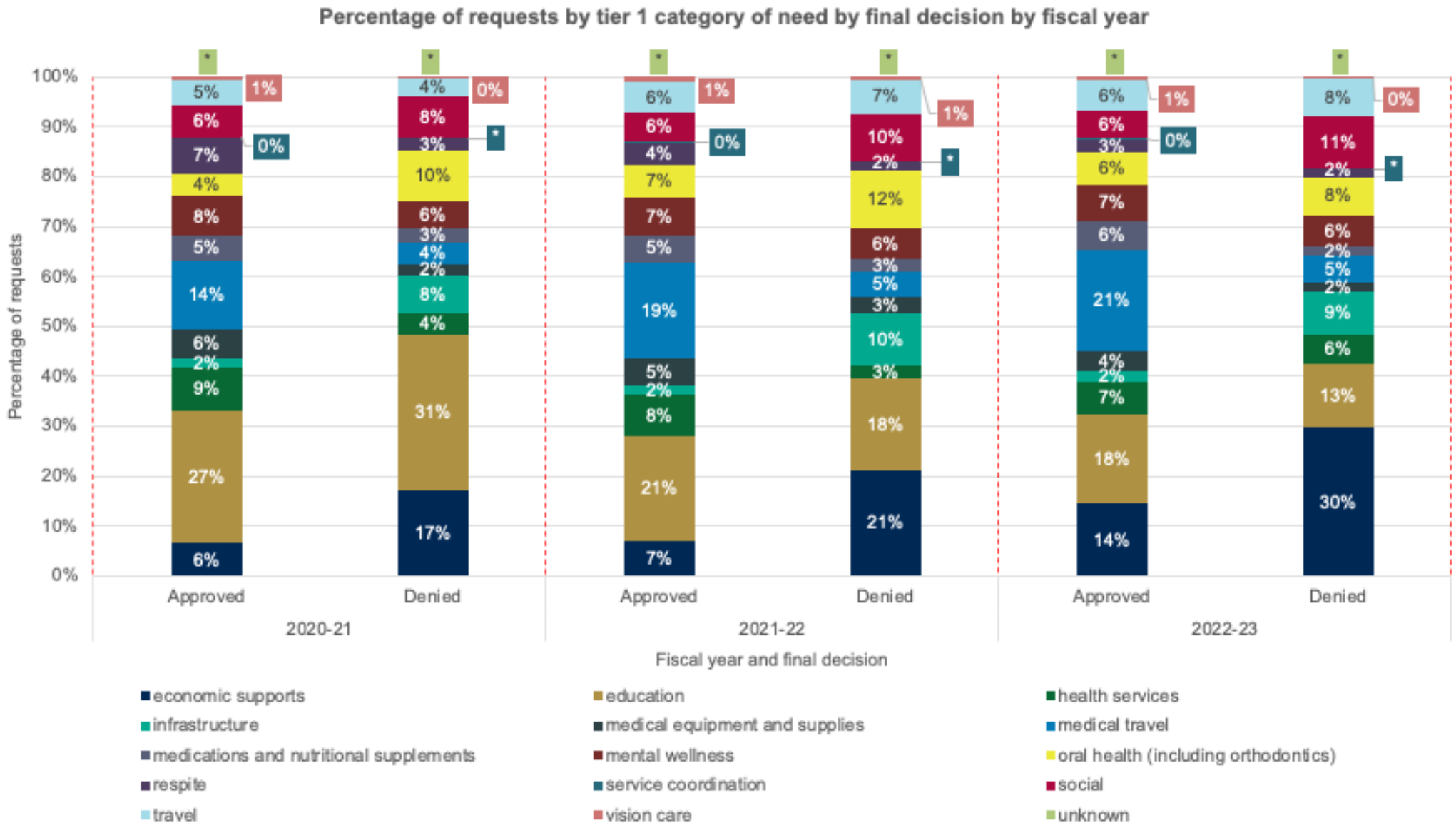

Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
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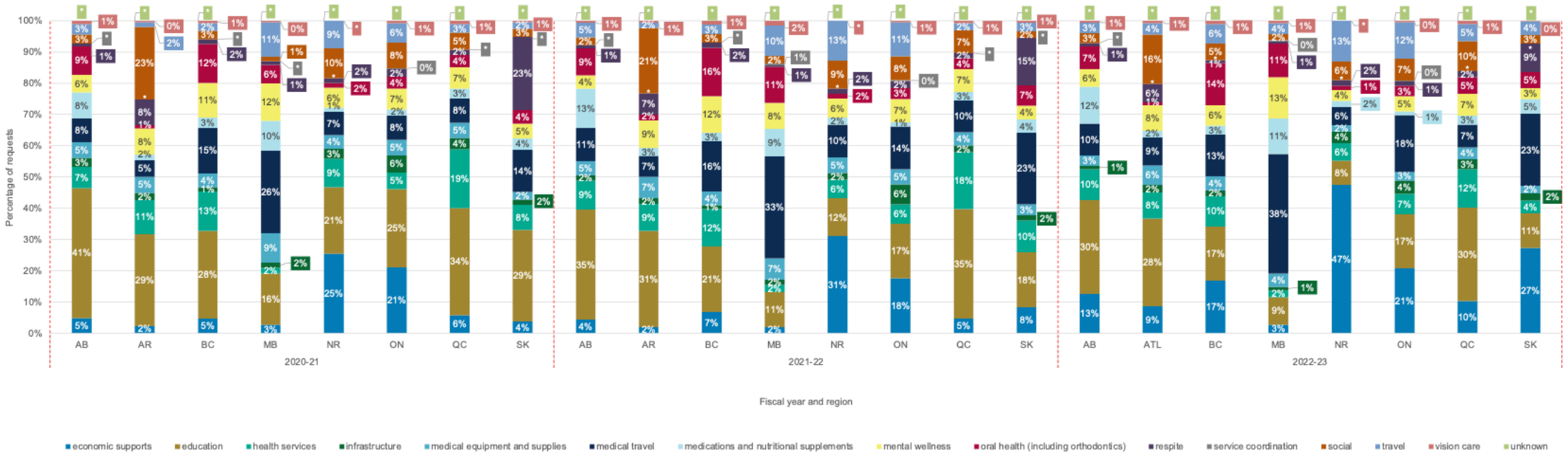

Source: Indigenous Services Canada (ISC).
Notes: 1) AR stands for Atlantic Region. 2) NR stands for Northern Region. 3) Entries with fewer than 15 records were suppressed.

IFSD
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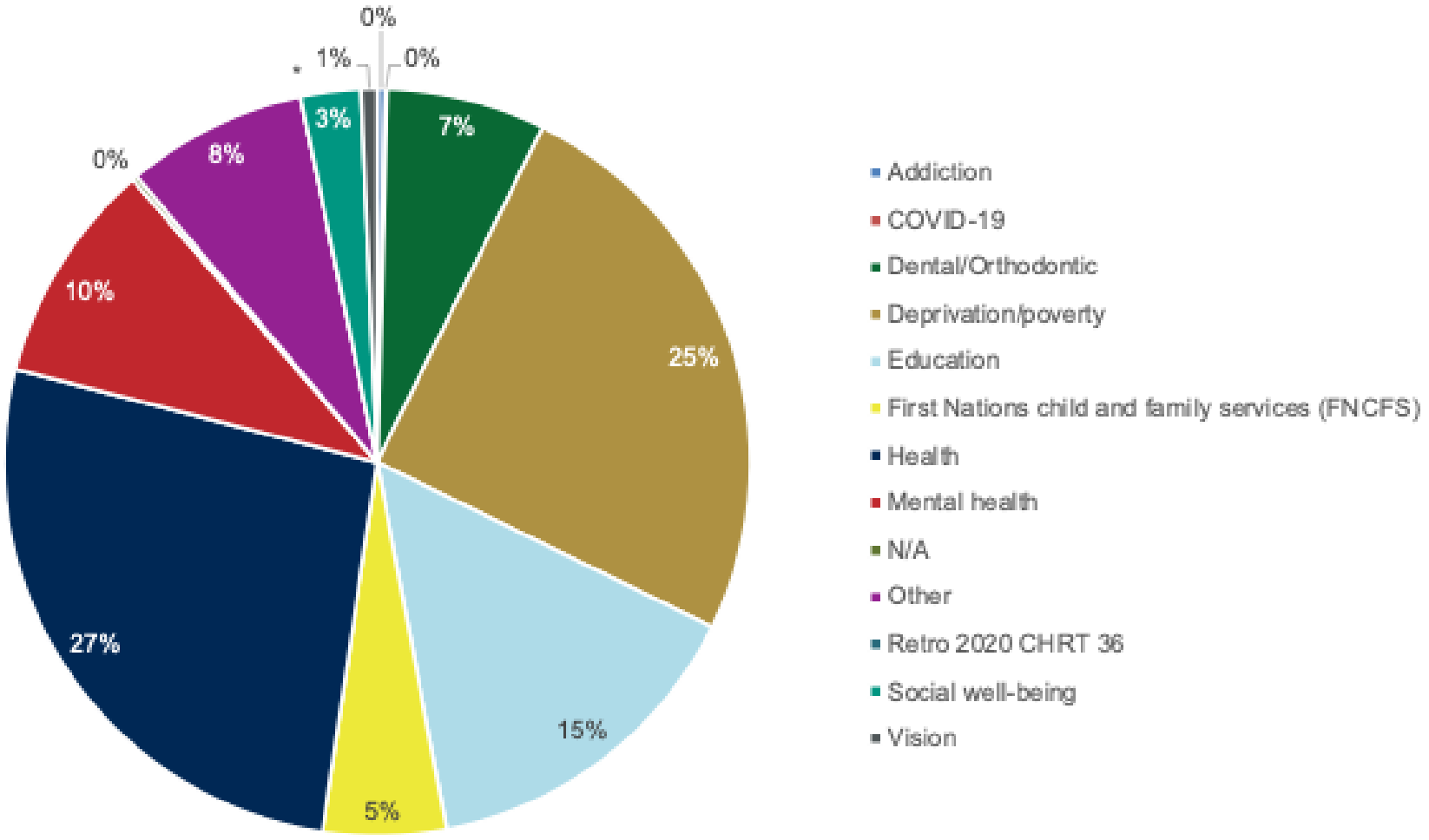
Percentage of requests by IFSD needs cluster, 2022-23



Source: Indigenous Services Canada (ISC).
Notes: 1) Entries with fewer than 15 records were suppressed. 2) One request can be associated with multiple needs.

IFSD IFPD

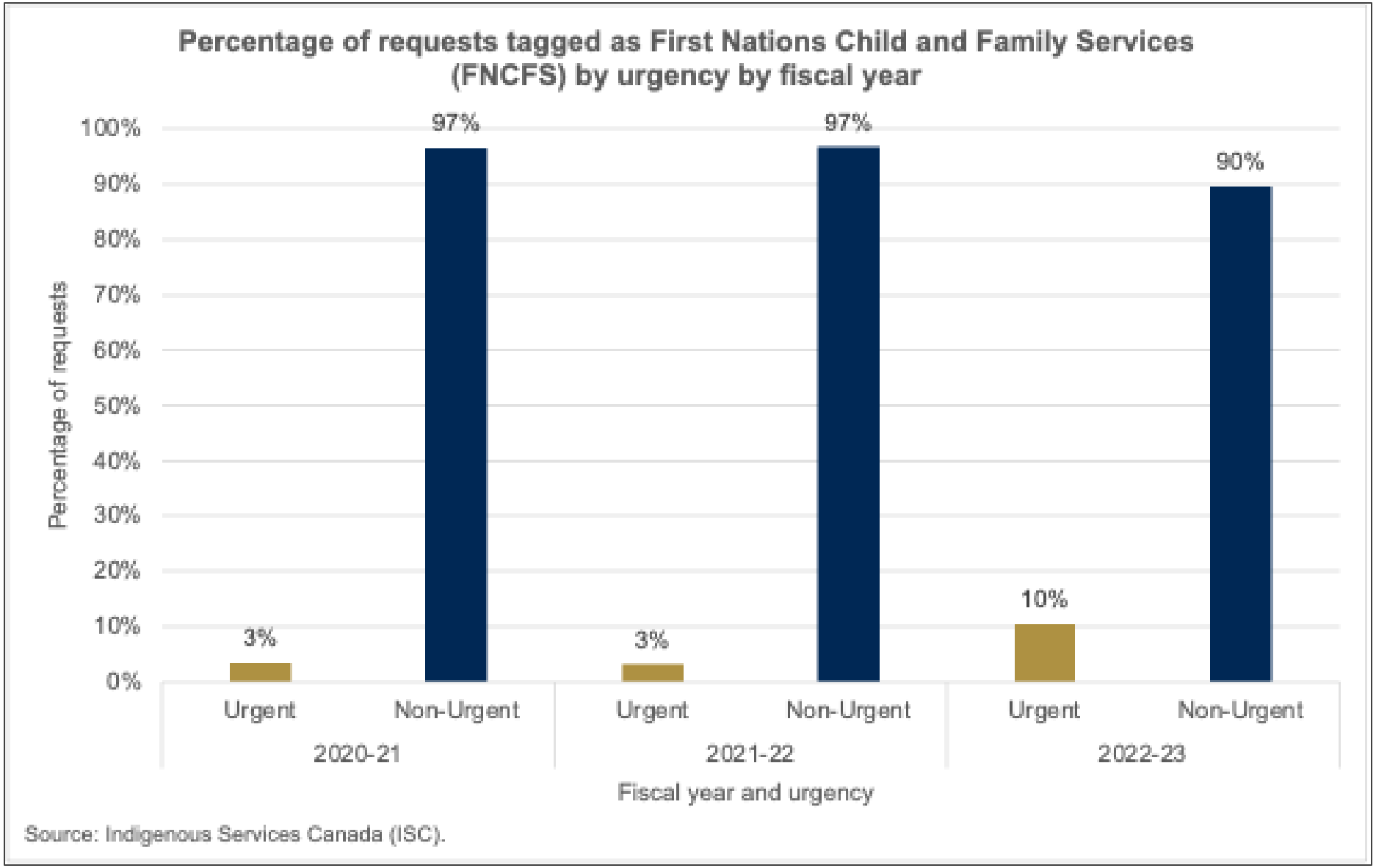
FNCFS-related requests

Note on FNCFS "need" tagging

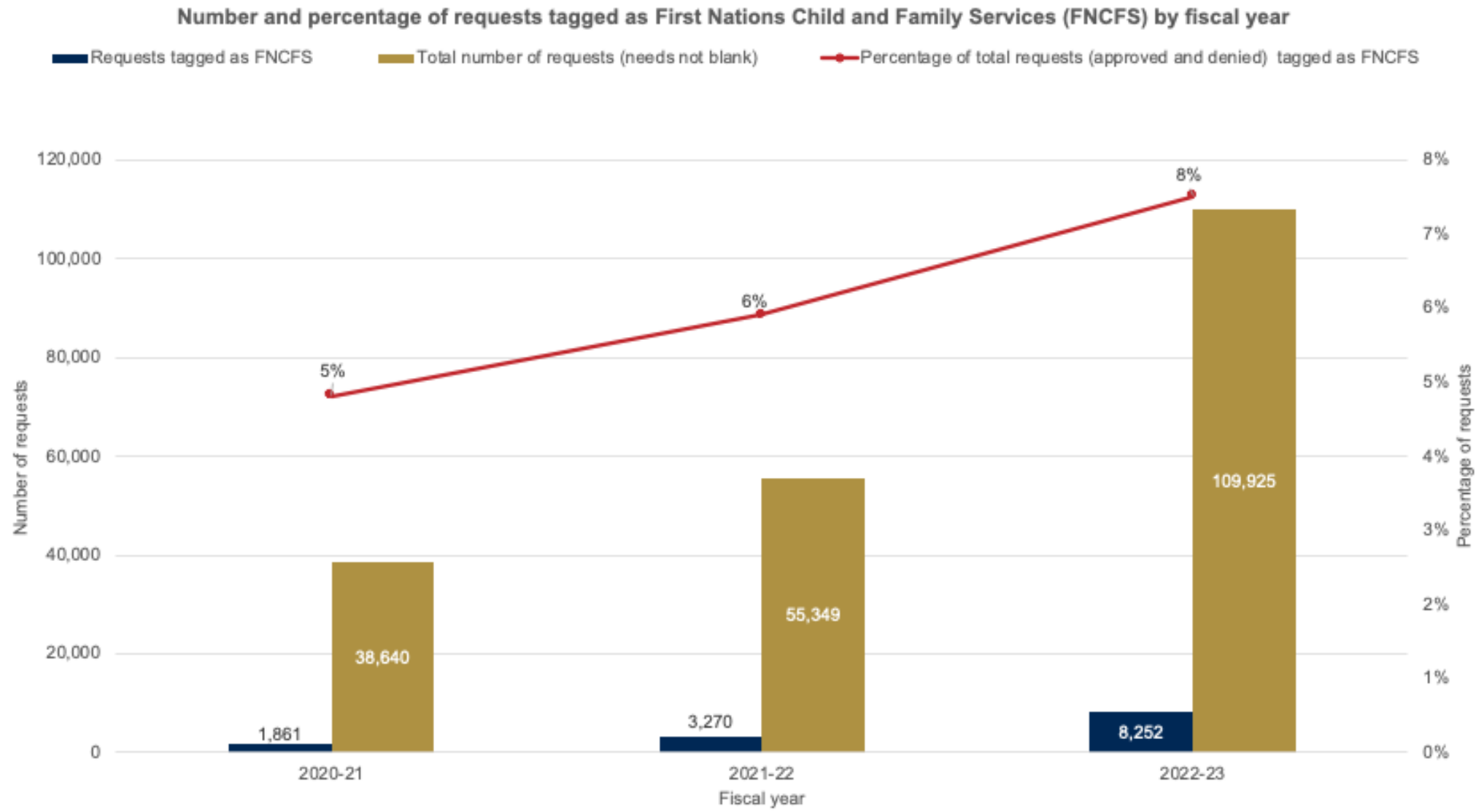
- IFSD tagged a request as related to First Nations Child and Family Services (FNCFS) if any of the following were values for the Needs variable:
  - Child Apprehension Prevention
  - Preserving Family Integrity
  - Unspecified Familial
  - Unspecified Family Integrity

FNCFS-tagged requests

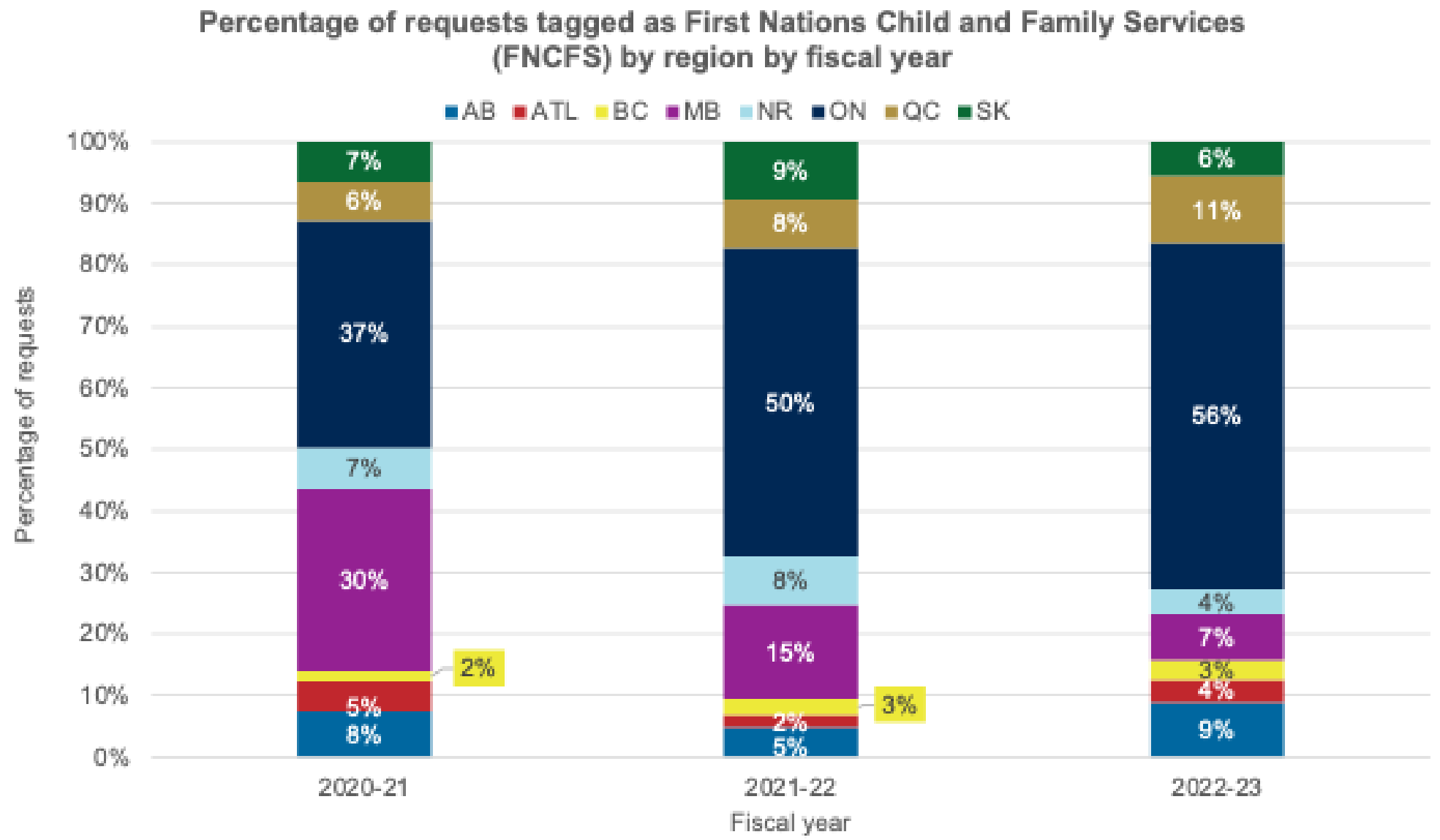
- Most FNCFS requests were not urgent, although 10% were tagged as urgent in 2022-23. FNCFS-tagged requests made up 8% of all requests in fiscal year 2022-23.
- 50% and 56% of FNCFS-tagged requests in fiscal years 2021-22 and 2022-23, respectively, were from Ontario.
- In 2022-23, most FNCFS-tagged requests were approved. The highest shares of denials are in British Columbia (29%).
- Most FNCFS-tagged requests are for amounts below $5,000 and most are for children on-reserve.
- In 2022-23, most FNCFS-tagged requests were for travel, medical travel, and economic supports.
- Roughly 40% of FNCFS-tagged requests across fiscal years come through Navigators.


Percentage of requests tagged as First Nations Child and Family Services (FNCFS) by urgency by fiscal year
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of requests
3%
97%
3%
97%
10%
90%
Urgent
Non-Urgent
Urgent
Non-Urgent
Urgent
Non-Urgent
2020-21
2021-22
2022-23
Fiscal year and urgency
Source: Indigenous Services Canada (ISC).

IFSD
IFPD



Source: Indigenous Services Canada (ISC).



Source: Indigenous Services Canada (ISC).

IFSD
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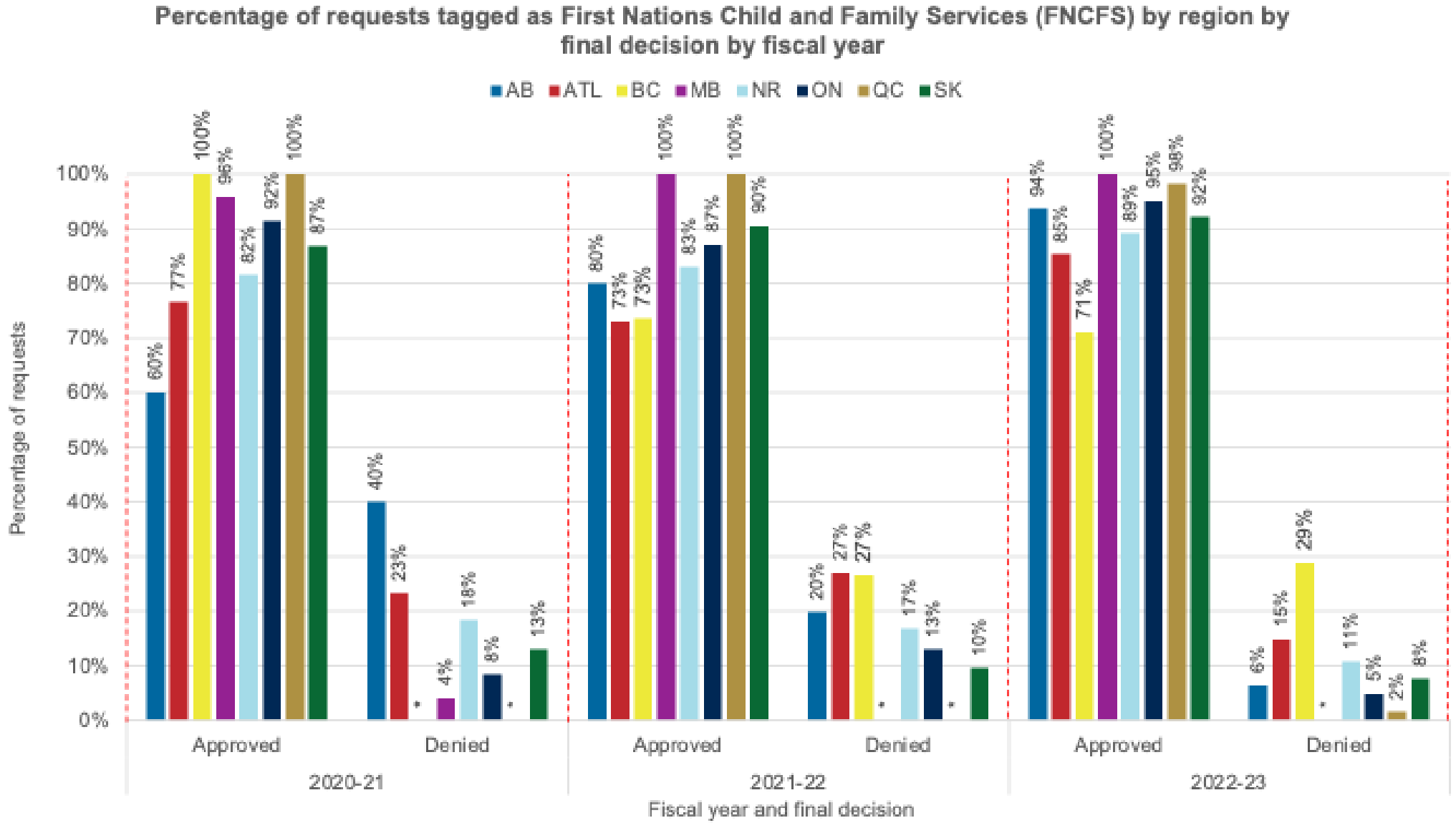

Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
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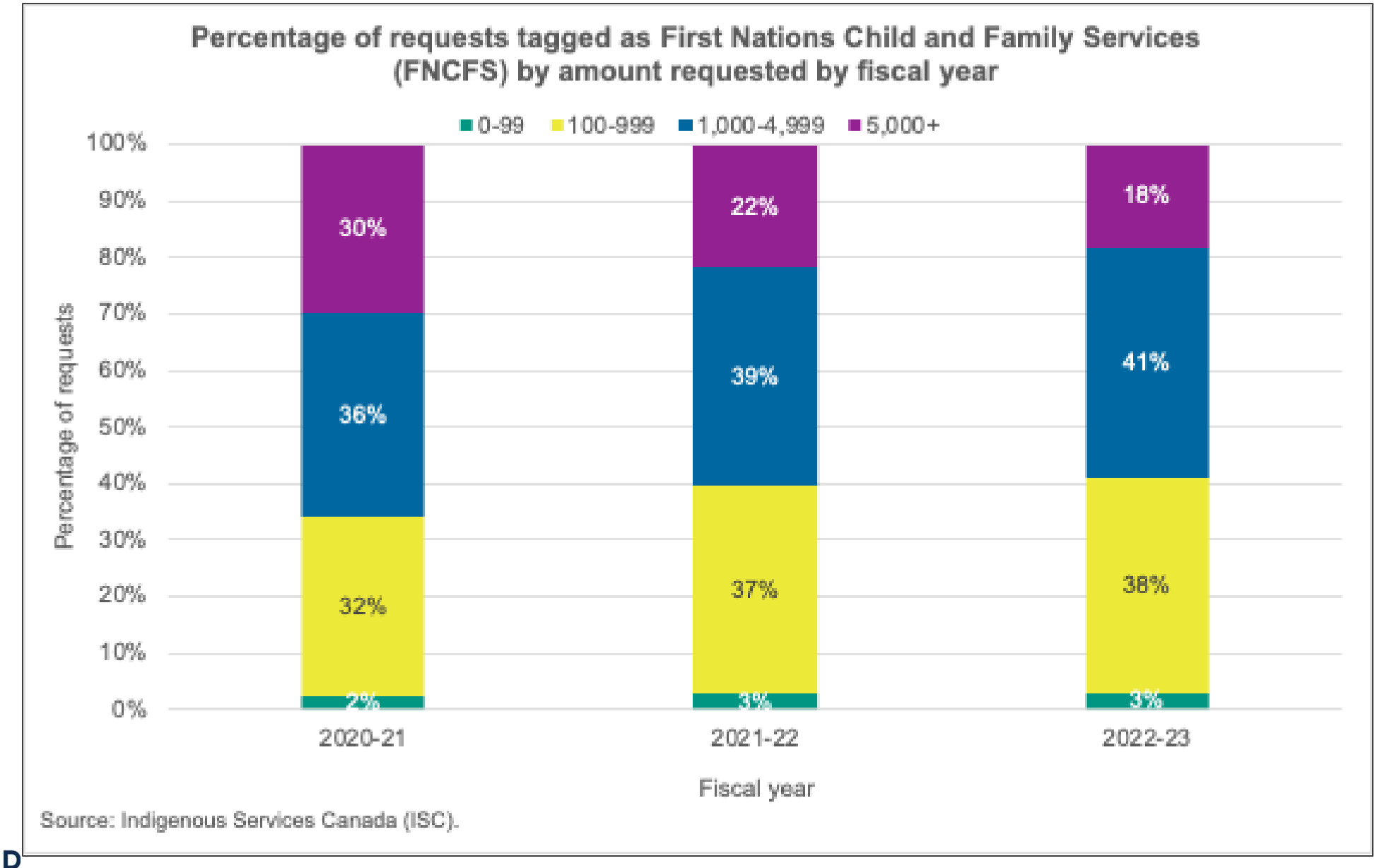
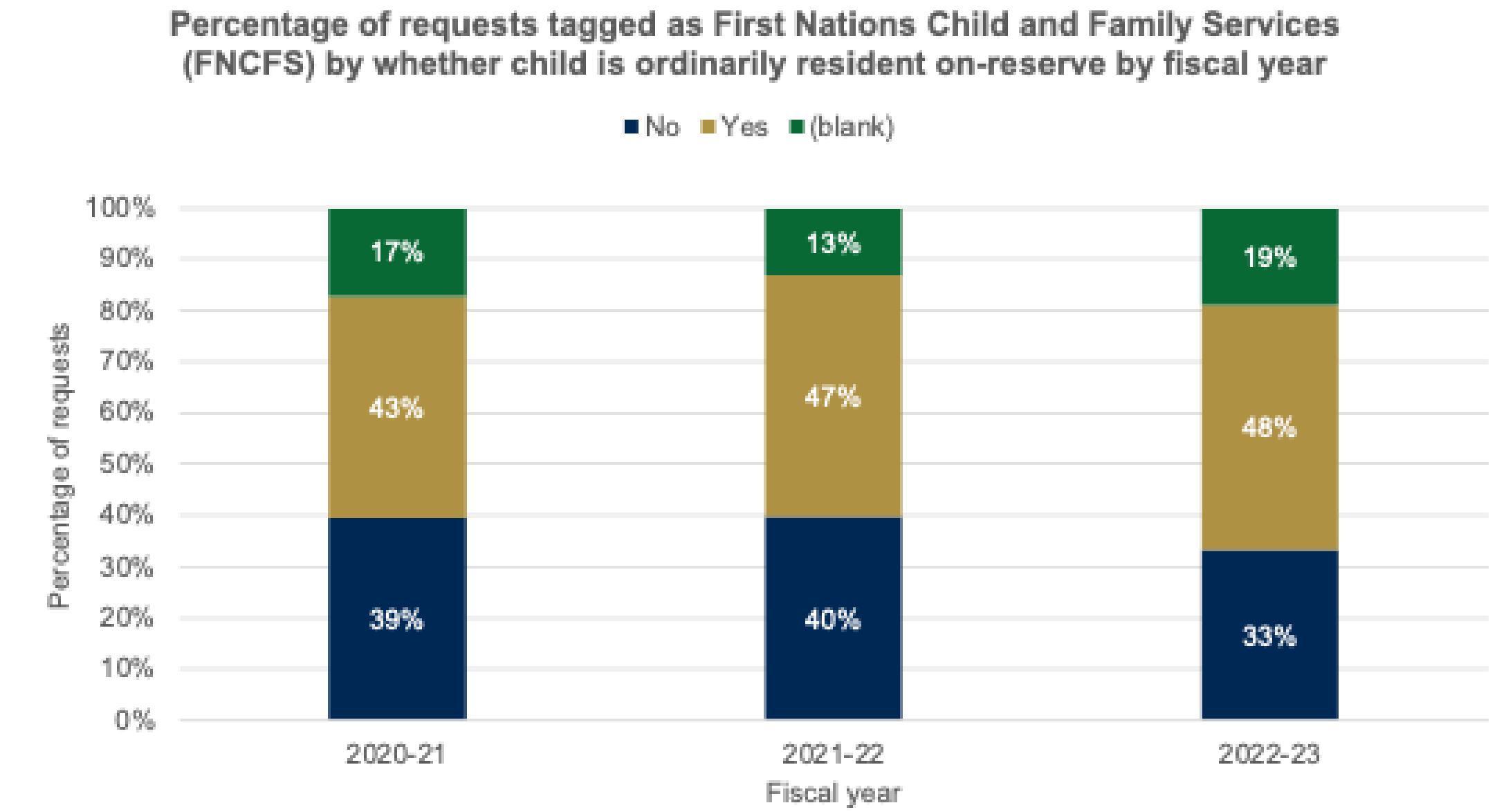
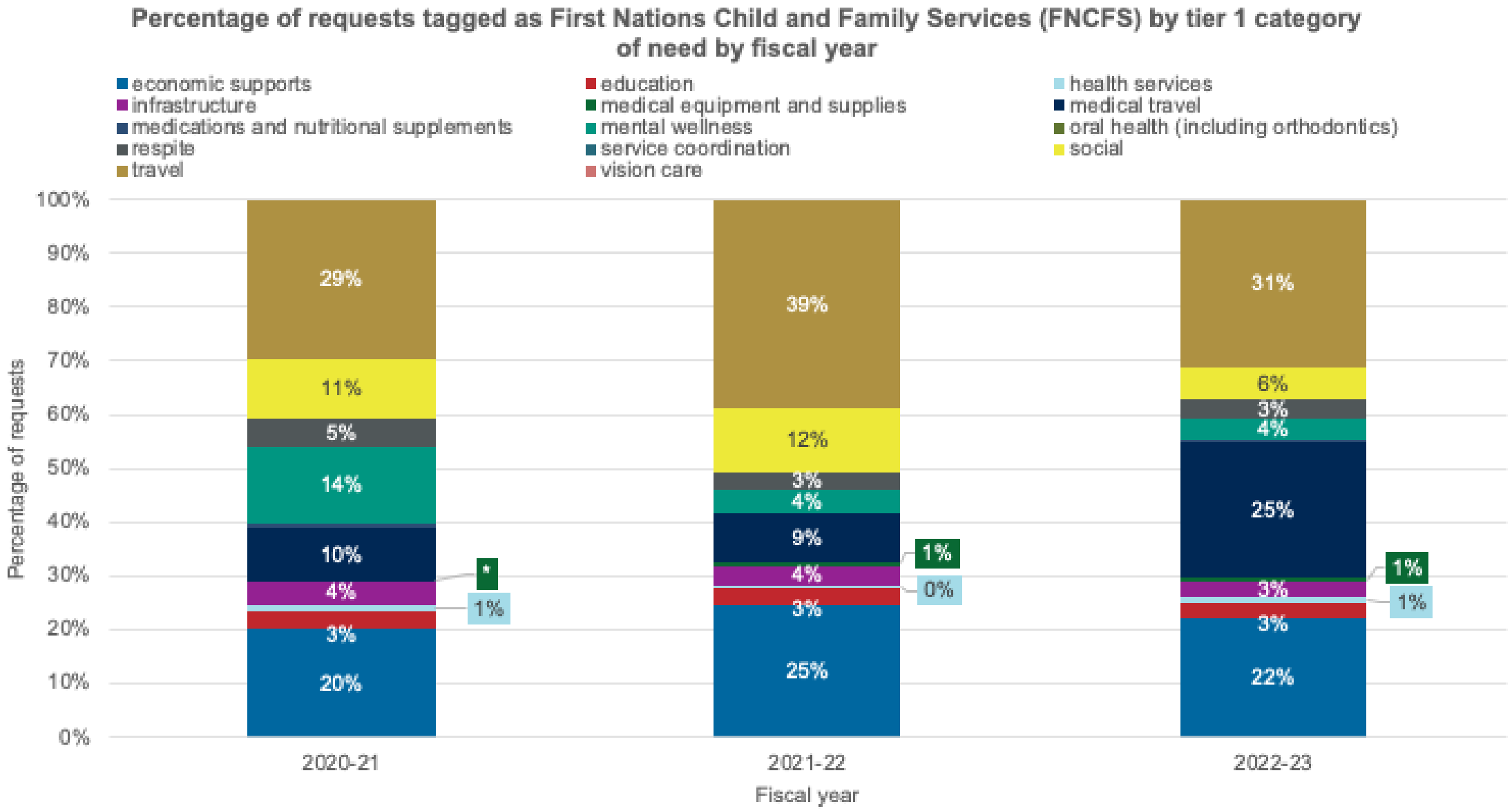

Percentage of requests tagged as First Nations Child and Family Services (FNCFS) by amount requested by fiscal year
0-99
100-999
1,000-4,999
5,000+
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of requests
30%
36%
32%
2%
22%
39%
37%
3%
18%
41%
38%
3%
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

IFSD
IFPD

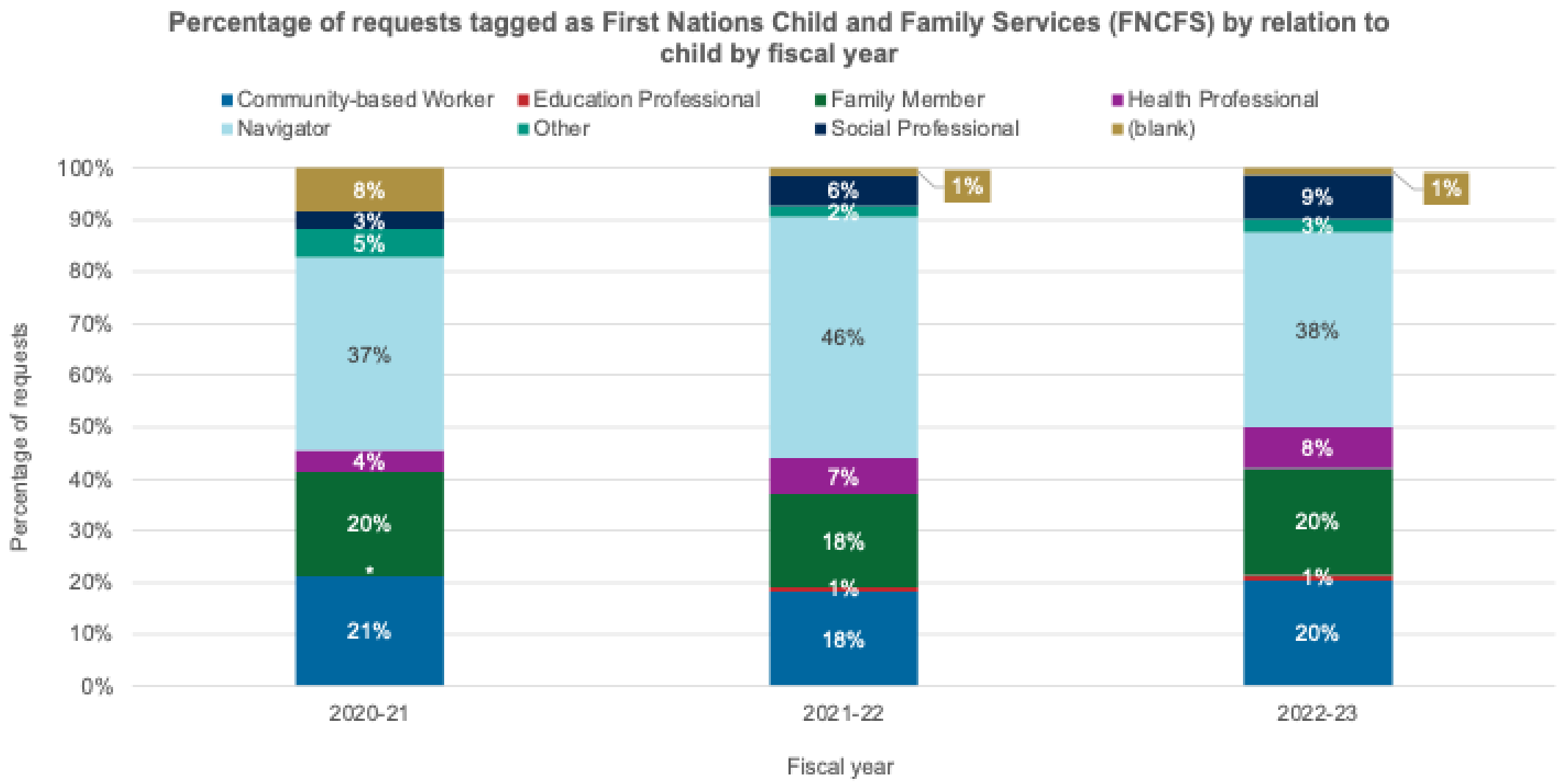


Source: Indigenous Services Canada (ISC).

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
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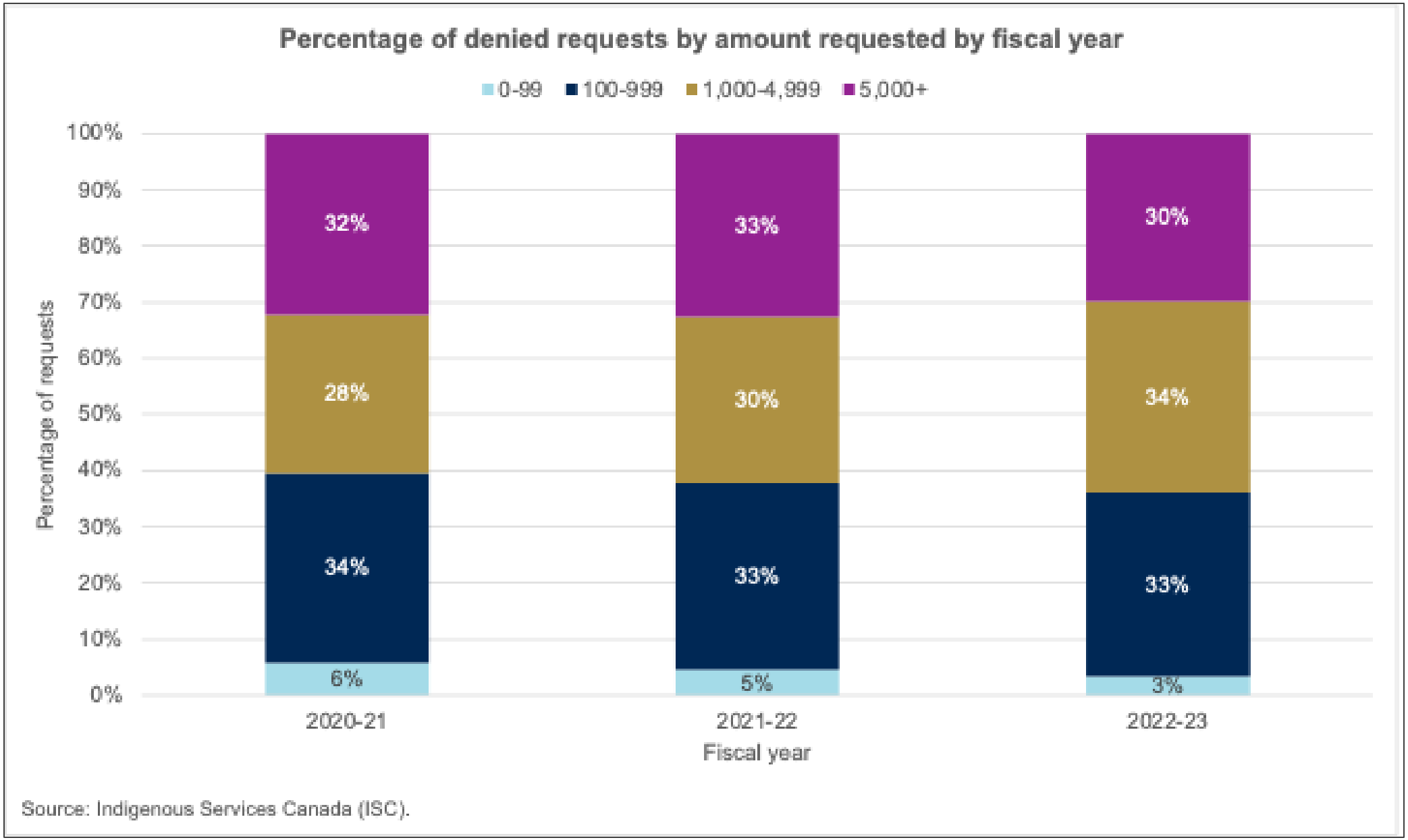
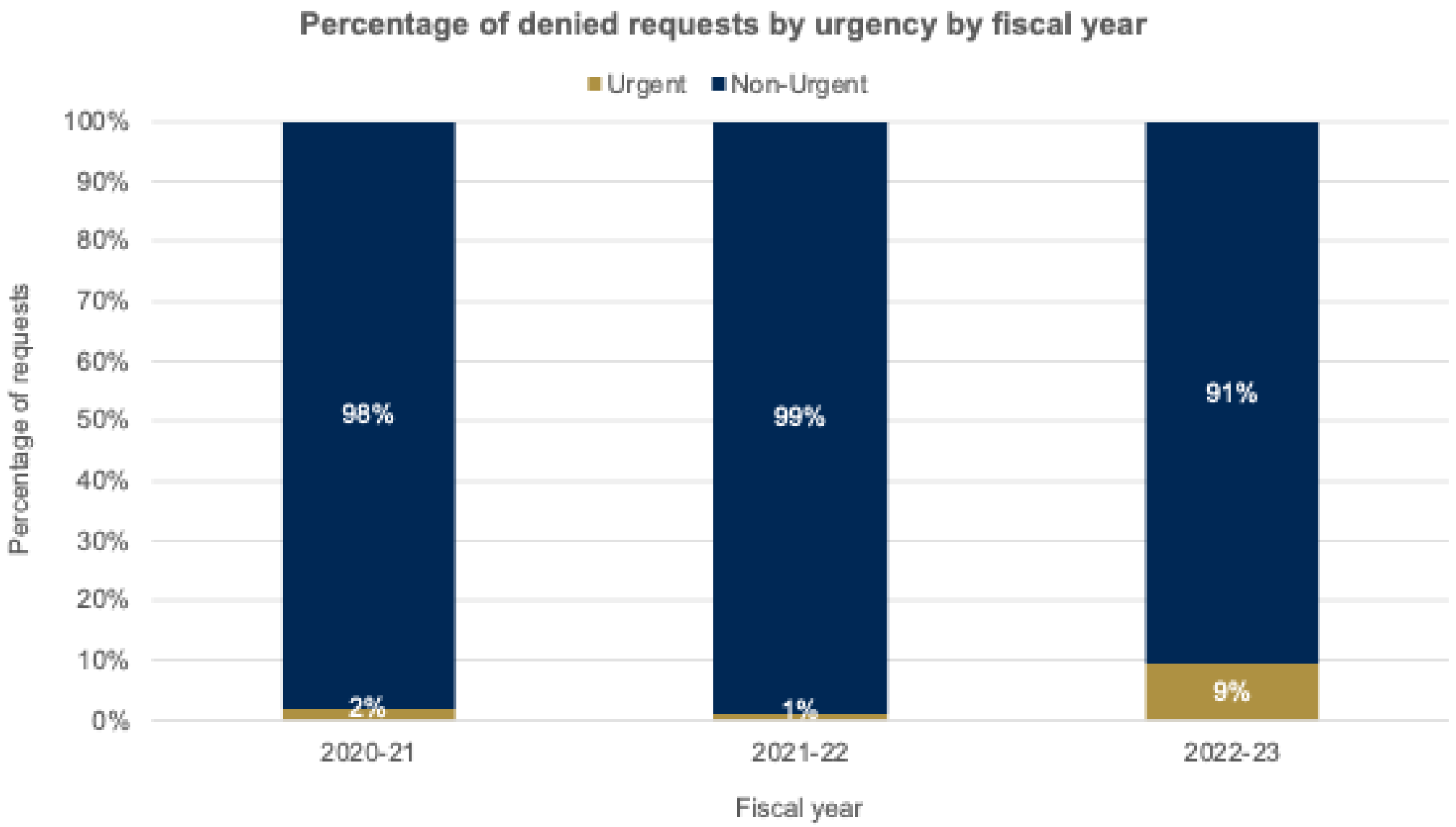
Denied requests

Denied requests

- Denied requests are evenly distributed across request amounts (other than amounts 0-99, for which denials are the lowest).
- 9% of denied requests were urgent in fiscal year 2022-23. Denied requests are mostly non-urgent.
- Family members and navigators have the largest shares of denied requests in fiscal years 2021-22 and 2022-23.
- Ontario has the largest share of denials (and the largest share of requests).
- Requests for economic supports had the greatest share of denials in fiscal year 2022-23.

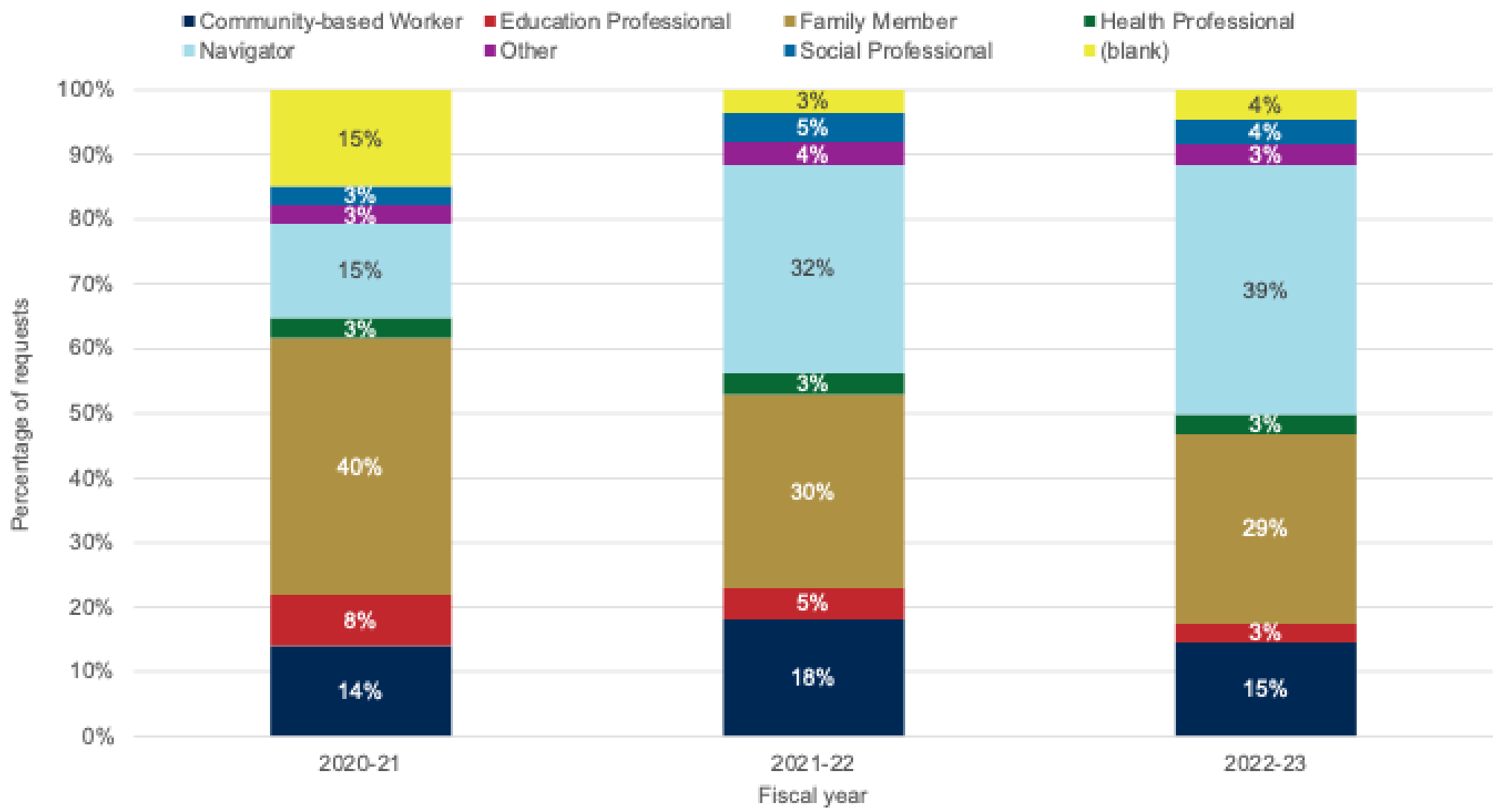

Percentage of denied requests by amount requested by fiscal year
0-99
100-999
1,000-4,999
5,000+
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percentage of requests
32%
28%
34%
6%
33%
30%
33%
5%
30%
34%
33%
3%
2020-21
2021-22
2022-23
Fiscal year
Source: Indigenous Services Canada (ISC).

IFSD
IFPD



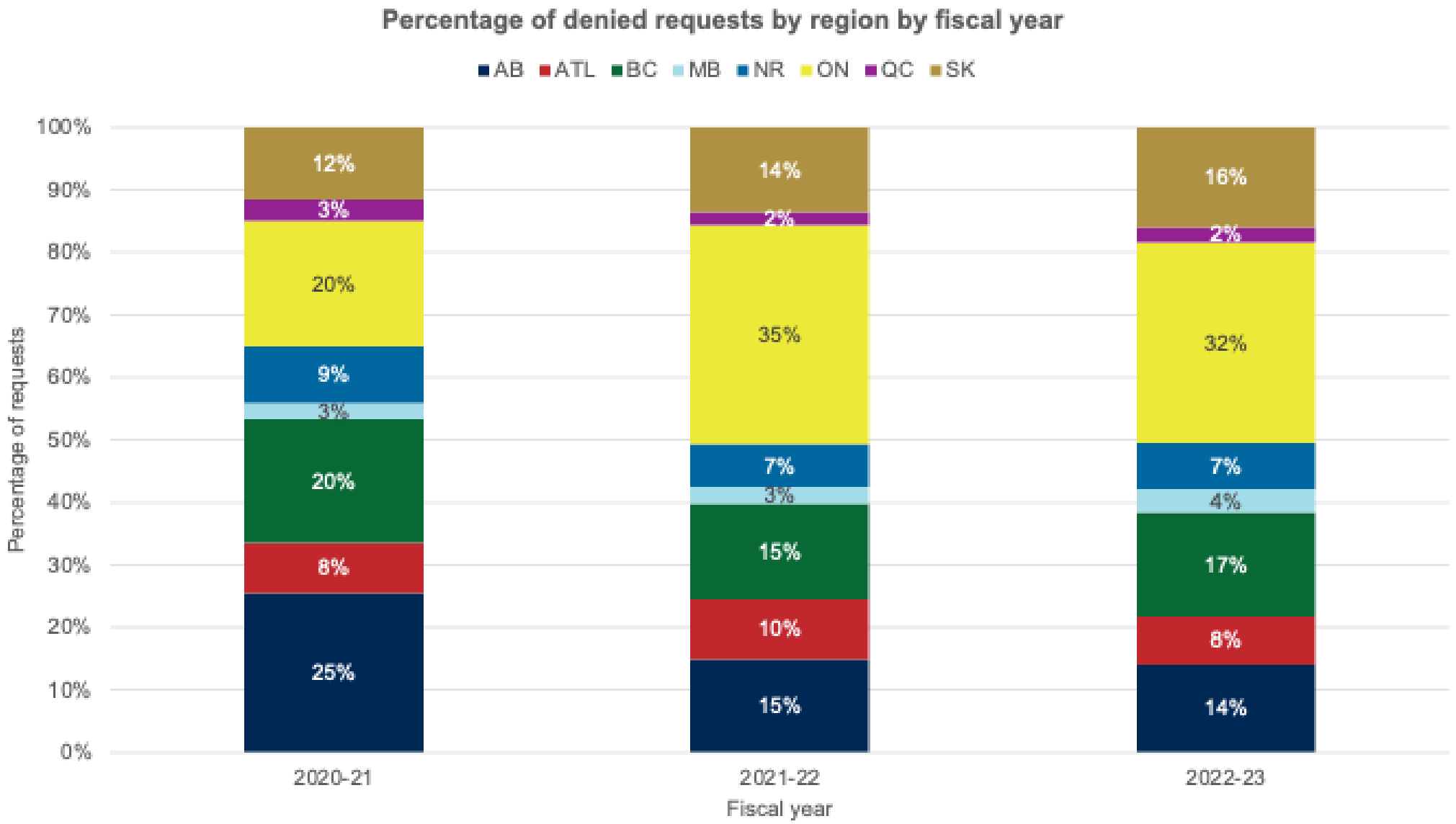
Source: Indigenous Services Canada (ISC).

IFSD
IFPD



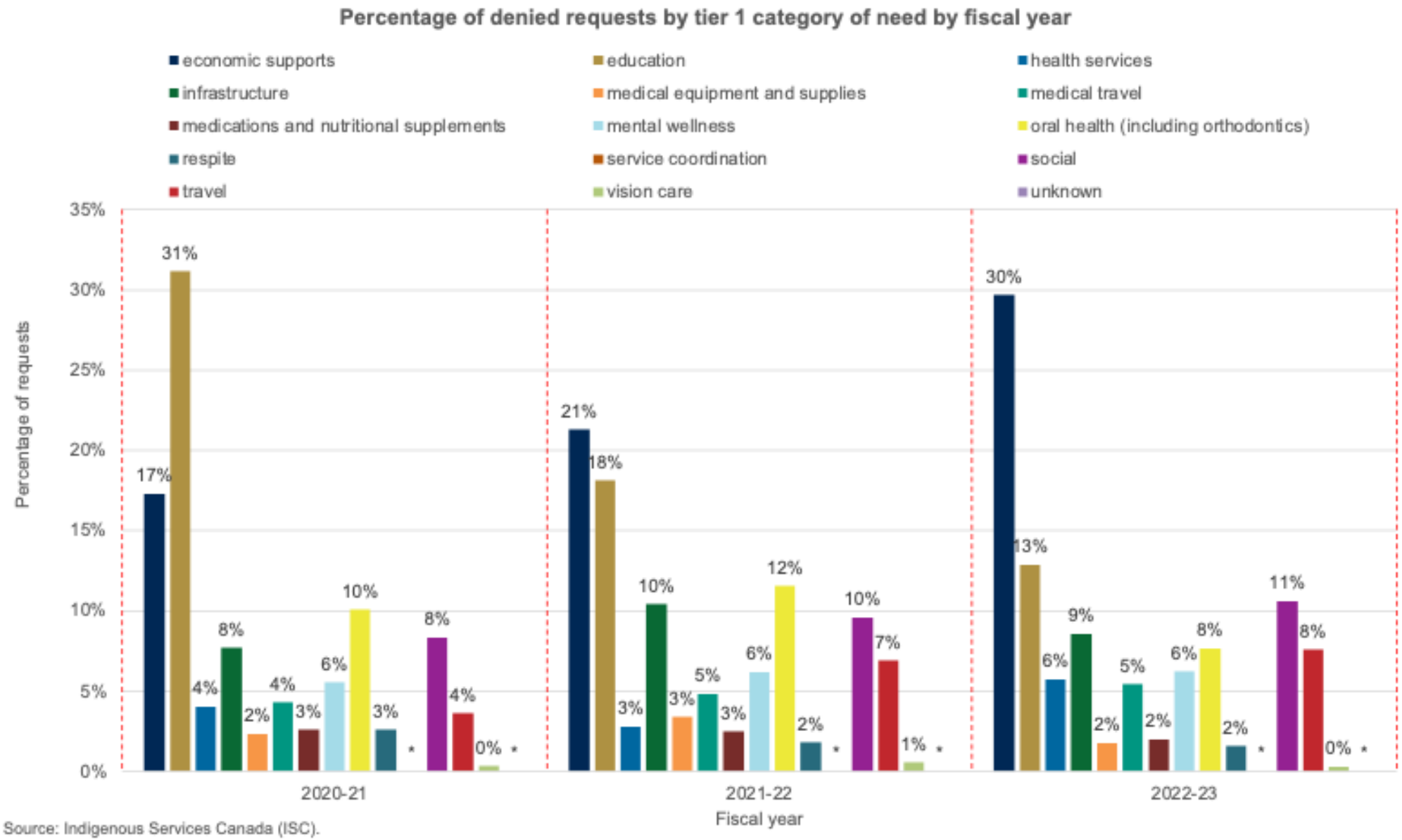
Source: Indigenous Services Canada (ISC).

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Notes: 1) AR stands for Atlantic Region. 2) NR stands for Northern Region.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

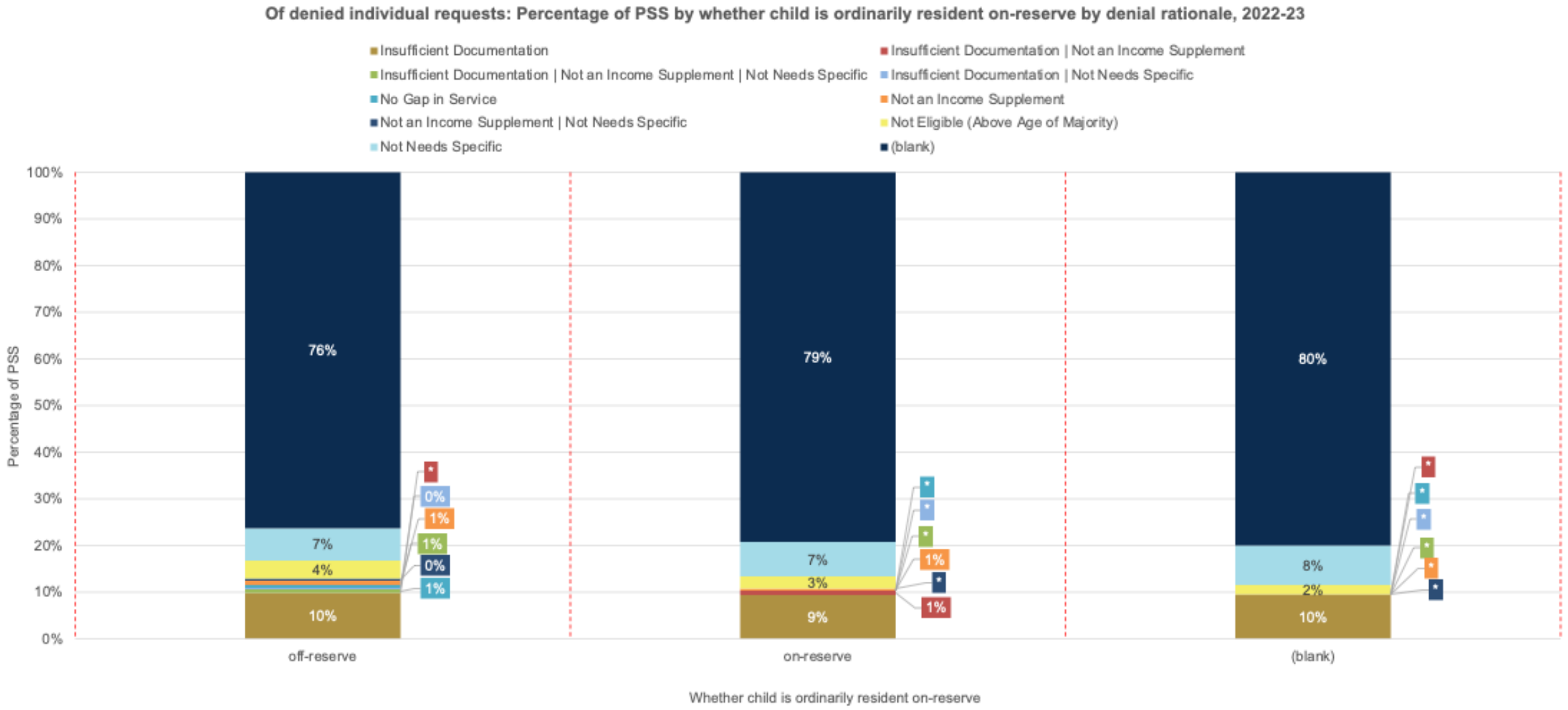
IFSD
IFPD

Rationales for denials

- Rationales for denied individual requests are mostly blank. Insufficient documentation is the most cited reason (when recorded, approximately 10%).

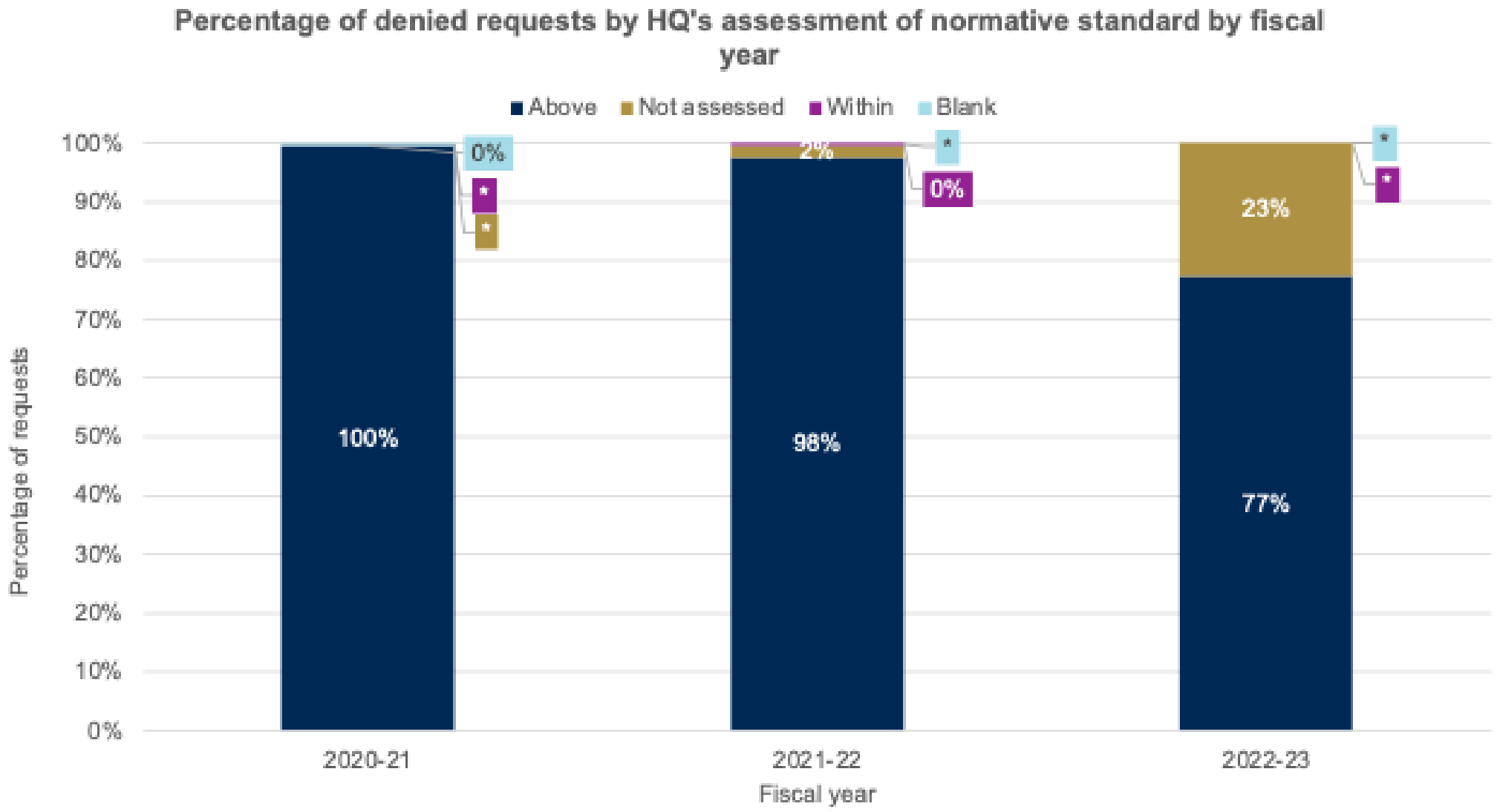
- Appeals of denied individual requests have larger shares of approval than those for group requests of which a larger share are denied.
  - Group requests are not appealed at the same rate as individual requests. For instance, in FY 2022-23, 37 group requests were appealed and all (100%) were denied.

- Most denied requests were above the normative standard, below the threshold for substantive equality, cultural appropriateness, and the best interests of the child.



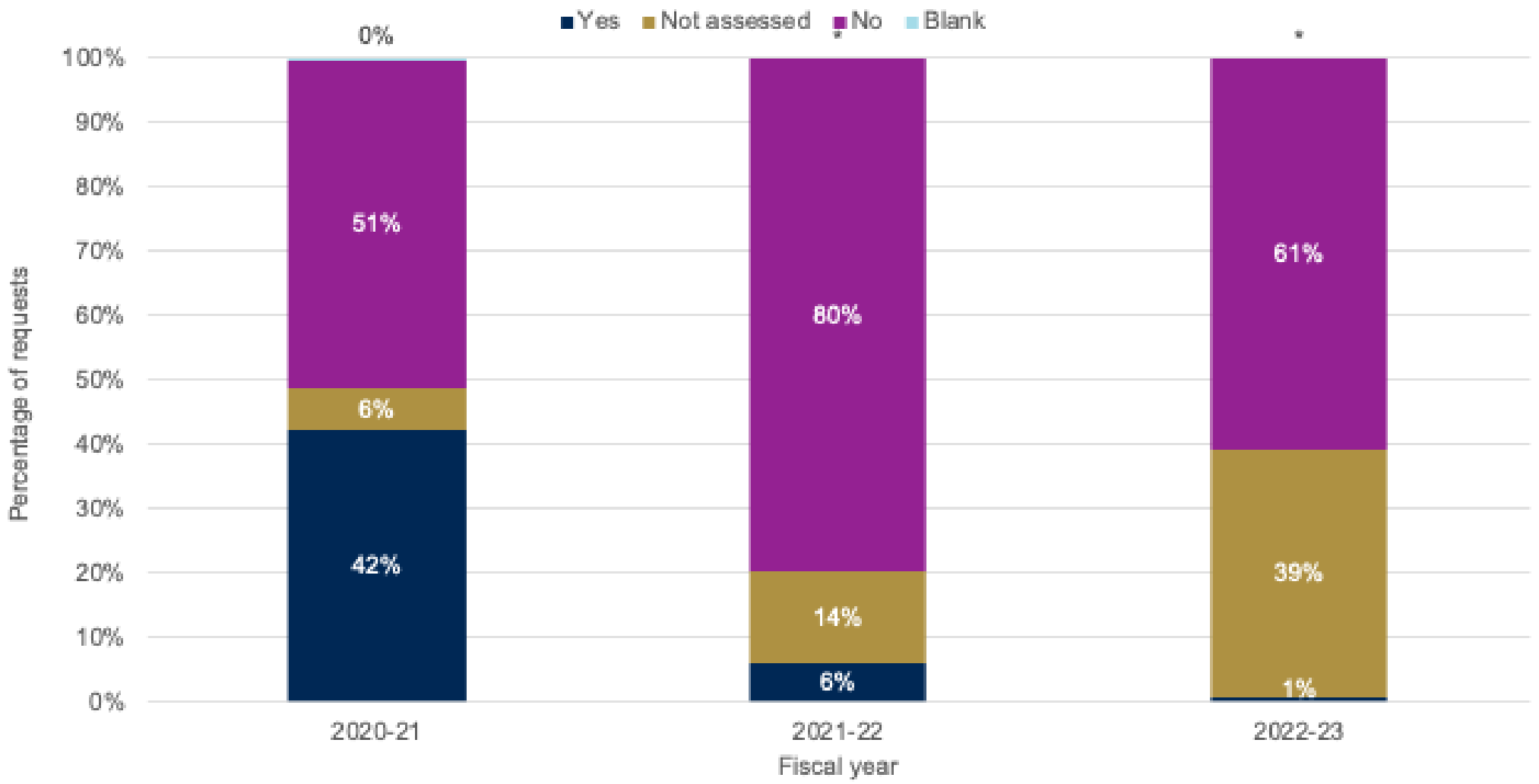
Source: Indigenous Services Canada.
Notes: 1) Entries with fewer than 15 records were suppressed and excluded from the legend. 2) According to ISC, denial rationale is a "new data field implemented in January 2023," so only 3 months of data for 2022-23.

IFSD
IFPD



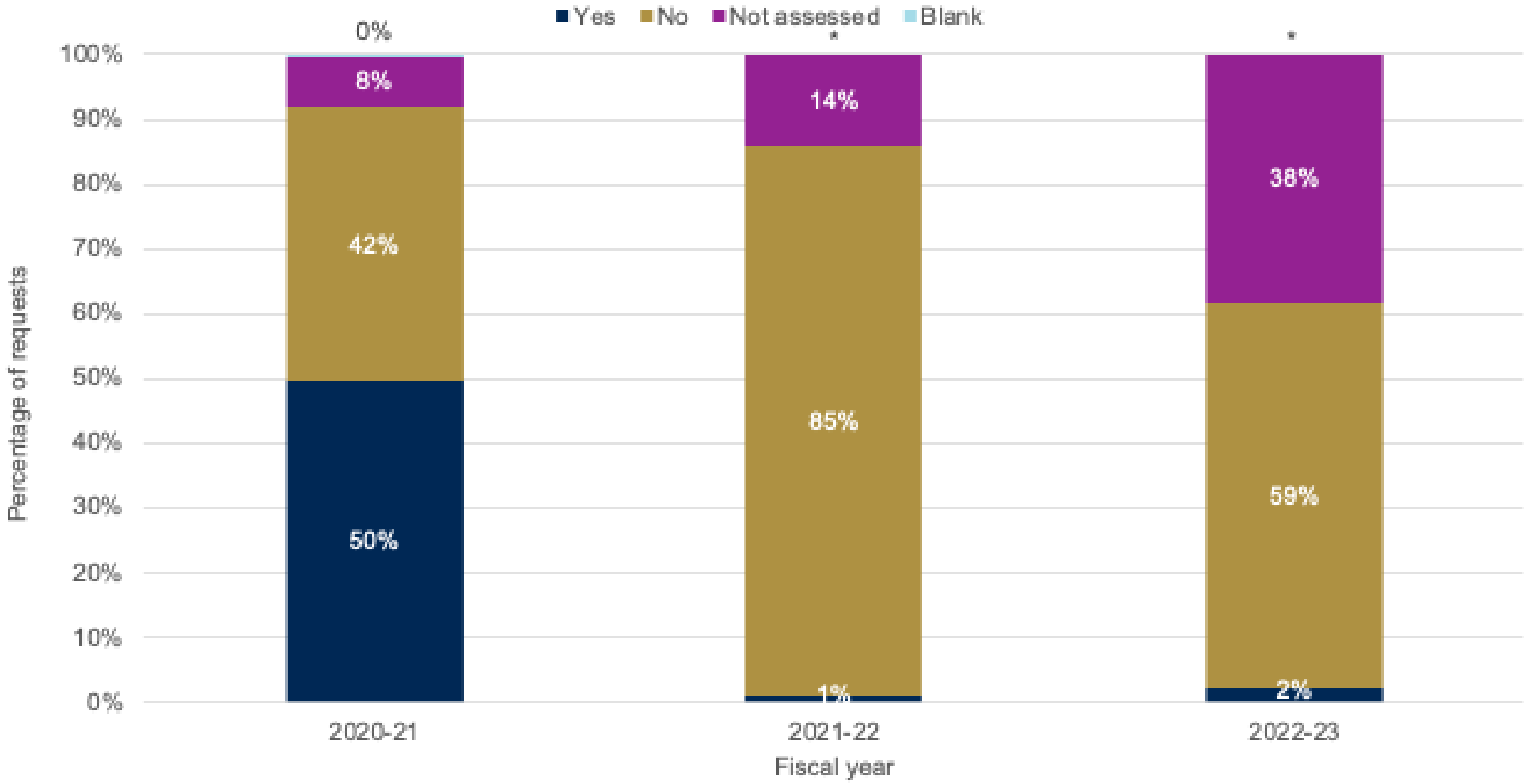
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



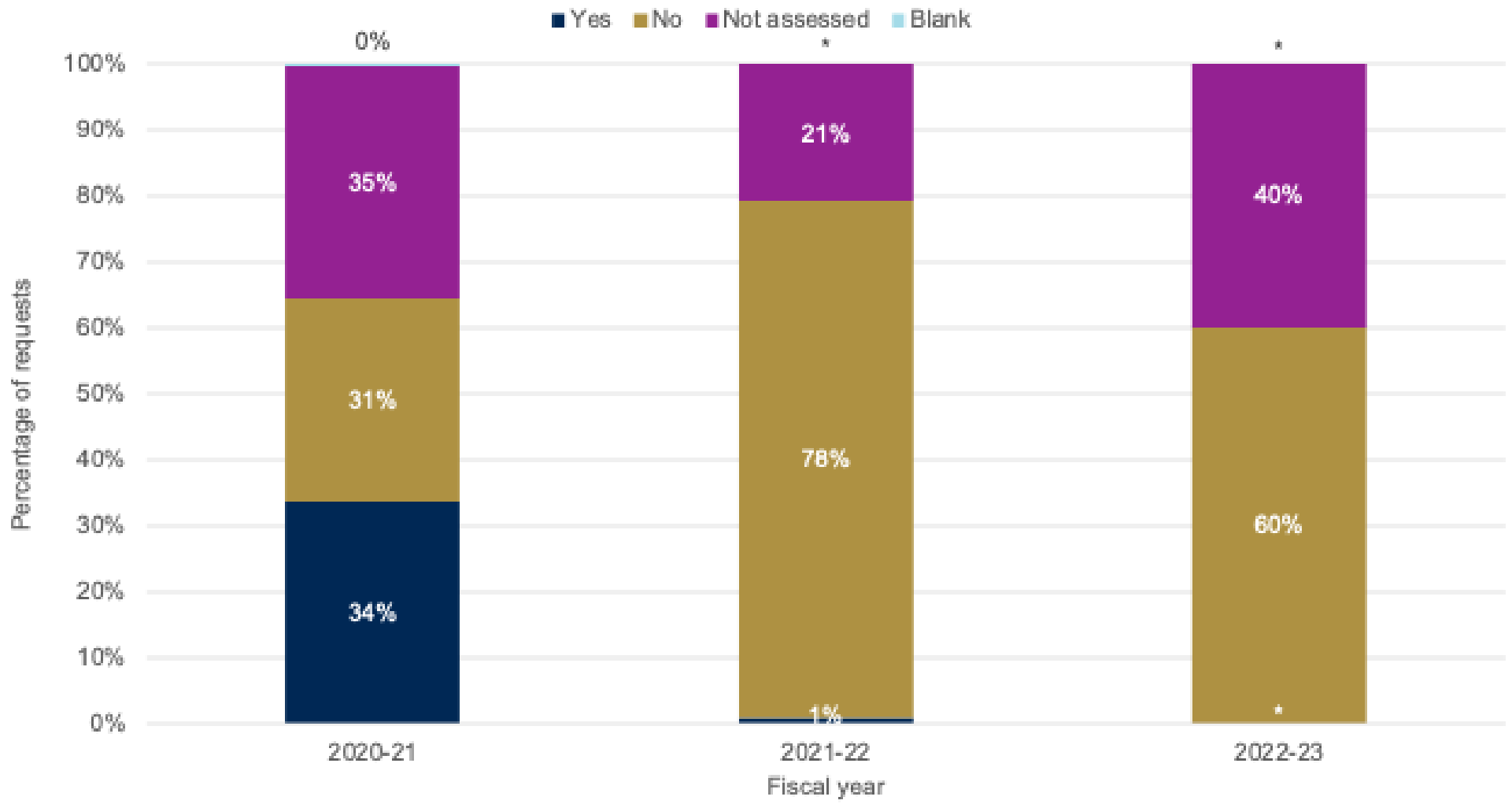
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



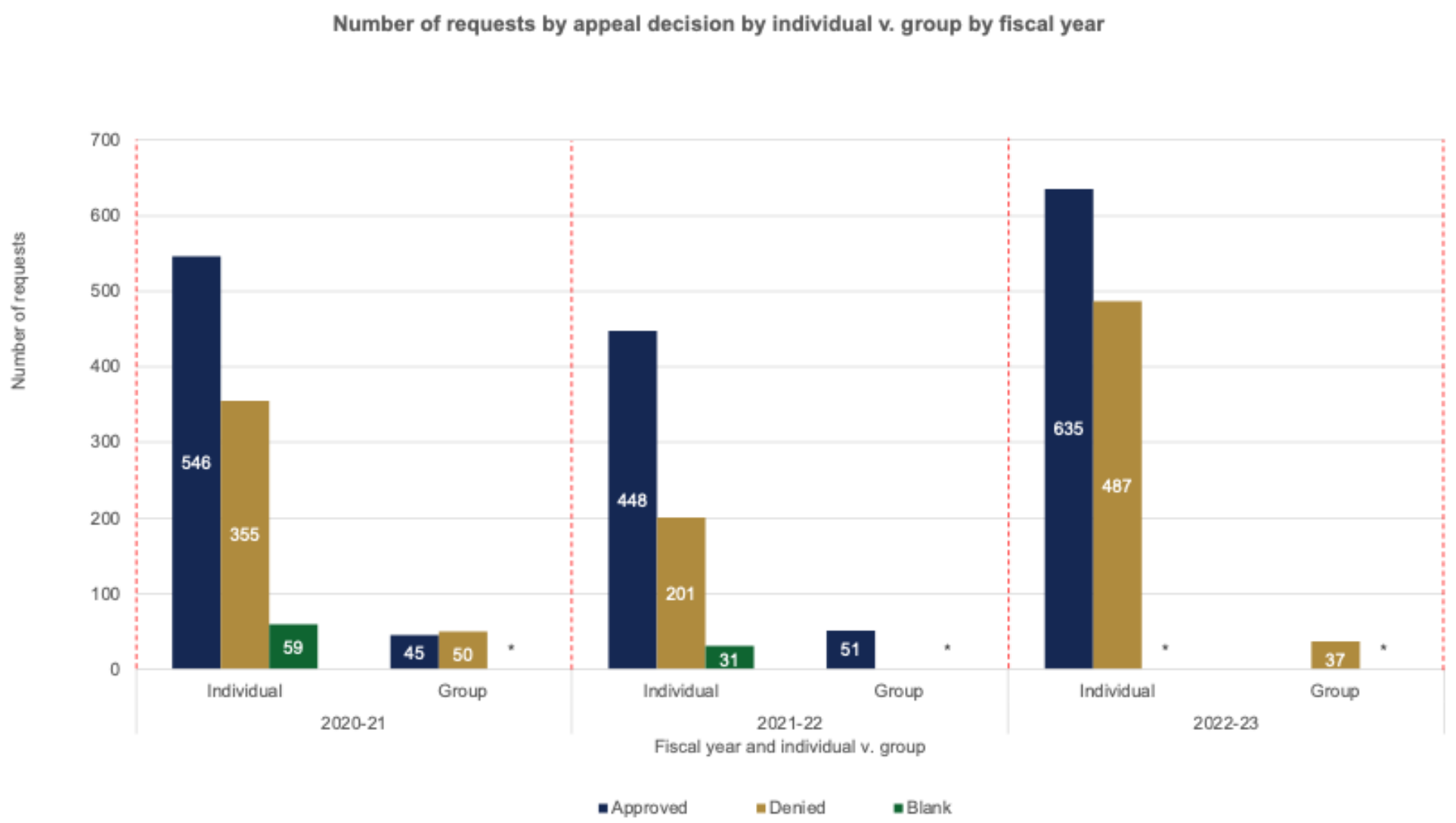
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD



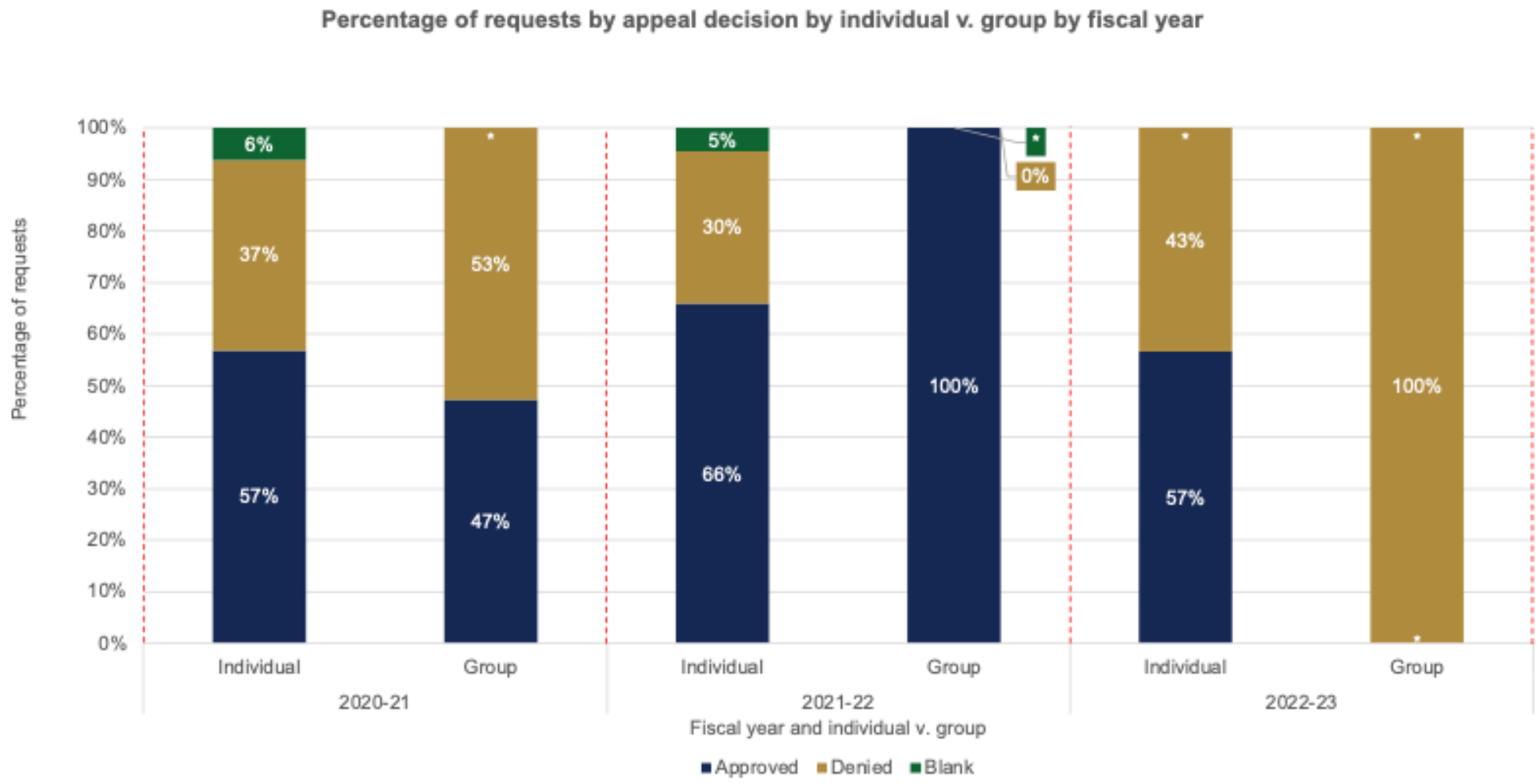
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD
IFPD

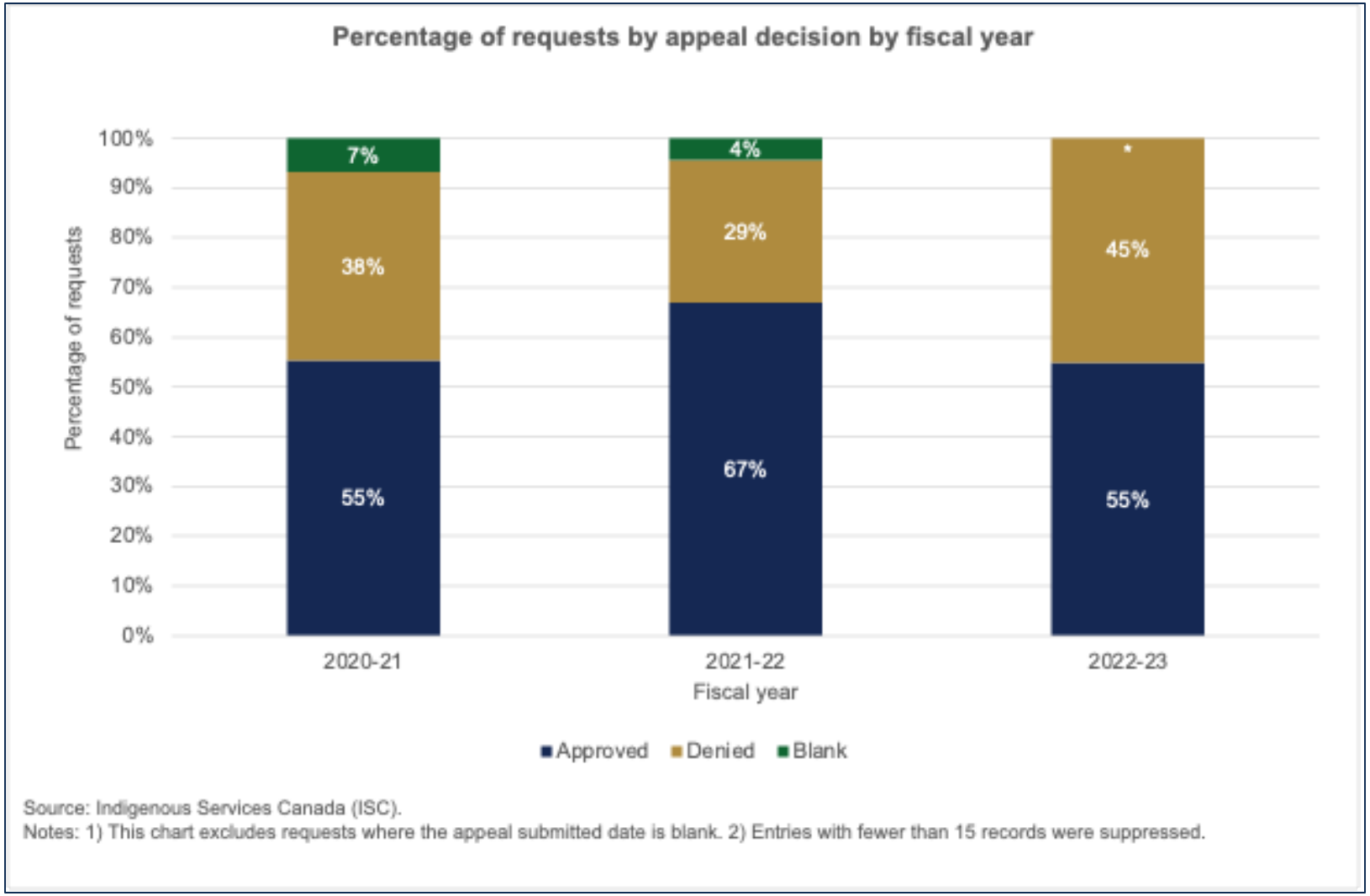


Source: Indigenous Services Canada (ISC).
Notes: 1) This chart excludes requests where the appeal submitted date is blank. 2) Entries with fewer than 15 records were suppressed.

IFSD
IFPD



Source: Indigenous Services Canada (ISC).
Notes: 1) This chart excludes requests where the appeal submitted date is blank. 2) Entries with fewer than 15 records were suppressed.



Source: Indigenous Services Canada (ISC).
Notes: 1) This chart excludes requests where the appeal submitted date is blank. 2) Entries with fewer than 15 records were suppressed.

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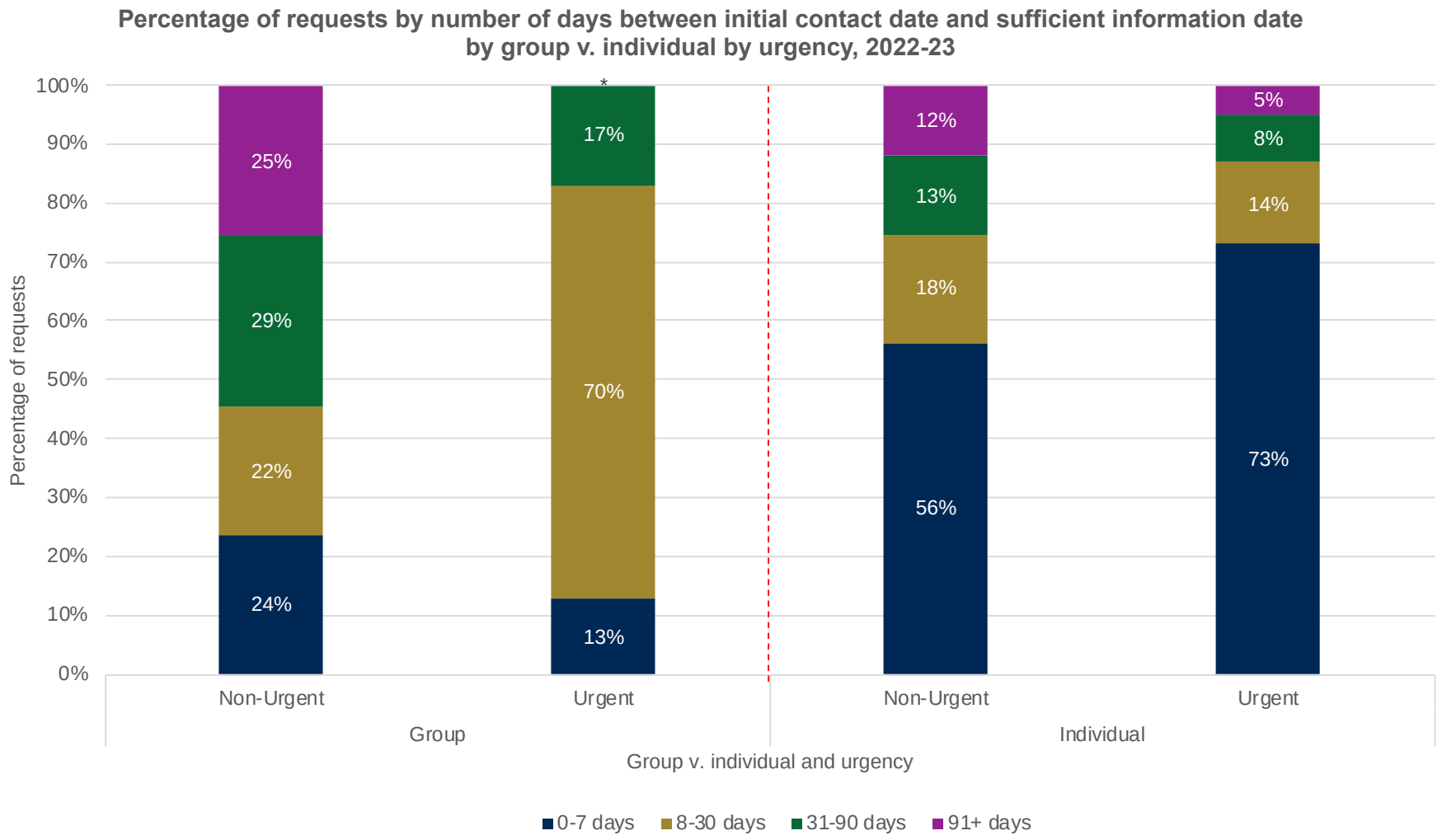
Other analysis

Other analysis

- Individual requests have shorter response times than group request. Urgent requests have shorter response times for individual requests than non-urgent requests.

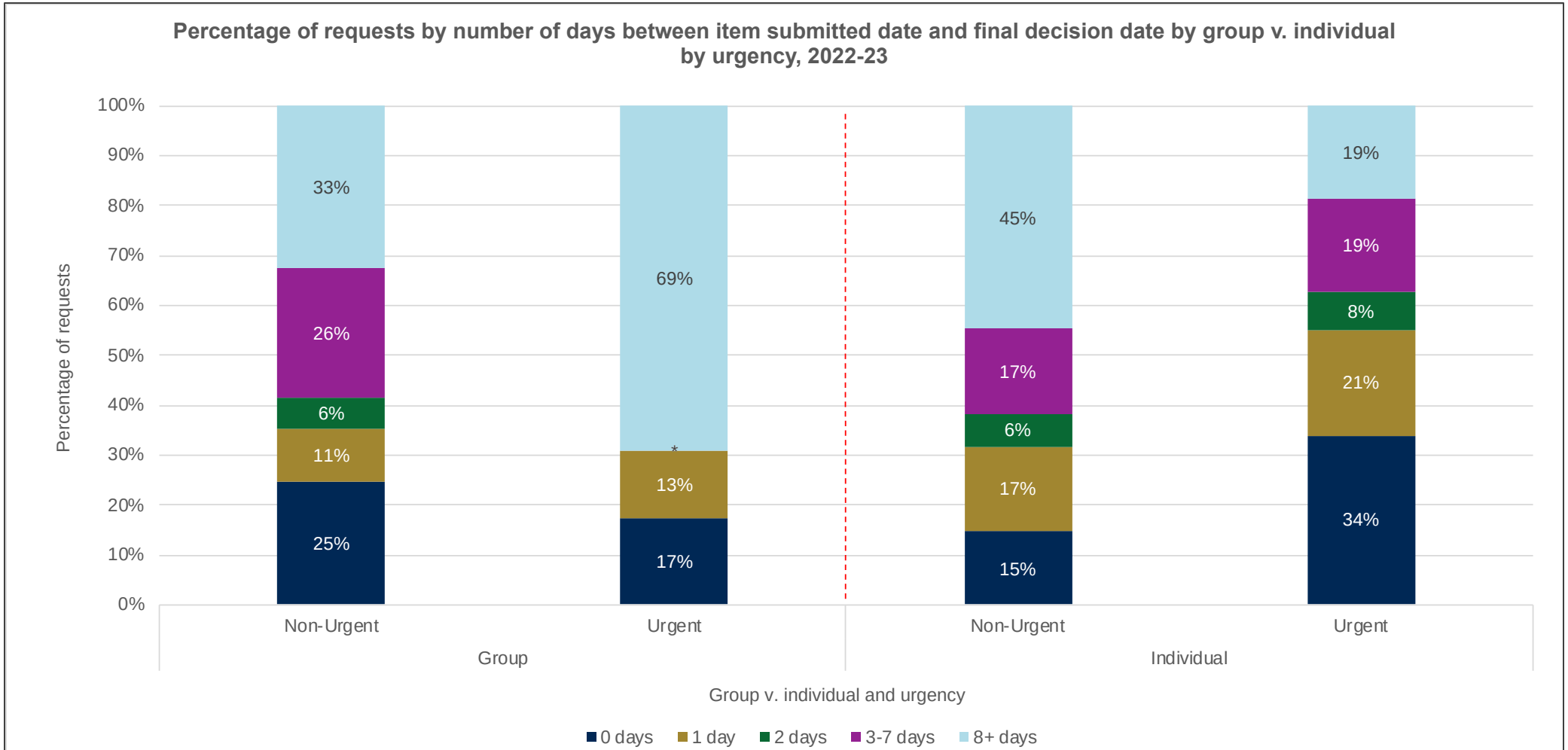
- Most individual requests are for one child.

- In 2020-21 and 2021-22 re-reviews Back to Basics made up the full category. In fiscal year 2022-23, re-reviews with new information made up just over 50% of all re-reviews.



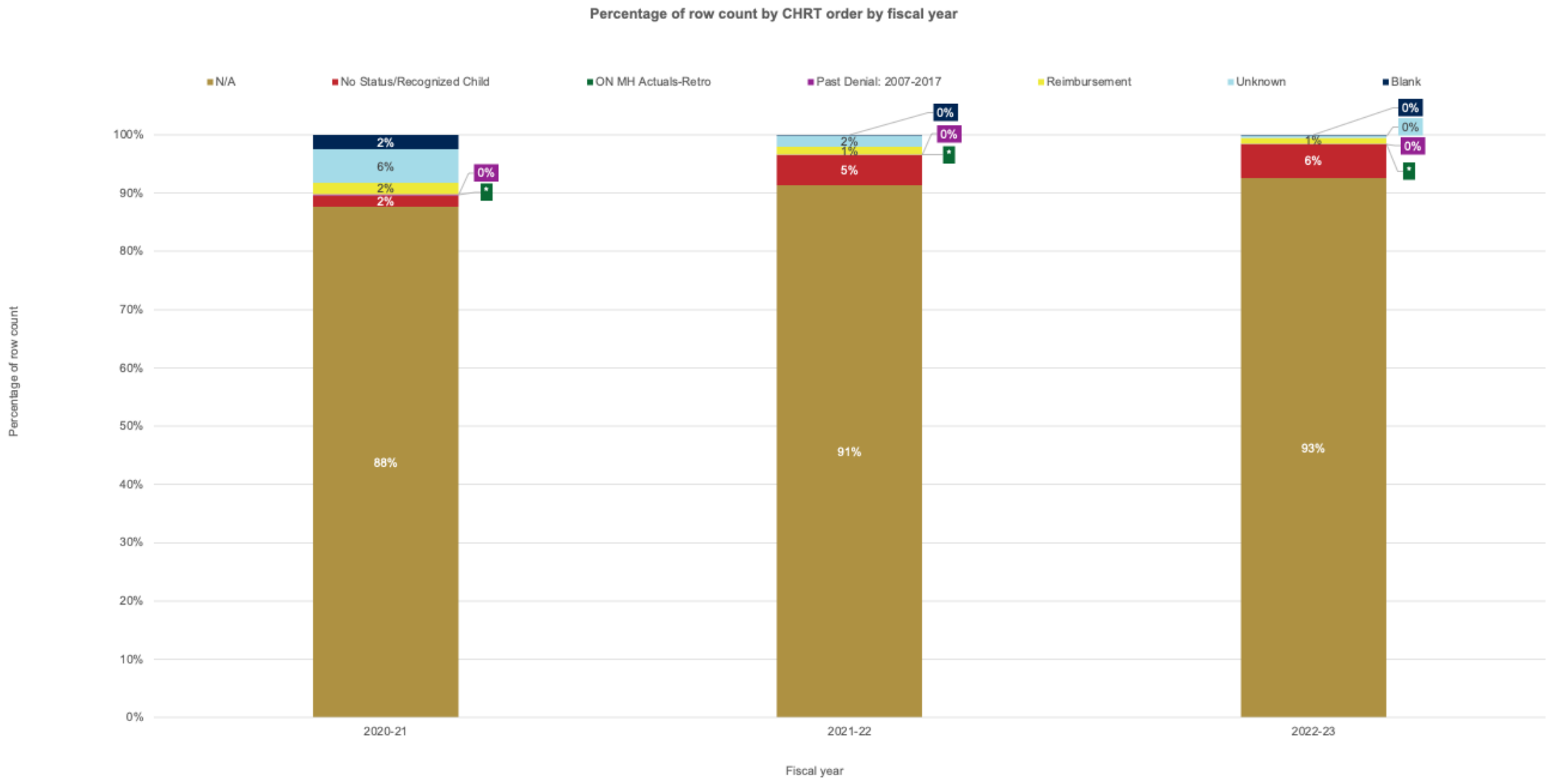
Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD IFPD

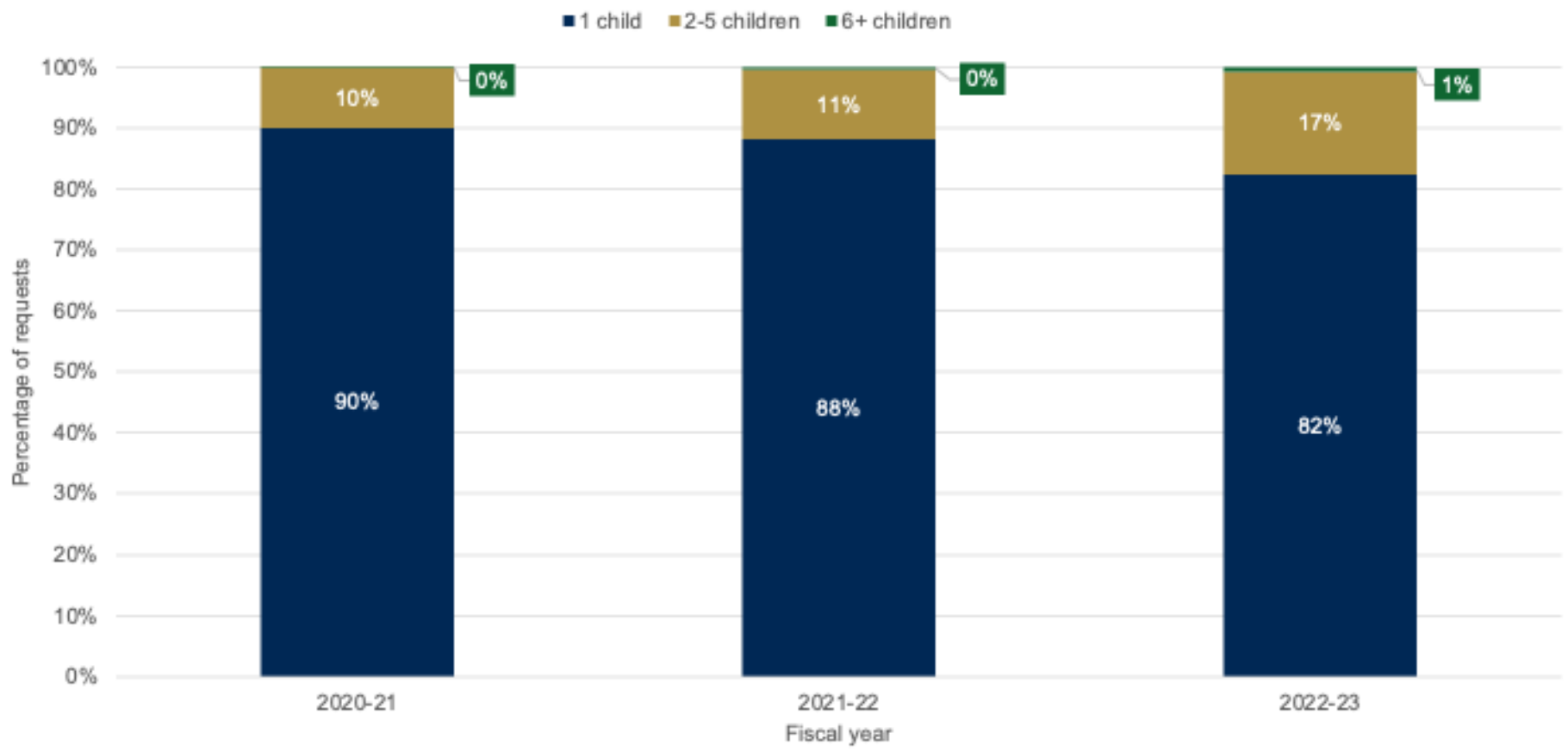


Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.

IFSD IFPD



Source: Indigenous Services Canada (ISC).
Note: Entries with fewer than 15 records were suppressed.



Source: Indigenous Services Canada (ISC).

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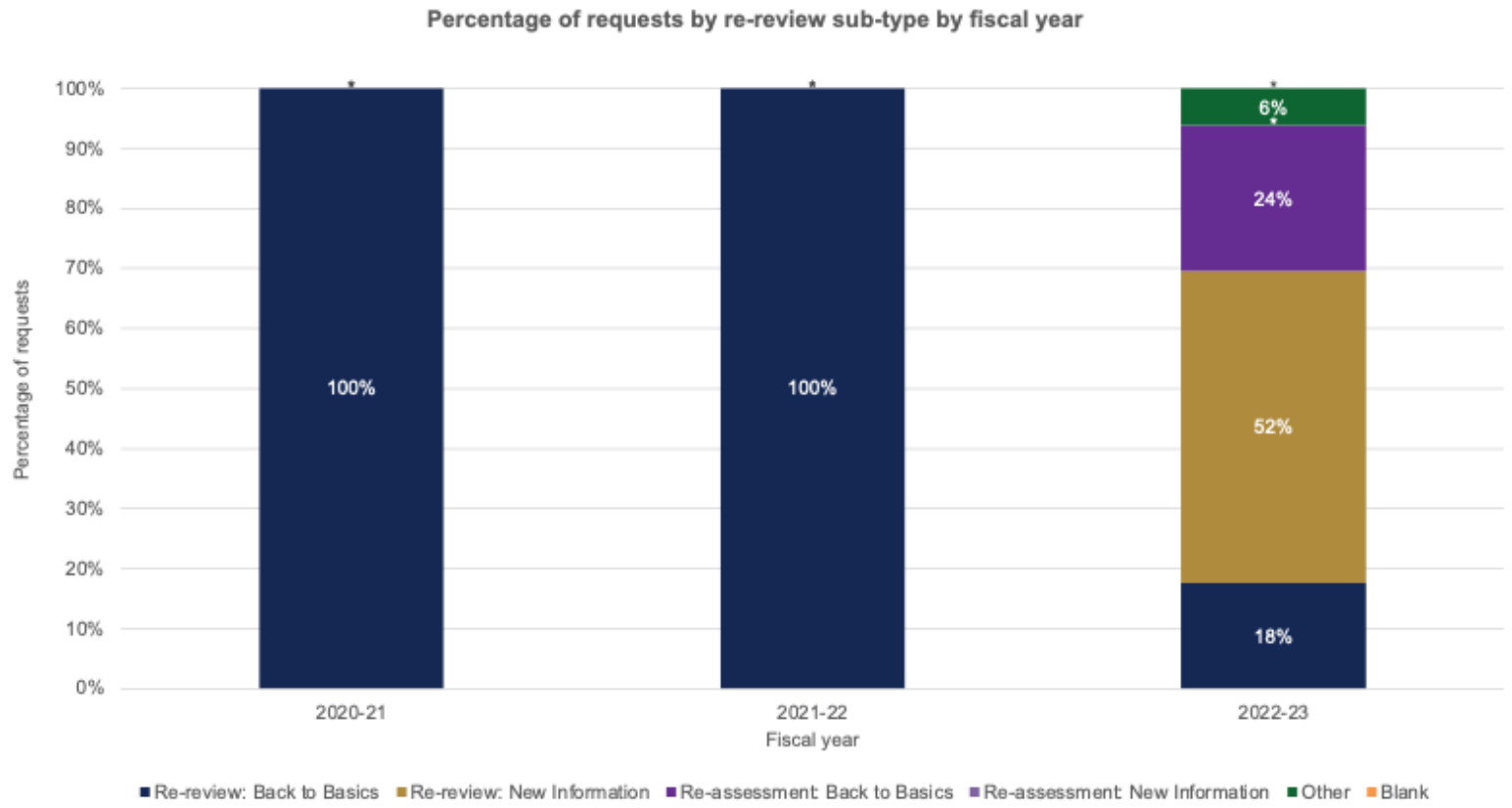
Definitions of re-review types

Term	Definition
Re-review	“a previously denied item which has been re-reviewed due to new information or the implementation of the Back-to-Basics(B2B) policies"
Re-assessment	“an item currently in escalations, not yet denied, which may be eligible for re-assessment/approval due to new information or B2B.”



Source: Indigenous Services Canada (ISC).
Notes: 1) This chart excludes requests where the re-review item submitted date is blank. 2) Entries with fewer than 15 records were suppressed.

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Jordan’s Principle: Analysis of aggregate national and regional instances of requests and expenditures

DRAFT – FOR DISCUSSION ONLY

January 14, 2025

uOttawa

Notes to reader

- Indigenous Services Canada (ISC) provided IFSD with summary aggregate statistics on Jordan's Principle on total expenditures and instances of requests (row count*) for fiscal years 2016-17 to 2023-24 (see Appendix A for the summary table).

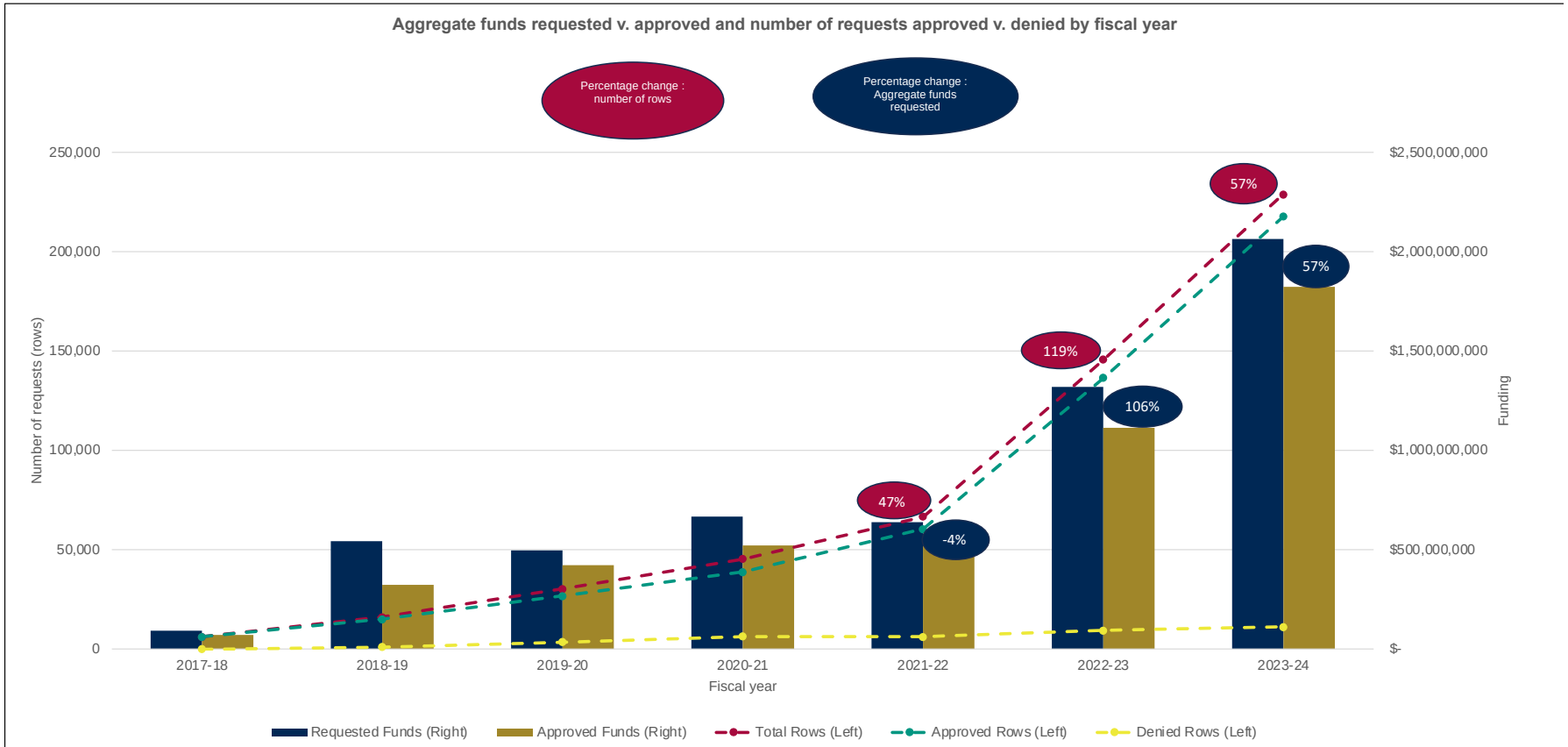
- From fiscal year 2018-19 onwards data can be segmented by residency, i.e., on-/off-reserve and unknown.

- The descriptive analysis is presented to contextualize aggregate trends in Jordan's Principle.

*Request data was extracted from ISC's GCcase system. There are four approaches to counting requests in the system (see GC Case section for additional information). The row count is the defined number of instances of children requesting support through Jordan's Principle and is used in this analysis.

Expenditures and instances of requests by fiscal year

- Expenditures (requested and approved) and instances of requests (approved and denied) have increased across fiscal years, and most significantly from fiscal year 2021-22.

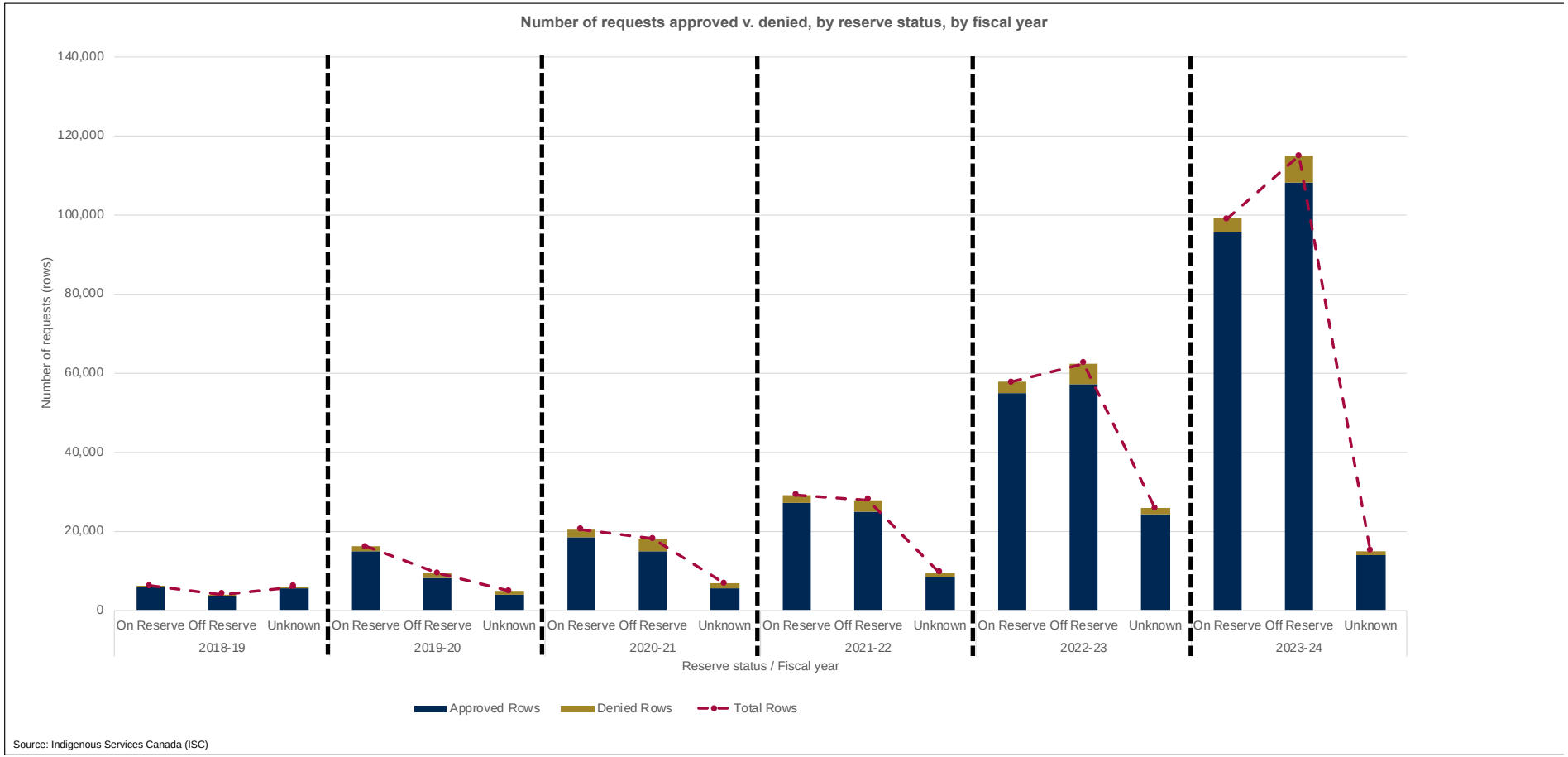


Source: Indigenous Services Canada (ISC)

IFSD IFPD

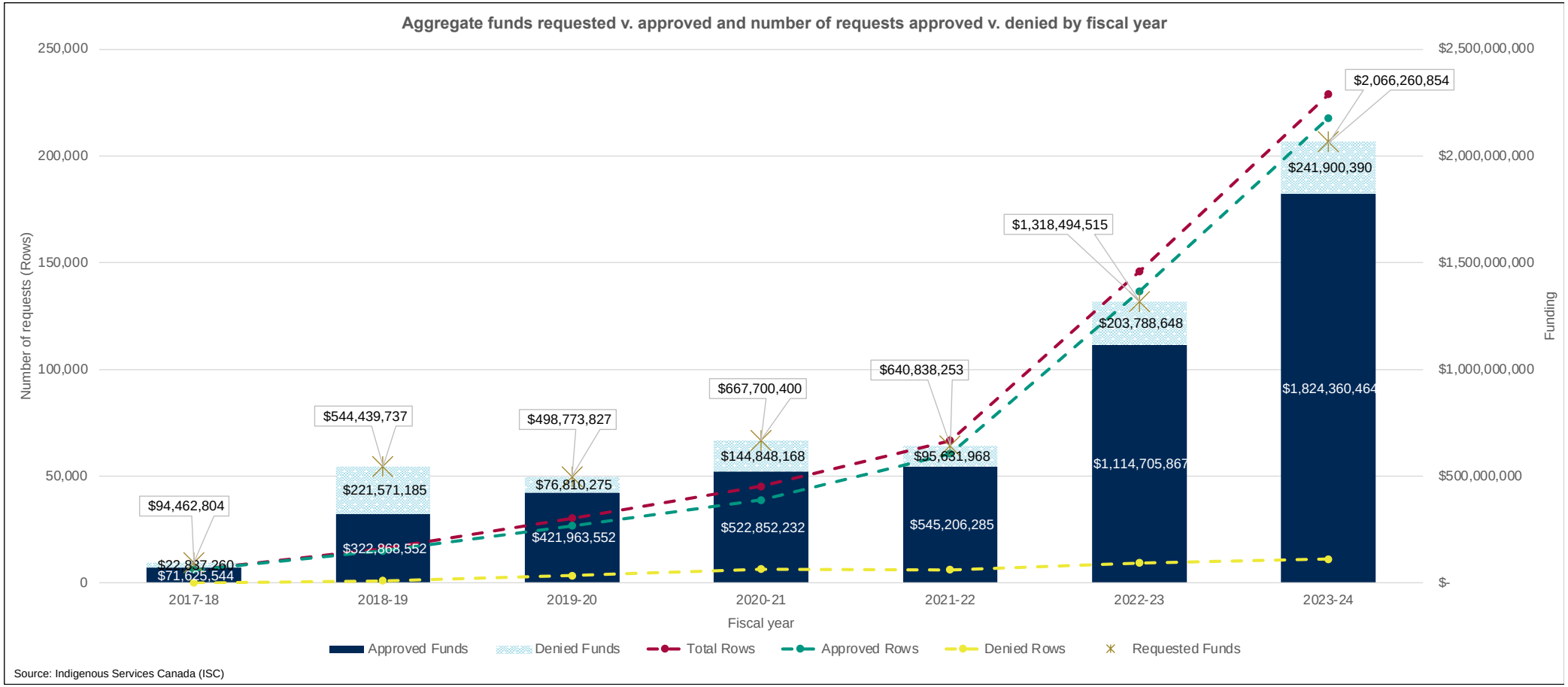
Requests by residency (on- v. off-reserve)

- From 2018-19 and 2021-22, the total instances of requests were greater on-reserve than off-reserve. The trend shifted in 2022-23, in which total instances of off-reserve requests were greater.



Source: Indigenous Services Canada (ISC)

IFSD IFPD

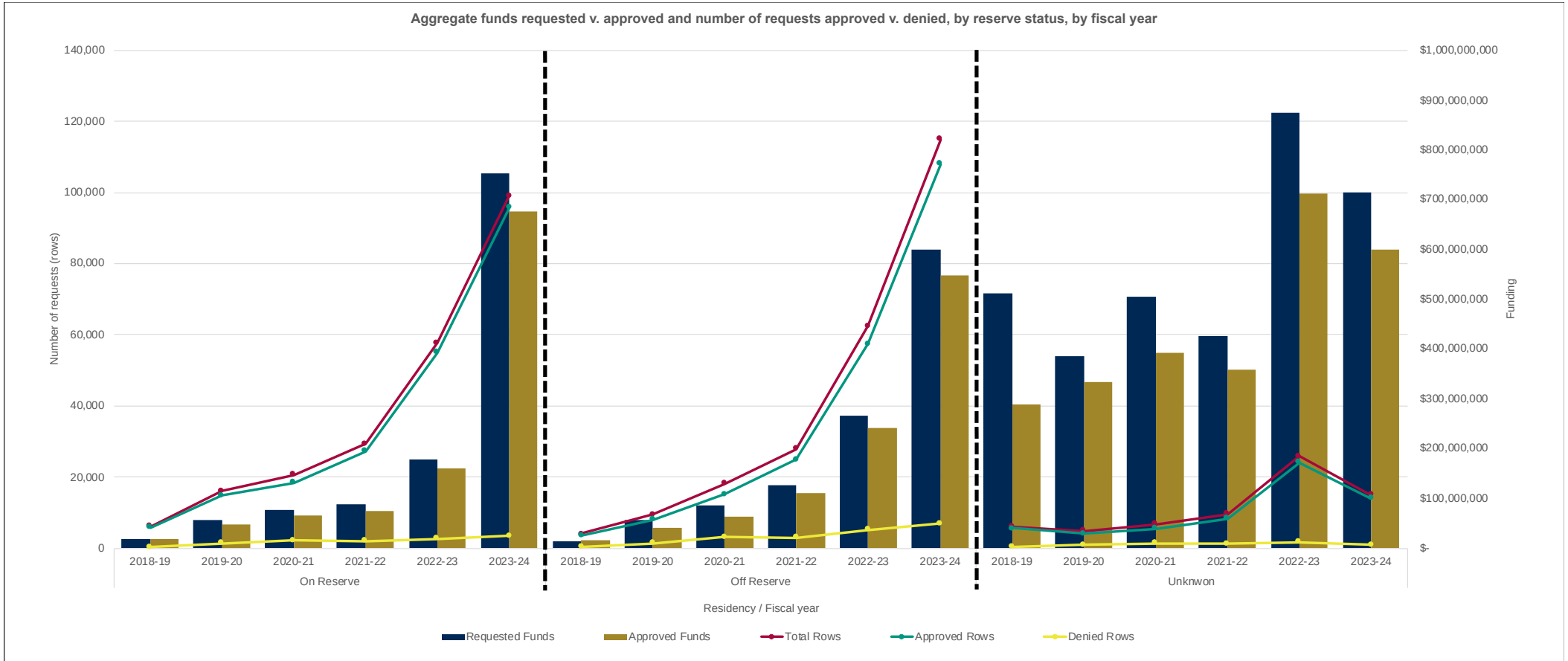


Source: Indigenous Services Canada (ISC)

IFSD
IFPD

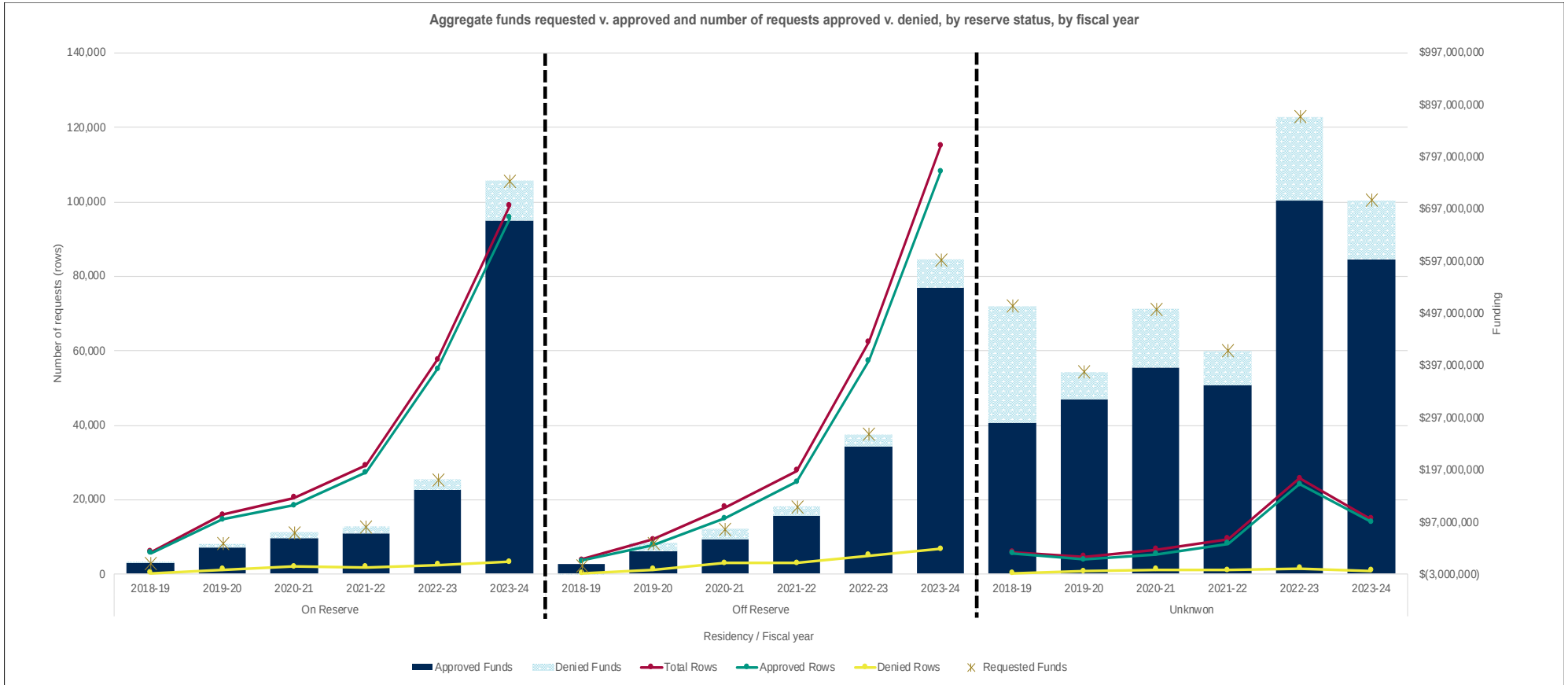
Expenditures by residency

- Despite having the lowest instances of requests, expenditures for the “Unknown” residency category are highest across fiscal years.



Source: Indigenous Services Canada (ISC)

IFSD IFPD



Source: Indigenous Services Canada (ISC)

IFSD
IFPD

Aggregate expenditures by region

- In a letter from Canada to the CHRT dated January 10, 2025, Jordan's Principle expenditures for **group requests** were provided by region.
- The data tables from the letter are included in Appendix B.
- The descriptive analysis is presented to contextualize regional expenditures in Jordan's Principle.

In its letter, Canada reported over **$8.8B in expenditures** associated to Jordan's Principle since 2018. The aggregate expenditure data from ISC and the 2024-25 year-to-date allocations from Canada's letter to the CHRT total to $6.6B. (Data for 2016 was not provided to IFSD).

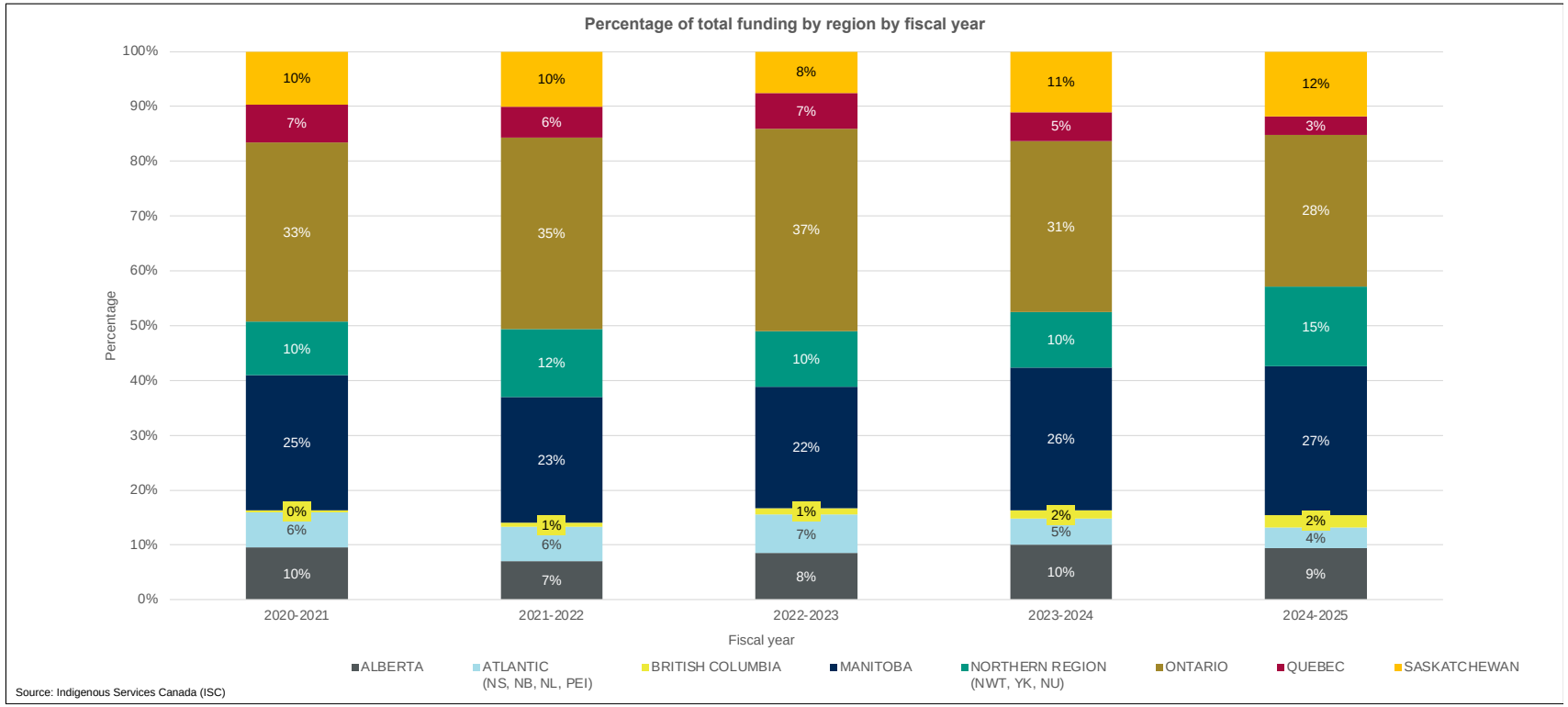
There is a $2B discrepancy.

ISC should provide a breakdown of the expenditures from 2016 associated to Jordan's Principle.

IFSD IFPD

Jordan's Principle expenditures by region

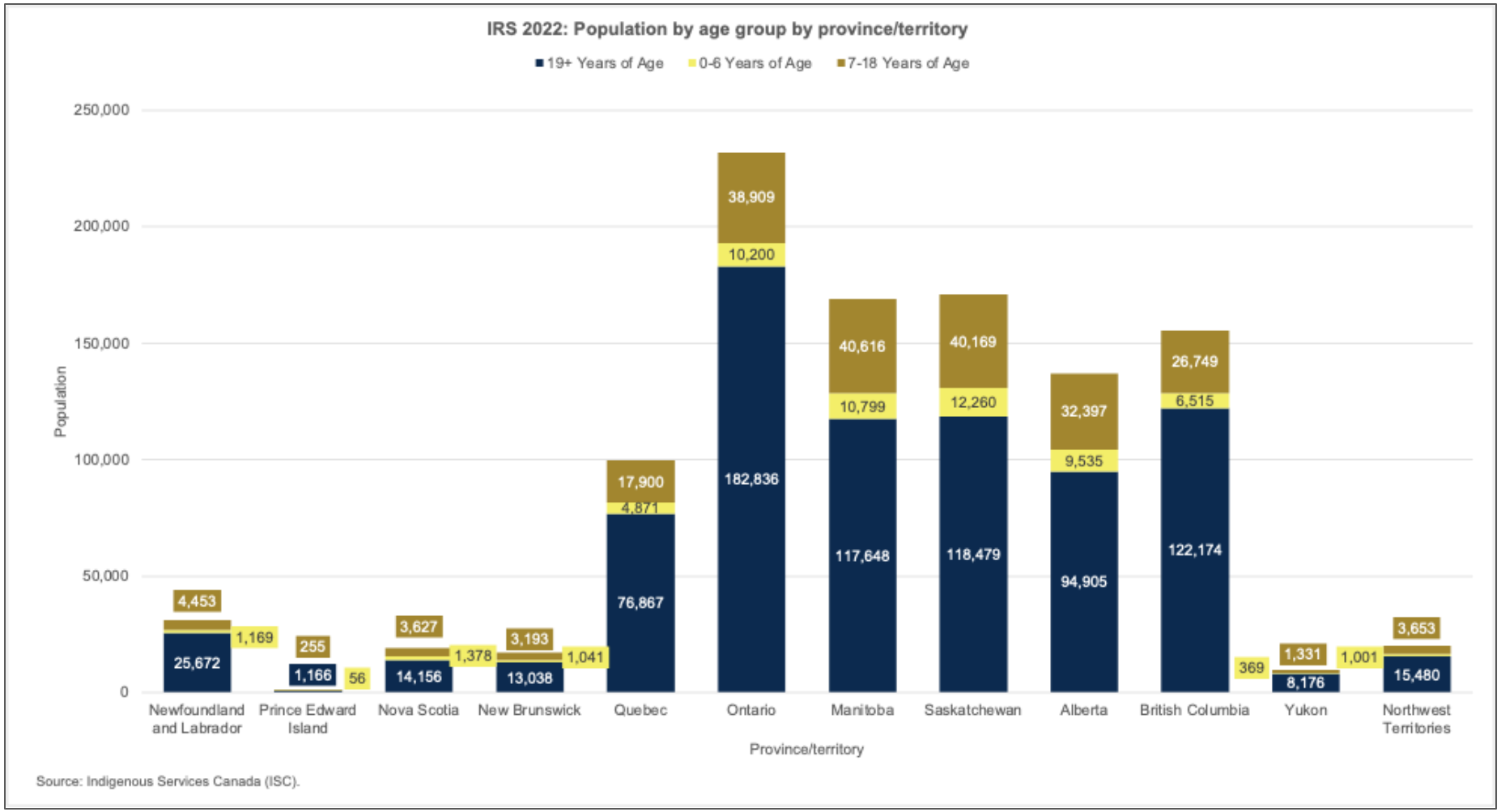
- Across fiscal years 2020-21 to 2024-25 (year-to-date), recipients in Ontario and Manitoba receive the largest shares of Jordan's Principle expenditures for group requests. In fiscal years 2022-23 and 2023-24, Ontario and Manitoba also had the largest shares of requests to Jordan's Principle. See Appendix B for amounts.



IFSD IFPD

Population by age group by region, IRS 2022

- First Nations in Ontario have the largest total population across age groups, with 21% of their total population below 19 years of age.
- Saskatchewan, Alberta and Manitoba have the largest populations of children under the age of 19, followed by Ontario.
- By share of total population, Saskatchewan and Alberta's population below 19 years of age represent 31%, Manitoba's share is 30%.



Source: Indigenous Services Canada (ISC).

IFSD
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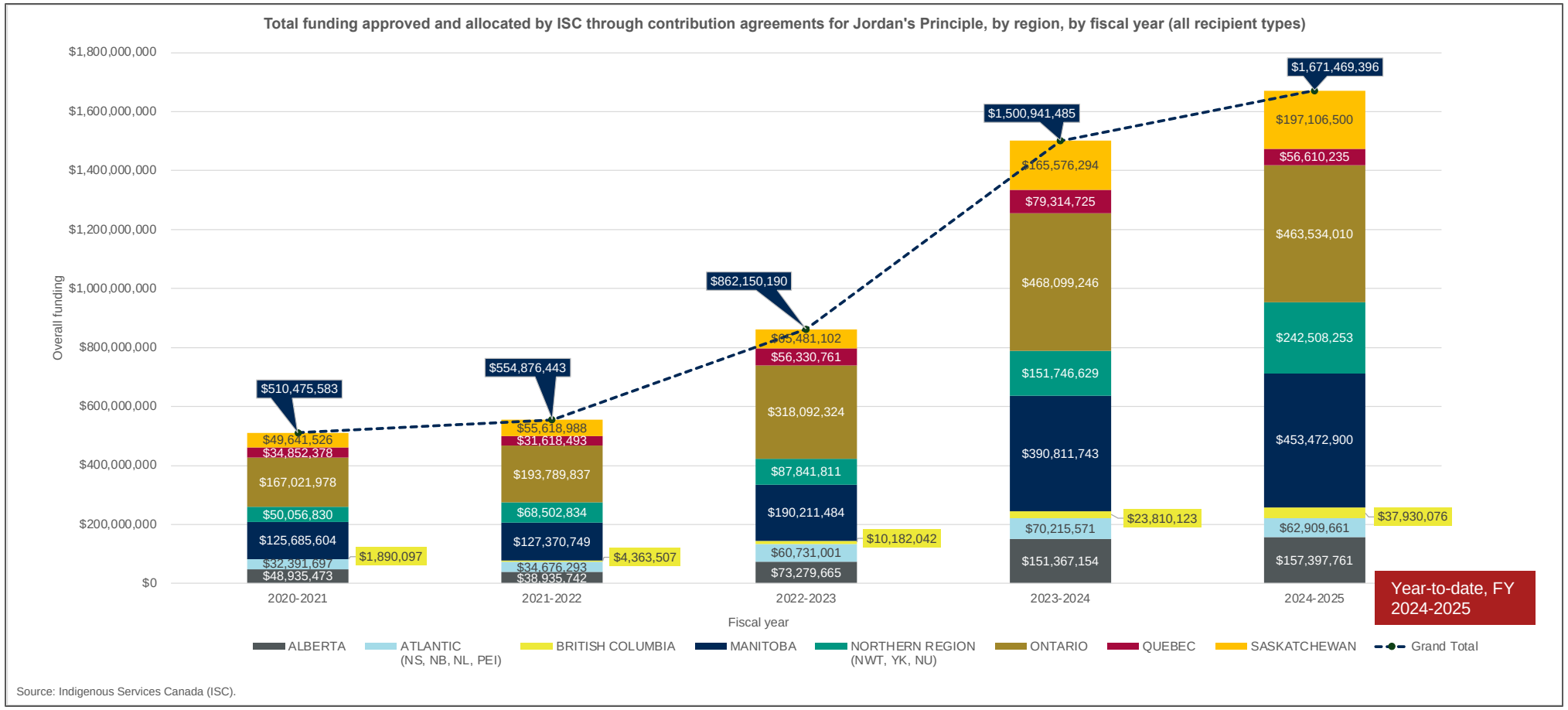
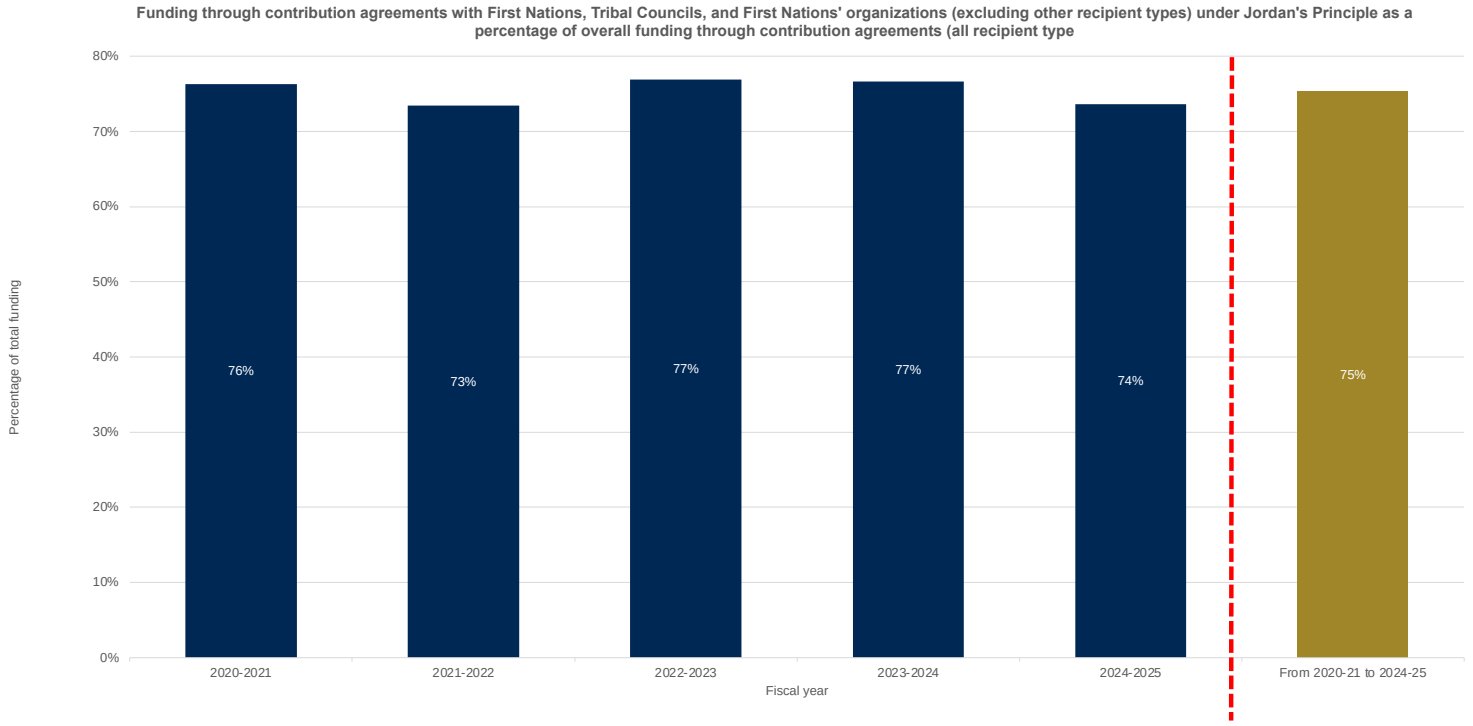
Funding amounts by region for all recipient types



Source: Indigenous Services Canada (ISC).

Share of allocations to First Nations, Tribal Council and First Nations' organizations

- On average, 75% of total expenditures for group requests through Jordan's Principle across fiscal years is through contribution agreements with First Nations, Tribal Councils, and First Nations' organizations.



Source: Indigenous Services Canada (ISC).
Note: According to ISC, service providers include "Provincial/Territorial School Boards, First Nations or Provincial Health Authorities/Boards, Child and Family Services, Friendship Centres, Cultural Centres, and others."

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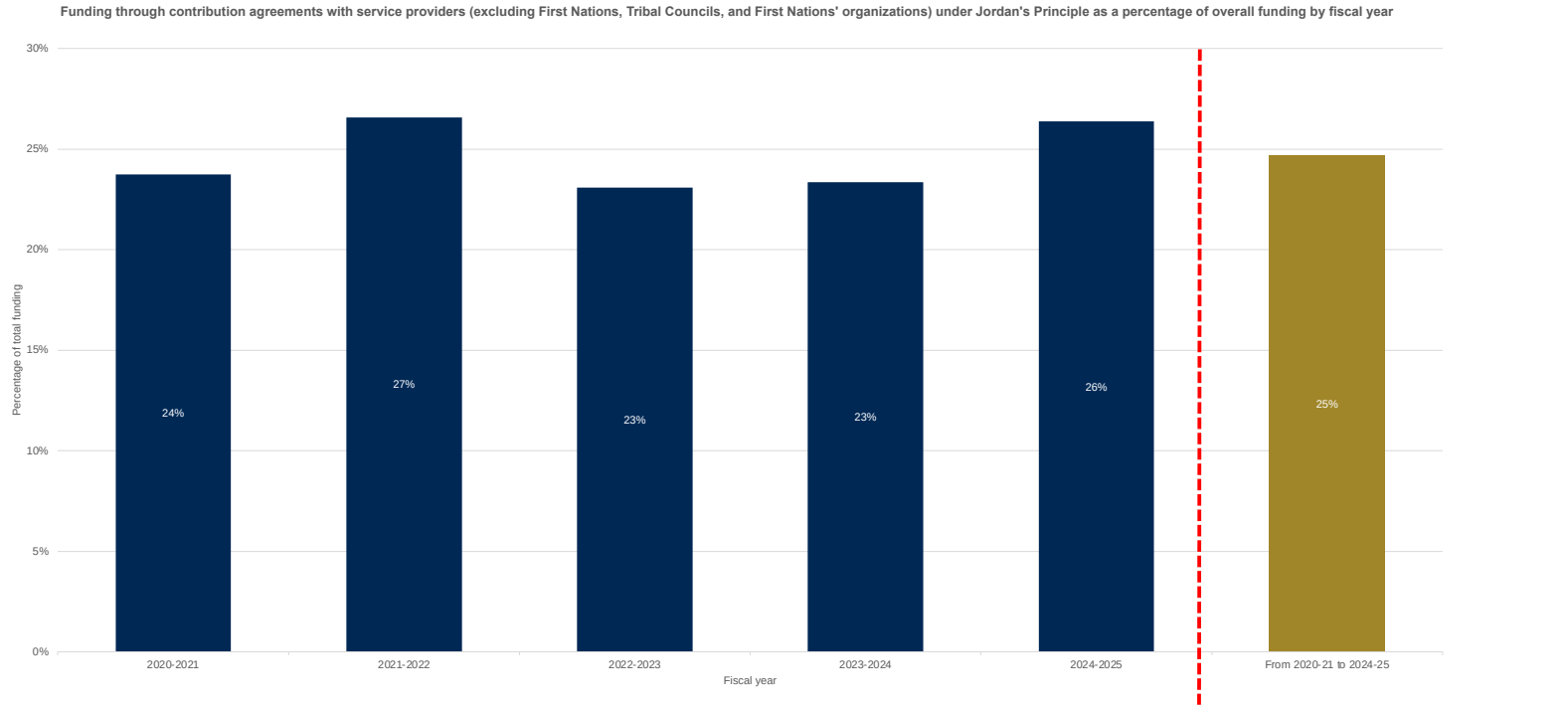
Share of allocations to other recipient types

- Approximately 25% of all expenditures for group requests through contribution agreements are paid to other recipient types, i.e., **not** First Nations, Tribal Councils, and First Nations' organizations. Other recipient types include school boards, provincial health authorities, etc.



Source: Indigenous Services Canada (ISC).
Note: According to ISC, service providers include "Provincial/Territorial School Boards, First Nations or Provincial Health Authorities/Boards, Child and Family Services, Friendship Centres, Cultural Centres, and others."

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Allocations to First Nation v. other recipient types

- Across regions, there is some variability in annual share by recipient type. The majority, however, are allocated to First Nations, Tribal Councils and First Nations' organizations.
- Allocations to both recipient groups are growing at relatively consistent rates.
- The exceptions are Alberta and the Northern Region which have higher shares allocated to other recipient types.
  - This may be attributable to funding allocated to non-First Nations entities or payment practices, e.g., paying providers directly.

Percentage of contributions by fiscal year to First Nations, Tribal Councils and First Nations' organizations v. total recipients

Region	2020-2021	2021-2022	2022-2023	2023-2024	2024-2025	Grand Total
ALBERTA	69%	37%	47%	48%	43%	47%
ATLANTIC(NS, NB, NL, PEI)	94%	92%	88%	88%	94%	91%
BRITISH COLUMBIA	98%	98%	93%	92%	89%	91%
MANITOBA	85%	84%	84%	88%	92%	88%
NORTHERN REGION(NWT, YK,	19%	24%	31%	33%	26%	28%
ONTARIO	91%	90%	92%	92%	89%	91%
QUEBEC	72%	80%	80%	72%	79%	76%
SASKATCHEWAN	61%	59%	60%	68%	66%	65%
Grand Total	**76%**	**73%**	**77%**	**77%**	**74%**	**75%**

Reconciling aggregate national and regional allocations through Jordan's Principle

- At IFSD's request, ISC provided total aggregate national funding for Jordan's Principe (up to fiscal year 2023-24).
  - IFSD requested total regional funding but ISC refused to provide the information indicating a lack of resources on January 13, 2025.

- Canada's January 10, 2025 letter to the CHRT indicates that the regional data is for **group requests**. Using the aggregate national funding data provided by ISC, group requests make up more than three-quarters of spending across fiscal years.

- Assuming the balance is for individual requests, Jordan's Principle is principally funding group requests.

	Fiscal year			
	2020-2021	2021-2022	2022-2023	2023-2024
Total regional spending (Letter to CHRT January 10, 2025)	$ 510,475,583	$ 554,876,443	$ 862,150,190	$ 1,500,941,485
Total approved funds (From ISC to IFSD December 19, 2024)	$ 522,852,232	$ 545,206,285	$ 1,114,705,867	$ 1,824,360,464
Difference ($)	$ 12,376,649	$ (9,670,158)	$ 252,555,677	$ 323,418,979
Share (regional/total approved)	98%	102%	77%	82%

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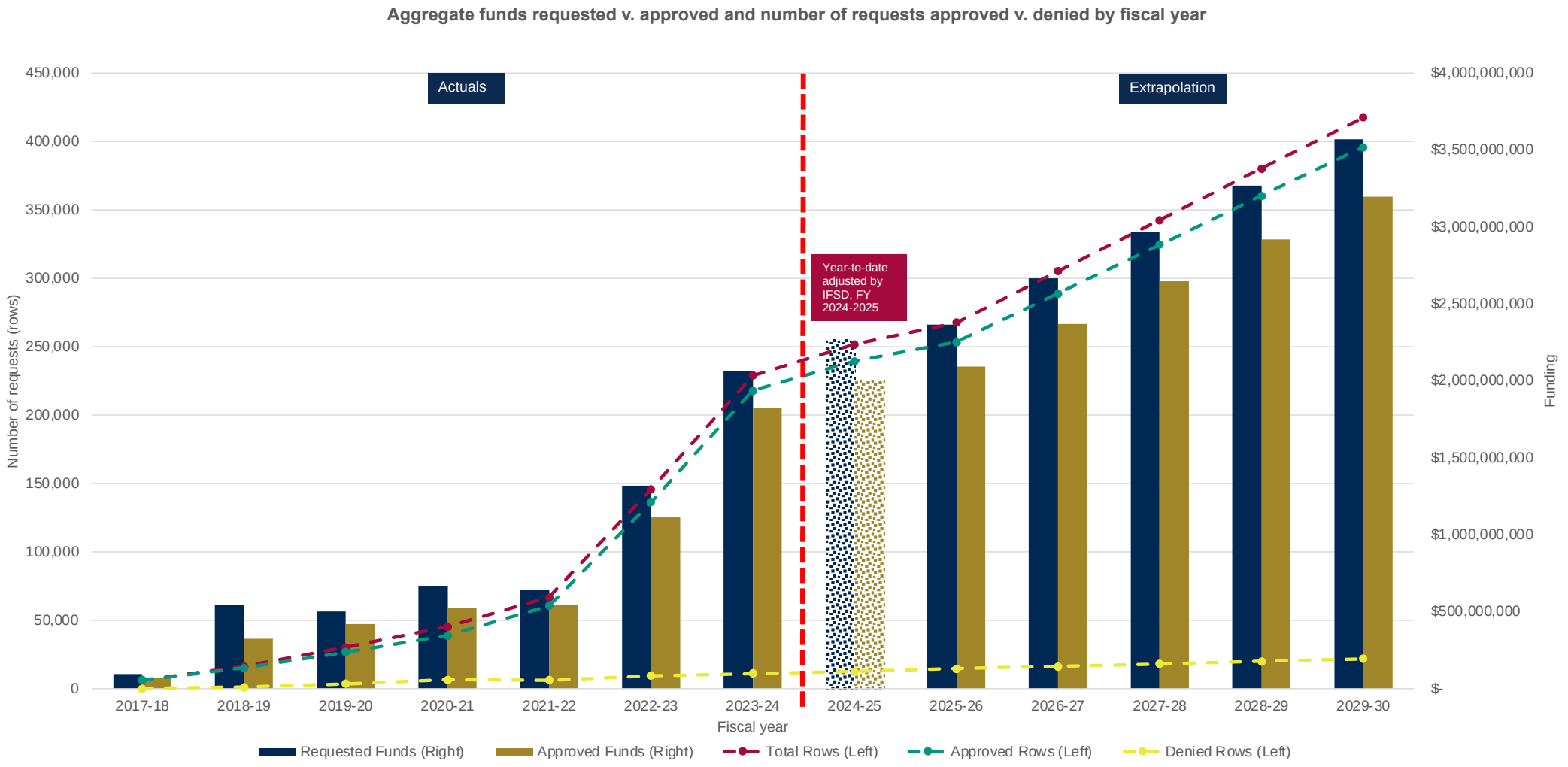
Extrapolating expenditures

Extrapolations of national trends

- Based on past trends, instances of requests (row count) and funding associated to Jordan's Principle are projected to increase.

- The two years prior to fiscal year 2024-25 had exceptional growth.
  - IFSD applied the year-to-date expenditures for 2024-25 (provided by Canada in a January 10, 2025 letter to CHRT) and assumed they represented 80% (based on an average from the last two fiscal years of that data). IFSD added an additional 20% to the expenditures to model an anticipated expenditures for 2024-25.
  - For fiscal year 2024-25, IFSD inferred the number of requests and requested amount using data from the prior fiscal year and the grossed 2024-25 expenditure.
  - For fiscal years other than 2024-25, IFSD assumed growth rates using ISC-provided data, based on the trend formula.

- At current rates, by fiscal year 2029-30, approved funds are projected to be over $3B and total instances of requests reaching approximately 400,000.



Source: Indigenous Services Canada (ISC)

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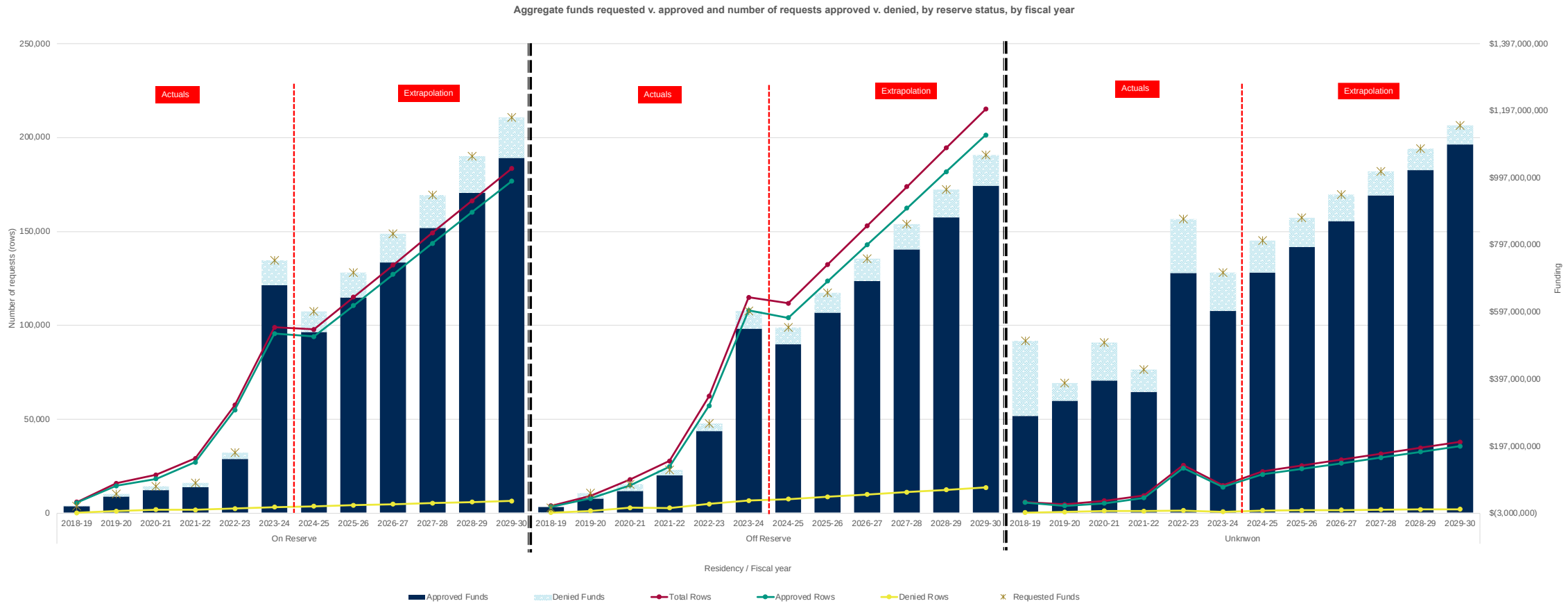
Extrapolations by residency

- Extrapolating current trends, the instances of requests (row count) and approved funds will increase across residency categories (on-reserve, off-reserve, unknown).

- **This approach is different than the national extrapolation approach.** The two years prior to fiscal year 2024-25 had exceptional growth. The projections for fiscal year 2024-25 reflect aggregate trends with a dip in the extrapolated number of requests and funds (approved and denied).
  - Data from 2024-25 was not available by residency status.
  - To extrapolate, IFSD applied trend analysis. **For this reason, the trends are different than the national extrapolations.**

- The steepest increase in requests (row count) is projected off-reserve. Approved funds will continue to increase across categories, with the highest amounts on-reserve and in the unknown category.



Source: Indigenous Services Canada (ISC)

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Appendix A

Aggregate statistics by reserve status: total rows, total rows by decision, and requested and approved amounts, 2016-17 to 2023-24.						
Reserve Status	**Fiscal Year**	**Total Rows**	**Approved Rows**	**Denied Rows**	**Requested Funds ($)**	**Approved Funds ($)**
On Reserve	2016-17	NA	NA	NA	NA	NA
	2017-18	NA	NA	NA	NA	NA
	2018-19	6,115	5,796	319	19,252,496	19,061,318
	2019-20	16,054	14,765	1,289	55,657,819	48,006,031
	2020-21	20,535	18,463	2,072	77,521,140	66,347,025
	2021-22	29,263	27,283	1,980	88,208,743	75,427,063
	2022-23	57,699	55,058	2,641	178,839,948	159,506,164
	2023-24	99,051	95,659	3,392	751,646,929	676,399,703
Off Reserve	2016-17	NA	NA	NA	NA	NA
	2017-18	NA	NA	NA	NA	NA
	2018-19	4,000	3,629	371	14,122,470	16,197,565
	2019-20	9,361	7,981	1,380	57,493,933	41,226,868
	2020-21	18,039	15,019	3,020	84,656,007	63,837,506
	2021-22	27,892	24,902	2,990	127,311,923	110,425,660
	2022-23	62,382	57,299	5,083	265,213,439	241,914,390
	2023-24	114,915	108,055	6,860	600,091,885	547,600,107
Unknown	2016-17	NA	NA	NA	NA	NA
	2017-18	NA	NA	NA	NA	NA
	2018-19	6,022	5,686	336	511,064,771	287,609,669
	2019-20	4,866	4,027	839	385,622,075	332,730,653
	2020-21	6,761	5,417	1,344	505,523,253	392,667,701
	2021-22	9,558	8,327	1,231	425,317,587	359,353,562
	2022-23	25,737	24,128	1,609	874,441,128	713,285,313
	2023-24	14,964	14,030	934	714,522,041	600,360,654
Total	2016-17	NA	NA	NA	NA	NA
	2017-18	6,254	6,174	80	94,462,804	71,625,544
	2018-19	16,137	15,111	1,026	544,439,737	322,868,552
	2019-20	30,281	26,773	3,508	498,773,827	421,963,552
	2020-21	45,335	38,899	6,436	667,700,400	522,852,232
	2021-22	66,713	60,512	6,201	640,838,253	545,206,285
	2022-23	145,818	136,485	9,333	1,318,494,515	1,114,705,867
	2023-24	228,930	217,744	11,186	2,066,260,854	1,824,360,464

Notes: (1) Statistics for 2016-17 to 2022-23 were generated using datasets provided to the IFSD merged with respective un-grouped values for requested and approved funds; (2) Requests for 2023-24 were extracted from the Jordan's Principle Case Management System (November 4, 2024) and may not align with other analyses.

Appendix B

Summary table – total expenditures by region

TABLE 1: total funding overall approved and allocated by ISC through contribution agreements for each region under the Jordan's Principle initiative. Represents funding to First Nations, Tribal Councils, First Nations' organizations, as well as service providers including Provincial/Territorial School Boards, First Nations or Provincial Health Authorities/Boards, Child and Family Services, Friendship Centres, Cultural Centres, and Others.

Region	2020-2021	2021-2022	2022-2023	2023-2024	2024-2025	Grand Total
ALBERTA	$48,935,473.00	$38,935,742.00	$73,279,665.00	$151,367,153.56	$157,397,761.00	$469,915,794.56
ATLANTIC(NS, NB, NL, PEI)	$32,391,697.00	$34,676,293.00	$60,731,001.00	$70,215,571.00	$62,909,661.00	$260,924,223.00
BRITISH COLUMBIA	$1,890,096.52	$4,363,507.13	$10,182,041.76	$23,810,123.11	$37,930,076.14	$78,175,844.66
MANITOBA	$125,685,604.00	$127,370,749.00	$190,211,484.00	$390,811,743.44	$453,472,900.00	$1,287,552,480.44
NORTHERN REGION(NWT, YK, N	$50,056,830.00	$68,502,833.69	$87,841,811.00	$151,746,628.50	$242,508,252.95	$600,656,356.14
ONTARIO	$167,021,977.87	$193,789,837.00	$318,092,323.75	$468,099,245.94	$463,534,010.09	$1,610,537,394.65
QUEBEC	$34,852,378.00	$31,618,493.00	$56,330,761.00	$79,314,725.00	$56,610,235.00	$258,726,592.00
SASKATCHEWAN	$49,641,526.40	$55,618,988.00	$65,481,102.00	$165,576,294.00	$197,106,500.00	$533,424,410.40
Grand Total	**$510,475,582.79**	**$554,876,442.82**	**$862,150,189.51**	**$1,500,941,484.55**	**$1,671,469,396.18**	**$5,099,913,095.85**

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Summary table – Expenditures to First Nations, Tribal Councils and First Nations' organizations by region

TABLE 2: funding approved and allocated by ISC through contribution agreements with First Nations, Tribal Councils, and First Nations' organizations under the Jordan's Principle initiative.

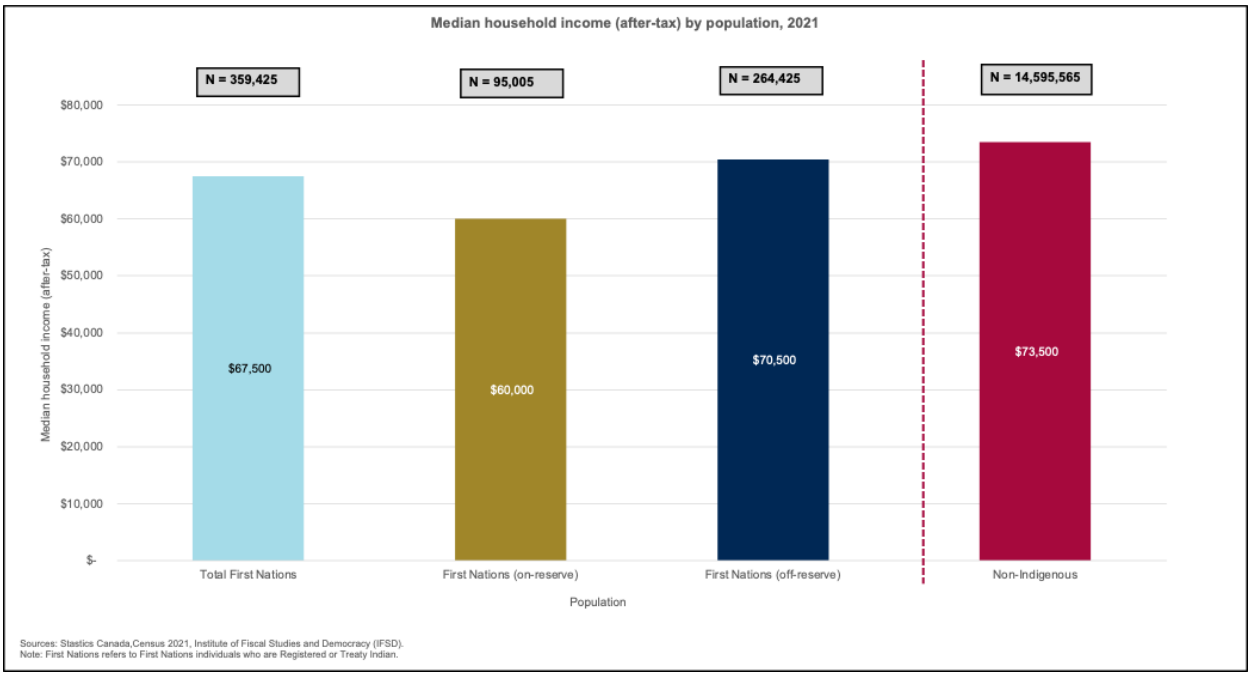
Region	2020-2021	2021-2022	2022-2023	2023-2024	2024-2025	Grand Total
ALBERTA	$33,733,825.00	$14,301,474.00	$34,332,835.00	$72,509,536.56	$67,767,524.00	$222,645,194.56
ATLANTIC(NS, NB, NL, PEI)	$30,555,177.00	$32,047,898.00	$53,633,339.00	$61,704,469.00	$58,939,824.00	$236,880,707.00
BRITISH COLUMBIA	$1,860,096.52	$4,273,507.13	$9,442,730.40	$21,804,099.95	$33,806,020.88	$71,186,454.88
MANITOBA	$106,298,676.00	$106,785,824.00	$159,488,648.00	$345,517,154.44	$416,706,435.00	$1,134,796,737.44
NORTHERN REGION (NWT,YK,	$9,350,914.00	$16,601,598.69	$27,541,407.00	$49,580,168.50	$62,817,554.95	$165,891,643.14
ONTARIO	$152,428,430.87	$175,156,443.00	$293,991,433.75	$429,585,114.94	$414,671,794.09	$1,465,833,216.65
QUEBEC	$25,058,558.00	$25,158,605.00	$45,292,202.00	$57,311,959.00	$44,794,205.00	$197,615,529.00
SASKATCHEWAN	$30,099,264.40	$33,073,257.00	$39,481,382.00	$112,614,960.00	$131,069,637.00	$346,338,500.40
Grand Total	**$389,384,941.79**	**$407,398,606.82**	**$663,203,977.15**	**$1,150,627,462.39**	**$1,230,572,994.92**	**$3,841,187,983.07**

Appendix F

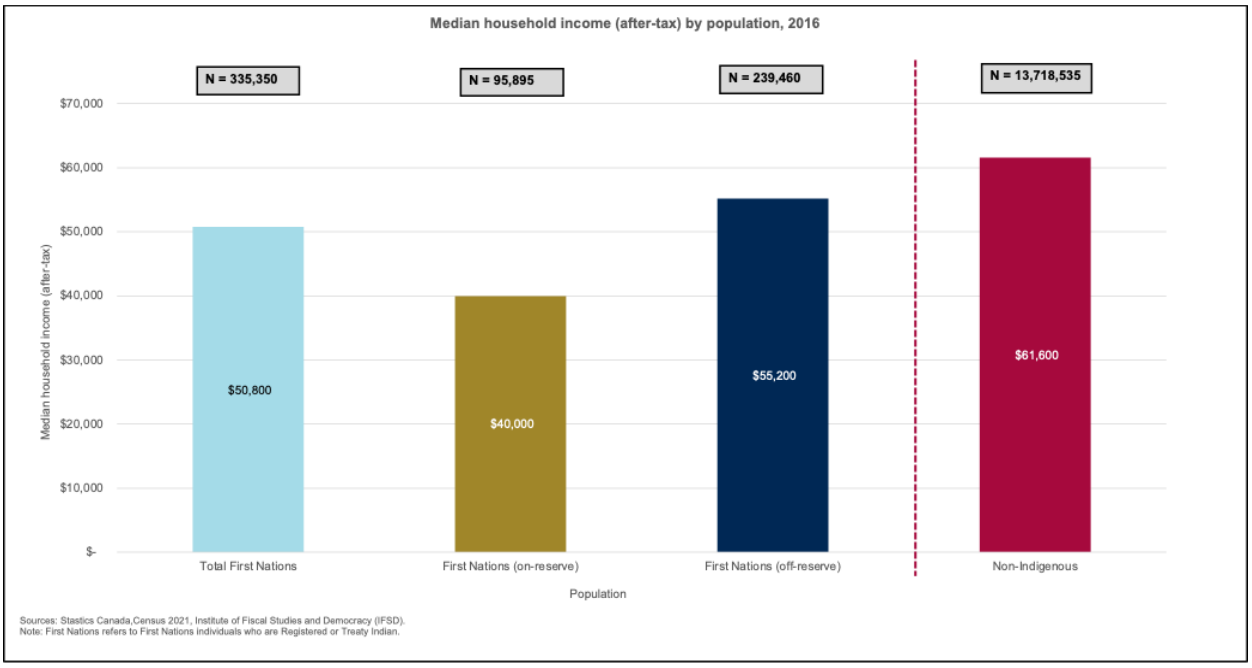
Socio-economic Gaps between on-reserve First Nations, off-reserve First Nations, and non-Indigenous populations

Household income and rates of poverty

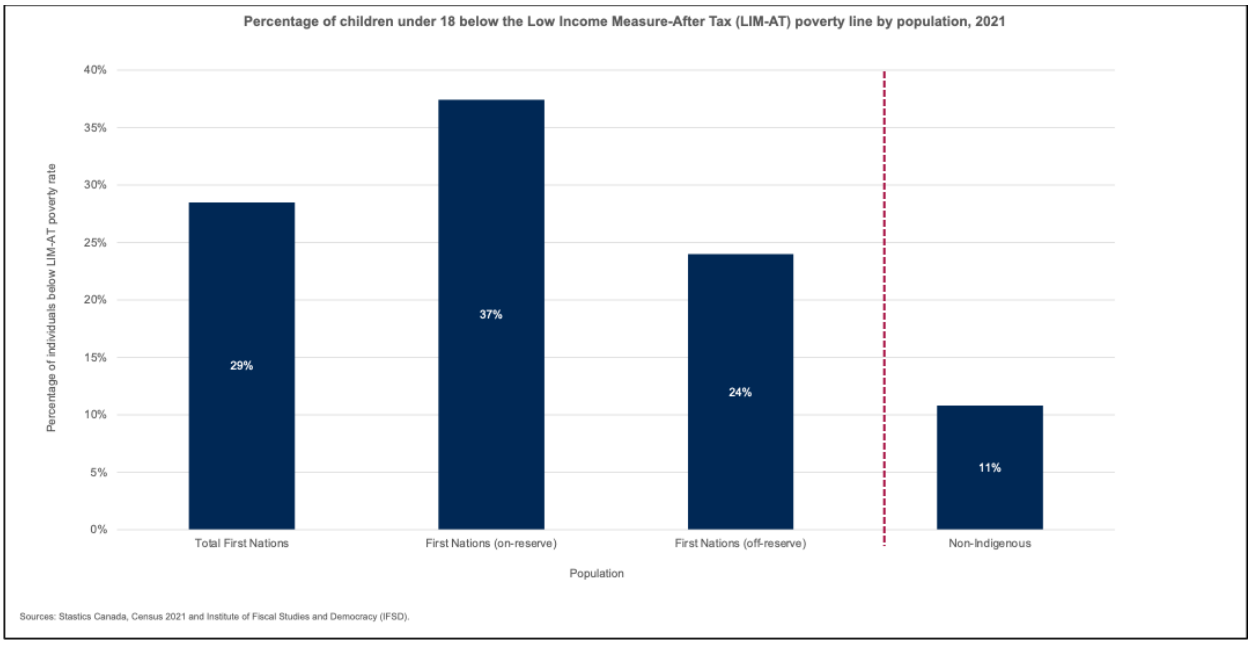
Household incomes are lower for First Nations households, especially those on-reserve. In 2021, median household income for non-Indigenous households was $6,000 higher than that of First Nations households and $13,500 higher than that of on-reserve First Nations households.



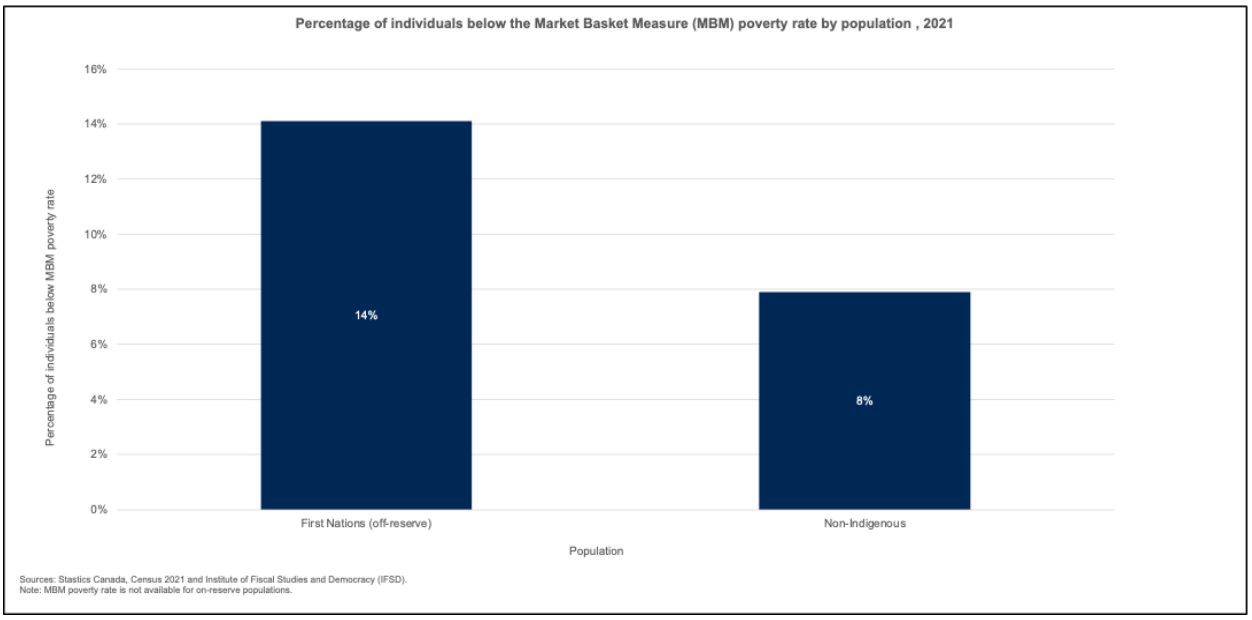
The gap between median household income is even larger in 2016, a period without the federal transfer payments associated with COVID-19. In 2016, median household income for non-Indigenous households was $10,800 higher than that of First Nations households and $21,600 higher than that of on-reserve First Nations households.



First Nations children, especially those on-reserve, experience higher rates of poverty compared to non-Indigenous children. Using the Low Income Measure, the non-Indigenous child poverty rate is 18 percentage points lower than the First Nations child poverty rate and 26 percentage points lower than the on-reserve First Nations child poverty rate.

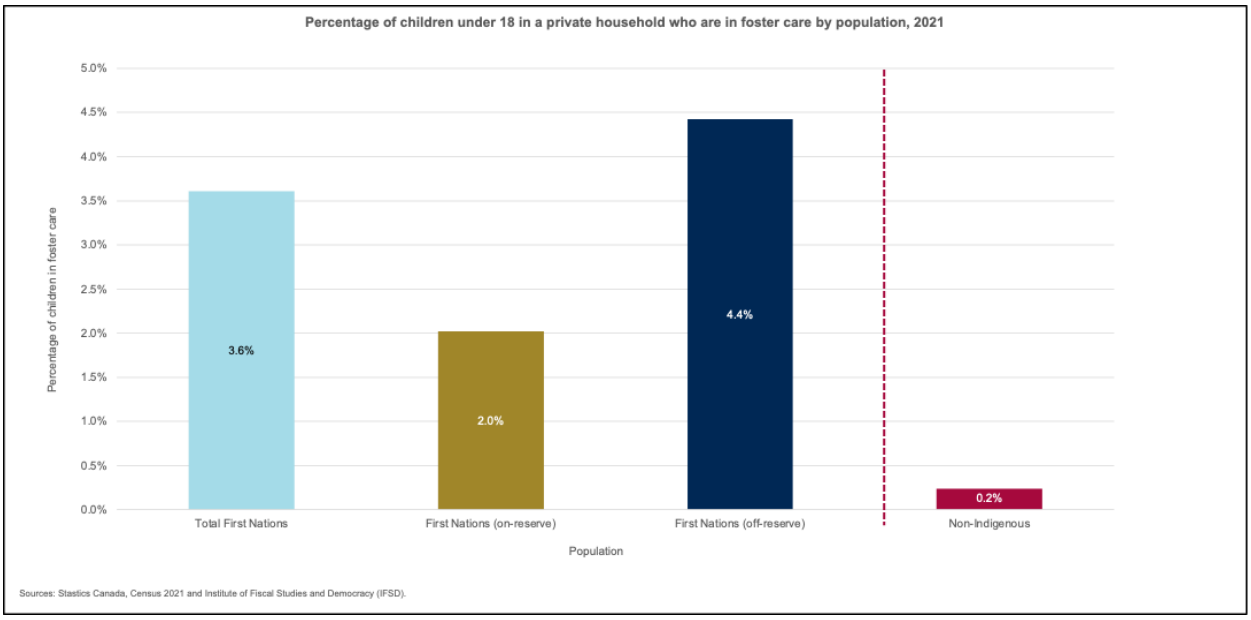


Statistics Canada does not report the Market Basekt Measure (MBM) poverty rate for on-reserve populations. However, there is still a significant gap of 6 percentage points between off-reserve First Nations and non-Indigneous poverty rates.



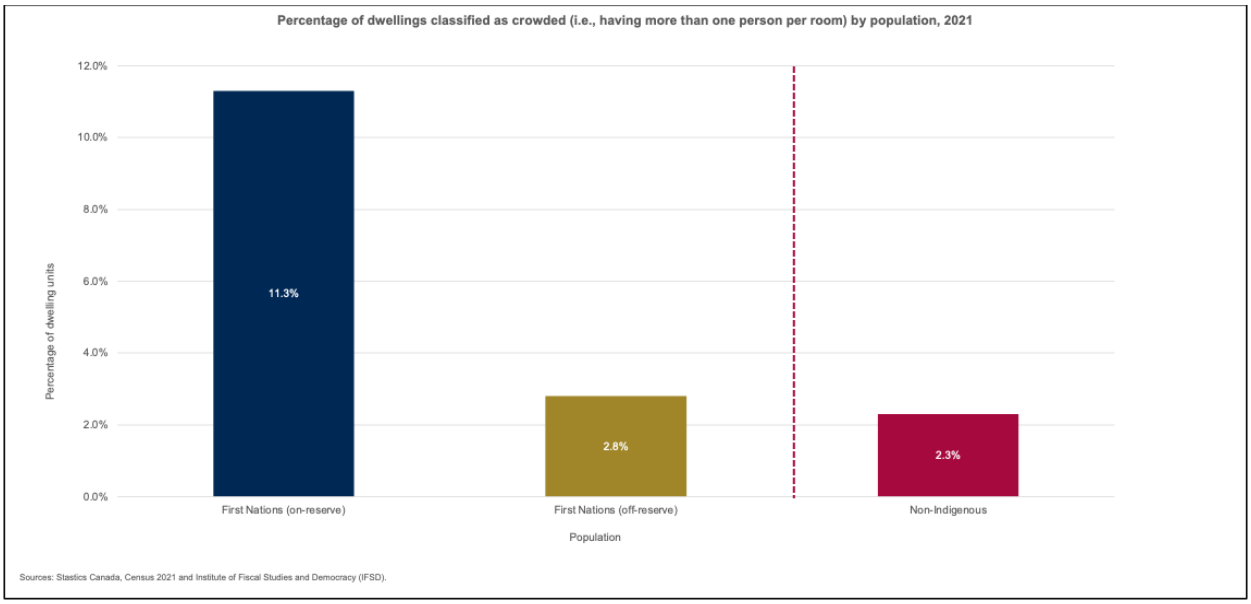
Child and family services

First Nations children are approximately 18 times more likely to be in foster care than non-Indigenous children. This discrepancy is even more pronounced for children on-reserve, who are more than twice as likely to be in foster care than First Nations children living off-reserve.

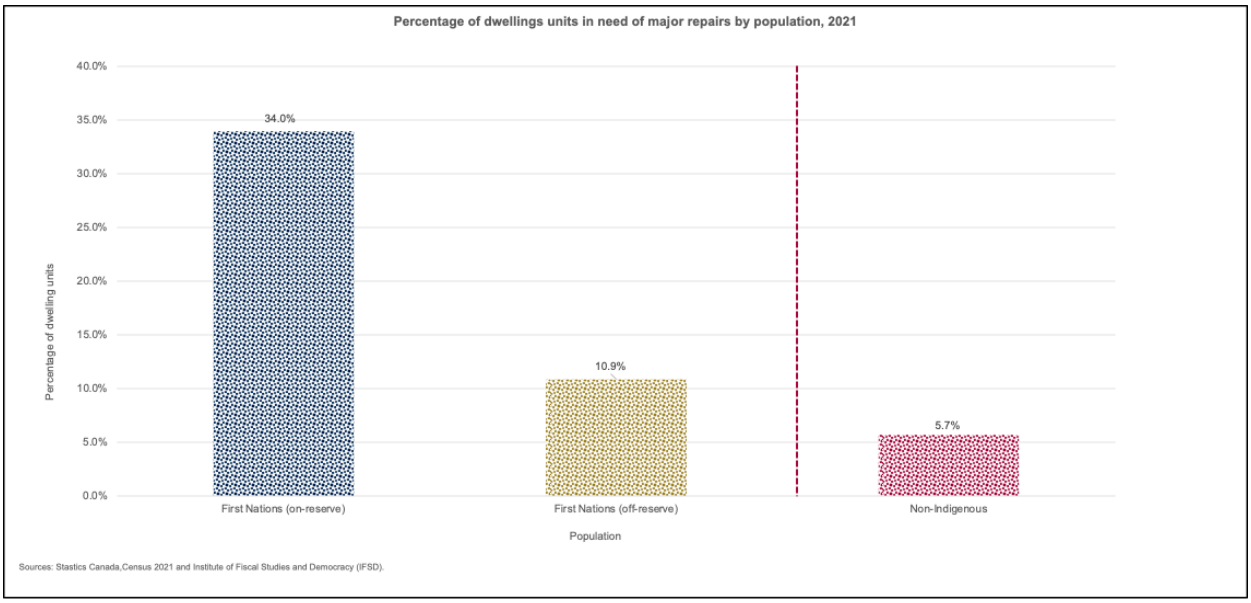


Housing crowding and condition

Overcrowded housing is significantly more common on-reserve than off-reserve. Dwellings on-reserve are about four times more likely to be crowded (i.e., with one more more person per room) than those off-reserve.

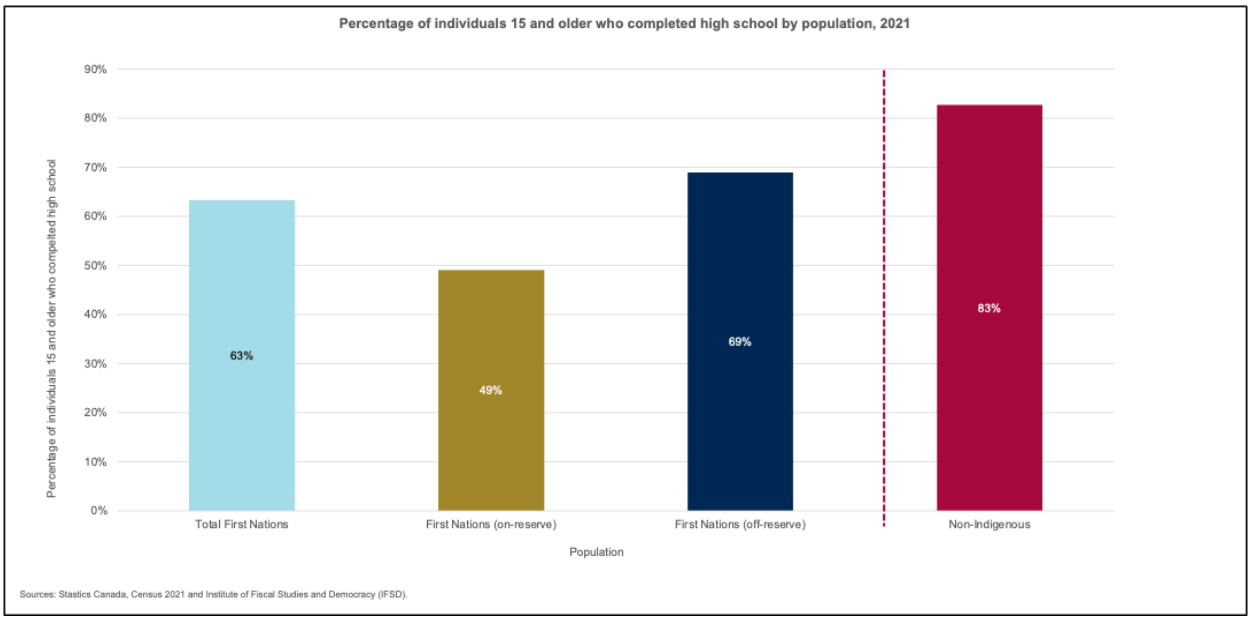


Housing condition is also generally lower on-reserve than off-reserve. Dwellings on-reserve are about three times more likely to be in need of major repairs.



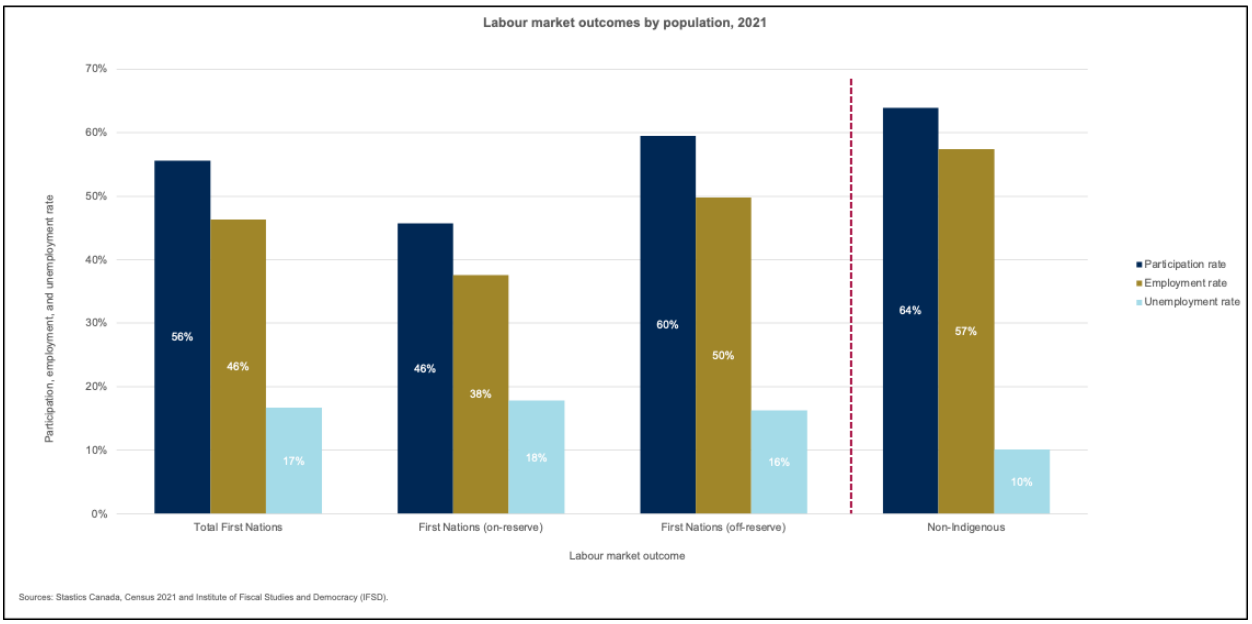
Education

High school completion is lower in First Nations communities. First Nations over the age 15 on-reserve are approximately 34 percentage points less likely to have completed high school than non-Indigenous individuals in the same age group.



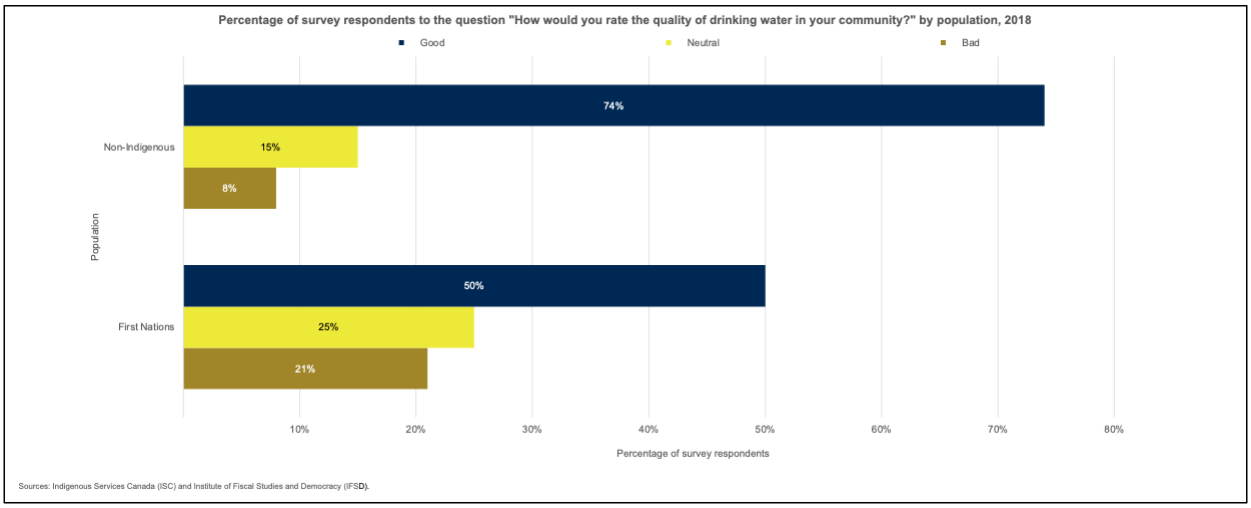
Labour market outcomes

First Nations adults are less likely to be employed or in the labor force and are more likely to be unemployed than non-Indigenous adults. This discrepancy is more pronounced for First Nations adults living on-reserve.

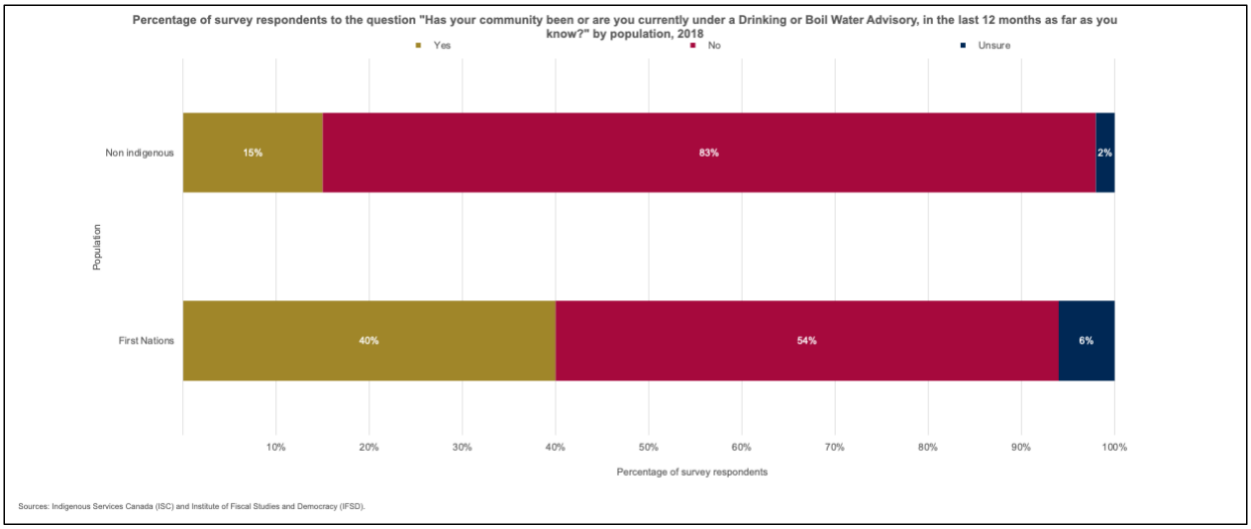


Water and wastewater

The most recent available data comparing drinking water quality in First Nations and non-Indigenous communities is from 2018. Survey respondents in First Nations communities were less likely to rate their drinking water as good and more than twice as likely to rate their drinking water as bad.



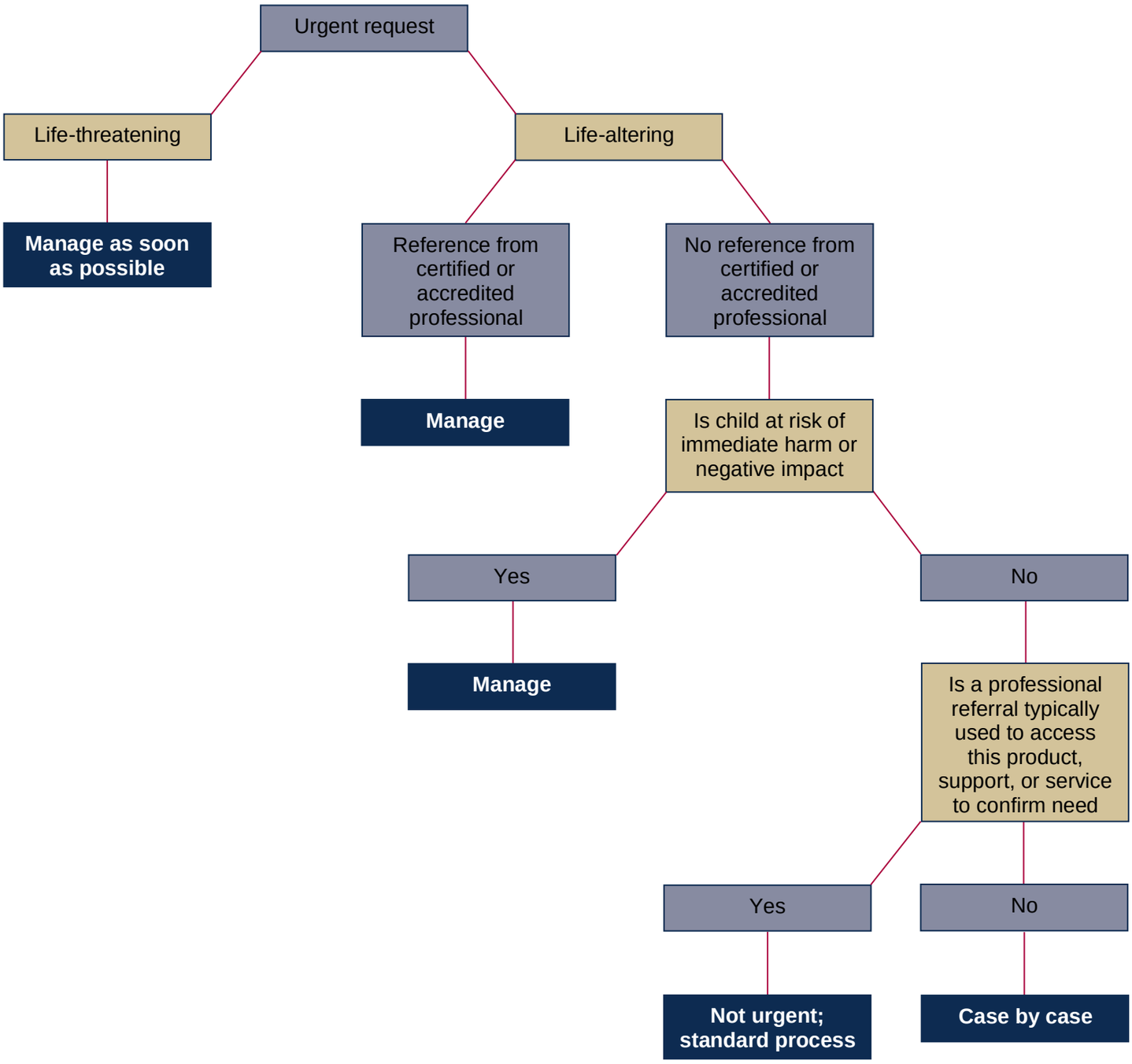
Using the same out-of-date information as above, First Nations survey respondents were also more than twice as likely to have been covered by a Drinking or Boil Water Advisory in the past 12 months.



Appendix G

Jordan's Principle: Urgency decision tree

The approach below is an exercise to triaging requests through Jordan's Principle by prioritizing life-threatening cases, while still treating some non-life-threatening cases as urgent.[1]



[1] Some medical professionals consider non-life-threatening conditions as urgent.
J. Turnbull, G. McKenna, J. Prichard, et al., "Results from the literature review: how do policy-makers, professionals and service users define and make sense of urgent care?" in *Sense-making strategies and help-seeking behaviours associated with urgent care services: a mixed-methods study*, Southampton (UK): NIHR Journals Library; 2019 Jul. (Health Services and Delivery Research, No. 7.26.), chapter 3, https://www.ncbi.nlm.nih.gov/books/NBK544484/; Alberta Health Services, "Find Healthcare," n.d., https://www.albertahealthservices.ca/findhealth/service.aspx?id=1003853#:~:text=Medical%20care%20for%20complex%20or,Airdrie%20Community%20Health%20Centre and Centre intégré universitaire de santé et de services sociaux de l'Estrie - Centre hospitalier universitaire de Sherbrooke, « Emergency Room Triage, » n.d., https://www.santeestrie.qc.ca/en/care-services/general-services/emergency/triage

Appendix H

Workshop summary: Jordan's Principle working group meeting #1

Overview

On September 18-19, 2023, the Institute of Fiscal Studies and Democracy (IFSD) convened the first meeting of a working group on Jordan's Principle. The regionally-representative working group met in Ottawa to discuss operating realities, successes, challenges, and considerations for refining/improving the delivery of Jordan's Principle. The Chatham House Rule was followed.

Twenty-five participants, representing 18 organizations, participated at the meeting (with a small number of individuals joining virtually). Participation was geographically broad, with at least one participant joining from 11 of 13 provinces and territories.

Working group members reflected on their regional practices and highlighted the differences in their approaches and results. The value of convening a regionally diverse group of Jordan's Principle managers, coordinators, and practitioners was unanimously supported by participants.

Working group members identified four matters that require attention and action:

1) Define a common understanding of Jordan's Principle and its goals (among First Nations, providers, ISC, etc.);
2) Standardize the significant regional variation in approvals;
3) Define a common approach to data gathering to understand needs and gaps;
4) Convene those supporting and delivering Jordan's Principle in First Nations to share wise practices and lessons.

The informative discussion (see Appendix A for the agenda) coalesced around these four matters and is summarized across those themes below. In addition to these matters, the working group reviewed considerations for the future of Jordan's Principle through the lenses of policy goals, structure, and accountability.

The working group committed to reconvening in winter 2024 to review data gathering and indicators for assessing the performance of Jordan's Principle.

The need for a common understanding of Jordan's Principle

A legal principle, Jordan's Principle is meant to support the immediate needs of First Nations children wherever they reside. Jordan's Principle is not a 'golden bandaid' or a gap filler. It is intended to ensure First Nations children can access the supports and services they need, when they need them, no matter where they live.

The application of Jordan's principle has changed over the years by ISC, e.g., from emergency recourse to the back to basics approach. While Jordan's Principle is meeting real needs for children, gaps that should be closed continue to exist.
Programs and services adjacent to Jordan's Principle, e.g., education, health, etc. have gaps and Jordan's Principle has become a first point of contact for children and families with needs. This can create a negative feedback loop with increased reliance on Jordan's Principle without addressing the root causes of need.

Compounding this challenge are jurisdictional disputes, namely, with the provinces, when it comes to allocating resources to solve problems for First Nations children. The provincial standard of funding is often unclear, inconsistent, or undocumented, making it difficult to understand what is the normative standard.

Developing a common understanding of Jordan's Principle and its goals is necessary to establish data gathering approaches, evaluation practices, and crucially, to assess changes in the well-being of First Nations children.

The regional working group emphasized that Jordan's Principle should continue to be a resource for children. It can, however, be adjusted to better capture and meet their needs.

Regional variations

Different approaches, different people, and different rules yield different results. The regional working group shared the diversity of their approaches to delivering Jordan's Principle (see Appendix B for an overview of regional approaches to requests). There were creative approaches and solutions that were shared, but it was clear that what was permitted in one region, e.g., pre-paid credit cards, gift cards, vouchers, was not necessarily permitted in others. The variance in accepted approaches needs to be addressed.

There was special emphasis placed on the importance of relationships with regional ISC officials, namely focal points. As in any interaction, positive relationships can promote collaboration and mutually beneficial solutions. Certain regions highlighted the strengths and benefits of their positive working relationships with regional ISC officials. One region even noted that their ISC counterparts spend time learning about their First Nations and have quarterly meetings scheduled with First Nations and their regional support organization. These regular interactions are opportunities for information sharing, learning, and problem solving, which promote better outcomes for the region.

Participants underscored the impact one public servant can have in managing their request. If a Jordan's Principle request cannot be approved regionally, it is escalated to headquarters, entering 'the ISC blackbox,' leaving the requestor with limited information and recourse until a decision is rendered. With significant staffing changes in some regions, participants expressed challenges with consistent decision-making at the regional level. What an official four weeks ago may have approved, another may be denying. The advocacy for consistency is left to those working in and supporting First Nations. The Caring Society is regularly called upon for support and intervention across regions when challenges arise with delayed responses and denied claims.

There was a call for greater transparency and information sharing on how decisions are made regionally, what parameters are in place to guide decisions, and whether there are inter-regional assessments of consistency in the application of Jordan's Principle. Participants suggested that ISC's officials and those working in First Nations and supporting organizations should all access the same training to ensure consistent information is shared. In their discussion on the future of Jordan's Principle, the regional working group noted the need for national standards and goals with local care and control of delivery to mitigate the variances.

Data gathering and analysis
Across regions, data gathering and analysis can be improved. There is a general need to capture information about needs, i.e., *why* children and families are seeking support through Jordan's Principle. This type of information can help to address gaps in existing programs and services and support First Nations in identifying local and regional needs. There was consensus in the regional working group that a new approach to data gathering is required.

Given the different types of requests, individual, group, and capital, gathering relevant information is essential for advocacy and planning. Beyond issues of delays, there were concerns raised about capital requests through the Canadian Human Rights Tribunal's (CHRT) order, CHRT 41. It was indicated by several participants that the ISC team dedicated to handling capital requests are not part of Jordan's Principle and consequently, do not always understand its purpose. The information gap means that decisions and requirements, e.g., prior group request required to approve a capital request, service must already be in place to approve capital request, are inconsistent with the spirit and intent of Jordan's Principle. Ensuring that these experiences are captured and compared can help to improve the operationalization of Jordan's Principle.

Better information gathered consistently means opportunities to more effectively monitor and evaluate decisions, with linkages to the needs of children.

There were calls for First Nations-led regional data centres that steward or gather data (based on the direction of First Nations) to track needs and outcomes for children with Jordan's Principle requests. Data comparability, consistency in availability, privacy, security, and compliance with OCAP ® Principles were identified as initial considerations for improving information with Jordan's Principle.

Convening and sharing practices
Participants indicated that this was the first time that they gathered on Jordan's Principle across regions, with exception to the Jordan's Principle Operations Committee (JPOC). Some regions even noted they had been dissuaded from convening or from comparing their practices with other regions by ISC.

The regional working group reiterated the importance and utility in convening as a group. The opportunity to exchange practices, share experiences and ideas, and explore solutions was appreciated.

Future considerations
The regional working group discussed considerations for the future of Jordan's Principle. There is a need to build a common understanding of Jordan's Principle for consistency in supporting the needs of First Nations children. Practical considerations, e.g., multi-year funding for recurring or long-term needs, were identified alongside structural issues in the operation of Jordan's Principle.

Participants discussed future considerations for Jordan's Principle through the its policy goals, structure, and accountability mechanisms.

Policy goal
Jordan's Principle is about substantive equality for First Nations children. Reconceptualizing First Nations through the lens of Citizens + helps to reinforce the differentiated needs and obligations to achieving substantive equality. In practice, this means closing existing gaps in programs and services and supporting First Nations children wherever they live.

Structure
National standards and goals for Jordan's Principle should be defined with local care and control in delivery. Regionally diverse systems can meet regional needs. Regional approaches and implementation should be guided by regional leadership, with the potential for regional bodies to manage funding.

Accountability
Defining a clear baseline for First Nations children is necessary. Indicators for measuring change in well-being should be linked to the policy goal of substantive equality through the lens of citizens +. Gathering relevant and consistent information will require capacity. This means people, systems, and processes that will require additional support. The bodies governing the operationalization of Jordan's Principle should be accountable for outcomes, e.g., First Nations, regional organizations, federal government.

Next steps

The regional working group committed to continuing its work and defined action items for IFSD:

1) Schedule follow-up meetings (late winter/early spring 2024), to define an approach to data gathering ;
2) Produce a draft map of Jordan's Principle and its operation (including JPOC, JPAT, service providers, etc.);
3) Review ISC's Departmental Plan (including revenue and expenditure projections);
4) Build a table of common terms, accountable actors, etc. (for contributions by working group members); and,
5) Ask ISC for clarification on its internal budgeting and cost estimation practices.

IFSD will share progress updates with the regional working group as information is available and welcomes their feedback on how to share project updates more broadly.

IFSD is grateful to the regional working group for their on-going efforts and looks forward to continuing this important work.

Appendix A
Agenda

The below agenda was circulated to working group members prior to the meeting. Please note that actual proceedings may have deviated from the agenda based on the evolution of the discussion with participants.

Jordan's Principle Working Group: Workshop Agenda

Date: September 18-19, 2023

Location: Le Germain Hotel, 30 Daly Street, Ottawa, ON, Cangiante room – 3rd floor.

Purpose

The Institute of Fiscal Studies and Democracy (IFSD) has been asked to undertake additional research on Jordan's Principle. The project will make recommendations for consideration to develop and implement structural solutions to achieving substantive equality for First Nations children, youth, and families. (This work builds on findings from IFSD's September 2022 report, *Data assessment and framing of analysis of substantive equality through the application of Jordan's Principle*).

IFSD's approach will be bottom-up with a focus on engagement with those working in capacities related to Jordan's Principle. Other primary data sources and secondary data sources will also be used.

A regionally-representative working group has been assembled to provide practitioner input on operating realities, successes/challenges, and considerations for refining/improving matters associated to Jordan's Principle.

During the workshop we will:

1) Map the Jordan's Principle ecosystem across regions, through the lenses of the actors (e.g., people or organizations involved in Jordan's Principle), institutions (e.g., rules, regulations, etc.) and ideas (e.g., substantive equality, formal equality, etc.).
2) Discuss considerations for improving the claims and adjudicative processes.

An analytic summary of the workshop proceedings will be prepared for collaborator review, and will be made publicly available. The content of the summary may also be included in a final report to the Caring Society.

Guiding questions

Consider these questions to guide participation:

1) How do you interact with Jordan's Principle?
2) How does the claims process work in your region?
3) Who do you interact with for the purposes of Jordan's Principle?
4) Do First Nations or other organizations (other than ISC) adjudicate claims?
5) What positions or organizations are in place to support claims?
6) Do you leverage supports or services from your First Nation, or elsewhere?
7) Could the claims process be improved or changed?

Expected outcomes

By the end of the working meeting, we will have:

1) Reviewed regional approaches and processes in the operationalization of Jordan's Principle;
2) Built an understanding of the national and regional landscape of organizations and positions that support Jordan's Principle claims; and,
3) Shared considerations and opportunities for improving the claims and adjudicative processes.

Preparing for the workshop

To help make the most of our time together, IFSD asks that you kindly review the briefing materials included in the transmittal email:

1) Project overview;
2) Summary of findings from Part 1 and overview of Part 2;
3) Workshop agenda; and,
4) Draft regional portrait of the claims process (please come prepared to discuss your region's approach to the claims process).

AGENDA

DAY 1

Le Germain Hotel Cangiante Room – 3rd floor	
DATE: September 18, 2023	
Goal: Mapping the Jordan's Principle ecosystem across regions, through the lenses of actors, institutions, and ideas.	
8:00-9:00	Breakfast
9:00-9:30	Elder's welcome and opening prayer
9:30-10:00	Introductions and overview of Phase 1 and 2 – *Dr. Helaina Gaspard, IFSD*
10:00-10:15	Break
10:15-11:15	Roundtable discussion: • What is the goal of Jordan's Principle? • When do you seek support through Jordan's Principle?
11:15-12:00	*Exercise: Mapping the Jordan's Principle ecosystem in your region* In this session, representatives will work with regional teams to depict the Jordan's Principle claims process in their region, with support from IFSD staff.
12:00-13:00	Lunch
13:00-14:30	*Share-back session: Mapping the Jordan's Principle ecosystem in your region* In this session, representatives are invited to share the results of the morning's mapping exercise. • How does Jordan's Principle work in your region? • What works well? • What challenges do you face? • What can other regions learn from your experience?
14:30-14:45	Break
14:45-16:15	Roundtable discussion: • How is Jordan's Principle working in your region? • What actors, organizations, or entities are involved in the Jordan's Principle process? How are they involved? • Do First Nations or other organizations (other than ISC) adjudicate claims? • Are there any guiding principles or goals that underlie the Jordan's Principle in your region? • Are there specific rules, regulations, practices, or policies, that guide Jordan's Principle in your region?
16:15-16:30	Concluding discussion for day 1
16:30	Cocktails at Le Germain (2nd floor)

DAY 2

Le Germain Hotel Cangiante Room – 3rd floor	
DATE: September 19, 2023	
Goal: Discuss considerations for improving the claims and adjudicative processes locally, regionally, and nationally.	
8:00-9:00	Breakfast
9:00-9:15	Recap and goals
9:15-10:30	*Group Exercise: Claims and Adjudication* In this exercise, representatives will outline the actors, institutions, and ideas involved at local, regional, and national levels on the claims and adjudication processes (see template below) • Could the claims, adjudication, appeals, or complaints process be improved or changed? • What works? • What doesn't? • How could the process be improved?
10:30-10:45	Break
10:45-12:00	*Group Exercise: Appeals and Complaints (continued)*
12:00-13:00	Lunch
13:00-15:00	*Group Discussion: If you could redesign Jordan's Principle, what would it look like? How would it work?*
15:00-15:15	Concluding remarks and next steps
15:15	Coffee and tea

Template for Day 2 Group Exercise

		Stage			
		Claims	**Adjudication**	**Appeals**	**Complaints**
Level	**Local**				
	Regional				
	National				

For each stage and level:

- Who is involved?
- What are their roles?
- What are the associated rules and processes?
- What are successes and challenges?

Appendix B
Regional Profiles

Please note that IFSD is still working with several working group members to adjust regional profiles. As such, this appendix does not include every region. The package will be updated as practices are confirmed.

IFSD welcomes your feedback and input on the regional profiles. We want to ensure these portraits accurately capture the process in your region.

IFSD
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Jordan's Principle Regional Profiles

uOttawa

Appeal Process

Disclaimer: This graphic is provided as a prompt for working group members. IFSD does not warrant its completeness or accuracy. IFSD intends to work with stakeholders to develop comprehensive regional portraits.

Request is denied with letter explaining why. Within 1 year of the denial, the requester can contact the Focal Point/Regional Office to appeal either:

1. Directly to the Focal Point/Regional Office
2. Through a service coordinator

In either case, emails are sent to jpcasemgtgestcaspj@hc-sc.gc.ca.

Information required includes:
- Case number
- Letter of denial
- Name, name of child, and date of birth of child
- Item for which appeal is to be requested.

Recommended information includes:
- assessments
- any other information that might support the case that the request furthers substantive equality, the best interest of the child, and cultural appropriateness.

→

The Focal Point/Regional Office gives information to Appeals Secretariat who gives information to Appeals Committee/External Consultant Review Committee.

Appeals Secretariat might contact requester to obtain additional information for Appeals Committee.

External Consultant Review Committee is made of up professionals in areas such as health and education that are not part of ISC but have an understanding of the Indigenous context. The Appeals Secretariat reports to the ISC Chief Science Officer.

→

Appeals Committee communicated decision to ISC Chief Science Officer (who reports to the Deputy Minister), who needs to sign off.

The decision must be made within 30 business days.

→

Appeals Secretariat emails final decision and, in the case of denial, includes the option to appeal to a Federal Court.

Complaint Process

Disclaimer: This graphic is provided as a prompt for working group members. IFSD does not warrant its completeness or accuracy. IFSD intends to work with stakeholders to develop comprehensive regional portraits.

In cases where ISC has not met the CHRT's prescribed timelines with regard to adjudication and payment, a requester (potentially with assistance of a Service Coordinator) can:

- Send additional material such as a personal statement or a referral (in the case of adjudication)
- Submit a follow-up application
- Contact the Focal Point/Regional Office
- Contact an ISC Program Officer
- Contact a provincial authority
- Write to an MP
- Contact the Caring Society

Atlantic

Disclaimer: This graphic is provided as a prompt for working group members. IFSD does not warrant its completeness or accuracy. IFSD intends to work with stakeholders to develop comprehensive regional portraits.

Requesters

- Family
- Guardian
- Service Provider (less often)
- First Nation

Application

Requests can be made:

- Directly to ISC (through Call Centre or Focal Point).
- Through Union of Nova Scotia Mi'kmaq, the Confederacy of Mainland Mi'kmaq, MAWIW, or North Shore Mi'kmaq District Council
- Through Mi'kmaw Native Friendship Center or Under One Sky (Native Friendship Centre)
- Nunatsiavut (Inuit Land Claim Organization)
- Through First Nations including Sheshatshiu, Mushuau, Qalipu, Miawpukek, Lennox Island, and Abegweit.
- Through Service Provider

Adjudication

ISC Focal Point receives request and approves it:

- Receiving Officer receives request.
- Inbox Officer sorts requests as urgent, time-sensitive, or non-urgent as identified by the requester (Inbox Officer can upgrade a request to urgent or time-sensitive)
- Shell Case Team places request in GCCase but does not always send confirmation of receipt.
- PM-02/03, PM-04, and PM-05 level officials from File Review/Focal Point Team review requests but only those at PM-05 (and sometimes PM-04) can approve requests.

Focal Points may unofficially return an application to a service coordinator to discuss an aspect of an application that prevents them from being able to approve.

If Focal Point cannot approve, they send request to FNIHB Headquarters where a committee of experts evaluates. Service coordinators sometimes leverage the Caring Society when requests are escalated to headquarters.

If Approved

Payment

Payment can be provided either:

- Directly through ISC through the Service Access Resolution Fund (in the case of direct payment to a Service Provider, they must be registered with ISC)
- Through one of the 4 organizations, 2 Native Friendship Centres, 6 First Nations, or Land Claim Organization which have Contribution Agreements with ISC to receive funding from the Service Access Resolution Fund
- Cheques are permitted for expenditures such as groceries, but no receipts are required

If Denied

Appeal

If Approved

Appeal Denied

Yukon

Disclaimer: This graphic is provided as a prompt for working group members. IFSD does not warrant its completeness or accuracy. IFSD intends to work with stakeholders to develop comprehensive regional portraits.

Requesters

- Family
- Guardian
- Service Provider
- First Nation

Application

Requests can be made:

- Directly to ISC (through Call Centre or Focal Point)
- Through one of 3 service coordination organizations in the Yukon (A Service Coordinator from Council of Yukon First Nations will also submit or assist with requests. For Council of Yukon First Nations, an application form may not be required.)
- Through an SCO that applies to both First Nations and Inuit

Adjudication

ISC Focal Point receives request and approves it:

- Receiving Officer receives request.
- Inbox Officer sorts sorts requests based on whether urgent, time-sensitive, or non-urgent as identified by the requester or service coordinator (Inbox Officer can upgrade a request to urgent or time-sensitive).
- Shell Case Team places request in GCCase but does not always send confirmation of receipt.
- PM-02/03, PM-04, and PM-05 level officials from File Review/Focal Point Team review requests but only those at PM-05 (and sometimes PM-04) can approve requests.

Focal Points may unofficially return an application to a service coordinator to discuss an aspect of an application that prevents them from being able to approve.

If Focal Point cannot approve, they send request to FNIHB Headquarters where a committee of experts evaluates. Service coordinators sometimes leverage the Caring Society when requests are escalated to headquarters.

In the near future, the Council of Yukon First Nations will be able to independently approve requests for the basic necessities of life.

If Approved

Payment

Payment can be provided either:

- Directly through ISC through the Service Access Resolution Fund (in the case of direct payment to a Service Provider, they must be registered with ISC)
- In some cases, through one of the SCOs which have Contribution Agreements, including Council of Yukon First Nations, with ISC to receive funding from the Service Access Resolution Fund
- A purchase order can be used to fund requests such as groceries.

If Denied

Appeal

If Approved

Appeal Denied

Northwest Territories

Disclaimer: This graphic is provided as a prompt for working group members. IFSD does not warrant its completeness or accuracy. IFSD intends to work with stakeholders to develop comprehensive regional portraits.

Requesters

- Family
- Guardian
- Service Provider
- First Nation

Application

Requests can be made:

- Directly to ISC (through Call Centre or Focal Point)
- Through one of 2 First Nations SCOs in the Northwest Territories or one of 3 in the Yukon (A Service Coordinator from Dene Nation will also submit or assist with requests.)
- Through an SCO that applies to both First Nations and Inuit
- Through an SCO for the Inuit Child First Initiative in Northwest Territories.

Adjudication

ISC Focal Point receives request and approves it:

- Receiving Officer receives request.
- Inbox Officer sorts sorts requests based on whether urgent, time-sensitive, or non-urgent as identified by the requester or service coordinator (Inbox Officer can upgrade a request to urgent or time-sensitive.).
- Shell Case Team places request in GCCase but does not always send confirmation of receipt.
- PM-02/03, PM-04, and PM-05 level officials from File Review/Focal Point Team review requests but only those at PM-05 (and sometimes PM-04) can approve requests.

Focal Points may unofficially return an application to a service coordinator to discuss an aspect of an application that prevents them from being able to approve.

If Focal Point cannot approve, they send request to FNIHB Headquarters where a committee of experts evaluates. Service coordinators sometimes leverage the Caring Society when requests are escalated to headquarters.

If Approved

Payment

Payment can be provided either:

- Directly through ISC through the Service Access Resolution Fund (in the case of direct payment to a Service Provider, they must be registered with ISC).
- Through one of the SCOs which have Contribution Agreements with ISC to receive funding from the Service Access Resolution Fund.
- In the case of emergencies, Dene Nation can purchase gift cards, to be repaid by Jordan's Principle, and do not ask for receipts. In normal circumstances, Dene Nation can provide prepaid credit and will ask for receipts.

If Denied

Appeal

If Approved

Appeal Denied

Quebec

Disclaimer: This graphic is provided as a prompt for working group members. IFSD does not warrant its completeness or accuracy. IFSD intends to work with stakeholders to develop comprehensive regional portraits.

Requesters

- Family
- Guardian
- Service Provider
- First Nation

Application

Requests can be made:

- Directly to ISC (through Call Centre or Focal Point)
- Through one of 13 Native Friendship Centres
- Through an urban Indigenous organization
- Through one of 11 urban school organizations
- Through a Jordan's Principle Community Coordinator/local coordinator, of which there is one in most communities.

- FNQLHSSC supports Service Coordinators
- Focal Points may review an application from a service coordinator to discuss an aspect of an application that prevents them from being able to approve.

Adjudication

ISC Focal Point receives request and approves it:

- Receiving Officer receives request.
- Inbox Officer sorts sorts requests based on whether urgent, time-sensitive, or non-urgent as identified by the requester or service coordinator (Inbox Officer can upgrade a request to urgent or time-sensitive)
- Shell Case Team places request in GCCase but does not always send confirmation of receipt.
- PM-02/03, PM-04, and PM-05 level officials from File Review/Focal Point Team review requests but only those at PM-05 (and sometimes PM-04) can approve requests.

If Focal Point cannot approve, they send request to FNIHB Headquarters where a committee of experts evaluates. Service coordinators sometimes leverage the Caring Society when requests are escalated to headquarters.

If Approved

Payment

Payment can be provided either:

- Directly through ISC through the Service Access Resolution Fund (in the case of direct payment to a Service Provider, they must be registered with ISC)
- Through First Nations and Friendship Centres who can pay directly through funds from a Contribution Agreement with ISC to receive funding from the Service Access Resolution Fund
- Gift cards can be used to fund some types of requests such as groceries.

If Denied

Appeal

If Approved

Appeal Denied

Ontario

Disclaimer: This graphic is provided as a prompt for working group members. IFSD does not warrant its completeness or accuracy. IFSD intends to work with stakeholders to develop comprehensive regional portraits.

Requesters

- Family
- Guardian
- Service Provider
- First Nation

Application

Requests can be made:

- Directly to ISC (through Call Centre or Focal Point)
- Through one of 54 SCOs that are made up of: First Nations, Tribal Councils, First Nation Child and Family Services Agencies, Health Authorities, and an Aboriginal Health Access Centre. Some of these organizations (notably First Nations governance groups) appear to use Jordan's Principle Navigators.
- Possibly through a school board

Adjudication

ISC Focal Point receives request and approves it:

- Receiving Officer receives request.
- Inbox Officer sorts sorts requests based on whether urgent, time-sensitive, or non-urgent as identified by the requester or service coordinator (Inbox Officer can upgrade a request to urgent or time-sensitive.).
- Shell Case Team places request in GCCase but does not always send confirmation of receipt.
- PM-02/03, PM-04, and PM-05 level officials from File Review/Focal Point Team review requests but only those at PM-05 (and sometimes PM-04) can approve requests.

Focal Points may unofficially return an application to a service coordinator to discuss an aspect of an application that prevents them from being able to approve.

If Focal Point cannot approve, they send request to FNIHB Headquarters where a committee of experts evaluates. Service coordinators sometimes leverage the Caring Society when requests are escalated to headquarters.

In the case of medical transportation, there may be communication with NIHB to discuss sharing costs with Jordan's Principle.

If Approved

Payment

Payment can be provided either:

- Directly through ISC through the Service Access Resolution Fund (in the case of direct payment to a Service Provider, they must be registered with ISC)
- Through one of the SCOs which receive funding from the Service Access Resolution Fund. (Note: Independent First Nations can also manage shipping of requested products.)
- Gift cards for groceries are not permitted. Receipts, even for groceries, are required.

* Payment can be supported by a Jordan's Principle Navigator

If Denied

Appeal

If Approved

Appeal Denied

Saskatchewan

Disclaimer: This graphic is provided as a prompt for working group members. IFSD does not warrant its completeness or accuracy. IFSD intends to work with stakeholders to develop comprehensive regional portraits.

Requesters

- Family
- Guardian
- Service Provider
- First Nation

Application

Requests can be made:

- Directly to ISC (through Call Centre or Focal Point)
- Through an SCO, which could include a non-profit or an Early Childhood Intervention Program
- Through the Service Coordinator of a First Nation or Tribal Council.
- For social requests in the Regina area or requests for culture or family programming associated with Reginal Intersectoral Partnership, Regina Treaty/Status Indian Services Inc. can manage applications.

Adjudication

Communities receive $100,000 to address urgent needs but will need to ask ISC if they require more funds. Communities will send requests to ISC if they believe it should be denied.

ISC Focal Point receives request and approves it:

- Receiving Officer receives request.
- Inbox Officer sorts sorts requests based on whether urgent, time-sensitive, or non-urgent as identified by the requester or service coordinator (Inbox Officer can upgrade a request to urgent or time-sensitive.).
- Shell Case Team places request in GCCase but does not always send confirmation of receipt.
- PM-02/03, PM-04, and PM-05 level officials from File Review/Focal Point Team review requests but only those at PM-05 (and sometimes PM-04) can approve requests.

Focal Points may unofficially return an application to a service coordinator to discuss an aspect of an application that prevents them from being able to approve.

If Focal Point cannot approve, they send request to FNIHB Headquarters where a committee of experts evaluates. Service coordinators sometimes leverage the Caring Society when requests are escalated to headquarters.

If Approved

Payment

Payment can be provided either:

- Directly through ISC through the Service Access Resolution Fund (In the case of direct payment to a Service Provider, they must be registered with ISC. ISC has direct billing for services such as medical therapists, tutoring, and mental health therapists and counselling.)

* Payment can be supported by one of the previously mentioned organizations in the application section. Service coordinators try to pay service providers directly whenever possible and gift cards are not used.

If Denied

Appeal

If Approved

Appeal Denied

Alberta

Disclaimer: This graphic is provided as a prompt for working group members. IFSD does not warrant its completeness or accuracy. IFSD intends to work with stakeholders to develop comprehensive regional portraits.

Requesters

- Family
- Guardian
- Service Provider
- First Nation

Application

Requests can be made:

- Directly to ISC (through Call Centre or Focal Point)
- Through the First Nations Health Consortium (request goes through Access Worker then Regional Service Coordinator)
- Through one of 123 First Nations, schools, School Districts, and other organizations

Adjudication

ISC Focal Point receives request and approves it:

- Receiving Officer receives request.
- Inbox Officer sorts sorts requests based on whether urgent, time-sensitive, or non-urgent as identified by the requester or service coordinator (Inbox Officer can upgrade a request to urgent or time-sensitive.).
- Shell Case Team places request in GCCase but does not always send confirmation of receipt.
- PM-02/03, PM-04, and PM-05 level officials from File Review/Focal Point Team review requests but only those at PM-05 (and sometimes PM-04) can approve requests.

Focal Points may unofficially return an application to a service coordinator to discuss an aspect of an application that prevents them from being able to approve.

If Focal Point cannot approve, they send request to FNIHB Headquarters where a committee of experts evaluates. Service coordinators sometimes leverage the Caring Society when requests are escalated to headquarters.

If Approved

Payment

For individual, non-capital requests: through the First Nations Health Consortium or through ISC.

For group requests or requests for capital: directly through ISC (Alberta Region Jordan's Principle Team) through the Service Access Resolution Fund (in the case of direct payment to a Service Provider, they must be registered with ISC).

- Prepaid credit cards can be used for expenses such as groceries (as well as cheque, direct deposit, reimbursement etc. but not e-transfer). Receipts or reasonable alternative (e.g., bank statement) are required.

If Denied

Appeal

FNHC will work on appeals even with families who did not initially work with them.

If Approved

Appeal Denied

British Columbia

Disclaimer: This graphic is provided as a prompt for working group members. IFSD does not warrant its completeness or accuracy. IFSD intends to work with stakeholders to develop comprehensive regional portraits.

Requesters

- Family
- Guardian
- Service Provider
- First Nation

Application

Requests can be made:

- Directly to ISC (through Call Centre or Focal Point)
- Through one of 41 Service Coordinators at 33 SCOs including British Columbia Aboriginal Network on Disability Society, First Nations Health Authority, Three Corners House, and Carrier Sekani Family Services (CSFS).
- If organizations find a request unfamiliar, they may send it to the British Columbia Aboriginal Child Care Society.

Adjudication

ISC Focal Point receives request and approves it:

- Receiving Officer receives request.
- Inbox Officer sorts sorts requests based on whether urgent, time-sensitive, or non-urgent as identified by the requester or service coordinator (Inbox Officer can upgrade a request to urgent or time-sensitive.).
- Shell Case Team places request in GCCase but does not always send confirmation of receipt.
- PM-02/03, PM-04, and PM-05 level officials from File Review/Focal Point Team review requests but only those at PM-05 (and sometimes PM-04) can approve requests.

If Focal Point cannot approve, they send request to FNIHB Headquarters where a committee of experts evaluates. Service coordinators sometimes leverage the Caring Society when requests are escalated to headquarters.

Should there be a challenge, service coordinators can reach out to the leadership council for BCAFN, Union of BC Chiefs, and First Nations Summit.

If Approved

Payment

Payment can be provided:

- Directly through ISC through the Service Access Resolution Fund (in the case of direct payment to a Service Provider, they must be registered with ISC)
- Directly through service coordinator receiving Approved Request Contingency (ARC) funding. (While service coordinators have their own accountability system in place, there is no receipt requirement from ISC on ARC funding.)
- Prepaid gift cards are permitted for some types of requests such as groceries. Receipts are not required.
- If a requester does not have the money to pay for a service up-front, CFSFS can pay and be reimbursed by Jordans' Principle.

* Payment can be supported by one of the previously mentioned organizations in the Application section.

If Denied

Appeal

If Approved

Appeal Denied

IFSD
IFPD

Jordan's Principle Regional Working Group
Meeting Summary – March 5, 2024

Purpose of the Meeting

The Jordan's Principle Regional Working Group convened on March 5, 2024, to discuss the pivotal role of information in the operationalization and governance of Jordan's Principle. The exchange focused on the necessity of gathering and analyzing data to understand the well-being of children, recognize needs, and assess changes over time.

What We Heard

A critical concern was identified in the discussions: the current national data for Jordan's Principle, predominantly administrative in nature, fails to capture the complex and unique needs of First Nations children. This data does not reflect the realities on the ground, nor the specific needs of the children, families, and communities seeking support from Jordan's Principle.

To address the gap between a community's reality and requests to Jordan's Principle, it was proposed that local data about First Nations should be gathered by First Nations to establish a baseline of well-being (in compliance with OCAP® principles). This community-level information on well-being could be used to help contextualize requests to Jordan's Principle. This dual approach of community data with administrative data could offer a more comprehensive view of the needs and challenges faced by First Nations children.

Regionally, administrative practices to data gathering share many commonalities with some variations (see Appendix A).

There is a recognized opportunity to develop a comprehensive set of indicators to test data gathering methods specific to Jordan's Principle. The working group underscored the importance of self-reliance in these processes to ensure that control over information remains with the First Nations and their designated organizations.

To address these challenges, the working group identified several areas in need of development:

1) **Support for capacity building for data collection:** training for people, the right tools, and processes are needed to equip First Nations and their organizations for data gathering and analysis.
2) **Gap analysis of existing federal programs**: Jordan's Principle helps a lot of children but it also covers gaps in existing federal program areas. Those gaps need to be identified and quantified.
3) **Data management infrastructure**: it would be powerful to have a consistent approach for First Nations-led data gathering and analysis for Jordan's Principle. Such infrastructure would support the aggregation of data in a manner that facilitates comparative analysis and transparent reporting.
4) **Data disaggregation**: the working group called on ISC to disaggregate and report on data by territory (Northwest Territories, Yukon, Nunavut), rather than rolling it up into an aggregate category.

The working group shared concerns over the potential misuse of Jordan's Principle. Whether the spirit and intent of Jordan's Principle was misunderstood or whether there were deliberate

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abuses, it will be imperative for First Nations to lead on solutions. There were also concerns raised about commercial entities offering services to access Jordan's Principle and others raising rates if they knew Jordan's Principle was paying. These issues merit attention.

Takeaways

The meeting concluded with takeaways on what we know about data and measurement in Jordan's Principle, what we don't know, and what can change.

What We Know:

Local knowledge in First Nations and among their organizations is abundant and underused. Service coordinators, First Nations, intake workers, hold a wealth of knowledge and case specific information, e.g., letters of support, case notes, etc. that can help to contextualize needs. It will be important to capture that information to better understand the needs of children.

ISC gathers a lot of information on Jordan's Principle. Even if the information is imperfect, it should be provided in disaggregated formats at the request of the First Nation or their trusted regional organization. First Nations can use that data to understand how Jordan's Principle is being utilized and the nature of the services provided.

What We Don't Know:

The working group identified several areas where knowledge is notably absent. The lack of baseline metrics remains a primary concern, as it is critical to evaluate progress, understand community needs, and monitor developmental trajectories over time.

The delineation of accountability and the clarity of roles within the framework of Jordan's Principle require further definition. For example, there remains uncertainty surrounding the specific responsibilities of the Jordan's Principle Operations Committee (JPOC) and the Jordan's Principle Action Team (JPAT), among others. A precise understanding of each entity's role is important for an effective operation.

Equally important is establishing uniform criteria for the administration of Jordan's Principle, particularly concerning the grounds for denial of services. The absence of standardized guidelines raises questions about the consistency and equity of decisions made under Jordan's Principle.

The outcomes of interventions and support services provided through Jordan's Principle lack clear documentation. This means that we don't know how children are faring after receiving supports from Jordan's Principle, e.g., are follow-ups needed? has their health improved? Understanding the impact of interventions is vital for assessing the success of Jordan's Principle and for informing future policy and practice.

Substantive equality is a fundamental goal of Jordan's Principle, yet we have not established a framework for measuring the achievement of this goal. It is essential to develop metrics that can accurately reflect the extent to which substantive equality is being realized.

Lastly, the extent of potential misapplications or misinterpretations of Jordan's Principle is not well understood. It is imperative to quantify and address these issues to maintain the integrity of Jordan's Principle while safeguarding access for those it aims to serve.

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What We Can Change:

In the context of enhancing Jordan's Principle's implementation, the discussion highlighted the criticality of localized data collection. Next steps will be defining what data should be gathered to support the delivery of Jordan's Principle.

It was agreed that ISC should adopt a mandate to report on all Jordan's Principle requests at the level of the First Nation or at their directed level. The reporting should be regular and consistent to ensure First Nations and their organizations have the data about the supports and services being sought in their communities.

Defining gaps in existing programs is crucial for supporting Jordan's Principle. Jordan's Principle is intended to promote substantive equality, not cover up the shortfalls of existing programs.

Conclusion

At the conclusion of the meeting, there was consensus that those working to administer Jordan's Principle in First Nations should move ahead of the federal government on data gathering and analysis.

Inconsistency in decision-making can mean inconsistency in access to Jordan's Principle. While the legal foundations of Jordan's Principle are secure, it is reliant on the administrative decisions of public servants and other actors. With the reliance on administrative decisions, there is an imperative to gather relevant data to demonstrate needs, successes, and areas for action.

Next Steps

1) IFSD to prepare a draft gap analysis of programs for working group review.
2) IFSD to undertake analysis of ISC's GC Case data:
    a. Prepare the list of available variables provided by ISC.
    b. Produce provincial and territorial analysis with the data (based on availability).
    c. Prepare analysis on: group requests, individual requests.
    d. Clarify reporting for requests that implicate multiple children or a family. Is reporting consistent?
3) IFSD to prepare potential indicators for local data gathering for review by the working group.
4) IFSD to explore the feasibility of the following analysis:
    a. Economy of scale in service delivery, i.e., building service locally rather than sending child out of community for services.
    b. Defining portraits of available services and access to services by First Nation.

IFSD will share progress updates with the regional working group as information is available.

IFSD is grateful to the regional working group for their on-going efforts and looks forward to continuing this important work.

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Appendix A – Data capture

Region	Information captured (notes from working group discussion)
Alberta	Applications • Demographics (applications to consortium) • Item/service requested
	Finance (all of Alberta other than capital) • Excel • $ requested/approved • Process and payment time • Invoice etc. • Recurring y/n • Output data • Compliance to processing times Areas of expenditure
British Columbia	Decentralized network, 3 years of development • No central data systems • Therefore, Indigenous Services Canada (ISC) data only
	Database will be based on willingness
	AB + additional elements for ISC • Name of employee • Time to respond • Obstacles/barriers
	*Community-level view for delivery of Jordan's Principle (Not ISC Aggregate view) Goal = using First Nations own data to understand service and program needs for planning, advocacy, and jurisdiction.
Saskatchewan (Tribal Council)	1) Demographics; Applications details including $ requested and approved, including products/services; Payment to vendors; Any applications through ISC pending
	2) Basic necessities/social needs tracked separately (Totally managed funds)
	3) Respite tracking
	Additional notes, except circumstances of family and risk factors (general Saskatchewan = Alberta + notes)
	Reporting differs! Always ISC but also First Nations and organizations.
Manitoba	70+ providers in Manitoba

	• Adjudication (approvals with First Nation) • Limits reliability of info because of lack of consistency
	Reporting varies/localized adjudication
	Even basic Alberta data not consistently captured.
	Attempts to establish common database have failed. Governance, OCAP, $, etc. are challenges.
	Different data capacity and infrastructure starting points for First Nations and other providers. • Group requests for First Nation programming different reporting.
Ontario (Independent First Nations [IFN])	Political Territorial Organizations (PTO) govern data for Jordan's Principle
	IFN = Alberta + [Interest to capture needs for planning and advocacy] • Track requests per child throughout interactions • Areas of need (education, social, medical, etc.) • Demographics
	Data Band systems, * on and off reserve • Other PTOs using
Quebec	All approvals/adjudications go through ISC.
	British Columbia (attempt) and/or Alberta+ • Coordinators in each First Nation • ISC works with coordination in First Nation • Approvals influenced by relationships • ISC hold database • First Nations coordinators keep own data but time/capacity limits use. • Data systems being created through child and family services; attempt to link to Jordan's Principle data (privacy concerns)
Nova Scotia	Same as Alberta and service quality through outcomes for kids (progress reports from vendors)
New Brunswick	Different approaches within province among First Nation/Tribal Councils
	First Nations data base linked to child for all services provided by First Nation • Linked to clinical practice via First Nation specific to Jordan's Principle
	Alberta and interactions with other services within FN • Linked to clinical practice via First Nation specific to Jordan's Principle
Prince Edward Island (Lennox Island)	Alberta or Nova Scotia
	On/off-reserve and demographics
	Approved/denied requests linked to final $

	One-page consent form (summary)
Yukon	Alberta + First Nation/Inuit
	Database system from Council of Yukon First Nations (CYFN) used to track claims • Demographics and those of parents • Final tracking linked to database
	ONLY FOR APPLICANTS THROUGH CYFN Respite, counselling, necessities of life, day care • CYFN can issue payments for necessities of life
	CYFN has general intake process to which data is linked • Including why support sought etc.
Northwest Territories	Basic necessities/general • Single form (developed by Dene Nation) • Name/First Nation; Request for produce/service; $ amount requested; First Nation ID #
	Dene Nation tracks ALL applications + statuses
	Dene Nations approves basic necessities
	Case files linked to payment
	Reporting is ISC only

Jordan's Principle Regional Working Group
Meeting Summary – October 2024

IFSD has prepared a summary of the Regional Working Group's (RWG) proceedings from their third meeting (October 2024). The RWG assembled with recognition of *their inherent and treaty rights as First Nations*.

Their contributions on a sustainable approach to Jordan's Principle are pursuant to Canadian Human Rights Tribunal (CHRT) orders (2022 CHRT 8).[1]

As technical experts and practitioners in the administration and delivery of Jordan's Principle, they have generously shared their knowledge with the intent of supporting local, regional, and national leadership in their decision-making on Jordan's Principle.

The contributions of the RWG have defined:

- Recommendations and statements on the spirit and intent of Jordan's Principle;
- Considerations for local data gathering on Jordan's Principle;
- Options and approaches for a national strategic framework for Jordan's Principle.

The summary of the RWG's deliberations proceeds by reviewing their contributions in these areas and their recommendations for next steps.

Recommendations

1) That there be a **national approach to Jordan's Principle** with consideration of different approaches to delivery. The national approach should include:
    a. **Common vision** of the spirit and intent of Jordan's Principle;
    b. A **national strategic performance framework**;
    c. **Common** approaches to **data gathering**;
    d. **Consistency in the delivery** of Jordan's Principle to empower families and promote substantive equality.
2) That the regional group reconvene to review IFSD's draft final report on Jordan's Principle (in advance of its publication).

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[1] [172] Pursuant to section 53(2) of the *CHRA*, the Tribunal issues the following orders:

[…]

4. Canada shall fund the following research through the Institute for Fiscal Studies and Democracy ("IFSD"):

    […]

    d. upon completion of the Jordan's Principle Data Assessment, the IFSD needs assessment regarding a long-term funding approach for Jordan's Principle, including but not limited to identifying and addressing formal* equality gaps, in keeping with the Tribunal's rulings, including but not limited to 2016 CHRT 2, 2017 CHRT 35, 2020 CHRT 20 and 2020 CHRT 36 (the "Jordan's Principle Long Term Funding Approach Research").

*** This order does not modify any substantive equality orders made by this Tribunal in this case.**

3) That the RWG's meeting summaries be posted for public access on the Jordan's Principle project site hosted by IFSD.
4) That the RWG be supported to continue to meet regularly (after IFSD's project ends) to share their ideas and practices as technical experts and practitioners.

Recommendations and statements on the spirit and intent of Jordan's Principle

Recommendations and statements on the spirit and intent of Jordan's Principle define its purpose and what it is meant to do for children. A common understanding of the spirit and intent of Jordan's Principle will guide options for structure, delivery, and funding, and foster consistency in its implementation.

The RWG identified recommendations and statements on the spirit and intent of Jordan's Principle:

- Addressing the **root causes of need and gaps in existing programs and services**, especially in housing, health, and social services.
- **Recognizing and understanding requests in their contexts** to achieve substantive equality because different places have different needs.
- Accessing services, supports, and products **wherever and whenever needed**.
- **Differentiating** between the ***needs* of children and the *wants* of parents**.
- **Empowering families** to end cycles of dependency.
- **Training and development for First Nations by First Nations** to empower First Nations in their communities to support the delivery of Jordan's Principle, leveraging local knowledge.

The RWG worked in four breakout groups on recommendations on the spirit and intent of Jordan's Principle. See Appendix A for summaries of each of the breakout groups' contributions.

When considering the common elements of the RWG's recommendations and statements, the following summary statement is proposed:

> *Jordan's Principle is a sacred gift from Jordan River Anderson to ensure First Nations children have the supports, services, and products whenever they need them wherever they need them.*
>
> *Jordan's Principle ensures that the root causes of need and gaps in existing programs and services are addressed (until they can be permanently repaired).*
>
> *Children and youth live in different places. The pursuit of substantive equality requires that their unique contexts be recognized in the delivery of and access to services, supports, and products through Jordan's Principle.*
>
> *To sustainably deliver Jordan's Principle in the cultural and linguistic contexts of First Nations, local talent will be essential. Training by First Nations for First*

Nations to develop local talent will be imperative to the success and sustainability of Jordan's Principle.

Local data gathering

There are core pieces of information that are missing from data capture on Jordan's Principle. Namely, why children are seeking support from Jordan's Principle and what happens to them following the intervention. A **consistent approach** to gathering **child-centred data** means more **relevant data** that can be used to **measure and monitor children's needs and identify gaps in existing programs and services**.

Any data gathering approach must have First Nation ownership, consistent with OCAP® Principles. The information and evidence generated must be relevant locally for First Nations. A subset of information (not necessarily all information) can be provided to ISC for reporting.

The goal of data gathering should be *consistency with decency*. A consistent approach ensures regular and common information is gathered to benefit all children by improving Jordan's Principle and identifying gaps in existing programs. Decency means engaging respectfully with children and families, avoiding duplication of requests, and following OCAP® Principles.

Presently, data gathering is inconsistent across regions. While some First Nations or regions are gathering good information capacity for analyzing it is limited. Additional challenges were noted about a lack of consistently and continuously captured data for a child and non-First Nation requests. With transiency on- and off-reserve, children may be accessing Jordan's Principle at one moment, through their First Nation or a First Nation organization, and at another, off-reserve through a mainstream (non-First Nation) organization. In these instances, there is no information on service continuity for the child, the information is lost. For any requests outside of First Nations or First Nations organizations, there are regional information gaps. If a hospital or school board is applying for support through Jordan's Principle, First Nations in all regions are not always made aware.

A common data gathering framework, defined by Jordan's Principle technical experts, would help to standardize access to and administration of Jordan's Principle.

Two approaches to data gathering were highlighted in which RWG members shared their practices:

1) **The single door:** For a regional First Nations organization, every door is the right door. In their approach to Jordan's Principle, requests are triaged and staff work behind the scenes to align supports and services for the family. Sometimes, their needs are best met through Jordan's Principle, and other times, through one or more services.

When assessing requests to Jordan's Principle, the organization uses its own framework to address needs and empower families. The framework includes standardized rates for various types of requests and local data gathering to track and monitor needs.

2) Community-focused data: Using a series of spreadsheet-models, this organization captures additional details on the child's community and their individual needs. When intaking a Jordan's Principle request, the organization supplements the basics of the application with health and related contextual information. Gathering supporting information (beyond the application requirements) means information can be aggregated and anonymized and shared back with First Nations. Information on challenges like suicide ideation or successes like school completion, can be documented and monitored.
To provide context for requests, the organization ensures a profile of the First Nation is included. This information is imperative to understanding requests in their context. Explaining *why* a request is being made will be different across communities.

There are lessons from these approaches that can be applied to future efforts on data gathering. Capturing relevant information at intake and with the child's context can substantiate requests and improve planning decisions. Information about the environment surrounding the child is crucial. Whether through a video submission, profile of the First Nation, or cultural notes, the additional information can support equitable decision-making by framing requests in their contexts. The Quebec Region required navigators to learn about and visit the First Nations for whom they review Jordan's Principle applications. The sensitization to the reality of the First Nation(s) they serve support assessments in context.

Consistent local data gathering at the level of the case can be aggregated for regional and national analysis. There are linkages between local data gathering and a national strategic performance framework. Developing the tools and approaches in tandem can improve their interoperability and consistency.

National strategic performance framework
A performance framework is a tool to measure to monitor change relative to a goal or desired outcome. With all the information gathered on Jordan's Principle, we still do not know *why* children are seeking support and *what* happens to them following an intervention. With these gaps, there is no way of assessing progress toward formal or substantive equality through Jordan's Principle.

A national strategic performance framework for Jordan's Principle is an essential component of a sustainable approach to Jordan's Principle. The RWG defined the importance of the framework as a tool to ensure equity for First Nations children and to define gaps to improve programs and services.

A national strategic performance framework for Jordan's Principle means we can:

1) Measure and monitor the needs of children;
2) Identify gaps in existing programs and services;
3) Hold Canada accountable;
4) Ensure the structure, delivery, and funding approaches to Jordan's Principle are working;
5) Measure progress toward the defined spirit and intent of Jordan's Principle.

The RWG defined a two-pronged approach to data capture to support the framework:

1) Case-level information focused on the child;
2) Community-level data to capture context.

Wholistic well-being was a guiding principle for the RWG for the national strategic performance framework. In their discussions, the RWG defined a series of national indicators. Some indicators were aggregations of case-level data and others were broad community-level indicators that could be captured from public and other data sources.

The indicators defined by the RWG are captured in Appendix B. They are clustered thematically. IFSD was tasked by the RWG with identifying broad community-level indicators to contextualize the case-based data (also included in Appendix B). To operationalize the performance framework, definitions for indicators, measures, and data capture are to be defined (see Appendix B). Sources of information include case level data (aggregated), Census data, Regional Health Survey (RHS) data, and ISC data.

The development and operationalization of a strategic performance will take time. It is, however, imperative that it be done to ensure accountability in Jordan's Principle. This means ensuring structure, delivery, and funding are meeting the needs of children.

Other matters for consideration and improvement
In their deliberations, the RWG highlighted matters requiring consideration and improvement.

The intake problem
ISC has an intake problem that needs to be revised. An automated system, with a standard intake form, and clear urgency codes (as they are overused) are required.

Intake and evaluation need to be separated. An automated system or third-party could manage intake and the administrative processing of requests. ISC would then be required to evaluate requests (rather than managing the full process). There are precedents for the outsourcing of such activities with compensation, insurance, etc.

CHRT timelines for evaluation and responses should be followed. Requests must be triaged effectively to ensure those that are necessities of life are addressed appropriately.

With the high rates of staff turnover at ISC, front-line staff involved with cases must have completed relevant and rigorous training before assuming their post. The staff changes are leading to inconsistent assessments and practices.

A complaints mechanism
Regional Jordan's Principle Ombuds should be established. The offices could collect complaints on administration and delivery of Jordan's Principle supports, conduct investigations as required, and hear directly from families/applicants about their concerns.

Ombuds would work directly with service coordinators and travel across First Nations. In their advocacy role, they would follow-up on complaints and appeal directly to ISC. The ombuds would work for families/applicants, service coordinators, and First Nations.

A truly independent committee of Indigenous experts should be established. The committee would serve as a body of consultative experts for the ombuds network.

Training and network development
First Nations led training and capacity development is required for Jordan's Principle. Front-line staff are confronting complexities that could be better managed with training. For instance, learning how an intake meeting can be a counselling session or opportunity to connect with other resources.

A consistent network of practitioners is needed to share practices and provide support. Such a network, whether regional or national, could collect and share best practices, job descriptions, roles and credentials associated to Jordan's Principle. With many service coordinators and First Nations confronting similar questions and challenges, the practice network would be a source of leverage.

Appendix A

The breakout group recommendations and statements on the spirit and intent of Jordan's Principle are summarized below.

Breakout Group 1:

- Jordan's Principle is about the pursuit of substantive equality. At least formal equality, relative to non-Indigenous children, must be guaranteed.
- There is a need to reform Jordan's Principle to meet these goals.
- Achieving the true intent of Jordan's Principle requires removing the barriers of colonialism.
- Requests through Jordan's Principle should be defined as goals to keep the child's needs at the heart of the requests, e.g., a bed for a good night's sleep to improve school performance.
- Jordan's Principle is to meet the actual needs of children (not the wants of parents). There are concerns about the misuse of Jordan's Principle that need to be addressed.

Breakout Group 2:

- There should be equity among First Nations children with respect to location, culturally relevant, and safe services.
- Standardize the age of majority, e.g., 30 years of age.
- Ensure all children receive the products, supports, and services when and where they need them.
- Foster equality among First Nations children in Canada.
- Define functional and consistent timelines for responding to requests to Jordan's Principle.

Breakout Group 3:

- Children, youth, and families should not suffer. They should thrive with need health and related supports.
- There should be no age limit for ongoing needs for support. For other needs, the age of majority should be 30, or cradle to grave.
- Jordan's Principle should differentiate between needs and wants.
- Existing supports to administer Jordan's Principle should be enhanced.
    - Recognize elders as professional service providers who can write letters of support.
    - Increase community-based personnel for Jordan's Principle.
    - Support access to obtain IDs, bank accounts, driver's licenses, etc.
- Identify existing system failures and repair them.
    - Explore and address the roots of poverty and issues associated to trauma.
- Define a common vision for Jordan's Principle.
- Establish a baseline by First Nations for First Nations to define criteria for access.
- Employees of ISC must take cultural awareness training.
- Address and eliminate requests backlogs by hiring First Nations for review.

- Accredit and teach Jordan's Principle across the educational system.
    - Develop an accreditation for Jordan's Principle with post-secondary institutions.
- Eliminate jurisdictional battles.
- Ensure families are alleviated from poverty and are supported through life's cycles, e.g., celebrations and gifts for a birthday.
- Broaden the view of Jordan's Principle to support overall well-being, because it will be defined different in different places.

Breakout Group 4:

- Refocus on the original spirit and intent of Jordan's Principle: supports and services required for a child to live.
    - End all jurisdictional debates between federal and provincial governments and within ISC.
    - Include wrap-around services.
- Children with special and complex needs must have their needs met.
    - Support for complex and special needs that are lifelong should continue to be met.
- Address root cases of need by adequately funding core necessities and existing programs and services.
- Focus on health and education.
- Provide support to families in different ways to ensure they are setup for success, and not dependent (should funding end), e.g., some financial support, referrals, etc. Support independence, not dependence.
- Address gaps in existing programs and services. Jordan's Principle's application would be limited or phased out if these gaps were closed.
- Consider the child wholistically and understand their needs wholistically.
- Gather/request information and feedback from families on what works to demonstrate the relevance of Jordan's Principle.
    - Regional data gathering and data systems should be consistent.
- Service delivery should be for First Nations by First Nations.
- Emphasize services (e.g., medical models, health needs of children), supports, and products for Jordan's Principle.
- Define priorities, i.e., what is urgent v. non-urgent.

Appendix B

Category	Indicators	For future use				
		Definition	Measure	Location of data capture	Availability of data	Case or community level
Education and pedagogy	Literacy rates in English and/or French					
	Literacy rates in Indigenous languages					
	Numeracy rates					
	Elementary school completion rate					
	Duration to completion of high school					
	Age at high school graduation					
	Change in expected educational outcomes					
	Post-graduation outcomes for youth with complex or special needs					
	Support or service to develop inherent talent or ability					
Family well-being	Sense of community belonging					
	Stability of family arrangement					
	Contact with child and family services					
	Children in care accessing Jordan's Principle					
Health and wellness	Recreational opportunities around the child					
	Instances of exceptional health-related supports and services					
	Health outcomes at least equal to or better than the general population					
	Health services consistent with Canada Health Act standards (as a minimum)					
	Instances of requests for mental health and/or spiritual supports defined as: crisis, maintenance, or normal/self-care					
Nature of requests and defined needs	WHY - Reason for accessing Jordan's Principle (root cause(s))					
	Instances of intergenerational Jordan's Principle requests, e.g., adolescent parent accessing Jordan's Principle					
	Nature of request: point in time; on-going/long-term; repeated					
	Instances of children ageing out but requiring ongoing support					
	Instance of navigation to access Jordan's Principle					
	Instances of referrals to existing supports and services					

	Identifying the source of the referral, e.g., Elder, physician, etc.					
	Were the child's needs met through Jordan's Principle					
Community well-being	Instances of community trauma					
	Cultural knowledge					
	Access to land					
	Access to Elders					
	Community emergencies impacting well-being					
Access and funding	Number of non-Indigenous and non-First Nation organizations/recipients receiving funding through Jordan's Principle					
	Documented fee increases or supplemental fees incurred when paid through Jordan's Principle					
	*See also questions to regions					
	Details on requests and transfer amounts through Jordan's Principle					
Broad national indicators (proposed by IFSD)	Housing suitability					
	Housing in need of repair					
	Food security					
	Rates of substance misuse (alcohol, drugs)					
	Access to potable water					
	Deprivation (income measure, relative to the relevant Market Basket Measure)					
	Employment rate					
	Unemployment rate					
	Highest level of educational completion					
	Instance of critical health issues (Note: Dependent on Regional Health Survey data)					
	Access to health and dental services (Note: Dependent on Regional Health Survey data)					
	Rates of access to Income Assistance					
	Population by geographic zone					

Appendix I

Realizing Substantive Equality Through Jordan's Principle

Report submitted to IFSD
Prepared by Faisal A. Bhabha[1]

Executive Summary

Named for Jordan River Anderson, Jordan's Principle originated as a non-binding motion that was endorsed unanimously by Parliament. It set the principle that First Nations children should have access to the support services they need without delay caused by jurisdictional disputes.

This report outlines the definitional and historical context of Jordan's Principle, its evolution into a legal rule, and its potential as a broadly enforceable legal rule. The report surveys the unrealized potential of Jordan's Principle due to failures in government interpretation and application, and the apparent limits of its enforcement through the statutory human rights regime against the backdrop of ongoing litigation at the Canadian Human Rights Tribunal (CHRT). The Caring Society litigation at the CHRT frames the status of Jordan's Principle in light of continued law and policy tensions in its implementation.

Given that many roots of the problems that Jordan's Principle is directed at resolving are structural, the report considers the viability of constitutional law to improve its impact. However, despite the common values undergirding both Jordan's Principle and s. 15 of the Charter, Jordan's Principle offers unique tools for applicants to leverage in comparison to constitutional litigation. Features of Jordan's Principle such as the capacity for group requests and mandatory timelines offer applicants specific tools that could otherwise take years of litigation to secure.

Despite the continued policy obstacles, the examination of constitutional litigation finds that Jordan's Principle nonetheless offers significant value in comparison to Charter based avenues. As an alternative means of addressing the current shortcomings in application, non-legal remedies may be better able to address the surveyed law and policy tensions which undermine the effective operationalization of Jordan's Principle. Security for advocacy groups means solidifying the link between the foundational aspiration of the Principle and its practical application.

1. Introduction

In 2004, the Assembly of First Nations estimated that the average Canadian receives almost 2.5 times the federal, provincial, and municipal government services that a First Nations member

[1] Associate Professor, Osgoode Hall Law School, York University. The author acknowledges the research assistance of Ola Mobarak.

receives.[2] Inequality in access to social services is exacerbated among the most vulnerable, such as First Nations children with disabilities who require medical treatment. Even where measures intended to address this issue, such as Jordan's Principle, are introduced, the challenges surrounding implementation and the resulting law and policy tensions persist. As one example, in 2016 the Canadian Human Rights Tribunal (CHRT) noted that, as a result of a limited implementation of Jordan's Principle, $11 million in Health Canada funding was never accessed by applicants.[3]

This report situates Jordan's Principle in its definitional and historical context. It analyzes how the principle evolved into a legal rule and how that rule has the potential to be a robust lever to fill the social service gaps faced by First Nations children across the country. Yet, questions about what it means and how it should be implemented have limited the potential impact of Jordan's Principle and fuelled ongoing (and mostly successful) litigation at the CHRT against the government seeking clarification of the principle. This report addresses how some of the implementation challenges reflect law and policy tensions, and how Jordan's Principle compares with other legal avenues for pursuing substantive equality.

2. The Law: Background and Features

This report builds on the work done by existing literature pertaining to Jordan's Principle. The following is a brief overview of some background information, such as the definition of Jordan's Principle and relevant legal rulings, to contextualize the remaining analysis.

Jordan's Principle is a "child-first" principle in recognition of Jordan River Anderson, a child who was born to a family of the Norway House Cree Nation in 1999.[4] Jordan required treatment for serious medical conditions, and – faced with a lack of services on reserve – his family transferred him to provincial care to get the required treatments. After spending the first two years of his life in hospital, he was eligible for transfer to a specialized foster home close to his medical facilities, but Aboriginal Affairs and Northern Development Canada (AANDC), Health Canada, and the Province of Manitoba spent the next two years in dispute over who was responsible for this funding. This dispute was ongoing when Jordan passed way in hospital at age five.[5]

On December 12, 2007, the House of Commons voted unanimously to adopt Motion 296 to address the needs of First Nations children.[6] Named for Jordan River Anderson, Jordan's Principle originated as a non-binding motion that was endorsed unanimously by Parliament. It set the principle that First Nations children should have access to the support services they need when they need them, without delay caused by jurisdictional disputes.[7] Where a government service is available

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[2] S. Brown, "Core Components and Consequences Analysis: Jordan's Principle," (2023) Institute of Fiscal Studies and Democracy 6; First Nations and Family Caring Society of Canada, *Wen: De We are Coming to the Light of Day* (First Nations Family and Caring Society: 2005) at 89, citing Assembly of First Nations, *Federal Government Funding to First Nations: The Facts, The Myths, and the Way Forward* (University of Wisconsin – Madison, 2004).
[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 (CanLII) at para 380 ["Caring Society"].
[4] *Ibid* at paras 351-352.
[5] *Ibid* at para 352.
[6] First Nations Child and Family Services, Government of Canada, "Timeline: Jordan's Principle and First Nations child and family services," accessed at: <https://www.sac-isc.gc.ca/eng/1500661556435/1533316366163>
[7] The First Nations Child & Family Caring Society of Canada in partnership with the Wabanaki Council on Disability and Mawita'mk Society, "Jordan's Principle and Children With Disabilities and Special Needs: A Resource Guide and Analysis of Canada's Implementation," (2021) 3; First Nations Child and Family Services, Government of Canada,

to all non-Indigenous children, and a dispute arises as to its availability to a First Nations child, the government department of first contact is required to put the needs of the child first and pay for the service. Government departments should negotiate co-payments or reimbursement from the other government/department after the child has received the service.[8] Jordan's Principle applies to First Nations children from birth to the age of majority in their province or territory.[9, 10]

Under Jordan's Principle, applicants can make individual or group requests. Canada must make decisions on individual requests within 48 hours, and group requests within one week. Where urgent needs are identified (i.e., where the risk of irremediable harm is reasonably foreseeable, the child is in palliative care, or the child requires urgent assistance), Canada must make decisions on individual requests within 12 hours and group requests within 48 hours.[11] Decisions may be submitted for appeal within one year of the date of denial and appeals are decided within 30 days.

The question of substantive equality arises because Jordan's Principle has been developed with an explicit anti-discrimination purpose, which raises inherently comparative questions. What outcome would likely have occurred had the claimant not been a member of the protected group? When a government service is not necessarily available to all other children or is beyond the normative standard of care, the government department of first contact will still evaluate the individual needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services to the child, and/or to safeguard the best interests of the child. This is because when it comes to indigenous children, even "natural" barriers, like geography, are anything but natural and can be traced to a legacy of systemic under-investment in Canada's First Nations communities.

The roots of the problem that Jordan's Principle is directed at resolving are structural, which at least partly explains the challenges with conceptualizing and implementing a remedial tool. The Principle

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"About Jordan's Principle: Timeline: Jordan's Principle and First Nations child and family services," accessed at: <https://www.sac- isc.gc.ca/eng/1568396042341/1568396159824#chp02>

[8] *Supra* note 3 at para 351.

[9] Indigenous Services Canada, Government of Canada, Jordan's Principle, "Submit a request under Jordan's Principle, Who Is Covered," accessed at: <https://www.sac-isc.gc.ca/eng/1568396296543/1582657596387#sec2>; The First Nations Child & Family Caring Society of Canada in partnership with the Wabanaki Council on Disability and Mawita'mk Society, "Jordan's Principle and Children With Disabilities and Special Needs: A Resource Guide and Analysis of Canada's Implementation," (2021) 9, 12.

[10] However, in 2022 CHRT 8 (CanLII), the CHRT ordered that "Canada shall fund at actual cost post-majority care to youth ageing out of care and young adults who were formerly in care up to and including the age of 25 across all provinces and territories. This funding shall be accessible through the actuals process for maintenance and protection reimbursed at the actual cost to the First Nations authorized post-majority service provider and shall be available until March 31, 2023. After this time, funding for post-majority care will be made available through the reformed FNCFS Program's funding formulas, policies, procedures and agreements in an evidence- informed way agreed to by the Parties" [para 172]. The relevant Government of Canada website indicates, "Starting April 1, 2022, First Nations authorized service providers can submit claims for the reimbursement of costs related to these services to Indigenous Services Canada (ISC) through the existing FNCFS claims process until March 31, 2023, or until the fully reformed program is implemented." No further information was indicated with respect to whether the fully reformed program for individuals over the age of majority has been implemented.

[11] The First Nations Child & Family Caring Society of Canada in partnership with the Wabanaki Council on Disability and Mawita'mk Society, "Jordan's Principle and Children With Disabilities and Special Needs: A Resource Guide and Analysis of Canada's Implementation," (2021) 15; Jordan's Principle, Indigenous Services Canada, Government of Canada, "Submit a request under Jordan's Principle, Processing Requests," accessed at: <https://www.sac-isc.gc.ca/eng/1568396296543/1582657596387#sec2>

will not fix the structural issues that continue to produce unequal access to essential services in First Nations communities. Jordan's Principle helps to mitigate the effects of systemic inequality by seeking to improve substantive outcomes for affected individuals notwithstanding the higher (publicly borne) costs of achieving such outcomes given the structural conditions.

From its inception, there were challenges with implementing Jordan's Principle as meaningfully as its advocates and putative beneficiaries would have preferred. This resulted from the government's development of highly restrictive definitions and eligibility categories. From 2007 to 2016, the federal government restricted the implementation of Jordan's Principle to such an extent that Jordan River Anderson himself may not have qualified to have the principle applied to his facts.[12] Implementation challenges resulted in allegations of discrimination being made to the Canadian Human Rights Commission by the First Nations Child & Family Caring Society (the "*Caring Society*") and the Assembly of First Nations ("AFN").[13] The case proceeded to a hearing before the Canadian Human Rights Tribunal. Appended to this Report is a chart laying out the various relevant tribunal rulings and court decisions in chronological order.

The Federal Court of Canada (FCC) and Canadian Human Rights Tribunal have repeatedly found that Jordan's Principle is binding on the federal government as a legal rule (not just a government policy or program),[14] and that Canada has discriminated against First Nations children by underfunding child welfare and failing to adequately implement Jordan's Principle. Canada has been repeatedly found in violation of the law and has faced non-compliance orders for its continued breaches.[15]

The government's failures appear in different forums and are highlighted in the 2016 CHRT decision in *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)*.[16] The tribunal concluded that First Nations children faced:

- disproportionate levels of funding on and off reserve;[17]
- disproportionate levels of funding as compared to provincial standards;[18]
- implementation methods which 'incentivize' removing children from their homes;[19]
- unduly narrowing of Jordan's Principle to only apply to "inter-governmental disputes and to children with multiple disabilities";[20]
- failure to consider the actual service needs of First Nations children and families;[21] and

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[12] The First Nations Child & Family Caring Society of Canada in partnership with the Wabanaki Council on Disability and Mawita'mk Society, "Jordan's Principle and Children With Disabilities and Special Needs: A Resource Guide and Analysis of Canada's Implementation," (2021) 5-6.
[13] *Ibid* at 6; *supra* note 3; *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 (CanLII).
[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 (CanLII) at para 25.
[15] *Supra* note 12 at 6-8. See further: Appendix.
[16] *Supra* note 3.
[17] *Ibid* at para 329.
[18] *Ibid* at para 330.
[19] *Ibid* at para 344.
[20] *Ibid* at para 360.
[21] *Ibid* at para 388.

- failure to modify the program for years after becoming aware of these adverse impacts.[22]

After these 2016 findings, the CHRT subsequently clarified the orders against Canada,[23] made additional findings in light of new evidence,[24] ordered further interim relief,[25] and further clarified the definition of a "First Nations child" for the purposes of eligibility under Jordan's Principle.[26] Ten additional CHRT decisions were issued in relation to this matter between 2020 and 2022, ranging in purpose from clarifying previous orders and eligibilities to establishing a draft compensation framework to operationalize portions of Jordan's Principle. For a more detailed breakdown of the CHRT litigation involved in relation to this decision, please see the appended Table of Decisions.

In the attached Appendix, the CHRT litigation is charted, noting the chronology and a summary of the content of each CHRT decision. On review of the litigation history, it is impossible to not be struck by the extent to which the litigation was slow, protracted, and complicated. It is worth considering the reasons for this, which can be traced to the nature of the claim, the nature of the forum, and the nature of state resistance to such claims. First, the claim was brought by way of the quasi-constitutional human rights legislation that is housed within the specialized, dedicated institutions—the Canadian Human Rights Commission and the Canadian Human Rights Tribunal. As the case history chart makes plainly clear, the government's strategy from the beginning was to seek to avoid liability at any cost. This included causing extensive delay, being uncooperative with the CHRT, resisting its orders, and more. The *Caring Society* case continues to grind on at present.

On December 12, 2023, the Caring Society filed a Notice of Motion with the Canadian Human Rights Tribunal regarding Canada's alleged non-compliance with the Tribunal orders on Jordan's Principle. The motion sought a number of urgent orders related to remedying the failure to implement Jordan's Principle, including addressing the backlog of unaddressed Jordan's Principle requests.

While premised on a virtuous idea, failures in the government's interpretation and application of Jordan's Principle have resulted in its unrealized potential and challenges to establishing its legal status, content, and scope due to ongoing litigation.

3. Tensions in Law and Policy

While the legal status and features of Jordan's Principle have been articulated, law and policy tensions remain and are pervasive. One analysis of the *Caring Society* case history might conclude that the litigation has not only struggled to effectively realize the full promise of Jordan's Principle as a legal doctrine, but that the government's litigation tactics and/or the CHRT's institutional

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[22] *Ibid* at para 461.
[23] *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 (CanLII); *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)*, 2016 CHRT 16 (CanLII).
[24] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs),* 2017 CHRT 14 (CanLII).
[25] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)*, 2019 CHRT 7 (CanLII) at para 89.
[26] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs*), 2020 CHRT 20 (CanLII).

limitations caused Jordan's Principle to stagnate in 15 years of litigation with piecemeal gains amid several setbacks. On this reading, the litigation could be viewed as an obstruction to the development of a robust, accessible, and enforceable legal interpretation of Jordan's Principle. By over-complicating the implications of the full legal implementation of the political commitment, rather than delivering on the promise of the Principle, the litigation stifled it.

The argument flowing from this analysis would be that forcing the matter into high-stakes litigation produced a chill on the will of government to move forward with commitments it was willing to make in the form of a non-binding resolution in December 2007. Capitalizing on the goodwill of that moment might have invited more of a negotiation in the political realm than adjudication of a test case. At the same time, it is not unusual for political leaders to commit to a policy or principle without the wherewithal to see it through to full implementation. Progressive or incremental realization of social rights is often necessary in order to implement human rights.[27] Unlike political rights, courts have tended to recognize that certain rights, especially those that exact a high cost from the state, may take time to realize. Thus, it is impossible to state with certainty whether the full realization of Jordan's Principle would be more effectively sought through a political rather than legal process. Even with government commitment to the spirit of the Principle, the state still has a strong interest in seeking to limit its financial liability. Thus, we will never know if Jordan's Principle could have grown into a more robust and accessible mechanism than it is today as a result of negotiated process as opposed to litigation.

It is worth remembering that the *Caring Society* case has been a remarkable success in terms of the legal principle. The claimant successfully deployed an argument that rooted Jordan's Principle in equality doctrine. The question that is not resolvable is determining who is best situated to balance the broad goals of Jordan's Principle with the government's interest in limiting legal liability. Claimants in litigation, whether under the *Charter* or the *Canadian Human Rights Act*, will seek a legal structure in which any proposed limits on the scope or force of Jordan's Principle will be subject to rigorous examination and adjudication by an impartial decision maker. The government, on the other hand, tends to prefer to retain control over the scope of its obligations and will resist litigation, preferring a process under its direction. The choice for advocates is not always an either/or choice. Litigation, or the threat of litigation, can create conditions conducive to negotiation or mediation. The risks of litigation, which is effectively a "zero-sum game", provide some incentive to even the most confident or idealistic claimant to consider a negotiated agreement. The willingness of the government to negotiate under the shadow of claimant-initiated litigation as opposed to a state-crafted process depends on a variety of factors, both legal and extra-legal.

Analyzing legal and policy tensions, and predicting outcomes, relating to Jordan's Principle can be challenging due to constraints on the available information. While the legal frameworks (i.e. rules, definitions, or terms and conditions) have been significantly defined by the CHRT, the government policy frameworks (i.e. the operational principles, procedures, and implementation) are harder to access.[28] One significant challenge – which often yields policy consequences in implementation – is the level of misunderstanding or misinformation surrounding Jordan's Principle, which has been

[27] See Katharine Young, "Waiting for Rights: Progressive Realization and Lost Time". *The Future of Economic and Social Rights* (Cambridge: Cambridge University Press, 2019).
[28] S. Brown, "Core Components and Consequences Analysis: Jordan's Principle*,"* (2023) Institute of Fiscal Studies and Democracy 14-15.

described as operating "in a novel legal and policy space."[29] The inaccessibility of many of these policies for information and evaluation likely contributes to this phenomenon. As of June 2023, comprehensive studies on the implementation of Jordan's Principle have been conducted, but only in the provinces of Manitoba and Alberta.[30] While this data is useful, given the distinct landscape in each jurisdiction, it would be valuable to gain more localized information. Knowing how the implementation is actually working on the ground from a broader perspective is an important part of allaying concerns and demonstrating responsiveness to the stakeholder communities, who need to see tangible, positive outcomes. Placing Indigenous families in the position of having to navigate an uncertain landscape in real time when the need for services arises is precisely what the spirit of Jordan's Principle was meant to cure, yet the misapplication of Jordan's Principle appears to be doing just that.

A common issue arising at an initial stage when an application under Jordan's Principle is made concerns the scope of the rule. The CHRT has indicated that the implementation of Jordan's Principle must be responsive to the best interests of the child, should be needs-based, and must accord with the standard of substantive equality.[31] The theory of substantive equality, which has formed the core understanding of Canadian equality doctrine for more than 25 years:

> … recognizes that in order to further equality, policies and practices need to respond to historically and socially based differences. Substantive equality looks to the effects of a practice or policy to determine its equality impact, recognizing that in order to be treated equally, dominant and subordinated groups may need to be treated differently.[32]

Jordan's Principle implicitly acknowledges that First Nations children may need to be treated differently in certain circumstances so as to ensure they are treated equally to non-Indigenous children. In practice, however, the government has applied Jordan's Principle in a way that seeks to systematize compliance by matching the application of the rule to a corresponding provincial or territorial standard of care, rather than tailoring its application to the individualized interests of each child. This is viewed by many advocates and stakeholders to be a failure to sufficiently centre the child, as required by Canadian equality law. This position is bolstered by international norms to which Canada ascribes and which have been given legal weight in Canadian courts.[33] The demands of substantive equality require an individualized, contextual approach that avoids categorical and presumptive reasoning.[34]

Similarly, while the originating rationale for Jordan's Principle, and the bulk of its application, centre on healthcare, the legal rule as interpreted by the CHRT is wider, covering a range of social services and supports.[35] These gaps between the theory and practice, or between the conceptualization and application of Jordan's Principle, in relation to its scope of coverage, can lead families (1) to believe that Jordan's Principle would not be applicable to their situation when they may in fact be eligible; or

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[29] *Ibid* at 1.
[30] *Ibid* at 35.
[31] *Supra* note 12 at 8; *supra* note 3.
[32] Diana Majury, "The *Charter*, Equality Rights, and Women: Equivocation and Celebration" (2002) 40:4 Osgoode Hall LJ 297 at 305.
[33] *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817, paras 74-75 [*Baker*]; *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3, General Assembly resolution 44/25, 20 November 1989.
[34] *Supra* note 12 at 18; *supra* note 3.
[35] *Supra* note 12 at 19; *supra* note 3 at para 355.

(2) to expect a narrower scope and/or lower level of assistance in their circumstances than they might otherwise be entitled to and/or receive.

Similarly, gaps between theory and practice result in questions about the authority of the rule and, relatedly, how it operates. As a legal rule, Jordan's Principle is not merely a government program that can change with elections. It is also not subject to an evaluation of a fixed budget or resources to be divided among applicants. Rather, the needs-based assessment must be implemented, which then indicates to the government(s) what levels of funding and resources are required.[36] Substantive equality should set the parameters pertaining to the sufficiency of services in relation to what is required by Jordan's Principle. Cost considerations are not irrelevant, but within an equality framework, such considerations should only apply at the point that the limit on full rights realization is reached and only if the cost is truly prohibitive. The *Charter* recognizes that rights and freedoms, including the right to substantive equality, are subject to reasonable limits that can be demonstrably justified in a free and democratic society. In the absence of such reasonable limits on cost, it is not clear that cost is a valid consideration in the substantive equality analysis.

When completing the application, families face additional challenges. As one example, the requirement of confirmation of need from a "professional", such as a social worker, medical doctor, or psychologist, is likely to maintain the narrow healthcare focus, and adds another barrier for First Nations families to access a broad range of social services.[37] This also creates false incentives to address social problems as health problems and produces unnecessary stigma. Studies have found that, even where healthcare access is available to First Nations families, parents may avoid seeking support through the healthcare system due to fears of being blamed personally for their child's condition. First Nations parents also worry that the healthcare system could lead to the engagement of the child welfare system as the only way for the child to receive necessary services.[38] The significance of this challenge was noted by the CHRT in 2016, identifying that there is "approximately three times the numbers of First Nations children in state care than there were at the height of residential schools in the 1940s," and that indigenous children face disproportionate contact with the child welfare system.[39]

After going through the process of requesting supports, parents and caregivers may then have no choice but to leave reserve communities to access the required health and social services.[40] These services can also be culturally inappropriate or unsupportive of Indigenous families.[41]

Finally, even after applications are completed and services obtained, the Caring Society has noted that families are sometimes required to re-apply for previously approved supports or services, face 'sunset dates' on approved services, and/or periodically submit "re-evaluations" to establish

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[36] *Supra* note 12 at 8.
[37] *Supra* note 12 at 20-21; Douglas Durst, "Urban Aboriginal families of children with disabilities: Social inclusion or exclusion?" (2006) National Association of Friendship Centres.
[38] *Supra* note 12 at 22-23, 155. Lori Chambers & Kristin Burnett, "Jordan's Principle: The struggle to access on-reserve health care for high-needs Indigenous children in Canada," (2017) *American Indian Quarterly*, 41 (2), 101–124; Douglas Durst, "Urban Aboriginal families of children with disabilities: Social inclusion or exclusion?" (2006) National Association of Friendship Centres.
[39] *Supra* note 3 at para 161.
[40] *Supra* note 12 at 23; Roberta Woodgate. "Understanding the disability trajectory of First Nations families of children with disabilities: Advancing Jordan's Principle." (2013) First Nations Families of Children with Disabilities Summit.
[41] *Ibid.*

continued need.[42] As noted above, evaluation of these procedures is limited by the unavailability of information concerning the consistency of these requirements across jurisdictions.

Though the legal features of Jordan's Principle include concepts such as substantive equality, needs-based analyses, and child-first principles, the practices and policy realities faced by families seeking services indicate significant shortcomings.

4. The *Charter*: Another Path to Securing Jordan's Principle?

It is worth considering whether, given the way Jordan's Principle has been described by the CHRT within an antidiscrimination lens, it could be said that the Principle has been constitutionalized as a necessary component of fulfilling equality rights. This idea raises an initial objection on the basis of redundancy: Jordan's Principle has been interpreted robustly as an anti-discrimination guarantee pursuant to the *Canadian Human Rights Act*, which has binding, quasi-constitutional authority over the federal government. Establishing that the *Charter* effectively constitutionalizes Jordan's Principle may have the effect of securing the standard from legislative interference or repeal, but it would not automatically clarify the definitional and scope issues.

Yet, given the ambiguity in Jordan's Principle itself, along with the apparent limitations of a statutory human rights system to provide robust, enforceable remedies, it may nonetheless be worth considering whether constitutional litigation and a court order could better enshrine Jordan's Principle in law and administrative practice.

The *Canadian Charter of Rights and Freedoms* is one such avenue through which people seek to challenge discriminatory government actions. Just as Jordan's Principle aims to facilitate substantive equality for First Nations children, s. 15 focuses on equality rights:

> 15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
> (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

Under s. 15, government actions (such as laws, policies, programs, etc.) must not discriminate. There is no positive obligation under this section for the government to remedy every inequality, but s. 15(2) enables the government to combat discrimination proactively through affirmative measures (such as Jordan's Principle).[43] The analysis under s. 15 is purposive, focused on substantive equality, and thereby contextual. These principles echo those that are required in connection with Jordan's Principle.

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[42] *Supra* note 12 at 37.
[43] Government of Canada, Section 15 – Equality rights, accessed at: <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art15.html>

In addition, and rather importantly if a *Charter* case is to be seriously considered, there is s. 35 of the *Charter*, which provides: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." As with Jordan's Principle, the depth and scope of s. 35 are not fully known. Aboriginal rights have been interpreted by courts to include a range of cultural, social, political, and economic rights including the right to land, as well as to fish, to hunt, to practice one's own culture, speak one's language, and establish treaties. The CHRT considered various arguments rooted in s. 35 in the *Caring Society* case. For example, in its May 2017 ruling, the CHRT highlighted the relevance of s. 35 Aboriginal rights as well as the "honour of the Crown" and fiduciary duties owed to indigenous peoples, as well as the "best interests of the child" when it comes to children. Addressing Jordan's Principle, the panel concluded that:

> To ensure Aboriginal rights and the best interests of First Nations children are respected in this case, the Panel believes the governance organizations representing those rights and interests, representing those children and families affected by the *Decision* and who are professionals in the area of First Nations child welfare, such as the Complainants and the Interested Parties, should be consulted on how best to educate the public, especially First Nations peoples, about Jordan's Principle. This consultation will also ensure a level of cultural appropriateness to the education plan and materials.

Thus, we see that even if s. 35 does not create a "positive obligation" on Canada to meet a specific standard of service, s. 35 is a valuable interpretive tool that affirms the history of indigenous dispossession and highlights the root causes of the present conditions in which indigenous children lack access to basic services.

Using the same facts that were present in the *Caring Society* case before the CHRT (which addressed similar elements as would be required under the relevant s. 15 tests), applicants in a *Charter* case would most likely succeed if the court adopts the same test and standards in relation to the facts. The claimants would indicate that the relevant services are provided as part of a government program (thus bringing it within the required scope of state action); a distinction is created on an enumerated or analogous ground (in this case, the characteristics of race and/or national or ethnic origin, as recognized by the CHRT); and that the distinction results in the denial of benefits (i.e. government services) that the claimants are otherwise entitled to, but for their status as indigenous children (s. 35 might work to bolster this element). These elements add up to constitute substantive discrimination. There is every reason to expect that a good litigant with competent counsel could establish a discrimination breach.

Once substantive discrimination is established, the onus shifts to the government to justify the discrimination. This step is the s. 1 justification exercise, whereby the government can argue that the *Charter* breach is fair and reasonable in a free and democratic society. It is highly unlikely that a breach of s. 15 could be justified, though it is not completely unprecedented.[44]

While applications made under Jordan's Principle have the option of being processed as group requests, these are also often burdened with significant additional administrative demands, and pose extra challenges for applicants.[45] Consequently, many service providers and applicants elect to make

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[44] *Newfoundland (Treasury Board) v. N.A.P.E.*, 2004 SCC 66 (CanLII), [2004] 3 SCR 381 at para 72 [limiting the application of employment equity to redress sex inequality in the civil service on account of undue cost implications].
[45] *Supra* note 12 at 33.

individual requests. However, the "incredibly high application rate" for services under Jordan's Principle indicates widespread shortcomings in the programs and services available to First Nations children, which then require supplements.[46] Sometimes individualized applications will make the most sense; however, many applications will share certain essential features and it may be more efficient and fair to accept group applications for similarly-situated individuals who wish to collectivize their resources.

Rights adjudication is a rear-looking exercise. Courts only gain jurisdiction over a matter after the dispute has already occurred. Cases that are brought prematurely or based on hypothetical situations, in the absence of facts, are dismissed at an early stage. When it comes to administrative discretion – that is, the exercise of authority delegated by the state to individual decision makers, as is the case with the implementation of Jordan's Principle – the question of rights is complicated. The SCC in *Baker* stated that "discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the Charter".[47] However, enforcing *Charter* compliancy in discretion decision making is a challenge.

Certainly, discretionary decisions that violate *Charter* rights are unlawful. In a 2014 decision,[48] the SCC took this a step further for administrative decision makers that operate in a quasi-judicial manner: they are required to consider and proportionately balance *Charter* values with the other statutory aims and considerations at play. Professor Audrey Macklin's 2014 article, "Charter Right or Charter-Lite? Administrative Discretion and the Charter" offers thorough analysis of the case and its impact.[49] The bottom line for Macklin, and many other critics, is that the concept of *Charter* values takes the already soft concepts of rights in the *Charter* and makes them vaguer, less tangible; and in doing so, makes them less accessible, less robust, and less able to hold government to account. Jurisprudence from the last decade, as well as expert commentary, tend to confirm this account when it comes to using the *Charter* to challenge discretionary decisions. Instead of asking whether the decision violates the *Charter*, under the *Dore* analysis, reviewing courts ask instead whether the decision was reasonable to the extent that it balanced the *Charter* rights along with other considerations. Reasonableness based on proportionality analysis is a much less robust check on government action than review for rights violations.

In this case, we are neither dealing with legislation that can be challenged or decisions that are reached through a quasi-judicial process. Jordan's Principle, on its face, does not raise *Charter* objections; *au contraire*, it is laudatory and aspirational. However, the methods of implementation—the discretionary decisions relating to requests made pursuant to Principle—have given rise to plausible concerns about under-inclusiveness and discrimination. Because the decision makers are not quasi-judicial, the *Dore* framework does not apply. Nonetheless, the decisions are still constrained by the *Charter* but accountability requires challenging the *application* of the law or rule as opposed to the law or rule itself. The *Charter* struggles to correct the exercise of discretion that fails to adequately consider *Charter* values.

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[46] *Supra* note 12 at 22, 41.
[47] *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817
[48] *Doré v. Barreau du Québec*, [2012] 1 S.C.R. 395
[49] Audrey Macklin, "Charter Right or Charter-Lite? Administrative Discretion and the Charter" (2014) 67 SCLR 561

In *Eldridge*,[50] a pre-*Dore* case, a law authorizing the Medical Services Commission to fund certain health services was found not to violate the *Charter* even though it denied deaf patients sign language interpretation services. The law could stand, but the exercise of discretion by the Commission not to fund interpreters for deaf patients was found to be unconstitutional. The case, decided by the SCC in 1997, is viewed as a rare (if not singular) example of a finding of under-inclusive decision-making constituting s. 15 unconstitutionality. There are few if any comparators.

A further limitation of the *Charter* is that courts do not have the remedial tools to fix systemic issues. This is what is necessary to fully operationalize Jordan's Principle. In *Eldridge*, the fix was simple: reverse the exclusion and add sign language interpretation to the list of funded services. Here, it appears the issue cannot be resolved by turning just one dial, but rather requires a more systematic remedial approach. This is similar to what was prescribed in the *Caring Society* case, which, unlike *Eldridge*, was a discrimination claim that went to the CHRT under the *Canadian Human Rights Act* rather than to the courts under the *Charter*. As an expert human rights body, the CHRT has, in theory, greater remedial flexibility than the courts. Yet, even still, as the jurisprudential history of that case clearly illustrates, even detailed, prescriptive remedies can be easy to evade and difficult to enforce.

5. Achieving Security for Jordan's Principle

There appears to be no question that Jordan's Principle is secure in its status as a rule on paper with some moral force but uncertain legal authority and unknown boundaries and limits. Security for advocacy groups means solidifying the link between the Principle's foundation and its application. In turn, it also means ensuring the broadest possible scope of coverage. It would be valuable to have research surveying the implementation experiences of Jordan's Principle across jurisdictions within Canada to compare discrepancies in implementation. This could provide a foundation grounded in facts for reform. As of June 2023, comprehensive studies had only been conducted in the provinces of Manitoba and Alberta.

Additionally, advocacy groups could engage in greater public awareness/education regarding the nature of Jordan's Principle. This is especially important with respect to indigenous communities and the fact that they have been misled with respect to Jordan's Principle. This could cover: the scope of Jordan's Principle (i.e. health, social, education, and cultural services and supports); the application process and appeal rights; general misconceptions, etc. This would essentially be a "know your rights" campaign to assist individuals and communities to engage in more effective self-help to access the benefits of the Principle. Additional measures could be undertaken to bolster awareness within affected communities by demonstrating a material change which could address past concerns. Some specific examples include:

- Provide greater education for service providers (ex: psychologists, doctors, social workers, counsellors, etc.) -- especially those working with First Nations populations -- on the availability and mechanics of Jordan's Principle.

- Establish an advisory or supervisory board comprised of First Nations representatives working on the implementation, revision, and/or awareness-raising about the Principle.

[50] *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624

- Bolster the funding/accessibility of related or implicated components (social workers, medical doctors, psychologists, etc.), particularly near reserve communities, to avoid a) additional barriers to initial and continued access, and b) fears based on disproportionate entry into the child welfare system to have care needs met.

- Develop standardized internal implementation practices among service providers to be publicized to the public. This should be accompanied by a mechanism for review, making findings, and issuing penalties for a service provider's failure to adhere to the defined process or to give adequate grounds for rejection.

- Obtain specific additional remedies through the CHRT pursuant to its jurisdiction to order an offending party to "take measures to prevent the practice from occurring in the future", pursuant to s. 53(2)(a) of the Act, which pertains to the training and policies for decision makers.

Part of the challenge is that there is no real comparator for Jordan's Principle. It is a unique rule that appears to create a program that is unparalleled. Some sources draw comparisons to the Veteran and Family Well-Being Fund (VFWF). This fund provides "grants and contributions to private, public or academic organizations to conduct research and implement initiatives and projects that support the well-being of Veterans and their families."[51] This funding mandate ensures access to funds that are meant to assist veterans in various ways. This is not the way Jordan's Principle works, but it offers an example of a different approach to realizing a similar objective. It may be worth exploring the possibility of developing a system in which particular service providers (especially those with greater cultural competencies) or particular locations (especially near under-served reserve communities) to implement their own programs. In my opinion, such a system could work but may be better suited to non-healthcare social services especially given the lack of basic healthcare infrastructure, such as hospitals, equipment, etc., in the reserve and remote communities.

When we consider the legal status of Jordan's Principle, an apparent originating obstacle is the vague status and imprecise force or weight attributed to the Principle. It is neither law nor regulation. At best, it can be understood as a policy which sets a novel rule with limited enforceability. As a rule without a comparator, Jordan's Principle struggles to be actionable and robustly enforceable to the satisfaction of its beneficiaries. If it were adopted as a legal rule through legislation, this would be both formalize its status as a cognizable and enforceable statutory rule or standard, as well as provide a legal concept in need of a doctrinal foundation, which could develop through adjudication. To that end, one policy recommendation to consider is an appellate tribunal. Setting this as a key operational priority would promote greater transparency and accountability in the process by which Jordan's Principle requests are adjudicated and decided. By creating a quasi-judicial tribunal to hear appeals of denials, decisions could be made by a body that is legally obliged to balance *Charter* values (per *Dore*) and to apply applicable human rights principles (per *Tranchemontagne*)[52] in making decisions in respect of Jordan's Principle. The decisions of such a body, unlike decisions made in the first

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[51] Please see: <https://www.veterans.gc.ca/eng/about-vac/research/well-being-fund>

[52] *Tranchemontagne v. Ontario (Director, Disability Support Program),* [2006] 1 S.C.R. 513 [ruling that "statutory tribunals empowered to decide questions of law are presumed to have the power to look beyond their enabling statutes in order to apply the whole law to a matter properly before them", which would include applying statutory anti-discrimination law].

instance, would be published for the public. While not technically setting binding precedents, over time the decisions would constitute a body of jurisprudence that could be consulted and relied upon and would thereby have the ability to influence conduct if not compel action by generating observable criteria and guidelines for eligibility. Better transparency would go a long way to fostering better public understanding of, and buy-in to, the program; and could be expected to build trust and improve relations between affected communities and the government.

6. Conclusion

Despite legal interventions, it is evident that challenges with government implementation of Jordan's Principle are ongoing. While these legal interventions may have provided clarity on the components of Jordan's Principle, the limited information available on related policies appear to fall short of these conceptual standards.

Despite obstacles, Jordan's Principle nonetheless offers significant value even as compared to other legal avenues such as s. 15 of the Charter. Parliament's willingness to resolve as it did helped save advocates years of advocacy that would have been necessary to get a test case to the Supreme Court to issue a binding decision. Though many of the underlying principles of s. 15 and statutory human rights are the same – substantive equality, contextual, needs-based analysis – features of Jordan's Principle such as the capacity for group requests and mandatory timelines offer applicants specific tools that could otherwise take years of litigation to secure and which do not necessarily flow from the Charter. These measures are specifically designed to promote access to justice and have meaningful impact – should an applicant under Jordan's Principle challenge the decisions or delivery of services offered, they will have tools to challenge and have positive impact.

Proactively, having advocates seek greater clarity on the delivery and implementation side is likely to offer a more effective application and implementation of Jordan's Principle, and reduce the need for responsive litigation or a protracted test case. In this way, operationalizing Jordan's Principle more effectively can draw closer to realizing the intention of the legal rule as a child-first principle.

APPENDIX

The following table provides a chronology of the *Caring Society* litigation at the Canadian Human Rights Tribunal (CHRT) with brief overviews of the various decisions, both procedural and substantive. Other court decisions (ex: Federal Court) are excluded. The earliest decision noted is from March 2010 and the last is exactly 12 years later. The litigation is ongoing. All paragraph numbers are references within the given case.

Case	Issue(s)	Outcome(s)
First Nations Child and Family Caring Society of Canada, Assembly of First Nations v. Indian and Northern Affairs Canada, 2010 CHRT 7	Motion by Mushkegowuk Council for interested party status in this proceeding. [1]	Denied. [14]
First Nations Child and Family Caring Society of Canada, Assembly of First Nations v. Indian and Northern Affairs Canada, 2010 CHRT 16	Application by Aboriginal Peoples Television Network to record and broadcast the hearing. [1]	Granted in part, only for an opening ceremony at the outset of the hearing on the merits. [38-39]
First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Attorney General of Canada (representing the Minister of Indian Affairs and Northern Development), 2011 CHRT 4	Crown motion for a ruling that questions arising out of the complaint are not within the jurisdiction of the Canadian Human Rights Tribunal.	One question (the "comparator" question) is a pure question of law and outside CHRT scope. The other question (whether the Indian and Northern Affairs Canada [INAC] funding is a "service") could not be decided due to insufficient evidence.
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), 2012 CHRT 16	AFN motion to appoint a panel of three members [as opposed to a single member] to hear the complaint. [1]	A three member panel is assigned to inquire into this complaint. [30]
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), 2012 CHRT 17	After judicial review by the Federal Court of the decision in 2011 CHRT 4 (above), the matter was remitted for reconsideration before a different panel of the CHRT. [1-2]	Bound by the FC decision, the jurisdictional complaint is dismissed and the CHRT is to proceed with the complaint on its merits. [7-8]
First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and	After judicial review before the Federal Court of the decision in 2011 CHRT 4 (above), the	The Tribunal grants APTN's motion for camera access, subject to operating guidelines. [8]

Northern Affairs Canada), 2012 CHRT 18	CHRT adopted those reasons. [1, 6]	
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)., 2012 CHRT 23	Clarification re: the proposed camera operating guidelines.	There shall be no broadcasting of the testimony of a witness who has objected to the broadcasting of his or her testimony on the basis that it contains information that is personal in nature once this objection has been upheld by the Tribunal upon examining the witness' testimony.
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)., 2012 CHRT 28	Motions to strike evidence and expert reports.	One motion withdrawn, one motion dismissed.
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)., 2013 CHRT 11	Concerns raised that recordings may have been made during breaks and of privileged conversations.	The Tribunal orders NFB to comply with the Tribunal's existing media guidelines and any further guidelines issued by the Tribunal. [14]
First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada), 2013 CHRT 16	Respondent's motion for an adjournment and the complainant's motion for an order for production.	The Respondent's adjournment motion is allowed in part; The First Nations Child and Family Caring Society's motion for a production order is allowed in part.
First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada), 2014 CHRT 2	Motion for an order admitting documents as evidence for the truth of their contents. [21]	The Tribunal will admit relevant documents, regardless of hearsay, on a case-by-case basis as the parties introduce them into evidence, and to consider any issues regarding their reliability at the weighing stage. [69]
First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada), 2014 CHRT 12	Ruling pertaining to the parties' disclosure obligations is sufficiently flexible. [1]	The Panel expects to hear from Respondent Counsel prior to the end of this week regarding any potential additional time needed to comply with the Complainant's request, beyond the dates already scheduled. [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), 2015 CHRT 1	The Attorney General now raises concerns regarding the admissibility of documents "relied on by Counsel" for the Commission, the Caring Society and the AFN that were not referred to by Counsel orally during the hearing. [17]	Documents listed in Appendix B of the Commission's December 1, 2014 letter (including Documents Referred to Only in Final Written Submissions (which were Adopted Orally) found at page 9) will be considered as forming part of the evidentiary record. The Respondent will be granted an opportunity to respond to the Complainant's documents listed in Appendix B and supporting submissions with the exception of tab-66. Should the Respondent decide to benefit from this opportunity, the Respondent is to advise the parties and the Tribunal of its intention and form of response by no later than January 21, 2015, following which the Respondent will have until February 4, 2015 to file its response. The Panel continues to reserve the right to ask clarification questions to the parties concerning any issue or document while it reviews the evidence. [30]
First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2015 CHRT 14	Notice of motion to amend the Complaint to include allegations of retaliation, contrary to section 14.1 of the *Act* [2]	The Tribunal finds that the Complaint is substantiated on the basis of the Respondent's retaliatory actions relating to the exclusion of Dr. Blackstock from the Chiefs of Ontario Meeting at the Minister's Office. [121]
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	Whether the provision of child and family services in on-reserve First Nations communities and in the Yukon is discriminatory. Namely that there is inequitable and insufficient funding for those services by AANDC. [21]	The Panel finds the Complainants have presented sufficient evidence to establish a *prima facie* case of discrimination under section 5 of the *CHRA*. [456]
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	The Panel advised the parties it would address the outstanding questions on remedies, and the Panel requested further clarification from the parties on	Revised orders issued and clarifications provided.

	how these orders could best be implemented [3-4]	
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 11	The Nishnawbe Aski Nation (the NAN), specifically the NAN Chiefs Committee, seeks leave to intervene in these proceedings, at the remedies stage, as an interested party. [1]	The NAN shall be added as an interested party to these proceedings. [18]
First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs), 2016 CHRT 16	This Panel continues to supervise Indigenous and Northern Affairs Canada's (INAC's) implementation and actions in response to findings that First Nations children and families living on reserve and in the Yukon are denied equal child and family services, and/or are differentiated adversely in the provision of child and family services [1]	Multiple additional orders issued [160]
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 7	The Nishnawbe Aski Nation ("NAN") seeks various immediate relief orders [4]	Multiple additional orders issued [24]
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	The Complainants and the Interested Parties believe Canada has failed to comply with the Panel's orders to date, or certain aspects of those orders.	The orders made in this ruling are to be read in conjunction with the findings above, along with the findings and orders in the *Decision* and previous rulings (2016 CHRT 2, 2016 CHRT 10 and 2016 CHRT 16). Specific timelines for the implementation of each of the Panel's orders are indicated below to ensure a clear understanding of the Panel's expectations and to avoid misinterpretation issues that have occurred previously in this matter (such as with the term "immediately"). [133-134]

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	All parties involved in the motion consent to relief sought (modification in earlier definitions/guidelines). [8]	Revised certain definitions and guidelines in the above orders from 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), 2018 CHRT 4	The Complainants and Interested Parties (with the exception of Amnesty International) have each brought motions challenging, among other things, Canada's implementation of this Panel's decision and orders in *First Nations Child and Family Caring Society of Canada (FNCFCS) et al. v. Attorney General of Canada* (for the Minister of Indian and Northern Affairs Canada (INAC)), 2016 CHRT 2 ("the *Decision*"). Canada and the Canadian Human Rights Commission (Commission) filed submissions in response to the motions. This ruling deals specifically with allegations of non-compliance and related requests for further orders with respect to immediate relief. [1-2]	Many additional orders and timelines issued [407-446]
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 27	Concern over confidentiality of affected party.	Confidentiality order issued pursuant to section 52 of the Canadian Human Rights Act. All parties agreed that all other documents, affidavits and materials filed with the Tribunal regarding the implementation of the Panel's orders are part of the evidentiary and public record, subject to redactions to identifying information and, unless directed otherwise by the Tribunal. [7]
First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada	The Tribunal found that Canada knowingly failed to disclose 90,000 documents, a number of	Motion brought on consent by parties. Additional costs ordered. [32]

(representing the Minister of Indigenous and Northern Affairs Canada), 2019 CHRT 1	which were prejudicial to Canada's case and highly relevant, and found that Canada failed to advise the Tribunal and the parties of this fact at the earliest opportunity. [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), 2019 CHRT 7	The Caring Society, makes a motion for further relief to ensure that this Tribunal's Orders of January 26, 2016 (2016 CHRT 2), April 26, 2016 (2016 CHRT 10), September 14, 2016 (2016 CHRT 16) and May 26, 2017 (2017 CHRT 14) are effective, specifically regarding the definition of "First Nations Child" in those orders. [27]	The Panel, in light of its findings and reasons, its approach to remedies and its previous orders in this case, above mentioned and, pursuant section 53 (2) a and b of the CHRA, orders that, pending the adjudication of the compliance with this Tribunal's orders and of Canada's definition of "First Nations child" for the purposes of implementing Jordan's Principle, and in order to ensure that the Tribunal's orders are effective, Canada shall provide First Nations children living off-reserve who have urgent and/or life-threatening needs, but do not have (and are not eligible for) Indian Act status, with the services required to meet those urgent and/or life-threatening service needs, pursuant to Jordan's Principle. [87]
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 11	On January 30, 2019, the Congress of Aboriginal Peoples (CAP), wrote the Tribunal requesting an opportunity to participate in this matter on the issue of the scope of eligibility of the Jordan's Principle related to non-status Indian children living off-reserve. [15]	The Panel grants the CAP's request in part – limited interested party status with conditions. [51-52]
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	Determining issues of compensation.	Orders made re: • Compensation for First Nations children and their parents or grandparents in cases of unnecessary removal of a child in the child welfare system • Compensation for First Nations children in cases of necessary

		removal of a child in the child welfare system • Compensation for First Nations children and their parents or grandparents in cases of unnecessary removal of a child to obtain essential services and/or experienced gaps, delays and denials of services that would have been available under Jordan's Principle
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 7	Three questions regarding eligibility for compensation: 1. At what age should beneficiaries gain unrestricted access to the compensation? 2. Should compensation be available to children who entered care prior to January 1, 2006 but remained in care as of that date? 3. Should compensation be paid to the estates of deceased individuals who otherwise would have been eligible?	1. The provincial/territorial age of majority is determined to be the age for victims/survivors/beneficiaries to gain unrestricted access to the compensation. [36] 2. Yes [37] 3. Yes [77]
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	Compensation Process Ruling on Outstanding Issues in Order to Finalize the *Draft Compensation Framework*	Full decision highlights specific issues and provides framework for compensation.
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 17	The Caring Society filed an informal motion requesting the disclosure of redacted information in a number of documents disclosed by the AGC. [8]	The Panel directs the parties to file submissions by way of letters following a given schedule. [25]
First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of	In this motion, the Chiefs of Ontario (COO), an interested party in the case at hand, argues that Canada failed to comply	The Panel, pursuant to Section 53(2)(a) and (b) of the *CHRA*, reiterates its order that Canada fund Band Representative Services for Ontario

Indigenous and Northern Affairs Canada), 2020 CHRT 24	with this order and seek further direction from the Tribunal on Canada's implementation of funding for Band Representative and Mental Health Services in Ontario. [5]	First Nations, Tribal Councils or First Nations Child and Family Services Agencies at the actual cost of providing those services, retroactively to January 26, 2016 within 15 business days after receipt of the documentation of expenses and until such time as studies have been completed or until a further order of the Panel. The Panel, pursuant to its previous orders that consistently account for the specific needs of First Nations children, families and communities and Section 53(2)(a) and (b) of the *CHRA*, orders Canada A. to continue to accept submissions and make reimbursements for Band Representative Services and Children and Youth's mental health services on an ongoing basis, in conformity with the reasons explained above and previous orders of the Panel and, without imposing an inflexible deadline; and B. to cooperate with the COO and those parties designated by the COO (such as provincial-territorial organisations such as the Nishnawbe Aski Nation) in a clear communications plan to communicate to First Nations or their recipients that the previously stated deadline no longer firmly applies. [45-46]
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 31	This ruling addresses the Innu Nation's request to make a limited intervention in this matter as an interested party. [1]	The Panel grants the Innu Nation's motion for a limited interested party status on the parameters indicated. [33]

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	In this ruling, the parties request approval of the process they have established to determine which children are eligible for consideration to receive services under Jordan's Principle. [2]	Pursuant to section 53(2) of the *CHRA*, the Tribunal orders eligibility for Jordan's Principle to be determined in accordance with the "Jordan's Principle eligibility criteria following 2020 CHRT 20" as included in Annex A. Further, the Tribunal orders Canada to fund First Nations and First Nations organizations for confirmation of First Nations identity as outlined in "Jordan's Principle Eligibility – First Nations Citizenship Determination" as included in Annex B. [54] Cases meeting any one of four criteria are eligible for consideration under Jordan's Principle. Those criteria are the following: 1. The child is registered or eligible to be registered under the Indian Act, as amended from time to time; 2. The child has one parent/guardian who is registered or eligible to be registered under the Indian Act; 3. The child is recognized by their Nation for the purposes of Jordan's Principle; or 4. The child is ordinarily resident on reserve. [56]
First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2021 CHRT 6	Compensation Process Ruling on Four Outstanding Issues in Order to Finalize the *Draft Compensation Framework* (Trust Provisions, NAN's Role in the Compensation Process, Jordan's Principle Discrimination Eligibility Timeframe, and Retention of Jurisdiction and Tribunal's Role)	The Tribunal has the jurisdiction under section 53 of the *CHRA* to approve the trust provisions in the *Draft Compensation Framework*. [30]. Past practice and the nature of trust law both support that the *Indian Act* does not preclude the creation of the proposed trust provisions in the *Draft Compensation Framework*. [42]. The trusts and guardianship laws referred to by Canada do not preclude the Tribunal approving the trust provisions

		contained in the *Draft Compensation Framework*. [50] The Panel agrees with the NAN that remoteness issues cannot be compartmentalized and acknowledges that NAN's contribution to these proceedings has been meaningful. [103] The eligibility for compensation under Jordan's Principle orders have already been argued and answered by this Tribunal. [113] The Panel agrees with the Commission's characterization of the Tribunal's supervisory role as part of the Tribunal's retained jurisdiction. [124]
First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2021 CHRT 7		Pursuant to section 53 of the *CHRA* and its previous rulings, the Tribunal approves the *Framework for the Payment of Compensation under 2019 CHRT 39* along with accompanying schedules as submitted by the parties on December 23, 2020. The Tribunal will make the *Framework* available to the public upon request. [40]
First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2021 CHRT 12	This ruling is a consent order addressing a motion by the First Nations Child and Family Caring Society of Canada (the Caring Society) for a determination that First Nations children and families living on-reserve and in the Yukon who are served by a provincial or territorial agency or service provider are within the scope of the Tribunal's current remedial orders. [1]	Steps for resolution ordered [42]
First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of	This ruling addresses a number of related motions brought in the context of the Tribunal's retained jurisdiction of the	10 orders issued [532]

Indigenous and Northern Affairs Canada), 2021 CHRT 41	implementation of remedies in a complaint brought by the First Nations Child and Family Caring Society of Canada (the Caring Society) and the Assembly of First Nations (the AFN) against Canada on behalf of First Nations children and families. The first motion relates to Major Capital funding to support service delivery to First Nations children. The second relates to the scope of reimbursement for small First Nation Family and Child Services Agencies (FNCFS Agencies). Another issue addressed in this ruling is an Ontario-specific request for Capital funding for Band representatives and prevention services. [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), 2022 CHRT 8	This ruling concerns a March 4, 2022, consent order request made by the parties to these proceedings to expand Jordan's Principle services orders to youth from 18 to 25 years of age and for the application of the FNCFS program to youth ages 18 to 25 that age out of care. This consent order also provides for increased funding for prevention services for children, youth and families. This consent order request addresses a specific timeline for the implementation of the above and to set March 31, 2022 as the end date for eligibility for compensation for the victims of the discrimination found by the Tribunal. Finally, the parties made a number of other consent order requests. [1]	Multiple orders issued [172–174]

First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2022 CHRT 26	This is a motion under Rule 8(1), 8(2) and 3 of the Rules of Procedure under the *Canadian Human Rights Act* (the "*CHRA*") (03-05-04) (the "Old Rules") by the Federation of Sovereign Indigenous Nations ("FSIN"), who are First Nations located in Saskatchewan, to be added as interested parties to participate in a motion brought jointly by the Assembly of First Nations (AFN) and Canada in this case (joint motion). The joint motion is for a confirmation that the Compensation Final Settlement Agreement on compensation (Compensation Agreement) satisfies the compensation orders and framework for compensation made by this Tribunal. [1]	The Tribunal grants the FSIN a limited interested party status with conditions [61].
First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2022 CHRT 41	Declarations concerning finality of decisions, and draft Final Settlement Agreement on compensation for the class members in the class action.	Many conclusions and orders listed [508-511, 519-520].

Appendix J

IFSD assumes that First Nations-in-Assembly (or First Nations' chosen approach for guidance) will provide direction on the course forward for Jordan's Principle. The spirit, intent, and principles of a reformed approach should be captured in a formal agreement or in legislation (co-developed with First Nations) to underscore their significance.

The special operating agency (SOA) and administrative decision-making model presented below are illustrative. They both include an ombud and are intended to demonstrate the combination of components to achieve desired structures for Jordan's Principles. The models below are similar with differences in **legislative foundations** (hybrid requires legislation to establish administrative decision-making body, SOA does not), and **funding** (hybrid would be appropriated annually to an independent entity, SOA would be appropriated annually via departmental reference levels).

IFSD's combination structural OPTION 1: The Jordan's Principle Centre for First Nation Child Well-Being (the "Centre") through a *SPECIAL OPERATING AGENCY (SOA)*

The Jordan's Principle Centre for First Nation Child Well-Being will be designed as Special Operating Agency (SAO) within a federal department, governed by a framework agreement between the minister deputy minister, and Treasury Board. The Centre would consist of four components:

1) Evaluation board to assess individual requests;
2) Fund management board to assess group requests;
3) Appeal Division to review decisions appealed by requesters; and,
4) Ombud to report annually on outcomes relative to principles defined in the SOA framework agreement, with a mandate to identify federal program failures/gaps.

Access to Jordan's Principle will be governed nationally with local implementation to ensure consistency in administration and delivery. The SOA, through the Ombud, would be accountable for releasing bulletins:

- Annually, to report on quantified failures and gaps in existing federal programs, with data from First Nations' local delivery and the evaluation of requests nationally.
- Quarterly, to produce bulletins on implementation and any updates to administrative procedures for consistency, including, special issues.

The Centre would be dedicated to information gathering and reporting to First Nations. Relevant information associated to the needs of children, tied to geography, starting points, etc. would be aggregated and applied to identify gaps in existing federal program areas.

To help build clarity and consistency in decision-making, the Centre would develop, publish, and apply rules, directions and guidelines. It is expected that these administrative elements would be co-developed with First Nations. These would assist parties and the public in understanding the practices of the Centre and the usual interpretation and application of Jordan's Principle.

Operations:

1) Request through a First Nation-based service coordinator comes to the Centre. Service coordinators in First Nations are members of regional and/or national networks of practice. They receive regular training and development, have regular regional meetings to share practices, needs, and concerns, and convene annually to receive reports and updates from the Centre. Service coordinators accompany children and families in navigating requests to Jordan's Principle. Before submitting a request, they explore existing sustainable options to meet the needs of children and families. Should they be unavailable, impractical, or insufficient, a request is submitted to Jordan's Principle. The request is triaged by:
    a. Individual
    b. Group
2) If individual:
    a. Evaluation board at the Centre (or local First Nation administration), First Nation and other administrators dedicated to informed decision-making and supported by relevant technical tools to facilitate the process (akin to Canada Revenue Agency's electronic filing practices). Individual requests implicate one child or children from the same family/kinship unit.
    b. Working from the SOA framework agreement and a series of documented, consistent parameters for decision-making (akin to Canada Revenue Agency's "bulletins" on how to interpret tax code) determine whether the request is approved or denied.
        i. Approved requests provide payment to the vendor or reimburse the First Nation or family.
        ii. Denied requests may be appealed to the Jordan's Principle Centre Appeal Division, where requesters can seek a review of the decision. Decisions from the Appeal Division would be subject to judicial review by the Federal Court.
        iii. Should a request, be it approved or denied, be found to have been covered by an existing federal program, The Centre will pursue reimbursement (to the Centre) from the existing program.
3) If group:
    a. Fund management board, First Nation and other technical experts who manage a defined pool of resources to meet the needs of groups through Jordan's Principle.
    b. Working from legislatively defined parameters and a series of documented, consistent parameters for decision-making (akin to Canada Revenue Agency's "bulletins" on how to interpret tax code) determine whether the request is approved or denied.
    c. Approved requests provide payment to the organization or entity administering the group resources. They will be required to report on outputs and results of the use of funds (likely at the level of the group or community, as individual assessments are impractical. For instance, reporting for a group request for a specialized play structure for children in

a remote community may include confirmation of purchased structure, testimonials from children/families using the structure).

d. Denied requests may be appealed. Denied requests may be appealed to the Jordan's Principle Centre Appeal Division, where requesters can seek a review of the decision. Decisions from the Appeal Division would be subject to judicial review by the Federal Court.
e. Should a request, be it approved or denied, be found to have been covered by an existing federal program, The Jordan's Principle Centre for First Nation Child Well-Being will pursue reimbursement (to the Centre) from the existing program.

The Ombud[1]:
The Jordan's Principle Centre for First Nation Child Well-Being Ombud would have a mandate defined in the SOA framework agreement to report on results for First Nations children accessing Jordan's Principle and documenting gaps in existing federal programs. As requests are assessed, the Ombud's office would evaluate the needs of the requester against an inventory of existing programs at the federal or provincial level. This would enable identification of service gaps that should be addressed by other programs. This evaluation would occur ex-post, to ensure it does not interfere with children accessing the supports they need, when they are needed.

The Ombud would report annually to Parliament and to First Nations on results for children. Their reports would be built from data gathered at the Centre from case level and national indicators. The performance framework through which they report would be First Nation-defined.

Using the Spirit Bear or similar framework, the Ombud would use case information to identify the federal programs that are failing children. They would use their position and data to highlight gaps so they may be rectified among the relevant departments and/or provincial/territorial government. The information could be leveraged by First Nations, e.g., to support claims against the federal government.

Working behind the scenes, the Ombud would connect to a feedback loop to improve programs system-wide. It would bill existing programs for their failure to provide support if a request supported by Jordan's Principle should have been covered by an existing program. This would lead to a long-term shift toward a focus on outcomes.

Funding:

The funding for the Jordan's Principle Centre for First Nation Child Well-Being, as a Special Operating Agency (SOA), will come from annual appropriations allocated within departmental reference levels. To ensure dedicated and consistent financial support, a Special Purpose Allotment (SPA) can be applied, which prevents the reallocation of

[1] See for instance, Naiomi Metallic, Hadley Friedland, Shelby Thomas, "Doing Better for Indigenous Children and Families: A Report on Jordan's Principle Accountability Mechanisms," (Caring Society and Department of Indigenous Services Canada), 2022.

funds within the department, safeguarding resources specifically for Jordan's Principle. This funding mechanism, while flexible, ensures that the Centre has in-year financial stability.

In this proposed model, IFSD is attempting to respond to calls for consistency in the delivery of Jordan's Principle and the need to capture the gaps in existing programs and services. This necessitates at least the centralized assessment of case data, and ideally, a set of administrative standards. The SOA structure provides flexibility and consistency, without requiring new legislation, which allows the Centre to respond to evolving needs.

This approach would empower communities while ensuring accountability and sustainability. This would also allow for continued capacity-building and outcome-tracking to ensure that Jordan's Principle meets its long-term objectives.

IFSD's combination structural OPTION 2: The Jordan's Principle Centre for First Nation Child Well-Being (the "Centre") through a *HYBRID ADMINISTRATIVE DECISION-MAKING STRUCTURE*

The Jordan's Principle Centre for First Nation Child Well-Being will be designed as an administrative decision-maker defined in federal legislation. The Jordan's Principle Centre for First Nation Child Well-Being would be composed of four components:

1) Evaluation board to assess individual requests;
2) Fund management board to assess group requests;
3) Appeal Division to review decisions appealed by requesters; and,
4) Ombud to report annually on outcomes relative to legislatively defined principles, with requirement to identify federal program failures/gaps

Access to Jordan's Principle will be governed nationally to ensure consistency in administration and delivery. While this would eliminate First Nations-led delivery, the federally established administrative decision-maker would be accountable for ensuring the timely delivery of Jordan's Principle while capturing relevant data (as directed by First Nations) to define and quantify gaps in existing federal programs.

The Jordan's Principle Centre for First Nation Child Well-Being would be dedicated to information gathering and reporting to First Nations. Relevant information associated to the needs of children, tied to geography, starting points, etc. would be aggregated and applied to identify gaps in existing federal program areas.

To help build clarity and consistency in decision-making, the Centre would develop, publish, and apply rules, directions and guidelines. These would assist parties and the public in understanding the practices of the Centre and the usual interpretation and application of Jordan's Principle.

Operations:

1) Request through a First Nation-based service coordinator comes to The Jordan's Principle Centre for First Nation Child Well-Being. Service coordinators in First Nations are members of regional and/or national networks of practice. They receive regular training and development, have regular regional meetings to share practices, needs, and concerns, and convene annually to receive reports and updates from the Centre. Service coordinators accompany children and families in navigating requests to Jordan's Principle. Before submitting a request, they explore existing sustainable options to meet the needs of children and families. Should they be unavailable, impractical, or insufficient, a request is submitted to Jordan's Principle. The request is triaged by:
    a. Individual
    b. Group
2) If individual:
    a. Evaluation board, First Nation and other administrators dedicated to informed decision-making and supported by relevant technical tools to facilitate the process (akin to Canada Revenue Agency's electronic filing practices). Individual requests implicate one child or children from the same family/kinship unit.
    b. Working from legislatively defined parameters and a series of documented, consistent parameters for decision-making (akin to Canada Revenue Agency's "bulletins" on how to interpret tax code) determine whether the request is approved or denied.
        i. Approved requests provide payment to the vendor or reimburse the First Nation or family.
        ii. Denied requests may be appealed to the Jordan's Principle Centre Appeal Division, where requesters can seek a review of the decision. Decisions from the Appeal Division would be subject to judicial review by the Federal Court.
        iii. Should a request, be it approved or denied, be found to have been covered by an existing federal program, The Jordan's Principle Centre for First Nation Child Well-Being will pursue reimbursement (to the Centre) from the existing program.
3) If group:
    a. Fund management board, First Nation and other technical experts who manage a defined pool of resources to meet the needs of groups through Jordan's Principle.
    b. Working from legislatively defined parameters and a series of documented, consistent parameters for decision-making (akin to Canada Revenue Agency's "bulletins" on how to interpret tax code) determine whether the request is approved or denied.
    c. Approved requests provide payment to the organization or entity administering the group resources. They will be required to report on outputs and results of the use of funds (likely at the level of the group or community, as individual assessments are impractical. For instance, reporting for a group request for a specialized play structure for children in

a remote community may include confirmation of purchased structure, testimonials from children/families using the structure.

d. Denied requests may be appealed. Denied requests may be appealed to the Jordan's Principle Centre Appeal Division, where requesters can seek a review of the decision. Decisions from the Appeal Division would be subject to judicial review by the Federal Court.
e. Should a request, be it approved or denied, be found to have been covered by an existing federal program, The Jordan's Principle Centre for First Nation Child Well-Being will pursue reimbursement (to the Centre) from the existing program.

The Ombud:
The Jordan's Principle Centre for First Nation Child Well-Being Ombud would have a legislatively defined mandate to report on results for First Nations children accessing Jordan's Principle and documenting gaps in existing federal programs. As requests are assessed, the Ombud's office would evaluate the needs of the requester against an inventory of existing programs at the federal or provincial level. This would enable identification of service gaps that should be addressed by other programs. This evaluation would occur ex-post, to ensure it does not interfere with children accessing the supports they need, when they are needed.

The Ombud would report annually to Parliament and to First Nations on results for children. Their reports would be built from data gathered at the Centre from case level and national indicators. The performance framework through which they report would be First Nation-defined.

Using the Spirit Bear or similar framework, the Ombud would use case information to identify the federal programs that are failing children. They would use their position and data to highlight gaps so they may be rectified among the relevant departments and/or provincial/territorial government. The information could be leveraged by First Nations, e.g., to support claims against the federal government.

Working behind the scenes, the Ombud would connect to a feedback loop to improve programs system-wide. It would bill existing programs for their failure to provide support if a request supported by Jordan's Principle should have been covered by an existing program. This would lead to a long-term shift toward a focus on outcomes.

In its proposed alternate model, IFSD is attempting to respond to calls for consistency in the delivery of Jordan's Principle and the need to capture the gaps in existing programs and services. This necessitates at least the centralized assessment of case data, and ideally, a set of administrative standards. IFSD recognizes that the centralized approach may run counter to First Nations self-determination and their own approaches to the administration of Jordan's Principle. It will be for leadership to decide on their preferred approach.

An alternative would be to implement a hybrid approach: a centralized approach to define a consistent set of administrative standards and data gathering practices, and a local/regional approach to delivery. Then, for any First Nations wishing to resume or assume control in the administration of Jordan's Principle, they would do so with a commitment to at least continue reporting with the new approach, and ideally, implement the same standards for a consistent application of Jordan's Principle. Such a phased approach *would empower communities while ensuring accountability and sustainability. This would allow for continued capacity-building and outcome-tracking to ensure that Jordan's Principle meets its long-term objectives.*

Appendix K

The content to explore the indicators defined by the Regional Working Group is illustrative. First Nations and leadership should review and revise the content to align to a revised structure and/or changes in delivery and/or accountability. This information should be gathered and analyzed by First Nations for First Nations. Additional support (people, tools, funding) will be required in most First Nations or First Nations-mandated organizations to gather and analyze this or similar data.

Category	Indicators	For review and refinement by First Nations (for illustration only)				
		Considerations for definitions	Considerations for defining measures	Location of data capture	Data availability Limited Somewhat available Available	Case or community level or other
Education and pedagogy	Literacy rates in English and/or French	Define literacy and appropriate age-based achievement against an established benchmark	The child for whom the request is being made to Jordan's Principle is meeting literacy rates for their age group (Y/N)	Intake		Case
	Literacy rates in Indigenous languages	Define literacy against an established benchmark	The child for whom the request is being made to Jordan's Principle is learning or can speak their Indigenous language (Y/N)	Intake		Case
	Numeracy rates	Define numeracy and appropriate age-based achievement against an established benchmark	The child for whom the request is being made to Jordan's Principle is meeting numeracy targets for their age group (Y/N)	Intake		Case
	Elementary school completion rate	Define elementary school completion, e.g., completion of First Nation or provincial/territorial standard curriculum	The child for whom the request is being made to Jordan's Principle is on track to complete or has completed elementary school (Y/N)	Intake		Case
	Duration to completion of high school	Define high school completion, e.g., completion of First Nation or provincial/territorial standard curriculum, and number of days to attainment	Number of days between start date of high school and graduation date (or expected graduation date) for the child for whom the request is being made to Jordan's Principle	Intake		Case
	Age at high school graduation	Define high school completion and age at attainment	The age of the child/youth at high school graduation (or expected age) for whom the request is being made to Jordan's Principle	Intake		Case
	Change in expected educational outcomes	Define expected educational outcomes for a child/youth Define expected v. changed outcomes	The child for whom the request is being made to Jordan's Principle had a change in expected educational outcomes, e.g., graduated on time, improved literacy, did not graduate, etc. (Y/N)	Intake		Case
	Post-graduation outcomes for youth with complex or special needs	Define outcomes for youth	The child for whom the request is being made to Jordan's Principle post-graduation was (select all that apply):	Intake		Case

			1) Employed 2) Pursued co-op 3) Pursued post-secondary education 4) Other, please define			
	Support or service to develop inherent talent or ability	Define inherent talent or ability and ways of supporting their development	The child for whom the request is being made to Jordan's Principle had the program, support, or service to develop talent/ability (Y/N)	Intake		Case
Family well-being	Sense of community belonging	Define community and belonging	A family interacting with Jordan's Principle expresses connections to members of their community at intake (Y/N)	Intake		Case
	Stability of family arrangement	Define family arrangement and stability, e.g., consistent composition over time	A family interacting with Jordan's Principle is thriving in their family unit (Y/N)	Intake		Case
	Contact with child and family services	Whether child/family has file or contact with child and family services provider	A family interacting with Jordan's Principle is engaged with child and family services (prevention and/or protection) (Y/N)	Intake		Case
	Children in care accessing Jordan's Principle	Placement of child with kin or kith (not with parents or guardians)	The child for whom the request is being made to Jordan's Principle is in care (Y/N)	Intake		Case
Health and wellness	Recreational opportunities around the child	Define recreational opportunities relative to child	The child for whom the request is being made to Jordan's Principle has access to safe areas to play, e.g., park, arena, basketball court, etc. (Y/N)	Intake		Case
	Instances of exceptional health-related supports and services	Define baseline health-related supports and services to determine exceptions	The child for whom the request is being made to Jordan's Principle requires physical or mental health interventions outside of standard ones (Y/N)	Intake		Case
	Health outcomes at least equal to or better than the general population	Define health outcomes of general population for baseline	The child for whom the request is being made to Jordan's Principle is physically and mentally healthy (relative to the general population) (Y/N)	Intake		Case
	Health services consistent with Canada Health Act standards (as a minimum)	Define baseline or benchmark deemed consistent with CHA, e.g., province/territorial services	The child for whom the request is being made to Jordan's Principle has access to health services consistent with the principles of the CHA (Y/N)	Intake		Case
	Instances of requests for mental health and/or spiritual supports defined as: crisis, maintenance, or normal/self-care	Define mental health and spiritual support Define nature of intervention, i.e., crisis, maintenance, self-care	The child for whom the request is being made to Jordan's Principle is seeking mental health and or spiritual supports for (select one): crisis intervention, maintenance, or self-care	Intake		Case

Nature of requests and defined needs	WHY – Reason for accessing Jordan's Principle (root cause(s))	Define root cause of contact with Jordan's Principle	Select the reason(s) for which the request is being made to Jordan's Principle: 1) Poverty/deprivation 2) Lack of available programs/supports/services in community 3) Jordan's Principle response time is faster than regular program (name program) 4) Request refused through other program (name program) 5) Request was outside the scope of standard program (name program) 6) Other, please define	Intake		Case
	Instances of intergenerational Jordan's Principle requests, e.g., adolescent parent accessing Jordan's Principle	Define intergenerational trauma and how it may be expressed	The requestor (for a child seeking support through Jordan's Principle) has a parent or guardian that has suffered the effects of intergenerational trauma (Y/N)	Intake		Case
	Nature of request: point in time; on-going/long-term; repeated	Define nature and frequency of request	The duration of the request to Jordan's Principle is (select one response): 1) Isolated/point-in-time request 2) On-going/long-term request (i.e., must continue to make request to access program/support/service) 3) Request is a repeat of a previous request	Intake		Case
	Instances of children ageing out but requiring ongoing support	Define age of majority and what constitutes a need for ongoing support	The child for whom the request is being made to Jordan's Principle is reaching the age of majority but will still require ongoing support (Y/N)	Intake		Case
	Instance of navigation to access Jordan's Principle	Define navigation to access Jordan's Principle and conduits	The request to Jordan's Principle was made (select one): 1) With support of the First Nation's/Tribal Council's service coordinator 2) Directly to ISC by the parent/guardian 3) With support from an Indigenous organization 4) With support of a health, education or social services professional 5) Other, please define	Intake		Case

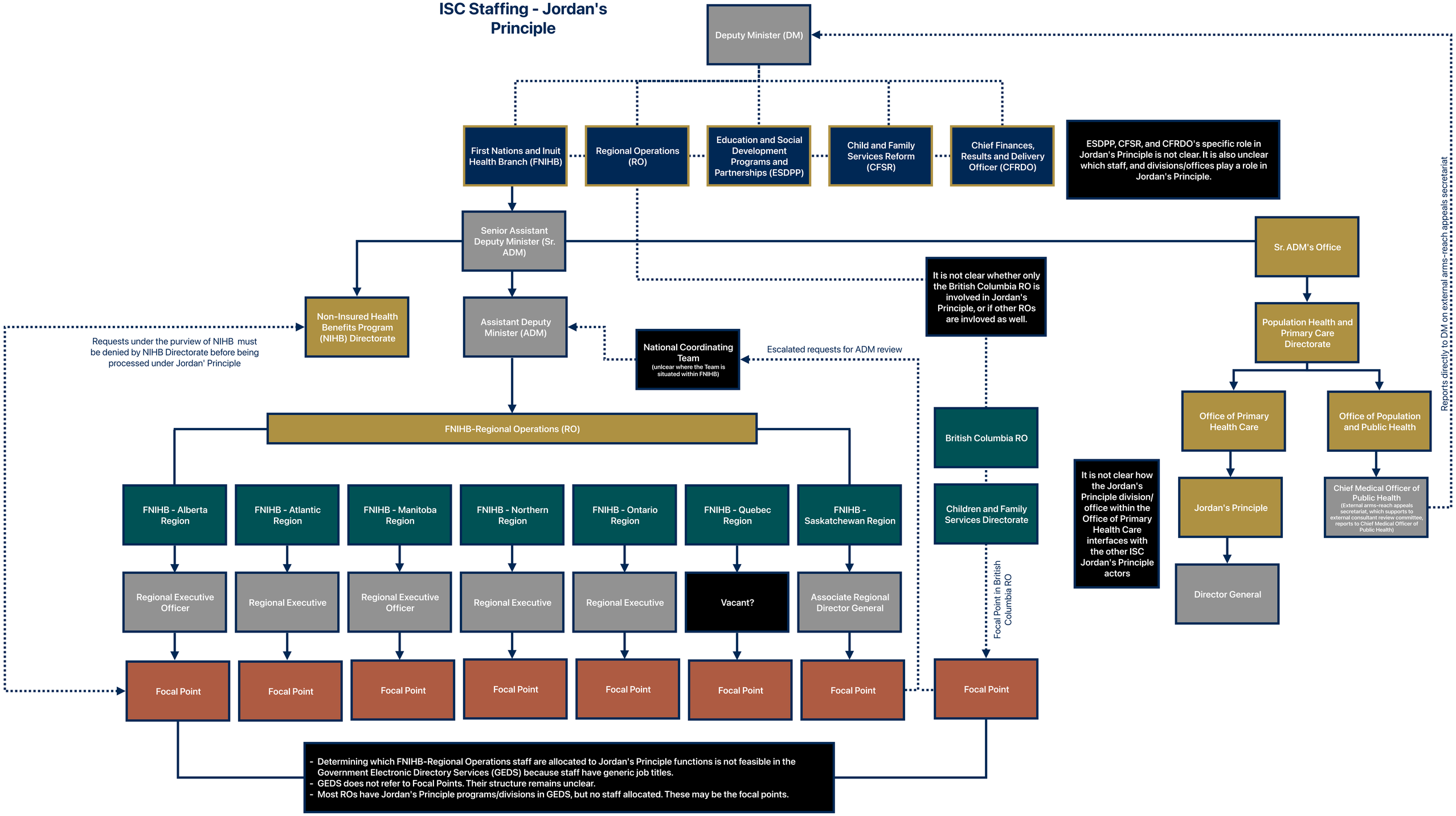
	Instances of referrals to existing supports and services	Define existing supports and services and whether they were attempted prior to a request to Jordan's Principle	Was the child for whom the request is being made to Jordan's Principle previously directed to existing supports and services before making the request (Y/N)	Intake		Case
	Identifying the source of the referral, e.g., Elder, physician, etc.	Define referring individual or organization	Who provided a professional letter of support for the application (select one): 1) Elder 2) Health professional, e.g., pediatrician, physiotherapist, speech therapist 3) Education professional, e.g., teacher, guidance counsellor 4) Social services professional, e.g., social worker, trauma counsellor 5) Other, please define	Intake		
	Were the child's needs met through Jordan's Principle	Define baseline for assessing need	The child received the program, service, or support required in their request (Y/N)	Intake		Case
Community well-being	Instances of community trauma	Define community trauma and period of consideration	The community of the child for whom the request is being made to Jordan's Principle has reported instances of trauma in the last 12 months, e.g., suicide crisis, violence, etc. (Y/N)	First Nation		Case
	Cultural knowledge	Define cultural knowledge and its assessment at a community level	The community of the child for whom the request is being made to Jordan's Principle practices their Indigenous culture (Y/N)	First Nation		Case
	Access to land	Define what constitutes access to land	The community of the child for whom the request is being made to Jordan's Principle has access to their traditional lands (Y/N)	First Nation		Case
	Access to Elders	Define Elder and what constitutes access	The community of the child for whom the request is being made to Jordan's Principle has access to Elders (Y/N)	First Nation		Case
	Community emergencies impacting well-being	Define emergency for a community	The community of the child for whom the request is being made to Jordan's Principle has experienced one or more emergencies in the last 12 months, e.g., suicide crisis, fire, flood, etc. (Y/N)	First Nation		Case

Access and funding	Number of non-Indigenous and non-First Nation organizations/recipients receiving funding through Jordan's Principle	Specify how ISC should count, e.g., rows, request, etc., using GCcase or relevant data source Specify data by fiscal year (funding, request, region)	ISC publicly reports by fiscal year on the number of non-Indigenous organizations/recipients, their regions, and funding received through Jordan's Principle.	ISC		Other
	Documented fee increases or supplemental fees incurred when paid through Jordan's Principle	Define fee and services/supports/programs that allow fees Specify how ISC should define baseline for fees to measure any change relative to allowable baseline	ISC publicly reports by fiscal year on fees associated to standard programs, supports, and services by region.	ISC		Other
	Details on requests and transfer amounts through Jordan's Principle	Define how ISC should count request, e.g., rows, request, etc., using GCcase or relevant data source Specify data by fiscal year with consideration of nature of request (individual v. group) and request v. result (approved v. denied) and region	ISC publicly reports by fiscal year on the number of requests to Jordan's Principle by region (group v. individual) and the amounts transferred through Jordan's principle by region (approved v. denied; individual v. group; approved individual v. denied individual and approved group v. denied group)	ISC		Other
Broad national indicators (proposed by IFSD)	Housing suitability	Define housing suitability using Census or other aligned to data source	Percentage of dwellings in a First Nation that meet National Occupation Standard based on the number of bedrooms and persons occupying the home	Census or First Nation		Community
	Housing in need of repair	Define housing need for repair using Census or other aligned to data source	Percentage of dwellings in a First Nation that require major or minor repairs (excluding remodelling or upgrades for esthetics)	Census or First Nation		Community
	Food security	Define food security with consideration of access, sufficiency, traditional, nutritious foods	Percentage of households in a First Nation that can acquire and consume sufficient traditional and nutritious foods.	First Nation		Community
	Rates of substance misuse (alcohol, drugs)	Define substance misuse	Percentage of First Nation population reporting substance misuse	Census or First Nation		Community
	Access to potable water	Define what constitutes access to potable water, e.g., from source to residential tap	Percentage of homes in First Nation with potable water from source to tap (OR instance of water advisory in the First Nation)	ISC or First Nation		Community
	Deprivation (income measure, relative to the	Define income-based deprivation using the Market Basket Measure (Canada's official poverty line) or other source	Difference between after-tax median household income in the First Nation and the relevant Market Basket Measure	Census or First Nation		Community

	relevant Market Basket Measure)					
	Employment rate	Define employment using Census definition or other aligned to data source	Percentage of the population in the First Nation that is employed	Census or First Nation		Community
	Unemployment rate	Define unemployment using Census definition or other aligned to data source	Percentage of the population in the First Nation is not employed	Census or First Nation		Community
	Highest level of educational completion	Define levels of educational attainment using Census definition or other aligned to data source	Percentage of the population in the First Nation by highest educational attainment (elementary school, high school, post-secondary, none)	Census or First Nation		Community
	Instance of critical health issues (Note: Dependent on Regional Health Survey data)	Define chronic disease aligned to data source or mechanism for data capture	Rates of chronic disease within the population of the First Nation	Regional Health Survey or First Nation		Community
	Access to health and dental services (Note: Dependent on Regional Health Survey data)	Define health and dental services access aligned to data source or mechanism for data capture	Availability and access to health and dental services in the First Nation	Regional Health Survey or First Nation		Community
	Rates of access to Income Assistance	Define Income Assistance and tabulation of days/period of benefit	Average number of days a recipient receives Income Assistance in a calendar year in the First Nation	First Nation		Community
	Population (and geographic zone)	Number of persons residing in First Nation	Total number of persons residing in the First Nation + geographic zone	IRS or First Nation		Community

Appendix L

ISC Staffing - Jordan's Principle



Legend

Branch/Sector	Directorate, division, office, team, etc.	Staff/Position
Regional Operations	Focal Point	Knowledge Gap

Clearly defined relationship →

Unclear/implied relationship ⇢

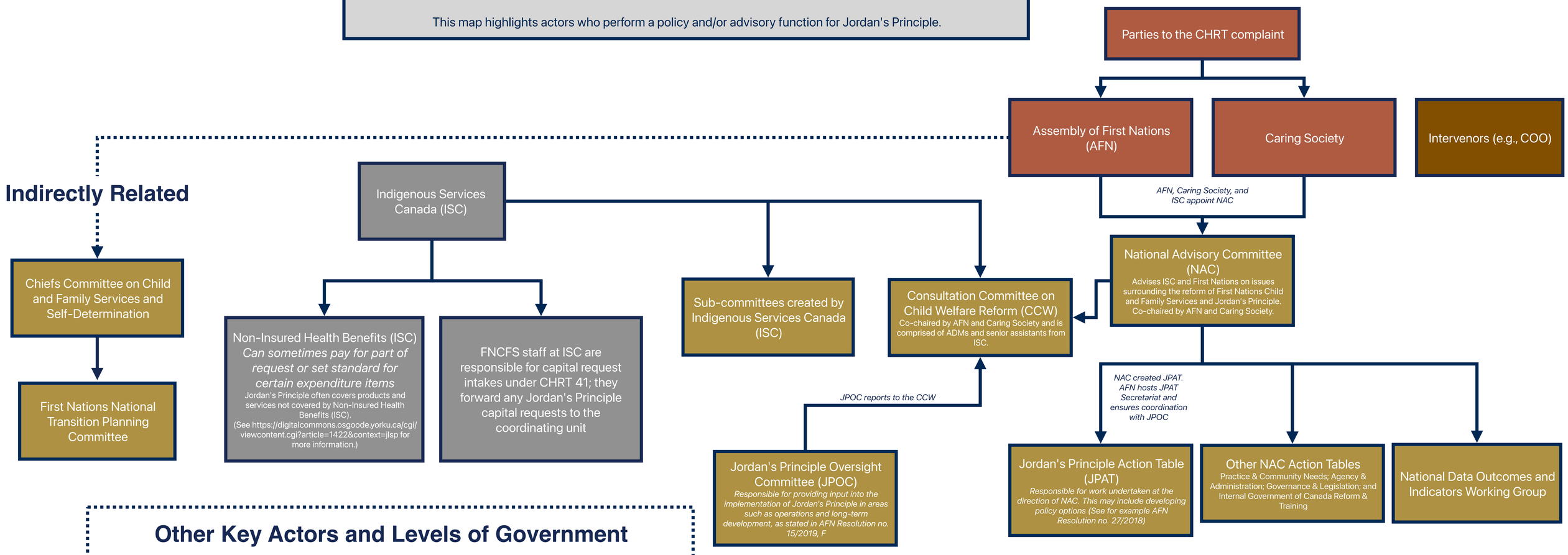
Sources

1. Audit and Assurance Services Branch. "Audit of the Implementation of Jordan's Principle." Gatineau: Indigenous Services Canada, October 2019. https://www.sac-isc.gc.ca/eng/1594378735468/1594378764255.
2. "Exhibit 'Q' in Affidavit of Valerie Gideon." Canadian Human Rights Tribunal, 2019. Tribunal File No. T-1340/7008. https://fncaringsociety.com/sites/default/files/t-1340-7008_-_affidavit_of_valerie_gideon_-_15apr2019.pdf.
3. Government of Canada. "Government Electronic Directory Services." Accessed March 28, 2024. https://geds-sage.gc.ca/en/GEDS?pgid=002.
4. Indigenous Services Canada. "Indigenous Services Canada BC Region Programs Reference," June 2021. https://fnps.ca/wp-content/uploads/2021/06/ISCProgramsReference.pdf.
5. Standing Senate Committee on National Finance. "Senator Pate's Follow-up on Accountability to Indigenous Children," June 7, 2022. https://sencanada.ca/Content/Sen/Committee/441/NFFN/briefs/SA-23_Follow-Up_ISC_Pate_b.pdf.

Policy and Advisory

Since the Canadian Human Rights Tribunal (CHRT) required the Government of Canada to implement the full intent of Jordan's Principle, the Government of Canada is responsible for ensuring compliance with CHRT orders. Other actors have the opportunity to implement Jordan's Principle in a manner compliant with CHRT orders and considering distinct community needs. This includes policy development and setting operational standards for the determination of requests. Various other organizations and actors form key parts of the Jordan's Principle ecosystem, such as monitoring and reporting on implementation, but may not be directly responsible for developing policy or operationalizing Jordan's Principle. IFSD has broadly classified these actors under the umbrella term "advisory."

This map highlights actors who perform a policy and/or advisory function for Jordan's Principle.



Other Key Actors and Levels of Government

First Nations
may have authority to adjudicate requests in some cases by applying locally developed standards. May participate in committees I.e., JPOC. Adjudication roles may differ depending on jurisdiction. Regional differences exist.

Regional Leadership Organizations
(e.g., British Columbia Assembly of First Nations)
who may have authority to approve requests in some cases by applying locally developed standards that apply a community specific lens to the principles of substantive equality, best interests and needs of the child, and distinct community context.

Regional Advisory Organizations
May advise communities as they work with Jordan's Principle. May contribute members to Committees e.g., JPOC and JPAT

Child and Family Services (FNCFS agency or provincial service)
Can be included on a case management file

Provincial government
May set standards for certain expenditure items such as school laptops, that could be followed by adjudicators
As per the Back to Basics approach, it is presumed that substantive equality applies and normative standards cannot be used to deny or "lessen" services.

Legend

- First Nations Actors
- Government of Canada
- Committees, working groups, action tables
- Parties to the CHRT complaint
- Intervenors
- Other organizations/actors

Appendix M

ALEXANDER HOLBURN

YOUR **PERSPECTIVE** OUR **FOCUS**™

March 10, 2023

VIA E-MAIL

Reply to: Kathryn McGoldrick
Direct Line: 604.484.1763
Direct Fax: 604.484.9763
E-mail: kmcgoldrick@ahbl.ca
Matter No.: 1137549

Institute of Fiscal Studies and Democracy (IFSD)
115 Séraphin-Marion Private #107
Ottawa, Ontario
K1N 6N5

Attention: Helaina Gaspard, Ph.D., Director, Governance & Institutions

Dear Sirs/Mesdames:

Re: Legal Opinion regarding potential Liability in Tort and Human Rights Law for First Nations administering Jordan's Principle Requests

We write to provide IFSD with a legal opinion with respect to potential liability concerns in the areas of tort and human rights for First Nations who take on block funding to administer Jordan's Principle requests.

EXECUTIVE SUMMARY

In **Part I**, we provide a brief summary of our understanding of Jordan's Principle, the types of services that may qualify for funding, and the manner in which requests are assessed. We also summarize the findings of the CHRT regarding Jordan's Principle and the ways in which Canada's administration of Jordan's Principle requests was discriminatory.

In **Part II**, we provide our opinion regarding potential liability in negligence of First Nations who take on block funding to administer Jordan's Principle. We draw extensively on our opinion dated January 20, 2023 ("January 2023 opinion"), as the issue of duty of care is similar in some respects. As in the context of the provision of prevention services by First Nations directly, the question of whether a duty of care is owed is a novel one.

In our view, where the items or services requested do not fall within the rubric of child and family services, there is likely no private law duty of care owed by First Nations to children on whose behalf the requests are made, as there is likely insufficient proximity.

Where what is requested could fall within secondary or tertiary prevention services, there may be a duty of care owed for the reasons set out in our January 2023 opinion; that is, the services may fall within those contemplated by child and family services legislation and the First Nations employees administering the requests may be considered to be acting in a manner analogous to social workers providing child and family services. Essentially, the closer the service is to one that would be provided as part of the First Nations Child and

Family Services (FNCFS) Program, the more likely a duty of care would be owed, as there would be more likely to be sufficient proximity to ground a private law duty. However, as with prevention services, we also note the greater difficulty in establishing a positive duty to provide a benefit or service.

If a duty of care is owed, the remainder of our negligence analysis in the January 2023 opinion applies. In particular, the defence of core policy may be available where the service has been denied due to a policy not to provide it, rather than a decision not to provide it in the specific circumstances of the request.

In **Part III,** we provide our opinion regarding the potential liability under human rights law of First Nations administering Jordan's Principle requests. In our view, like with provision of prevention services, a First Nation will be considered to be providing a "service" to the "public" within the meaning of s. 5 of the *Canadian Human Rights Act* where it is administering Jordan's Principle requests.

In our view, the fact that it is Canada that is subject to the CHRT's orders would not absolve the First Nation of its obligation to provide the service in a non-discriminatory manner. Canada is required to respond to Jordan's Principle requests in a manner that seeks to ensure substantive equality and avoid perpetuating historical disadvantage, and we anticipate this same expectation would apply to First Nations.

As with our opinion with respect to prevention services, if a complainant has established *prima facie* discrimination as a result of the denial of a Jordan's Principle request, undue hardship based on cost may be established. However, it will similarly likely not be sufficient for the First Nation to simply decline a request because the funding from Canada is too low. The Nation will likely be expected to have considered reasonable alternative services as well as whether funding can be obtained from elsewhere.

I. JORDAN'S PRINCIPLE, THE CHRT'S FINDINGS, AND THE MECHANISM FOR ADMINISTERING REQUESTS

Jordan's Principle is a "'child first' principle rooted in substantive equality".[1] Jordan's Principle was initially articulated by Parliament in a unanimous motion to ensure that all First Nations children have timely access to the same services as other children in Canada by eliminating denials, delays, or disruptions in service resulting from disputes between governments or government departments regarding payment for services. Jordan's Principle provides that when a First Nations child requires services, the government or department to which the request is originally made should pay for or provide the services without delay, and seek reimbursement from other levels of government as needed after the service has been provided. It is "a legal rule that requires the federal government to respond to the needs of First Nations children to ensure they can access services when they need them".[2]

Prior to the CHRT's decisions in *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)*,

[1] Institute of Fiscal Studies and Democracy, "Data assessment and framing of an analysis of substantive equality through the application of Jordan's Principle", September 1, 2022 ("IFSD Report") at p. 1

[2] IFSD Report at p. 1

2016 CHRT 2 ("*Caring Society 2016 (2)*") and subsequent decisions, Canada employed a very narrow definition of Jordan's Principle, granting requests only where the children involved had multiple disabilities and were resident on reserve, and where the dispute was between federal and provincial governments.

In *Caring Society 2016 (2)*, the Tribunal cited *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342 for the principle that Canada "took on the obligation espoused in Jordan's Principle". It found that the narrow definition employed by Canada did not cover "the extent to which jurisdictional gaps may occur in the provision of many federal services that support the health, safety, and well-being of First Nations children and families". It stated that "such an approach defeats the purpose of Jordan's Principle and results in service gaps, delays and denials for First Nations children on reserve" (at para. 381), which it considered to be one of the "main adverse impacts found" in the complaint. It observed that there were many other First Nations children outside the definition who required services, including child and family services. It noted that:

> [382] Having to put a child in care in order to access those services, when those services are available to all other Canadians is one of the main reasons this Complaint was made.

The Tribunal found generally that in providing the benefit of the FNCFS program and the other related provincial/territorial agreements, AANDC was obliged to do so in a non-discriminatory manner, particularly in a manner that does not perpetuate the historical disadvantages endured by Aboriginal peoples, including "a legacy of stereotyping and prejudice through colonialism, displacement and residential schools". It stated that "[i]f AANDC's conduct widens the gap between First Nations and the rest of Canadian society rather than narrowing it, then it is discriminatory" (at para. 403). It ordered Canada to stop applying its narrow definition of Jordan's Principle and "to take measures to immediately implement the full meaning and scope of Jordan's principle" (at para. 482).

Following these orders, Canada expanded the definition somewhat, although it continued to apply Jordan's Principle only to First Nations children on reserve, and those who had a disability or short-term critical condition affecting activities of daily living. Further, the services provided were limited to those that were comparable to provincial normative standards of care (the level of care typically provided to or funded for non-First Nations children), although exceptions beyond this standard could be considered on a case-by-case basis.

In *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)*, 2017 CHRT 14 ("*Caring Society 2017 (14)*"), the Tribunal found that, although Canada had adopted a broader definition, it continued to be too narrow and was not in compliance with its earlier orders. It reiterated that Jordan's Principle applied to *all* First Nations children, whether on or off reserve, and applied to a wide range of services including mental health, special education, dental, physical therapy, speech therapy, and medical equipment – it was not limited to children with disabilities or short-term critical conditions. Further, a dispute between governments or government departments was not a necessary requirement.

The Tribunal also held that the normative standard of care should be used to establish the minimal level of service only, as "emphasizing the normative standard of care does not ensure substantive equality for First Nations children and families".[3] Where a government service was not necessarily available to all other children or was beyond the normative standard of care, it stated that the government department of first contact is to evaluate the needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services, to ensure culturally appropriate services to the child, and/or to safeguard the best interests of the child (*Caring Society 2017 (14)* at para. 135(B)(iv)).

Our understanding is that, at present, where a Jordan's Principle request is made to the federal government, it is made to a "focal point", a government employee who has responsibility for receiving and administering requests in a specific geographic region. Based on their assessment, they may approve requests in which there is already clear precedent for approval, or seek a decision from the national office when further guidance is needed.[4]

Where a request exceeds normative standards, we understand that Canada employs a list of nine questions to guide assessment of the request:

> 1. Does the child have heightened needs for the service in question as a result of an historical disadvantage?
>
> 2. Would the failure to provide the service perpetuate the disadvantage experienced by the child as a result of his or her race, nationality or ethnicity?
>
> 3. Would the failure to provide the service result in the child needing to leave the home or community for an extended period?
>
> 4. Would the failure to provide the service result in the child being placed at a significant disadvantage in terms of ability to participate in educational activities?
>
> 5. Is the provision of support necessary to ensure access to culturally appropriate services?
>
> 6. Is the provision of support necessary to avoid a significant interruption in the child's care?
>
> 7. Is the provision of support necessary in maintaining family stability?, as indicated by:
>
> - the risk of children being placed in care; and
> - caregivers being unable to assume caregiving responsibilities.

[3] *Caring Society 2017 (14)* at para. 75

[4] Vandna Sinha et al., "Substantive Equality and Jordan's Principle: Challenges and Complexities." Journal of Law and Social Policy 35, (2021): 21-43 ("Sinha") at p. 33

8. Does the individual circumstance of the child's health condition, family or community context (geographic, historical or cultural) lead to a different or greater need for services as compared to the circumstances of other children (e.g., extraordinary costs associated with daily living due to a remote location)?

9. Would the requested service support the community/family's ability to serve, protect and nurture its children in a manner that strengthens the community/family's resilience, healing and self-determination?[5]

Examples of Jordan's Principle requests that we have noted in the case law or elsewhere include:

- for pre-mixed baby formula where there is a boil-water advisory in the First Nations community;
- for medical transportation;
- for respite;
- for home care for a child with severe disabilities;
- for medical equipment.

We note that, in particular, respite appears to be a commonly requested item. We anticipate that at least in some cases, providing respite (or other requested services such as home care) could be considered a secondary or even tertiary prevention service in the child and family services context. As discussed below, in our view, this could have implications for whether a duty of care is owed.

II. POTENTIAL LIABILITY IN TORT

As in the context of the provision of prevention services by First Nations directly, the question of whether a duty of care is owed by First Nations administering Jordan's Principle requests is a novel one.

There are several issues, which parallel issues raised in our January 2023 opinion. First, is there sufficient proximity to meet the first part of the *Anns* framework? Second, is there a positive duty to provide services pursuant to Jordan's Principle requests? Does it matter what service is requested, and whether it could fall within the rubric of "child and family services"?

In our January 2023 opinion, we opined that although it was a novel question and there was therefore uncertainty, a court might well find sufficient proximity to support a duty of care owed to children in respect of the provision of secondary and tertiary prevention services. This opinion was based on the following:

- These services are provided on an individual basis involving close interactions with families;

[5] Sinha at p. 30

- The purpose of these services is to reduce risk to children who are or may be at risk of harm, recognizing the rationale in the legislation of least disruptive measures and the goal of keeping children with their families if it can be done safely;
- At least some tertiary prevention services, and to a lesser extent, secondary prevention services, are essentially the same services that are provided by social workers employed by an agency or the province, or at least could be provided under the legislation;
- The First Nation would arguably be considered to have undertaken to provide the services;
- The distinction between tertiary prevention services and child protection services may not be clear.

However, we also noted that it is more difficult to establish a positive duty to act, citing the three types of circumstances where the Supreme Court of Canada has found such a duty could arise (in *Childs v. Desormeaux*, 2006 SCC 18 at para. 31). We said at p. 30:

> It is also not clear whether a First Nation and their employees providing prevention services would owe a duty of care in respect of both acts (providing a prevention service in a negligent manner) and omissions (failing to provide a prevention service). As discussed, it is more difficult to establish a positive duty to act. A plaintiff might bring a claim alleging that a First Nation is liable for failing to provide a service where the family or child would or might benefit from it in the sense that the child's risk of needing protection is reduced, and thus their ability to remain with their family is increased. The circumstances could potentially fall under either of the second or third categories identified by the Supreme Court in *Childs* – a paternalistic relationship of supervision or control, or exercising a public function that includes implied responsibilities to the public at large. However, these categories, particularly the third, are not well-developed in the case law.
>
> The rationale underlying the finding of a positive duty is also arguably not present in this case, as the First Nation and its employees providing prevention services do not create or control the risk to the plaintiff. Rather, they are trying to remedy risk caused by external factors. On the other hand, if a First Nation decides to use the prevention funding to provide services directly rather than direct it to an agency, they may arguably be found to have undertaken to provide such services at least to some degree, which could create reasonable expectations on recipients that services will be provided and thus support a duty of care.
>
> As this is a novel context, it is unfortunately not possible to provide a more definitive opinion on this issue. However, we would rely most heavily on the well-established duty of care owed by child protection workers to children as being at least somewhat analogous to the provision of secondary and tertiary prevention services, as this could be found to be a sufficiently analogous category such that an *Anns/Cooper* analysis of foreseeability and proximity would not be required. First Nations should be aware of the risk that by providing these services they may owe a duty of care to children and

> potentially also to their parents/families, depending on the circumstances and the precise nature of the claim.

In our view, where the items or services requested under a Jordan's Principle request do not fall within the rubric of child and family services, there is likely no duty of care owed by First Nations to families on whose behalf the requests are made. There is generally no freestanding legal duty to take positive steps to provide a benefit or mitigate a risk. The three categories set out in *Childs* in which a special relationship of proximity has been recognized in respect of a positive common law duty are: 1) where the defendant intentionally attracts and invites third parties to an inherent and obvious risk that they have created or control; 2) paternalistic relationships of supervision and control, such as parent-child or teacher-student; and 3) defendants who either exercise a public function or engage in a commercial enterprise (such as the owner of a bar) that includes implied responsibilities to the public at large: *Childs* at paras. 35–37. The Court emphasized the common element, and explained how the analysis might apply in each case, as follows:

> [38] Running through all of these situations is the defendant's material implication in the creation of risk or his or her control of a risk to which others have been invited. The operator of a dangerous sporting competition creates or enhances the risk by inviting and enabling people to participate in an inherently risky activity. It follows that the operator must take special steps to protect against the risk materializing. In the example of the parent or teacher who has assumed control of a vulnerable person, the vulnerability of the person and its subjection to the control of the defendant creates a situation where the latter has an enhanced responsibility to safeguard against risk. The public provider of services undertakes a public service, and must do so in a way that appropriately minimizes associated risks to the public.

In addition to these categories, courts have found that a positive duty was owed in circumstances of reliance, such as where a person is aware of a risk and has volunteered to address it (even though they did not create it) on which third parties have relied to their detriment. Justice Fisher summarized these cases in *Kennedy v. Coe*, 2014 BCSC 120, in which the plaintiff argued that the defendant, who was paired up with her deceased husband as his "ski buddy" on a heli-skiing adventure, owed a duty of care to immediately alert the guides as soon as he knew that the deceased, who unbeknownst to the defendant had fallen into a tree well and became immersed in snow, had disappeared:

> [62] The plaintiff relies primarily on *Wiens v. Serene Lea Farms Ltd.,* 2001 BCCA 739 (B.C. C.A.), *Goodwin, and Brown v. Port Edward (District)*, [1996] B.C.J. No. 2465 (B.C. S.C.). In *Wiens,* a person who voluntarily undertook to secure a ladder was found to owe a duty of care to the ladder's user. In *Goodwin*, a highway maintenance contractor who represented that it would alert a crew to black ice on an area of road over which it had no responsibility was found to owe a duty of care to third party users of the road. In *Brown*, a defendant who volunteered to clean up an oil spill on a road was found to owe a duty of care to persons using the road. In all of these cases, the volunteer failed to carry out the undertaking or did so negligently; in *Goodwin* and *Brown*, the undertakings resulted in the authority or individual legally responsible for maintaining or cleaning up the road taking no action due to reliance on those undertakings.

> [63] While these "volunteer" cases bear some similarities here, they are distinguishable primarily because in each there was a clear undertaking made to perform a specific task in circumstances very different from those in this case.
>
> [Emphasis added.]

The only one of these decisions decided after *Childs* was *Goodwin*, in which the court found that by undertaking to address the black ice, the contractor, which was a commercial entity providing public services, had effectively taken control over and undertook to manage the risk.

In our view, the administration of Jordan's Principle requests that do not fall within the rubric of child and family services is not analogous to this type of undertaking to provide a service to mitigate a risk, nor would it otherwise fall within any of the *Childs* categories. In requests not within the rubric of child and family services, there are no child protection concerns and the services would not fall within child and family services legislation.

In our view, the circumstances are much closer to the line of cases canvassed in our January 2023 opinion dealing with administration of benefits programs by governments, and particularly *Wareham v. Ontario*, 2008 CarswellOnt 176 (Ont. Sup. Ct. Jus.), and *Leroux v. Ontario*, 2021 ONSC 2269.

In *Wareham v. Ontario*, 2008 CarswellOnt 176 (Ont. Sup. Ct. Jus.), the plaintiffs' claim related to delays in processing their applications for benefits under the Ontario Disability Support Program (ODSP). They argued that the Province was negligent in creating and maintaining a system that failed to provide income to eligible persons in a timely manner – essentially, the system was inefficient and too complex. The Court found that more than systemic allegations regarding the ODSP were required to satisfy the proximity requirement, and that interactions between Crown employees (who were exercising an adjudicative function in their administration of the program) and benefits applicants were not sufficient to constitute proximity.

In *Leroux v. Ontario*, 2021 ONSC 2269, the claim was similar to *Wareham* but involved the provision of specific benefits for developmentally disabled adults. The plaintiffs had received similar benefits as children, but "aged out" when they turned 18. The claim alleged that Ontario acted negligently in administering these programs, which led to wasted money, inadequate targeting of resources, and long waitlists. The dissenting judge, although not on this point, found that proximity was not met where the claim related to how a government should be allocating resources within a program:

> [70] If the case against Ontario was one where the claim involved nothing but issues arising out of government resource allocation and the management of a discretionary program, it is clear such claims are outside of this court's jurisdiction. There is good reason why the jurisprudence precludes such a claim. It is for the government to decide how the resources of the government are to be allocated. The public may disagree with how a government may allocate its resources, and the remedy then is for a disaffected public to vote that government out of office at the next election. It is not for the courts to determine policy. Judges are not elected officials, and as such judges should leave core policy decisions to the politicians.

> [71] The governmental decision to fund or not to fund a particular program and the governmental decision as to how resources within a program should be allocated are also not the proper subject matter of judicial scrutiny - see *Cirillo v. Ontario*…Put differently, the determination of how a government decides to allocate resources does not establish a duty of care because the relationship lacks proximity.
>
> [Emphasis added.]

The majority of the Court, relying on *Wareham*, found that the choice to provide different benefits programs aimed at children and adults, and the allocation of scarce resources among competing eligible developmentally disabled adults, were policy choices: "devising, implementing and administering a benefits program is a core policy decision of government". It found that the government owed no private law duty of competent public administration to individual benefits claimants; rather, its responsibility was to voters.

The majority in *Leroux* also relied on *Wynberg v. Ontario*, 2006 CarswellOnt 4096 (Ont. C.A.), in which, among other claims, certain of the plaintiffs alleged negligence on the part of the province for what they characterized to be operational failures in its implementation of the "IEIP", an Intensive Early Intervention Program for children with autism from ages two to five. The Court of Appeal agreed with the trial judge that no duty of care was owed, as there was insufficient proximity and in any event was negated by a core policy defence. In so concluding, the Court found that the core of the claim was not about operational failures, but the failure of Ontario to provide intensive behavioural intervention consistent with the IEIP Guidelines for autistic children as part of their transition to school.

While these cases are not exactly on point in the sense that they did not involve applications for individual benefits on a case-by-case basis, but, rather, systemic denials or delays in providing benefits to a group of similarly situated persons, in our view they are likely still of assistance on the issue of whether proximity is met. The statements in *Wareham* regarding the allocation of resources within a program are particularly helpful. While an entity that administers a benefit program may be found to have acted in a discriminatory manner by failing to provide the benefit to a person and to be liable under human rights law, they will typically not be liable in negligence.

In contrast, however, where the Jordan's Principle request could fall within secondary or tertiary prevention services, there may be a duty of care owed for the reasons set out in our January 2023 opinion; that is, the services may fall within those contemplated by child and family services legislation and the First Nations employees administering the requests may be considered to be acting in a manner analogous to social workers providing child and family services. In our view, the closer the service is to one that would be provided as part of the FNCFS Program (and, particularly, the closer it is to a child protection service), the more likely a duty of care would be owed, as there would be more likely to be sufficient proximity to ground a private law duty. This would likely depend at least in part on the nature and closeness of the interactions between the First Nation and the family making the request, as there is likely to be increased interaction, and closer interaction, with the family where there are child protection concerns.

Despite this, as we also noted in our January 2023 opinion and reiterated above, it is more difficult to establish a duty to provide a specific benefit or services (nonfeasance) than to

establish that a service was provided in a negligent way (misfeasance). By their nature, Jordan's Principle requests are requests for a specific benefit or service. Thus, in our view, the circumstances in which a duty of care were owed in this context would likely be narrow, if they existed at all.

If a duty of care is owed, the remainder of our negligence analysis in the January 2023 opinion applies. The defence of core policy may be available where the request has been denied on the basis of a policy not to provide that type of service, rather than a decision not to provide it in the specific circumstances of the request, provided the required elements of a core policy decision are met: the decision must be based on social, economic, or political factors; made in good faith; not be irrational; and involve at least some level of consideration/deliberation by the decision-maker.

III. POTENTIAL LIABILITY IN HUMAN RIGHTS

Given the difficulties a claimant is likely to face in establishing a duty of care in respect of the administration of Jordan's Principle requests, liability under human rights law is likely to be a more significant concern for First Nations. Although there is no freestanding obligation to provide a benefit or service, once a service provider decides to provide it, it must do so in a non-discriminatory manner: *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624; *Moore v. British Columbia (Education)*, 2012 SCC 61.

(a) Providing a "service" to the "public"

In our view, as with provision of prevention services, a First Nation will be considered to be providing a "service" to the "public" within the meaning of s. 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 ("*CHRA*") where it is administering Jordan's Principle requests. In our January 2023 opinion, we said:

> In our view, it is clear that a First Nation would be a service provider for the purposes of s. 5 of the *CHRA* if it is directly providing any level of prevention services to children and families: primary, secondary, or tertiary. What does providing services mean in this context? In our view, it would include offering the services themselves (for example, having employees of the First Nation run parenting workshops), acting in a facilitation role where they refer children and families for services provided by others or otherwise arrange for the services to be provided, and making decisions on whether to grant requests from families for specific services. In such circumstances, there is little doubt that the First Nation is offering or providing "assistance" or a "benefit" to the general public or a subset thereof.

The First Nation would be a service provider even if it is administering the program on behalf of Canada, and working within the funding provided by Canada. As discussed in our January 2023 opinion, in *MacNutt v. Shubencadie Indian Band* (1995), 29 C.H.R.R. D/114 (C.H.R.T.) and *Polhill v. Keeseekoowenin First Nation*, 2019 CHRT 42, First Nations were found to be the suppliers of a service within the meaning of s. 5 by administering on-reserve federal benefits programs. In *MacNutt*, the Band argued that the "supplier" of the "service" was DIAND, not the Band, as it funded the program. The Tribunal disagreed, noting that the social assistance program on reserve was not statutorily-based but flowed from the terms of an agreement entered into between DIAND and the Band. Under this agreement, responsibility for funding, delivery, and administration of the program was divided or

apportioned between the two parties. The supplier was the Band, not DIAND. The Tribunal also found that the limited discretion the Band could exercise in the administration or delivery of the social assistance program did not take away from its characterization as a service customarily available to the public. In *Polhill*, the Tribunal followed *MacNutt* in finding that the First Nation offered a service in administering an on-reserve federal income assistance program.

(b) Test for discrimination

The complainant must demonstrate that 1) they have one or more characteristics protected from discrimination listed in s. 3 of the *CHRA*; 2) they are denied services, or adversely impacted by the provision of services by the service provider; and 3) the protected characteristic(s) are a factor in the adverse impact or denial.

If the complainant meets this burden of establishing *prima facie* discrimination, the burden shifts to the respondent to establish that there is a *bona fide* justification for the denial or differentiation. To be a *bona fide* justification, the respondent must establish that it could not have accommodated the complainant in the provision of the service without undue hardship, considering specifically health, safety, and cost.

(i) Protected characteristic

As also noted in our January 2023 opinion, the prohibited grounds of discrimination set out in the *CHRA* include race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, and disability. Like with respect to prevention services, it is easy to see how Jordan's Principle requests could be assessed in a manner that denies a service or differentiates adversely on a number of these grounds – for example, if requests for items or services associated with physical, but not mental, disability were granted; if a service was not provided because of a conclusion, based on stereotypical or prejudicial views, that the requestor is unlikely to benefit from it; or if preference for approval of services is given to some families over others because they had a family member on the Band council.

As we also discussed, a complaint could also be brought based on a adverse impact against an individual on the basis of their status as an Indigenous person, without any evidence of differential treatment as compared to another Indigenous person or group, or a non-Indigenous person or group. This is because the law is clear that a comparator group need no longer be established by a complainant in a human rights claim. In *R.R. v. Vancouver Aboriginal Child and Family Services Society (No. 6)*, 2022 BCHRT 116 ("*R.R.*"), an afro-Indigenous mother residing in an urban centre brought a complaint against a First Nations child and family services agency that she had been subject to adverse treatment through separation from her children who had been taken into care, and restrictions in her access to them. She claimed that her protected characteristics of race, colour, ancestry, and mental disability were a factor in this adverse impact, in two ways: directly, by the operation of anti-Indigenous stereotype and prejudice, and indirectly, by failing to account for her needs as an Indigenous parent interacting with the child welfare system.

(ii) Adverse or differential treatment

The complainant must establish that they have been denied services or adversely impacted in the provision of the service at issue. The denial of a Jordan's Principle request would clearly constitute the denial of a service and an adverse impact.

(iii) Protected characteristic a factor in adverse or differential treatment

For the purposes of the question of whether the protected characteristic is a factor in the adverse or differential treatment, it is important to note the Tribunal's emphasis on the role of Jordan's Principle in helping to ensure substantive equality for First Nations children and families. As canvassed above in Part 1, the issue is not simply whether the same or a similar service would be available to a non-First Nations child. Where a government service is not necessarily available to all other children or was beyond the normative standard of care, the Tribunal held that the government department of first contact is to evaluate the needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child. While Canada, and not the First Nation, is the subject of the Tribunal's orders, in our view the same expectation would apply where a First Nation is administering Jordan's Principle requests.

Consequently, it is very likely not sufficient for a First Nation to decline a request solely on the basis that the service or benefit is not or may not be one that is provided by provincial governments to non-First Nations children. Rather, they must assess whether to refuse the request would perpetuate historical disadvantage, including with respect to poverty and residential schools and their intergenerational effects on, among other things, physical and mental health as well as parenting. Sinha et al. describe this task as "connect[ing] the individual and family needs analysis to larger patterns of historical, intergenerational, intersectional inequalities facing First Nations communities, particularly First Nations children."[6]

As an example, Sinha et al. described a request for pre-mixed infant formula in a context where there was a boil-water advisory in the First Nation community, such that powdered formula was not a reasonable option.[7] Assuming only powdered formula was available to non-First Nations families in the province (or even to First Nations families not living in a community with no boil-water advisory), it would not be sufficient to avoid a human rights claim for a First Nation receiving a request for liquid formula in those circumstances to reject it on the basis that only powdered formula is available to other children.

It may be of assistance to First Nations taking on the administration of Jordan's Principle requests to create a list of questions similar to those used by Canada in assessing requests outside the normative standard. Although Sinha et al. point out that it is problematic to require families to respond to these questions and provide evidence that their requests are justified under a standard of substantive equality, they could be useful internally as a guide

[6] Sinha, *supra*, at p. 30

[7] Sinha, *supra*, at pp. 31-32

for employees regarding the types of considerations that are relevant to whether granting a request for a service will help to ensure substantive equality.

In our view, it is also obvious that declining to approve Jordan's Principle requests based on any of the other aspects of the various earlier definitions employed by Canada would also likely be discriminatory; for example, limiting approvals to children with multiple disabilities or by duration or severity of condition, or to situations where the requestor has first sought the service from a provincial agency and been denied. Further, if a child would need to be put in care in order to access the services that have been denied in refusing the Jordan's Principle request, this would also likely be considered discriminatory.

This does not mean, however, that all denials of Jordan's Principle requests will be *prima facie* discriminatory. As discussed in our January 2023 opinion, where the service provider demonstrates that the conduct leading to the adverse impact was for other reasons entirely unrelated to the protected characteristic, or there is simply no evidence (even a "subtle scent") that the protected characteristic was a factor in the adverse impact, *prima facie* discrimination will not be substantiated. In a Jordan's Principle context, such an example could include where the only reason for the denial is that there is no evidence a particular medical service will have any benefit for the requestor.

(iv) *Bona fide* justification/undue hardship

As set out in our January 2023 opinion, at the justification stage, it must be shown that alternative approaches were investigated, and the *prima facie* discriminatory conduct must also be "reasonably necessary in order to accomplish a broader goal". In other words, an employer or service provider must show "that it could not have done anything else reasonable or practical to avoid the negative impact on the individual" (*Moore* at para. 49; *VIA Rail Canada Inc. v. Canadian Transportation Agen*cy, 2007 SCC 15 at para. 130).

We anticipate that the most likely reason for denial of a Jordan's Principle request will be cost, and our analysis regarding an argument of cost as undue hardship applies equally in this context. After reviewing a number of decisions, we said:

> It is obvious from these decisions that a service provider will be expected to incur some hardship in respect of accommodating protected characteristics, including with respect to cost, and that there is an expectation that reasonable alternatives will be considered both in terms of the service itself, as well as methods to pay for it. *Moore* is particularly instructive, as the District administered and managed its programs based on government funding. Although it was experiencing severe financial constraints resulting in part from the level of government funding, its position on undue hardship ultimately failed because it had failed to *consider* any alternative to shutting down the Diagnostic Centre, such as cutting discretionary programs, offering an alternative program for severely learning disabled students, or attempting to find funding elsewhere.

We set out the following list of the types of things a First Nation would likely need to establish to successfully argue undue hardship based on cost:

- That it had considered whether there was a cheaper alternative to the specific service requested, or whether the service could at least be partially provided;

- There was insufficient prevention funding to fund the service, in light of other priorities for the use of that funding;
- There was insufficient funding elsewhere in the FNCFS program, in light of other priorities for the use of that funding;
- There was insufficient funding elsewhere in its budget, having regard to other community priorities and important public services for its members; and
- It had explored other funding sources, such as the FNCFS Program emergency fund, or, alternatively, other government programs or funding that might be available to it.

These same considerations would apply here. If the First Nation sufficiently considered alternative services or, where alternative services are not sufficient or feasible, other sources of funding, and made reasonable efforts to find funds to pay for the requested service or a suitable lower-cost alternative, the failure to provide it (or potentially a delay in providing it) due to legitimate budgetary constraints would likely be considered a *bona fide* justification. It would not be sufficient for the First Nation to simply conclude that the funding from Canada was insufficient to pay for the service, without exploring any alternatives.

In our January 2023 opinion, we also highlighted the importance for service providers of making decisions in an objective manner based on families' needs and circumstances, and not based on irrelevant personal characteristics. If a First Nation decides not to approve a particular Jordan's Principle request, or to provide the service to some families but not others, the reasons for this should be objective and based on clear criteria. In addition to cost, these criteria could include things like need, expected effectiveness/benefit of the service, and urgency. The reasons for declining to approve the request should also be well-documented.

SUMMARY

As in the context of the provision of prevention services by First Nations, the question of whether a duty of care is owed in respect of Jordan's Principle requests is a novel one. In our view, where the items or services requested do not fall within the rubric of child and family services, there is likely no private law duty of care owed by First Nations to children on whose behalf the requests are made, as there is likely insufficient proximity.

Where what is requested could fall within secondary or tertiary prevention services, there may be a duty of care owed for the reasons set out in our January 2023 opinion; that is, the services may fall within those contemplated by child and family services legislation and the First Nations employees administering the requests may be considered to be acting in a manner analogous to social workers providing child and family services. Essentially, the closer the service is to one that would be provided as part of the First Nations Child and Family Services (FNCFS) Program, the more likely a duty of care would be owed, as there would be more likely to be sufficient proximity to ground a private law duty. However, as with prevention services, we also note the greater difficulty in establishing a positive duty to provide a benefit or service.

If a duty of care is owed, the defence of core policy may be available where the service has been denied due to a policy not to provide it, rather than a decision not to provide it in the specific circumstances of the request.

With respect to liability under human rights law, as with provision of prevention services, a First Nation will be considered to be providing a “service” to the “public” where it is administering Jordan’s Principle requests.

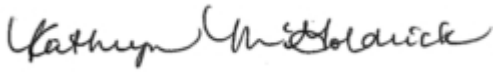
In our view, the fact that it is Canada that is subject to the CHRT’s orders would not absolve the First Nation of its obligation to provide the service in a non-discriminatory manner. Canada is required to respond to Jordan’s Principle requests in a manner that seeks to ensure substantive equality and avoid perpetuating historical disadvantage, and we anticipate this same expectation would apply to First Nations. Because of this, it would likely not be sufficient to avoid a human rights claim for a First Nation to deny a request on the basis that the service is not available to non-First Nations children.

As with our opinion with respect to prevention services, if a complainant has established *prima facie* discrimination as a result of the denial of a Jordan’s Principle request, undue hardship based on cost may be established. However, it will similarly likely not be sufficient for the First Nation to simply decline a request because the funding from Canada is too low. The Nation will likely be expected to have considered reasonable alternative services as well as whether funding can be obtained from elsewhere.

Thank you for the opportunity to provide this opinion. We look forward to discussing any questions you may have at your convenience.

Yours truly,

ALEXANDER HOLBURN BEAUDIN + LANG LLP
Per:



Kathryn McGoldrick
/KAM

ALEXANDER HOLBURN

YOUR **PERSPECTIVE**
OUR **FOCUS**™

September 1, 2023

VIA E-MAIL

Reply to: Kathryn McGoldrick
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Matter No.: 1137549

Institute of Fiscal Studies and Democracy (IFSD)
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Ottawa, Ontario
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Attention: Helaina Gaspard, Ph.D., Director, Governance & Institutions

Dear Sirs/Mesdames:

Re: Legal Opinion regarding potential Liability for First Nations carrying out activities related to Jordan's Principle

We write to provide IFSD with a legal opinion regarding potential liability concerns with respect to application assistance, adjudication, and/or payment of funds in respect of Jordan's Principle requests. Specifically, you have asked us to answer four questions. We have organized the questions somewhat differently (for example, by combining an aspect of one question with another question), and have re-stated them as follows:

1. What are the liability implications for First Nations who take on application assistance (navigation services), adjudication, or funding management relating to Jordan's Principle, as opposed to working directly through the federal government? Are there particular risks associated with urgent requests?

2. What liability, if any, does a First Nation take on when it does not provide navigation services to First Nations people from other First Nations living in their community?

3. What insurance coverage is available for First Nations taking on one or more of the tasks listed in question 1 with respect to Jordan's Principle requests?

4. Are First Nations required to adopt the same standards and procedures for applications, adjudication, and funding management as Canada? If they do not adopt the same standards, does this affect their liability and/or their ability to access insurance?

EXECUTIVE SUMMARY

In summary, our responses to these questions are as follows:

Question 1

In our view, the key issue in respect of this question is whether the First Nation would be found to owe a duty of care to persons making Jordan's Principle requests, and specifically whether there is sufficient proximity. Where the First Nation's involvement in administering Jordan's Principle involved direct interactions with persons making requests for services, in particular where the interest at stake is serious (e.g., a medical need), proximity is more likely and may be sufficient to establish a duty of care.

Consequently, proximity would likely be met where the First Nation has undertaken to provide application assistance, due to the direct interactions between the navigators and community members. These interactions would reasonably lead to expectations that the navigator will properly assist the community member with their request and do so in a timely way, and the community member will rely on this. The interests involved will also in at least some cases be significant – e.g., an urgent health issue – supporting a finding of proximity.

It is less clear whether a duty of care would be owed where the First Nation's role is limited to adjudication and/or the payment of approved requests, as individual interactions would be absent or reduced, making proximity less likely (particularly where its role is related to funding management alone). Further, there is some case law suggesting that at least in some circumstances, there is insufficient proximity where public authorities are carrying out an adjudication function. However, a finding of proximity cannot be ruled out.

If proximity were found, a core policy defence might be available to negate a duty of care. For example, if the funding Canada provided would not pay for a sufficient number of navigators to meet the demand, the First Nation's decisions as to how it could best use the limited funding would arguably be considered core policy decisions.

With respect to human rights, it likely does not matter whether a First Nation is providing navigation services, adjudicating requests, and/or managing funds. If these actions result in the denial of a service in a manner that is *prima facie* discriminatory and there is no *bona fide* justification, the level of closeness and interactions will not be relevant and the First Nation will likely be found liable in human rights law.

A First Nation could also have liability to Canada in respect of a claim brought against the latter if the First Nation is administering Jordan's Principle under a coordination agreement. We also provide some brief comments regarding potential liability of a First Nation under the Charter; however, this would need to be revisited after the Supreme Court releases its decision in *Dickson v. Vuntut Gwitchin First Nation*, as the application of the Charter to a First Nation's activities is currently unsettled and this decision should provide clarity.

Question 2:

A First Nation could face both tort and human rights liability for failing to provide Jordan's Principle services to members of a different First Nation who reside in their community.

In tort, there would likely be no difference from our opinion on Question 1, as we do not believe the court would find that a First Nation owed only its own members a duty of care and not others entitled to Jordan's Principle services who reside in their community.

In human rights, in our opinion the First Nation would be found to be providing a "service" within the meaning of the *Canadian Human Rights Act* even if it is administering the program on behalf of Canada and working within the funding provided by it, and certainly if it is providing navigation services.

In our view, members of a different First Nation could almost certainly establish that the prohibited ground of national and/or ethnic origin (and potentially also race) is engaged, and thus that there has been *prima facie* discrimination where they are denied Jordan's Principle services because of their lack of membership. We base this opinion on cases in which complainants who were members of a different Indigenous group successfully established that these grounds were engaged. The Tribunal in these cases rejected the argument that there was no engagement of these grounds because the complainants and the members of First Nation where they resided were all Aboriginal peoples (and thus that there was no distinction based on national/ethnic origin or race), noting that Aboriginal peoples of Canada are comprised of many nations and ethnic groups, possessing unique cultures, languages, traditions and history. The Tribunal noted in any event that was it was "entirely possible" for an individual to be a victim of discrimination at the hands of someone with the same origin, if it is established that the victim's origin was a factor in the adverse differential treatment.

A First Nation may be able to justify a policy of not considering requests by members of a different First Nation under s. 15(1)(g) of the *CHRA*, but this would depend on the circumstances and would likely be very difficult. If funding is an issue, the First Nation would almost certainly be expected to revisit its funding needs with Canada rather than adopt a blanket policy to not accept requests from non-members.

Question 3:

In our view, as long as the insurer is apprised of the specific Jordan's Principle operations and who is carrying them out (employees, volunteers, etc), we do not see any impediment to a First Nation obtaining coverage for any activities related to Jordan's Principle. Such coverage would likely be provided under the general liability portion of a First Nation's insurance policy. We followed up with one of the brokers whom we consulted for our June 2023 opinion, and he was not aware of any limitations in the policy wording or exclusions that might apply to preclude such coverage.

Question 4:

For the purposes of this question, we adopt the following meanings of "standards" and "procedures". We consider "standards" to mean the standards set by the CHRT in their orders in the Caring Society complaint with respect to timing of processing requests and other specific expectations set out in these orders. We consider "procedures" to mean policies, procedures, or guidelines adopted by Canada to assist its employees in administering the Jordan's Principle program. While we appreciate that you may have considered both standards and procedures to fall into this second category, in our view it is important to consider the first category as well.

In our view, a First Nation would not be expected to adopt the same policies and procedures used by Canada, either to avoid tort liability or to be able to obtain insurance. If they did wish to use these policies, they would likely be expected to turn their minds to whether they are reasonable and work for their organization. However, Canada's policies and procedures would likely not be wholly irrelevant to what is considered reasonable conduct by the First Nation, unless they were objectively unreasonable – e.g., some of the policies Canada initially adopted, such as granting requests only for children with multiple disabilities.

Under tort law, the First Nation may be expected to abide by the standards set for Canada by the CHRT, at least for urgent requests. Although these standards were created in a human rights context and not for the purpose of establishing a standard of care in negligence, they will likely still be relevant in the negligence context, and perhaps highly relevant. They were reached to some degree by consensus, and there was agreement that they constituted reasonable and desirable standards in order to make sure children are receiving the services they need without delay.

It is possible that failing to adopt the same standards as Canada might impact the First Nation's ability to obtain insurance for Jordan's Principle operations. However, it would depend on, among other things, the level of detail with which the insurer examines the operations, and the insurer's degree of knowledge – for example, whether they are even aware of the standards to which Canada must adhere.

With respect to human rights, we anticipate the expectation placed on Canada by the CHRT that it respond to Jordan's Principle requests in a manner that seeks to ensure substantive equality and avoid perpetuating historical disadvantage, as set out in its orders, would also apply to First Nations. The one major difference we see with respect to Canada's liability is they will likely be unable to justify a breach of the orders for economic reasons, whereas a First Nation could likely do so assuming they have made reasonable efforts to find other funding or provide reasonable alternative services. Thus, in our view, the question for the First Nation's liability under human rights law will not be whether they are required to presumptively meet the standards set out in the orders (they likely are) but whether they have a *bona fide* justification for failing to have done so in particular circumstances.

I. LIABILITY IMPLICATIONS FOR FIRST NATIONS PROVIDING JORDAN'S PRINCIPLE SERVICES

Liability of the First Nation

In our view, the key issue in respect of this question is whether the First Nation would be found to owe a duty of care to persons making Jordan's Principle requests in each of these situations: where they are offering application assistance, adjudication, or funding management only; or where they are doing all of these things – essentially, administering the program in its entirety with block funding from Canada.

In our March 2023 opinion, we opined where what is requested could fall within secondary or tertiary prevention services, that there may be a duty of care owed for the reasons set out in our January 2023 opinion; that is, the services may fall within those contemplated by child and family services legislation and the First Nations employees administering the requests may be considered to be acting in a manner analogous to social workers providing child and family services, and there would therefore be more likely to be sufficient proximity. We also

noted that proximity would likely depend at least in part on the nature and closeness of the interactions between the First Nation and the family making the request, as there is likely to be increased interaction, and closer interaction, with the family where there are child protection concerns or where the services more closely approach protection services.

Conversely, we also opined that the funding and administration of programs at a high level is likely insufficient to establish proximity, pointing to a number of cases involving administration of benefits programs in which proximity was not found (and where there may have also been a policy defence).

The administration of Jordan's Principle requests where the items or services requested do not fall within the rubric of child and family services was, in our view, a more difficult question, although we opined that there would be less likely to be a private law duty of care due to insufficient proximity. As set out below, however, where the First Nation's involvement in administering Jordan's Principle involved direct interactions with persons making requests for services, in particular where the interest at stake is serious (e.g., a medical need), proximity is more likely and may be sufficient to establish a duty of care.

(a) Liability in Tort

As we have set out in our previous opinions, duty of care requires both foreseeability and proximity, although it can be negated by policy considerations where it would be undesirable to recognize a private law duty of care.

(i) Foreseeability

Regardless of the type of tasks a First Nation takes on with respect to Jordan's Principle, there would be foreseeability of harm to children in at least some circumstances if requests are not processed and adjudicated properly and in a timely manner.

In cases where the request was for medical treatment, medical transportation, or anything else that facilitated necessary physical or mental health care for children, particularly if urgently required, potential harm resulting from failure to process a request properly and in a timely way would be foreseeable. The type of damage that occurred (death or other adverse health consequences) would be a reasonably foreseeable result of negligent conduct to the class of plaintiffs (children on behalf of whom the requests are being made) that causes denials or delays.

In contrast, in cases involving a request unrelated to health care or something else that would not be expected to cause material harm if not dealt with in a timely way, such as a computer, it is arguable that harm would not be foreseeable, although it may depend on the facts. Alternatively, sufficient foreseeability might be found for a duty of care to be met, but liability could potentially be avoided if the harm that was ultimately suffered was very unexpected given the circumstances of the request, or in other words, was too remote in law. In contrast to the foreseeability inquiry at the duty of care stage, the remoteness inquiry asks whether the specific injury suffered by the plaintiff was a reasonably foreseeable consequence of the defendant's breach, such that the defendant may be fairly held responsible for it. Remoteness issues arise at the causation stage of the negligence analysis, and specifically the legal causation component – that is, even if the negligence was a factual cause of the harm (absent the negligence, the harm would not have occurred), it is deemed to be unjust to hold the defendant responsible in law.

(ii) Proximity

Proximity, which asks whether the relationship between the plaintiff and defendant is sufficiently close and direct that the defendant should be expected to have the plaintiff in their contemplation as someone who could be injured by their negligent acts or omissions, is more difficult to assess. The factors that are considered generally relevant to whether there is sufficient proximity are the expectations of the parties, representations made by the defendant, reliance by the plaintiff, and the interests involved. With respect to the latter, all other things being equal, proximity is more likely to be owed where physical well-being (and to a lesser extent, property) is at stake rather than financial loss.

As set out in our January 2023 opinion, there are also special considerations in the proximity analysis where the defendant is a public authority. This is because, in the exercise of its functions, a government typically owes *public* duties – special circumstances will be required before it will be found to owe a *private* law duty to an individual or group that can ground a civil action. There are three ways in which sufficient proximity between a plaintiff and a governmental authority can be found: 1) through the applicable statutory scheme; 2) through interactions between the authority and the plaintiff; and 3) through a combination of the statutory scheme and interactions with the plaintiff. The case law is not entirely settled as to whether the specific interactions that may ground a duty of care must consist of direct interactions between the plaintiff and the government defendant.

It is difficult to establish a duty of care through a statutory scheme only, as most statutes confer public powers and duties on public authorities, which are often inconsistent with the establishment of a private law duty to individuals. Factors that will be relevant to whether proximity can be established through a statutory scheme include: whether the asserted duty would conflict with other duties owed by the governmental actor; whether the purpose of the statute is to protect the interests of an identifiable class of individuals of whom the plaintiff is a member; whether the statutory powers at issue involve the provision of a service as opposed to the reduction of a risk through regulation; the vulnerability of the plaintiff class to the risk of harm that materialized; and whether the defendant had specific knowledge of the plaintiff's vulnerability.

In the circumstances of Jordan's Principle, there is no statutory scheme. However, orders have been made by the CHRT obligating Canada to carry out certain tasks according to certain standards, which a court might consider to be analogous to a statutory scheme for the purposes of determining proximity. And if the First Nation had taken on all activities related to Jordan's Principle using block funding transferred by Canada (application assistance, adjudication, funding management), it would likely be considered to be exercising a public function, and to have undertaken to provide these services. In such a case, the factors identified in the previous paragraph would, in our view, point toward proximity being established: the duty to children on whose behalf requests are being made are not conceivably in conflict with public duties – rather, they are consistent; the purpose of Jordan's Principle is to protect these children; the program involves provision of a service; these children are vulnerable; and the First Nation would be aware of this vulnerability.

In contrast, if Canada was adjudicating requests and controlling the funding, but the First Nation was providing application assistance, the First Nation would be more likely to be considered a contractor rather than administering its own program. In that case, the considerations applicable to a public authority likely would not apply.

Regardless, proximity would likely be met where the First Nation has undertaken to provide application assistance, due to the direct interactions between the navigators and community members to provide such assistance. These interactions would reasonably cause the community member to expect the navigator will properly assist them with their request and do so in a timely way, and the community member will rely on this in making the request. The interests involved will also in at least some cases be very significant – e.g., an urgent health issue – which supports a finding of proximity.

It is less clear whether a duty of care would be owed by a First Nation where its role is limited to adjudication and/or the payment of approved Jordan's Principle requests. While foreseeability would likely be met for similar reasons as with respect to navigators, individual interactions would be absent or reduced, making proximity less likely. However, it cannot be ruled out.

With respect to adjudication in particular, the decision of *Wareham v. Ontario*, 2008 CarswellOnt 176 (Ont. Sup. Ct. Jus.), referred to in our January 2023 opinion, is instructive. The plaintiffs' claim related to delays in processing their applications for benefits under the Ontario Disability Support Program (ODSP). The Court found that more than systemic allegations regarding the ODSP were required to satisfy the proximity requirement, and that interactions between Crown employees (who were exercising an adjudicative function in their administration of the program) and benefits applicants were not sufficient to constitute proximity:

> [23] Under the ODSPA, <u>Crown servants have an adjudicative function in the sense that they must weigh the evidence presented by applicants, determine whether the conditions for eligibility are satisfied, and decide on the appropriate level of support in accordance with the statute and the Regulation. In fulfilling the statutory obligations they are not, in my opinion, in a relationship of proximity with each applicant</u>. Their duties are those of public servants engaged to administer the ODSPA for the benefit of eligible members of the public. It is not alleged that, in doing so, any particular individual applicants are singled out. The allegations of negligence are essentially systemic. In my opinion, the authorities require something more than this to indicate a personal, or otherwise close and direct, relationship that would satisfy the requirement of proximity. I note, also, that expectations of, and reliance by, applicants are not alleged to be based on representations by the Ministry, or its officials, rather than on the ODSPA as enacted.
>
> [Emphasis added.]

The underlined portion in this passage is fairly similar to what First Nations employees would be doing if they were adjudicating Jordan's Principle requests, and, thus, the same reasoning might be applied to find that there is similarly no proximity.

However, the court also notes in this same paragraph that the allegations of negligence are essentially systemic – they are not an operational issue with respect to the adjudication of a particular request. If, in the case of adjudication of Jordan's Principle requests, the allegation relates to a particular request being mishandled rather than systemic allegations dealing with the failure to address all requests in a timely manner, this would point in favour of proximity being found.

(iii) Core Policy Defence

Depending on the circumstances, there could be a core policy defence which would negate a duty of care, if the decision that led to the claim involved economic, social and/or political factors, provided it was a considered decision that was neither irrational nor taken in bad faith.

As we have previously opined, a high-level decision made in respect of how to allocate funds between programs, groups, or similar would almost certainly be considered a "core policy decision" that will confer immunity in negligence. However, a decision made at a lower level regarding the provision of a particular service to a particular individual would almost certainly not be.

For example, if the funding Canada provided would not pay for a sufficient number of navigators to meet the demand, the First Nation's decisions as to how it could best use the limited funding would arguably be considered core policy decisions. If, however, the failure to process an urgent request was because the First Nation did not have a system in place for prioritizing those over less-urgent ones (or because the urgent request was simply overlooked), this would very likely be considered an operational rather than policy decision, and would thus not support a core policy defence.

(iv) Standard of Care

Whether there is a breach of the standard of care would depend on the facts. It requires the defendant to have exercised reasonable care *in the circumstances*. This could include a situation of limited funding. For example, as we set out in our January 2023 opinion, the courts have recognized a reduced standard of care on volunteer firefighters as compared to paid, trained firefighters with better resources. If the First Nation has acted reasonably with the funding they have in taking on one or more activities related to Jordan's Principle, they would likely be found not to have breached the standard of care.

(b) <u>Liability in Contract</u>

Even if the First Nation were not liable to plaintiffs in tort, they could be liable to Canada if there were a coordination agreement with Canada, and the First Nation had failed to perform its obligations under the contract. However, if its failure to perform the contract was due to insufficient funding from Canada, there may be an argument that Canada is not entitled to indemnity from the First Nation for a negligence claim resulting from this lack of performance.

Without specific contractual provisions, and specific facts on which to consider whether there has been a failure to perform the contract, we cannot provide a more detailed opinion on this issue, and simply wished to flag the possibility.

(c) <u>Liability under Human Rights Law</u>

In our March 2023 opinion, we provide an opinion regarding the potential liability of a First Nation under human rights law in the administration of Jordan's Principle. We stated:

- A First Nation will be considered to be providing a "service" to the "public" within the meaning of s. 5 of the *Canadian Human Rights Act* where it is administering Jordan's Principle requests;

- The fact that it is Canada that is subject to the CHRT's orders would likely not absolve the First Nation of its obligation to provide the service in a non-discriminatory manner. Canada is required to respond to Jordan's Principle requests in a manner that seeks to ensure substantive equality and avoid perpetuating historical disadvantage, and we anticipate this same expectation would apply to First Nations.

- Factors that might result in a finding of *prima facie* discrimination include failing to provide a service because the service is not available to non-Indigenous children; employing a restrictive definition of Jordan's Principle; and a child needing to be placed in care in order to obtain the service.

- If a complainant has established *prima facie* discrimination as a result of the denial of a Jordan's Principle request, undue hardship based on cost may be established. However, it will similarly likely not be sufficient for the First Nation to simply decline a request because the funding from Canada is too low. The Nation will likely be expected to have considered whether additional funding can be obtained from Canada or elsewhere, or, if the request is too urgent to allow that kind of inquiry, whether there are reasonable alternative services for which sufficient funding is available.

This applies equally to the present opinion. In our view, it does not matter whether a First Nation is providing navigation services, adjudicating requests, or paying out funds (or failing to pay) – if these actions result in the denial of a service in a manner that is *prima facie* discriminatory and there is no *bona fide* justification, the level of closeness and interactions between the First Nation's employee and the requestor will not be relevant and the First Nation will likely be found liable in human rights law.

(d) <u>Liability under the Charter</u>

Because it is difficult in many cases to establish sufficient proximity to find a duty of care owed by a government authority, claimants are increasingly bringing claims against government on the basis of an alleged Charter breach, usually under s. 7, which protects the right to life, liberty, and security of the person. For example, if a child has died or suffered physical injury, they (or their estate/parent) might file a claim alleging that they were deprived of their life or security of the person and seek Charter damages. There is no upper limit on Charter damages.

Although these claims are becoming more common, as far as we are aware, none have resulted in a finding of a Charter breach. Some have been dismissed on the basis that an estate has no right to bring a Charter claim, but courts increasingly appear willing to consider such claims at least where the Charter breach contributed to the death.

The key question on this issue is whether the Charter would be found to apply to a First Nation's administration of Jordan's Principle. The issue of whether the Charter applied to a First Nation's legislation requiring Band councillors to reside in a particular area of its settlement land is currently under consideration by the Supreme Court of Canada in *Dickson v. Vuntut Gwitchin First Nation*, 2021 YKCA 5. The appeal in February 2023.

The Yukon Court of Appeal found that the Charter did apply to the Vuntut Gwitchin, which it characterized as "government". Although the Charter's language refers only to it being

applicable to federal or provincial governments, the common law has expanded the types of entities to which it applies. Prior case law has found that a First Nation is "government" for the purposes of the Charter because its laws were enacted pursuant to the *Indian Act*. However, in this case, the Vuntut Gwitchin argued that its legislation was enacted not under the *Indian Act* but under its own inherent powers of self-government.

The lower court found that its exercise of its legislative capacity and enactment of a constitution were sufficient for the Charter to apply to it, either as government or as an entity exercising inherently governmental activities. The Court of Appeal upheld the finding that it was exercising governmental powers, and the Charter therefore applied, regardless of whether the source of its authority was federal law by virtue of the *Indian Act*, or its inherent right to self-government.

However, it found that s. 25 of the Charter operated as a shield to protect Indigenous rights where those conflict with personal rights under the Charter. Section 25 states:

> 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada…

This case dealt with a First Nation's legislation rather than the administration of a program. However, it is arguable that the latter is just as much an exercise of governmental function as the former. We expect that the Supreme Court's decision in *Dickson* will provide clarity on how the Charter applies to a First Nation's activities, and we would be happy to provide a further opinion following the release of the decision.

Liability of Canada

It is unclear whether Canada would have liability in tort. Foreseeability would be met in the same way as with respect to the First Nation, but proximity is more difficult for some of the same reasons. As noted, there is no statute addressing Jordan's Principle, but the court might find that the orders of the CHRT are akin to one, given that both place legal duties on Canada. If there were interactions between Canada and requestors, this would also militate toward a finding of proximity. However, if First Nations navigators are providing application assistance and Canada's involvement is limited to adjudication and payment, we expect such interactions with Canada would be limited or even non-existent.

Even if it did not have liability in tort, Canada would very likely have liability in human rights law for failure to adequately fund or manage the Jordan's Principle program, even where it has delegated some of the tasks to First Nations.

Canada could also have liability under the Charter on the same basis as we opined a claim might be brought against a First Nation above, as the Charter clearly applies to Canada's activities.

(a) Tort

If the navigators are employees of the First Nation, and Canada is providing funding and conducting adjudication without any interactions with community members, a duty of care might not be found due to insufficient proximity. Even if there are no interactions between Canada and the community members, however, proximity may be found if the court adopts the reasoning of the CHRT in 2016 CHRT 2, citing *Pictou Landing Band Council v. Canada*

(Attorney General), 2013 FC 342 at para. 111, that Canada "took on the obligation espoused in Jordan's Principle". This, as well as the legal obligations the CHRT has found Canada to have due to its decision to provide child and family services to Indigenous children, may be treated as akin to proximity deriving from a statutory scheme, might be found to be akin to a statutory scheme. It would seem artificial to ignore these legal duties because they are not contained in a statute. However, this is a novel issue as far as we are aware, and as such it is difficult to provide a definitive opinion.

As set out above, there are a number of factors supporting the finding of a duty of care under a statutory scheme, including: whether the asserted duty would conflict with other duties owed by the governmental actor; whether the purpose of the statute is to protect the interests of an identifiable class of individuals; whether the statutory powers at issue involve the provision of a service as opposed to the reduction of a risk through regulation; the vulnerability of the plaintiff class to the risk of harm that materialized; and whether the defendant had specific knowledge of the plaintiff's vulnerability. As with a First Nation, it is arguable that all these point toward a duty of care in the circumstances.

However, if Canada's role is adjudication and payment of requests, and general funding/oversight of the program, it would be harder to argue for proximity, given the cases regarding government benefits programs we included in our prior opinions. A claim against Canada may be more likely to be successful under human rights law or the Charter.

Depending on the circumstances, Canada might have a core policy defence that would negate a duty of care. However, this would not be a defence under human rights law. Canada's potential liability in human rights law is discussed below.

(b) <u>Human rights</u>

Even if there were no tort liability, there is likely to be a human rights breach by Canada. The CHRT made a number of specific orders against Canada with respect to the implementation of Jordan's Principle in 2017 CHRT 14 and 2017 CHRT 35. Where irremediable harm is reasonably foreseeable, it is required to make all reasonable efforts to provide immediate crisis intervention supports until an extended response can be developed and implemented, and to carry out evaluation and determination of a request and for all other urgent cases within 12 hours of the initial contact. Once any necessary information has been obtained, a determination must be made within 12 hours for urgent cases, and 48 hours for non-urgent cases.

In our view, the obligation to comply with these orders could not be satisfied by simply funding the hiring of navigators by First Nations, with no oversight or other efforts to ensure that these timelines and other orders in respect of the Jordan's Principle program will be met. If the system is not functioning so as to meet the requirements in the CHRT's orders, or if the level of funding is not "meaningful and sustainable" (2022 CHRT 41 at para. 4), Canada will be in breach of these orders.

An exclusion of liability clause would also not assist Canada in respect of its potential human rights liability, as parties are not permitted to contract themselves out of human rights legislation: *Ontario (Human Rights Commission) v. Etobicoke (Borough)*, [1982] 1 S.C.R. 202, 1982 CarswellOnt 730 at para. 19; 2022 CHRT 41 at paras. 116, 517.

(c) Charter

Our comments above with respect to the potential liability of First Nations under the Charter apply equally here, although there will be no question the Charter applies to Canada's conduct. In the case of a child's death resulting from the failure to provide a service under Jordan's Principle, the main impediment to a claim for Charter damages being brought against Canada would be the issue of whether a claim can be brought by the estate or a family member. If the child suffered harm that did not lead to death, there should be no impediments to such a claim being brought. There are other obstacles to a successful claim under s. 7 for Charter damages, but in our view this is beyond the scope of this opinion and is something we could provide a further opinion on at a later time if desired.

II. LIABILITY FOR FAILURE TO PROVIDE JORDAN'S PRINCIPLE SERVICES TO MEMBERS OF OTHER FIRST NATIONS

In our view, a First Nation could face both tort and human rights liability for failing to provide Jordan's Principle services to members of a different First Nation who reside in their community.

In tort, there would likely be no difference from our opinion above, as we do not believe the court would find that a First Nation only owed its own members a duty of care and not others entitled to Jordan's Principle services who reside in their community.

We provide the following analysis regarding the First Nation's potential human rights liability.

(a) Provision of a "service"

In our March 2023 opinion, we opined that a First Nation will be considered to be providing a "service" to the "public" within the meaning of s. 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 ("*CHRA*") where it is administering Jordan's Principle requests.

We opined that the First Nation would be a service provider even if it is administering the program on behalf of Canada, and working within the funding provided by Canada, relying on two cases, *MacNutt v. Shubencadie Indian Band* (1995), 29 C.H.R.R. D/114 (C.H.R.T.) and *Polhill v. Keeseekoowenin First Nation*, 2019 CHRT 42, in which First Nations were found to be the suppliers of a service within the meaning of s. 5 by administering on-reserve federal benefits programs. In *MacNutt*, the Band argued that the "supplier" of the "service" was DIAND, not the Band, as it funded the program. The Tribunal disagreed, noting that the social assistance program on reserve was not statutorily-based but flowed from the terms of an agreement entered into between DIAND and the Band. Under this agreement, responsibility for funding, delivery, and administration of the program was divided or apportioned between the two parties. The Tribunal also found that the limited discretion the Band could exercise in the administration or delivery of the social assistance program did not take away from its characterization as a service customarily available to the public.

In *Polhill*, the Tribunal followed *MacNutt* in finding that the First Nation offered a service in administering an on-reserve federal income assistance program.

(b) Discrimination on the basis of national or ethnic origin

In our view, residents who are members of a different First Nation but residing in the same community could very likely establish that the prohibited ground of national and/or ethnic origin (and potentially also race) is engaged.

In *MacNutt*, the complainants were non-Indigenous spouses of Band members living on reserve. One of the complainants sought federal social assistance benefits through the Band, which denied them because she was non-Indigenous. The other two complainants had previously been paid such benefits but after some time they were no longer approved by the Band, which had decided to adopt a resolution to deny social assistance benefits to all non-Indian spouses.

The Tribunal found that the complainants had been subject to discrimination on the basis of either race or marital status because they were denied benefits. It noted that although they were all treated equally insofar as they had all been denied benefits as non-Indian spouses, "mere equality of application to similarly situated groups or individuals does not afford a realistic test for a violation of equality rights" (at para. 171). It found that the Band had only limited authority and discretion with respect to its administration of the benefits program, and that the agreement with DIAND and associated Guidelines, Policy and Procedures allowed the payment of social assistance to specific categories of non-Indians permitted to reside on reserve as per the Band's policy. (In this case, the Band had an unwritten policy of allowing non-members to reside on reserve.) The Tribunal found that its policy to deny benefits to non-Indian spouses had the effect of imposing an additional eligibility criterion on the basis of race or marital status.

The Tribunal found this was not justified under s. 15(g) of the *CHRA*. It could not find that the decision to refuse benefits was made with a sincerely held belief that it was in the best interests of reserve residents, and there was insufficient evidence as to "concerns about the homogeneous population of Reserves and the First Nations [sic] desire to preserve their culture, traditions and language" (at para. 202). It also noted there had been no attempt to accommodate the non-Indian spouses within the social services program on reserve.

In *Polhill*, the complainant argued she had been discriminated against on the basis of national or ethnic origin (because she was a non-member of the First Nation) and race (there was a perception in the community that she was white). The Tribunal ultimately found the complaint was not substantiated, but it found she had demonstrated having the alleged protected grounds: national or ethnic origin, and race. It commented on the First Nation's argument that whether or not an individual is a member of an Indigenous community is unrelated to the prohibited ground of national origin, noting that this did not address the ground of ethnic origin. The Tribunal said:

> Tracy identifies herself as Indigenous, because she has Anishnaabe ancestors. Despite this fact, she is not a Status Indian under the *Indian Act*. Furthermore, she is not a native of the Keeseekoowenin community. This means that Tracy cannot be and is not a member of the Nation. That is why I believe that ethnic origin is at issue in the case at bar.

Although it alleged discrimination in an employment context rather than provision of a service, *Deschambeault v. Cumberland House Cree Nation*, 2008 CHRT 48, is also of assistance. The complainant, who was Métis, applied twice for a job with the First Nation but was not selected despite being ranked in the selection process as the most qualified candidate. On each occasion, the candidate who was selected was a member of the First Nation. The First Nation made a similar argument as in *Polhill*, arguing that the complainant's status as a non-Band member was "not like the descriptors of 'race' or 'ethnicity'". The Tribunal rejected this, finding that the allegation was discrimination on the basis of national or ethnic origin, not race, and that there was no distinction in the *CHRA* between persons who were discriminated against for being members of a particular national or ethnic group and those who are discriminated against for *not* being members of a particular group.

It also rejected the Band's argument that all of the candidates were of the same national or ethnic origin, as all were Aboriginal peoples within the meaning of s. 35 of the *Constitution Act*, *1982*. It found that this would constitute a far too restrictive definition of "national or ethnic origin" under the *CHRA*, noting, among other things, that the argument ignored the fact that the Aboriginal peoples of Canada are comprised of many nations and ethnic groups, possessing unique cultures, languages, traditions and history. It also observed that the *CHRA* did not require that the complainant and respondent be of different national or ethnic origins in order for a complaint to be substantiated – it was "entirely possible" for an individual to be a victim of discrimination at the hands of someone with the same origin, if it is established that the victim's origin was a factor in the adverse differential treatment.

As we noted in our January 2023 opinion, it is possible for a service provider to demonstrate that the conduct leading to the adverse impact on the complainant was for other reasons entirely unrelated to the protected characteristic, or that there is simply no evidence (even a "subtle scent") that the protected characteristic was a factor in the adverse impact. In those circumstances, *prima facie* discrimination will not be substantiated. This is distinct from demonstrating that the conduct, although *prima facie* discriminatory, was justified.

A First Nation may be able to avoid a finding of *prima facie* discrimination in respect of Jordan's Principle requests if it had a policy not to fund a specific request, or not to pay more than a specific dollar amount (although such policies could be problematic for other reasons), and the person whose request was rejected for one of these reasons happened to be a non-member of the First Nation. However, if, like in *MacNutt*, if it had a policy of not considering requests brought by members of a different First Nation, this is direct discrimination (express differentiation based on a protected characteristic) and it would be extremely difficult, if not impossible, to argue that the differentiation was for other reasons.

(c) <u>Justification</u>

The First Nation may be able to justify a policy of not considering requests by members of a different First Nation under s. 15(1)(g) of the *CHRA*, but this would depend on the circumstances and would likely be difficult.

To be a *bona fide* justification, a respondent must establish that it could not have accommodated the complainant in the provision of the service without undue hardship, considering specifically health, safety, and cost: s. 15(2). In our January 2023 opinion, we

identified some case law in which cost was alleged as justification for discriminatory conduct. This included *VIA Rail Canada Inc. v. Canadian Transportation Agen*cy, 2007 SCC 15*,* in which the Supreme Court of Canada provided the following guidance for determining when cost may be sufficient to constitute undue hardship:

> [131]…[A]ssessing whether the estimated cost of remedying a discriminatory physical barrier will cause undue hardship falls to be determined on the facts of each case and the guiding principles that emerge from the jurisprudence. A service provider's refusal to spend a small proportion of the total funds available to it in order to remedy a barrier to access will tend to undermine a claim of undue hardship (*Eldridge*, at para. 87). The size of a service provider's enterprise and the economic conditions confronting it are relevant (*Chambly*, at p. 546). Substantial interference with a service provider's business enterprise may constitute undue hardship, but some interference is an acceptable price to be paid for the realization of human rights (*Central Okanagan School District No. 23*, at p. 984). A service provider's capacity to shift and recover costs throughout its operation will lessen the likelihood that undue hardship will be established: *Howard v. University of British Columbia* (1993), 18 C.H.R.R. D/353 (B.C. Human Rights Council).
>
> [132] Other relevant factors include the impact and availability of external funding, including tax deductions (*Brock (Litigation Guardian of) v. Tarrant Film Factory Ltd.* (2000), 37 C.H.R.R. D/305 (Ont. Bd. of Inquiry)); the likelihood that bearing the net cost would threaten the survival of the enterprise or alter its essential character (*Quesnel v. London Educational Health Centre* (1995), 28 C.H.R.R. D/474 (Ont. Bd. of Inquiry)); and whether new barriers were erected when affordable, accessibility-enhancing alternatives were available…

We also cited the Supreme Court's decision in *Moore v. British Columbia (Education)*, 2012 SCC 61, in which the Court found that a school district had not established undue hardship in eliminating an intensive remediation program to assist students with learning disabilities. Although the district was facing "serious financial constraints", it had disproportionately made cuts to special needs programs, and had failed to undertake any assessment, financial or otherwise, of reasonably available alternatives to accommodate special needs students. In order to conclude that it had no other economic choice but to refuse to accommodate the complainant, "it had to at least consider what those other choices were".

The Province was found to have not discriminated, as although the district's budgetary crisis had been created, at least in part, by the Province's funding shortfalls, it was the District which failed to properly consider the consequences of closing the remediation program or how to accommodate affected students.

We relied on these and other cases to opine that:

> If the First Nation sufficiently considered alternative services and funding, and made reasonable efforts to find money to pay for the service but was not successful, the failure to provide it due to legitimate budgetary constraints would likely be considered a *bona fide* justification. It would not be sufficient, in our view, for the First Nation to simply conclude that the funding from

Canada was insufficient to pay for the service, without exploring any alternatives.

We set out the following types of things a First Nation would likely need to establish in order to be able to rely on financial hardship as justification to deny a particular prevention service:

- That it had considered whether there was a cheaper alternative to the specific service requested, or whether the service could at least be partially provided;
- There was insufficient prevention funding to fund the service, in light of other priorities for the use of that funding;
- There was insufficient funding elsewhere in the FNCFS program, in light of other priorities for the use of that funding;
- There was insufficient funding elsewhere in its budget, having regard to other community priorities and important public services for its members; and
- It had explored other funding sources, such as the FNCFS Program emergency fund, or, alternatively, other government programs or funding that might be available to it.

These would also likely apply with respect to Jordan's Principle. It makes sense to provide services according to Jordan's Principle in the location where the person making the request resides (unless, perhaps, there were two First Nations in very close proximity and the community member could just as easily make a request of the First Nation of which they are a member). This would seem to be particularly the case where a request is urgent, and where proximity (physical proximity, not proximity used in its sense in the duty of care analysis) facilitates any necessary correspondence between the First Nation and a service provider. Because of this, there would likely need to be a compelling reason to refuse to provide services to non-members.

In cases dealing with alleged discrimination in respect of election laws (for example, where anyone without blood ties to the First Nation is prohibited from running for Band council or other positions) First Nations have argued that upholding the law is necessary to ensure their cultural continuity, or similar arguments. These arguments do not appear to succeed very frequently. However, even if they had the potential to succeed in those types of circumstances, in our view, similar arguments likely cannot be made in the context of Jordan's Principle. We do not see any good reason to deny services to First Nations' members living in a community because they do not belong to the particular First Nation on whose reserve they reside. If funding is an issue – for example, if a non-member has a particularly high need for Jordan's Principle funding (e.g., a serious medical condition or disability), or there are many members of other First Nations residing in the community, such that the First Nation's funding for Jordan's Principle is consumed to a significant extent by these non-members – the First Nation would almost certainly be expected to revisit its funding needs with Canada rather than adopt a blanket policy to not provide funding to non-members.

III. INSURANCE COVERAGE FOR ADMINISTRATION OF JORDAN'S PRINCIPLE PROGRAM

In our June 2023 opinion, we reported on insurance coverage available to First Nations for child and family services from two brokers, Capri and Aon. Capri offers a First Nation "program policy", which typically includes commercial general liability (including coverage for abuse); public officials liability; healthcare professional liability (which covers the provision of services by healthcare professionals such as nurses or psychiatrists, and may provide some coverage for abuse, although with a lower limit than if the Nation has separate coverage for abuse as part of the CGL policy)); cyber liability; legal expense coverage; and employment practices liability.

Aon offers a similar combination of coverages – general liability, which is broader than a typical CGL policy and includes abuse coverage and wrongful dismissal coverage; D&O liability; and incidental medical malpractice.

We do not anticipate there would be any issues with respect to obtaining coverage for Jordan's Principle operations, whether that be the provision of navigation services, adjudication, funding management, or all three. The significant risks that the brokers conveyed are of concern for insurers are foster care, group homes, and overnight trips, as these all carry greater potential for abuse. We do not see any such concerns with respect to Jordan's Principle.

However, we reached out to both brokers we spoke with previously, in case they had a different view. Mr. Clark of Capri responded, stating that he did not see any issues with coverage for Jordan's Principle operations, and could not locate in their policy wording or think of any exclusions that would apply. However, he did think further information may be required to be provided to the insurer regarding the specific nature of the operations, in order to ensure that the necessary coverage could be placed.

Consequently, as long as the insurer is apprised of the specific Jordan's Principle operations and who is conducting them (employees, volunteers, etc), we do not see any impediment to obtaining coverage.

IV. STANDARDS AND PROCEDURES FOR APPLICATIONS, ADJUDICATION, AND FUNDING MANAGEMENT

For the purposes of this question, we adopt the following meanings of "standards" and "procedures". We consider "standards" to mean the standards set by the CHRT in their orders in the *Caring Society* complaint (in 2017 CHRT 14 and 2017 CHRT 35) with respect to timing of processing requests and other specific expectations set out in these orders.

We consider "procedures" to mean policies, procedures, or guidelines adopted by Canada to assist its employees in administering the Jordan's Principle program. For example, this would include the list of nine questions we understand Canada relies on to guide assessment of a request that exceeds normative standards, set out at pages 4-5 of our March 2023 opinion.

While we appreciate that you may have considered both standards and procedures to fall into this second category, in our view it is important to consider the first category as well.

We have considered this question in both the context of tort and human rights.

(a) <u>Tort</u>

In our view, a First Nation would not be expected to adopt the same policies and procedures used by Canada, either to avoid tort liability or to be able to obtain insurance. Not only is following these likely not required, but, conversely, the First Nation may not be able to avoid liability by doing this. They would likely be expected to turn their minds to whether these policies and procedures are reasonable and work for their organization. However, they may be expected to abide by the same standards as have been set for Canada by the CHRT, at least for urgent requests.

(i) Policies and Procedures

In general, whether an organization and its employees have complied with the organization's own policies and procedures will be an "important factor" to consider in determining whether the standard of care has been met. However, failure to follow policy does not automatically result in a finding that the standard of care was breached: *Bergen v. Guliker Estate*, 2015 BCCA 283 at para. 111. In *Bergen*, the BC Court of Appeal cited its prior decision in *H. (D.) v. British Columbia*, 2008 BCCA 222, which involved alleged negligence by a probation officer in permitting a convicted sex offender to live in a residence with children, where the Court said:

> [83] The respondents and the trial judge put considerable weight upon the policies of the B.C. Corrections Branch as demonstrating a failure to meet the requisite standard of care. The primary obligation of the probation officers is set out in the *Correction Act*. <u>The policy directives function as a guide and are of assistance in determining the standard of a reasonable probation officer. Failure to comply with the policy raises questions as to the quality of judgment brought to bear on the issue by the probation officer but does not, by itself, compel a conclusion that the probation officers failed to meet the standard of care</u>. Here, the policy required information to be given to the at risk person "limited to that information required to enhance safety". The policy goes on to say that in most cases the information would identify the offender by name, general residential area, criminal history, modus operandi and other information needed to identify why there is a risk, but it is couched in terms that leave the degree of detail in any particular case to the probation officer.
>
> [Emphasis added.]

The question you have posed is not exactly answered by this case law, because there, the policies and procedures that are at issue are those of the defendant. Here, the policies and procedures would be those of a different entity – Canada. However, in our view, a plaintiff would have to effectively establish that Canada's policies and procedures rise to the level of "custom" or "industry standard", to which others in the same profession (e.g., doctors or engineers), or organizations conducting similar operations, typically adhere, in order for it to be a significant factor in whether the First Nation will be liable if it does not adhere to them.

Like policies and procedures, custom is not determinative of the standard of care. In Linden et al, *Canadian Tort Law, 12th Edition* (2022, LexisNexis Canada Inc.), the authors note that there are three ways in which custom may be relevant in negligence cases:

> First, compliance with custom may be evidence that the standard of care has been met, particularly in medical cases. Second, deviation from custom may be evidence that the standard of care has been breached. Third, compliance with custom may be evidence of negligence where the custom itself is found to be negligent.

To establish custom, expert evidence will be required, unless it is a rare case where the existence of a custom is obvious.

It would likely be difficult to establish any custom with respect to Jordan's Principle, given that administering the program is not a widespread activity engaged in by many organizations over a significant period of time. We understand that, in contrast, Canada is the sole entity currently doing so, with some First Nations beginning to take on some aspects of its administration. It is also a relatively recently-implemented program.

However, difficulty in establishing custom cuts both ways – if a First Nation used the same policies and procedures as Canada, they would likely have difficulty establishing that this rises to the level of custom as a defence to a negligence claim where they complied with those policies and procedures. They would likely be expected to have considered whether these policies and procedures are reasonable and make sense for their organization's administration of the program. The corollary of this is that if they preferred to adopt their own policies and procedures, provided those were reasonable, this should not be found to be negligent.

Having said this, Canada's policies and procedures would likely not be wholly irrelevant to what is considered reasonable conduct by the First Nation, (unless they were objectively unreasonable – for example, some of the policies Canada initially adopted, such as only approving requests where the child had a severe disability or where there was a dispute between levels of government as to who should pay).

(ii) Standards

The standards Canada is required to adhere to in the administration of Jordan's Principle requests are principally set out in 2017 CHRT 35. Where irremediable harm is reasonably foreseeable, Canada is required to make all reasonable efforts to provide immediate crisis intervention supports until an extended response can be developed and implemented, and to carry out evaluation and determination of a request and for all other urgent cases within 12 hours of the initial contact. Once any necessary information has been obtained, a determination must be made within 12 hours for urgent cases, and 48 hours for non-urgent cases.

These standards were based on a combination of the CHRT's prior orders as well as an agreement between the Caring Society, AFN, and Canada, based on which the Tribunal amended these orders. This was done in a human rights context and not for the purpose of establishing a standard of care in negligence. However, while the standards would likely not be found to be determinative of the standard of care, they will likely still be relevant in the negligence context, and perhaps highly relevant. They were reached to some degree by consensus among the parties, and there was agreement that they constituted a reasonable and desirable standard that should be met in order to make sure children were receiving the services they needed without delay, and a recognition that urgent requests needed to be addressed quickly.

While a First Nation would likely not be found liable in negligence for taking 13 hours, rather than 12, to make a determination on an urgent request, the court would probably at least consider this standard to be relevant in determining whether an urgent request that took 36 hours to deal with was negligent. It would of course depend on the circumstances and whether the First Nation and its employees acted reasonably in those circumstances with which they were faced. But, more than with respect to policies and procedures, the standards would likely inform the standard of care.

(iii) Insurance

Given that it is our opinion that a First Nation would likely not be required to adopt Canada's policies and procedures in order to avoid liability, we do not see any reason why this would affect their ability to obtain insurance. When we spoke with the insurance brokers for the purposes of our July 2023 opinion, they did indicate that policies and procedures, training, etc, will be particularly relevant for the likelihood of obtaining abuse coverage. As indicated above, we spoke with Mr. Clark again for the purposes of this opinion, and he could not think of any exclusions that would apply to coverage for Jordan's Principle. However, he did indicate that insurers may request additional information regarding the First Nation's operations in this regard, which we anticipate would likely include information regarding policies and procedures, staff qualifications, structure of operations, etc. Provided the policies and procedures were reasonable and employees had proper training in how to adhere to them, an insurer would likely not refuse coverage because they did not match those used by Canada. However, this could only be answered definitively by the insurer itself.

It is possible that failing to adopt the same standards as Canada might impact the First Nation's ability to obtain insurance for Jordan's Principle operations. However, it would depend on, among other things, the level of detail with which the insurer examines the operations, and the insurer's degree of knowledge – for example, are they even aware of the standards to which Canada must adhere. Brokers are able to provide general information regarding factors that might cause an insurer to refuse to take on a particular risk, but ultimately the decision is the insurer's. If a First Nation is considering taking on operations with respect to Jordan's Principle, the specific nature of the operations should be discussed with the broker to ensure that the insurer can make a properly informed coverage decision.

(b) Human rights

As noted above, we anticipate the expectation placed on Canada by the CHRT that it respond to Jordan's Principle requests in a manner that seeks to ensure substantive equality and avoid perpetuating historical disadvantage, as set out in its orders, would also apply to First Nations. The one major difference we see with respect to Canada's liability in human rights is that they will likely be unable to justify a breach of the orders for economic reasons, whereas a First Nation could likely do so assuming they have made reasonable efforts to find other funding or provide reasonable alternative services, as per our analysis above under question 1.

Thus, in our view, the question will not be whether the First Nation is required to presumptively meet the standards set out in the orders (they likely are) but whether they have a *bona fide* justification for failing to have done so in particular circumstances.

Thank you for the opportunity to provide this opinion. We look forward to discussing any questions you may have at your convenience.

Yours truly,

ALEXANDER HOLBURN BEAUDIN + LANG LLP

Per:

Kathryn McGoldrick
/KAM

IFSD is pleased to share two legal opinions prepared by Alexander Holburn Beaudin + Lang LLP.

IFSD has prepared the summaries of the two legal opinions on a best-efforts basis. **This is not legal advice, nor is it a legal interpretation. IFSD invites readers to review the opinions and seek legal advice.**

Opinion date	Topic	Summary

March 10, 2023	Legal Opinion regarding potential Liability in Tort and Human Rights Law for First Nations administering Jordan's Principle Requests	Liability for negligence (tort):
		
		• First Nations who assume block funding for Jordan's Principle may be taking on liability for negligence.
		  ○ Items/services requested that **are** child and family services (CFS) related are at higher risk
		  ○ Items/services requested that **are not** CFS related are at lower risk
		• The closer a service or request is to First Nations CFS, the higher the risk of liability.
		• Denials based on a policy may be more defensible than denials based on a specific circumstance.
		
		Liability under human rights law:
		
		• A First Nation likely:
		  ○ Cannot discriminate when approving/providing services
		  ○ Cannot decline requests solely because of insufficient funding from Canada
		  ○ Is expected to consider reasonable alternative services or alternative sources of funding to address requests

September 1, 2023	Legal Opinion regarding potential Liability for First Nations carrying out activities related to Jordan's Principle	• First Nations administering Jordan's Principle are more likely to be liable when they interact directly with the person making the request, and when that person has a serious condition. • First Nations may be liable in human rights law if: ○ Service is denied in a way that appears discriminatory; and

		○ There is no good faith reason for the denial • First Nations could be liable for failing to provide services to members of a different First Nation who reside in their community. • First Nations should be able to obtain insurance for Jordan's Principle activities, e.g., navigation, approval, funding. • Are First Nations required to adopt the same standards and procedures as Canada? ○ First Nations may be expected to meet the same standards as Canada. The CHRT orders likely apply to First Nations as well as Canada. ○ First Nations may not be required to use the same policies and procedures as Canada. First Nations may want to consider if Canada's policies and procedures are reasonable and work for their organization.

Appendix N1

Building better communities with Jordan's Principle
Yukon First Nations Education Directorate (YFNED)

This summary text has been reviewed and approved by the interlocutor. IFSD wishes to recognize their contribution in sharing their professional experience with Jordan's Principle.

Utilizing Jordan's Principle, the Yukon First Nations Education Directorate (YFNED) has built a comprehensive approach to education related supports for youth. From the redesign of curriculum, to school-based advocates, and dedicated professional services like psychologists, YFNED is "building better communities." They have defined their own approach and actualize it by taking advantage of the lack of structure and policy framework around Jordan's Principle. It's a double-edged sword. While the flexibility suits them, it also means that criteria and funding access can change, and reporting requirements are inconsistent limiting information on how children are doing.

Context

Through group requests to Jordan's Principle with three-year transfer payment agreements and other sources, e.g., Yukon Government, Chiefs Committee, YFNED has built a comprehensive approach to education-related supports for youth.

"If Jordan's Principle wasn't doing what it's already doing, it would be catastrophic."

Working directly with individuals, families, and schools, YFNED's approach is focused on rebuilding people to make them contributing and capable members of their communities. Preventive services, intercepting trauma, and supporting young people are central to their approach. With their own psychologist and occupational therapist on staff, First Nations children connected to advocates can receive testing and supports in 30 days or less. YFNED is offering wrap-around services to help ensure children and youth get the supports they need when they need them.

YFNED's approach

YFNED has 16 advocates across primary and secondary schools in Whitehorse who serve as "the eyes and ears" of their programming. With a web-based intake form, YFNED relies on its advocates and direct requests from families to define and capture self-declared needs. Advocates work with children/youth and families to build service plans, in concert with school personnel to identify and support needs. Trained in suicide prevention, working with vulnerable youth, first aid, etc. the work of the advocates is premised on relationships with children/youth and their families.

In its work, YFNED takes a First Nation approach, as in it takes care of all First Nations children. The approach benefits from scale, since multiple First Nations children and youth from various communities can be in a single school.

YFNED's work has impacts both in the classroom and beyond. YFNED has adjusted curricula in schools to have English, social studies, careers, and art taught through an Indigenous worldview. Elders and Knowledge Keepers are included in the curriculum through activities such as drumming, hunting, dry meat making, etc. Training for youth extends beyond the classroom through the advocates who support them in obtaining driving permits, chain saw operation licenses, etc. These are skills that help to make them self-sufficient, employable, and active contributors to their communities.

Supporting children and youth at school

Program delivery is dependent on funding renewal. At the time of writing, most of YFNED's funding (approximately $10M) comes from Jordan's Principle. Costs for program delivery are expected to rise by roughly 20%, with an administration fee (12%) included to manage growing numbers of applications and the requisite program designs.

The lack of policy framework associated to Jordan's Principle means that YFNED can utilize it to define its own vision and execute it. However, there are no consistent criteria for accessing Jordan's Principle, and there has never been an application form or template to make a request for funding. This means that submission requirements can be altered or deemed insufficient without much notice. The lack of policy framework means that there are no parameters on reporting. The result is differing approaches between service coordinators, e.g., organization like YFNED v. First Nation, due to capacity. This inconsistency limits availability of information on what children/youth are accessing and how they are being impacted.

The current approach to Jordan's Principle is a double-edged sword. The flexibility is welcome for executing on YFNED's vision and definition of success. However, guidance on the parameters of Jordan's Principle and what can be expected in the future would be helpful to support the sustainability of the education-focused supports they have developed.

Appendix N2

Summary of Feedback from Frontline Jordan's Principle Workers
(NAN "As We Gather" Conference, September 2024)

This summary text has been reviewed and approved by the interlocutor. IFSD wishes to recognize their contribution in sharing their professional experience with Jordan's Principle.

During the "As We Gather" conference hosted by Nishnawbe Aski Nation (NAN), frontline workers provided critical feedback on their experiences with Jordan's Principle, highlighting operational challenges and suggesting reforms that could enhance delivery.

Participants shared that their day-to-day responsibilities often extended beyond their official titles, as they acted as frontline coordinators, advocates, and support systems for families navigating Jordan's Principle.

Operational Challenges

Participants raised several significant operational challenges, many of which aligned with feedback gathered from the national working group:

Unclear Processes & Onerous Reporting Requirements: Frontline workers pointed out that ISC processes were opaque, particularly when accessing service coordination funding. Reporting requirements were described as inconsistent, burdensome, and often irrelevant to the real needs of the community (e.g., requiring forms to be typed rather than handwritten, but requiring a non-electronic signature)

Inconsistent Funding Affecting Staffing: A recurring issue was the inconsistent year-to-year funding, which disrupted the ability to maintain functional, community-based teams. The lack of stable funding meant that fully operational teams would be disbanded due to non-renewal of funding, affecting continuity of service delivery.

Eligibility Confusion & Arbitrary Decisions: Workers reported confusion and inconsistencies in eligibility criteria, as communicated by ISC. Identical applications would receive different outcomes, leading to frustration. ISC decisions were described as arbitrary, dismissive, and ill-informed. One participant said "it feels like ISC isn't reading our applications." Participants also mentioned instances of "subtle racism," with bureaucrats dismissing requests based on vague justifications (e.g., "the child has had enough services").

Bureaucratic Delays & Backlogs: Frontline workers expressed frustration over long wait times and backlogs, raising questions about why ISC wasn't hiring more adjudicators, especially given the growing demand. This highlighted the need for capacity building in data management and processing.

On-Reserve vs. Off-Reserve Funding Inequities: Many participants felt that funding systems were discriminatory based on location, with on-reserve and off-reserve children facing different levels of access and support. This highlights the issue of location-based inequity, and the need for disaggregated data by territory to better understand regional disparities.

Suggestions for Improvement

Frontline workers proposed several ideas and considerations for reform.

Simplifying Processes & Forms: A strong desire for simplifying the application process was expressed, with suggestions to eliminate complex forms that often used inaccessible language. Workers suggested a single-window approach with to streamline requests. This could also include standardized software, and more consistent administrative systems and data infrastructure.

Ending Reimbursement: Participants were particularly vocal about the challenges of reimbursement, saying that it unfairly burdened families who often had to float costs before receiving approval. They suggested moving towards a system where deposits or upfront payments are made. This highlights a gap in service consistency, where some requests are approved right away, and others take months or years.

Community-Based Staffing & Decision-Making: Many expressed that the decision-making process should be localized, with staffing for Jordan's Principle coming from the communities themselves. This would ensure that those making decisions are familiar with local realities, and support First Nations-led data collection and community control over information.

Consistency in Adjudication & Service Delivery: Participants advocated for greater consistency in adjudication and improved communication, suggesting that ISC assign specific staff to communities to develop expertise in local contexts. This could also be addressed by adopting uniform guidelines and clear accountability structures.

Data Collection & Reporting

Participants raised concerns around lack of consistent data collection practices and the burdensome nature of reporting. They highlighted that data gathered from frontline workers and Jordan's Principle coordinators could better reflect real needs and improve service planning. However, current systems were not user-friendly, with excessive bureaucracy hindering the process.

There were suggestions for simplified community-based data gathering, where frontline workers could provide concise reports based on their local knowledge without the need for onerous forms.

Appendix N3

Sustainability and the Spirit of Jordan's Principle

This summary text has been reviewed and approved by the interlocutor. IFSD wishes to recognize their contribution in sharing their professional experience with Jordan's Principle.

Service Coordinator X serves 7 First Nations officially, but nearly 30 in practice, plus two First Nations child and family services agencies. In their work with Jordan's Principle, Service Coordinator X is concerned that Jordan's Principle is creating a reliance on temporary solutions without building capacity and resilience in families. Service Coordinator X considers a return to the spirit and intent of Jordan's Principle to be the meaningful support of children and families by focusing on needs, building resilience in families, and providing tools for sustainable well-being.

Operationalizing Jordan's Principle

Working in a team of three (including themselves), Service Coordinator X has built an approach to managing applications and floating, i.e., funding, some requests through Jordan's Principle. Every application is reviewed by Service Coordinator X to connect families with relevant supports and services. Through this approach, Service Coordinator X seeks to "extend beyond the 'cash' for basic needs, to build capacity with the family."

For instance, there are several requests for groceries. Instead of only approving the request, Service Coordinator X asks what will happen next. Receiving grocery money may help in the short-term, but how will the applicant get groceries in three or six months? If the applicant's circumstances are otherwise unchanged, will they be applying again? Will they rely on Jordan's Principle indefinitely? While recognizing the often serious nature of requests for basic necessities, Service Coordinator X works with applicants to lessen reliance on Jordan's Principle funding. Instead of routinely approving grocery requests, Service Coordinator X seeks out options that build community capacity. This could include:

- Pairing applications with already available programs and services;
- Making a group request to fund a local food bank and build long-term food security in a community; or,
- Working with applicants to get coaching on budgeting and managing personal finances to ensure they can live within their means.

The active support and work alongside families and the use of group requests for commonly occurring requests are meant to build resilience and capacity so that Jordan's Principle offers a step forward rather than being a form of dependence.

There are few parameters for the delivery of Jordan's Principle. Service Coordinators are left to apply their judgement in supporting applications. This has resulted in Service Coordinator X developing their own scales and frameworks for applicants. The need for

parameters in Jordan's Principle has made effective communication with applicants a critical part of Service Coordinator X's work. Some applicants may come in with a preconceived idea about funding (i.e., my neighbour got a laptop through Jordan's Principle, so I should too). Service Coordinator X handles this by framing applications through a lens of *wants* versus *needs*. For example, an applicant may want a king-size bed for their child, but only need a twin bed, given the child's height and age. Service Coordinator X is careful so as not to be seen as gatekeeping, but rather works in partnership with applicants to understand their unique needs. This approach builds trust through respect of the applicants and their abilities, and is also supported by the tribal council employing Service Coordinator X.

With one service coordinator, one family support worker (a position funded through Jordan's Principle), and one administrator (to manage payments and track applications), the team often burns out. They are regularly serving well above the 7 First Nations in their mandate, serving nearly 30 First Nations at certain times.

Flourishing Jordan's Principle

Service Coordinators can be helpful as trained professionals (e.g., social workers, nurses) in building capacity and connecting families to available services. A return to these original functions, rather than the churn of reviewing applications would support the sprit and intent of Jordan's Principle by supporting families in creating meaningful and sustainable change.

The limited guidance on the implementation of Jordan's Principle has led to significant variability between regions. Guidance and guidelines would be helpful for assessing reasonableness in different places, e.g., urban versus remote, and for the types of requests, e.g., helping to decipher *needs* versus *wants*. Approving everything that applicants want, can and does lead to abuses. For example, applicants may receive money for groceries, and spend it on a vacation. Or they may be approved for household furnishings, and immediately sell them. While they may be the exception, it is crucial to limit these abuses for the long-term success of Jordan's Principle.

Unifying the Jordan's Principle application process across all regions could lessen the impetus for complaints or misinterpretations about what Jordan's Principle is for and how it should operate. Process parity could also lead to greater clarity for applicants and practitioners. In turn, clarity and parity allow for easier evaluation, ensuring that Jordan's Principle is operating as intended.

Appendix N4

First Nation X

This summary text has been reviewed and approved by the interlocutor. IFSD wishes to recognize their contribution in sharing their professional experience with Jordan's Principle.

First Nation X is a self-governing First Nation operating a Jordan's Principle pilot program. The program has one Jordan's Principle Navigator, and is looking to hire a second. The program is currently in development and is scheduled to be fully operational by the end of 2024.

Key takeaways

1. **Customized Case Management:** First Nation X develops customized wrap-around plans, building capacity within families and caregivers to address long-term needs and improve outcomes. The program addresses diverse needs, including emergency accommodation, addiction treatment, bedroom furniture, educational support, and respite care.
2. **Gap Filling:** Jordan's Principle is filling service gaps to help meet the basic needs of vulnerable individuals.
3. **Success: Leveraging Existing Systems:** First Nation X has modeled its Jordan's Principle program on existing systems within its First Nation. This allows it to leverage work that has already been completed, i.e., for budgeting, HR, etc.
4. **Success: Group Proposals:** The program has secured significant funding through group proposals, allowing First Nation X to staff its pilot program adequately.
5. **Challenge: ISC processes:** Delayed and inconsistent decisions from ISC cause problems. First Nation X may have to pay for services while awaiting a decision.

Operationalizing Jordan's Principle: A Pilot Program

First Nation X is running a Jordan's Principle pilot program to address what citizens and staff described as barriers to accessing equitable services. This pilot is overseen by First Nation X's Justice department and aims to streamline services, reduce wait times, and enhance case management for families accessing Jordan's Principle.

The program is still in its development phase, focusing on establishing protocols, training navigators, and standardizing practices. Once fully implemented, it aims to offer comprehensive support across all of First Nation X's service delivery departments.

As of the time of writing, First Nation X has been approved to be a Jordan's Principle Service Coordinator, with funding for 2 navigators, 1 intake/administration worker and half of the wages for a manager. First Nation X is working to secure the remaining wage funding for the manager through Post Majority Support Services (PMSS).

First Nation X also completed a service agreement with ISC to fund necessities of life like grocery support, emergency rent and housing, clothing, winter clothing, utilities/heating and prenatal supports.

The needs being addressed through Jordan's Principle are diverse (e.g., emergency accommodation, addiction treatment, educational support, bedroom furniture, sports fees, etc.). First Nation X's approach to Jordan's Principle reflects a commitment to providing holistic support, by first addressing immediate needs, and then building capacity within their community to foster long-term well-being.

First Nation X decided to establish their own Jordan's Principle Navigator due to several issues with the existing service delivery model:

1. **Fragmentation of Service Delivery**: Citizens were experiencing fragmented supports and services, making it challenging to navigate multiple systems for support and relief. This fragmentation was not in the best interest of the families and added to the burden of developing sound, customized wrap-around supports and services.
2. **Barriers to Access**: Citizens reported feeling barriers were being put in place to access equitable service delivery. Specifically, there were instances where citizens experienced a "no" before their application was even submitted. Largely, this was caused by requests being outside the scope of Jordan's Principle i.e., not for the well-being and benefit of the child.
3. **Longer Wait Times:** At the time of implementation, First Nation X had only identified one service coordination organization that their citizens could access (Regional Organization Y). Regional Organization Y served a larger community than just First Nation X, resulting in longer wait times for citizens to access Jordan's Principle funding.
4. **Lack of Appeal Process**: Citizens had no clear avenue to appeal applications and did not understand how to re-apply or modify their applications. This led to frustration, as citizens felt their needs were not being adequately met**.**

First Nation X is seeking funding for a variety of supports and services through Jordan's Principle to enhance their programming and services. Some of these include:

1. **Staffing and Program Costs:** First Nation X is seeking funding for various positions, such as Jordan's Principle Navigators, and for programming costs related to their Justice teams, Youth Outreach, and Youth Recreation teams. They are also developing a Necessities of Life program and other group proposals for specific needs like winter clothing.
2. **Capital:** First Nation X is submitting applications to recover costs on several capital purchases that enhance their on-the-land programming, e.g., trucks, trailers, river boats, and snowmobiles. They are also working on constructing additional office space and developing outdoor gathering and recreation hubs.

3. **Support for Individual Requests:** This includes emergency and medical travel, bedroom furniture for children, food and fuel subsidies, emergency accommodation, addictions treatment, respite support, private caregiver expenses, sports fees and equipment, educational supports, and emergency utility payments.

To manage cash flow for urgent requests, First Nation X uses its prevention dollars. This involves assuming the financial risk of covering these costs upfront, with the expectation that they will be reimbursed by Jordan's Principle later. They have developed tracking and reimbursement mechanisms to manage this process.

ISC approval decisions are ofren significantly delayed and can be inconsistent. Some applications may be approved quicly, while others take months. When asked about challenges, a Jordan's Principle Navigator from First Nation X offered the following:[1]

> *What I find the most challenging is how long it takes to get a decision back from [ISC]. Since I have started (February 2024); I have not received a decision back from [ISC] from the 23 applications I have submitted. I have only received approvals from the previous Navigator's submissions; some of those applications were submitted as far back as August 2023. When I do a follow-up email to [ISC] regarding the applications I have sent they respond within 1-2 business days providing an ISC# but the application will be pending approval.*
>
> *In addition, I think [ISC] assumes that [First Nation X] will just cash flow the supports for our clients. When I have submitted my own application personally; I received an approval 2 days after I submitted my application.*
>
> *I just got off the phone with CLIENT 1 (she wanted a follow-up done on her application) however, she told me her sister submitted an application on her own and she received an approval quite quickly as well.*

First Nation X highlighted challenges with delayed decision-making in Jordan's Principle applications, alongside instances of quicker approvals for individual submissions. The variability in processing time causes uncertainty for both applicants and staff. It reflects ongoing inefficiencies and disorganization with ISC's processes.

Additionally, ISC assumes First Nation X will be financially responsible for client supports while awaiting a decision. A unified approach (parity of process across all regions) to Jordan's Principle applications could help alleviate concerns over financial responsibility, and give greater clarity to applicants about what will and will not be covered.

First Nation X is developing their approach to operations and planning. This includes:

[1] Quotes have been edited for clarity, but have not been substantively altered.

1. **Integration with Other Services:** First Nation X is aligning the development of their Jordan's Principle program with their Post-Majority Services Program, which replicates the same financial tracking, bill backs, and cash flowing processes.
2. **Leveraging Cost Information**: First Nation X uses detailed cost information from their current operations to inform and support their funding proposals. This helps them to project and anticipate costs for future service delivery and program development.
3. **Data Management**: First Nation X has purchased a database/case management system to use as a tool for managing cases and tracking requests.

Responding to citizens' concerns about fragmented service delivery, First Nation X is integrating their approach to Jordan's Principle. While their development of an approach is ongoing, they are integrating services and activities, and using their own cost analysis to inform proposals. They utilize Jordan's Principle funding to support positions responsible for coordinating both Jordan's Principle and general program and service delivery. As their work continues, First Nation X is encountering challenges and disruptions due to the inconsistent management of Jordan's Principle by ISC.

Appendix N5

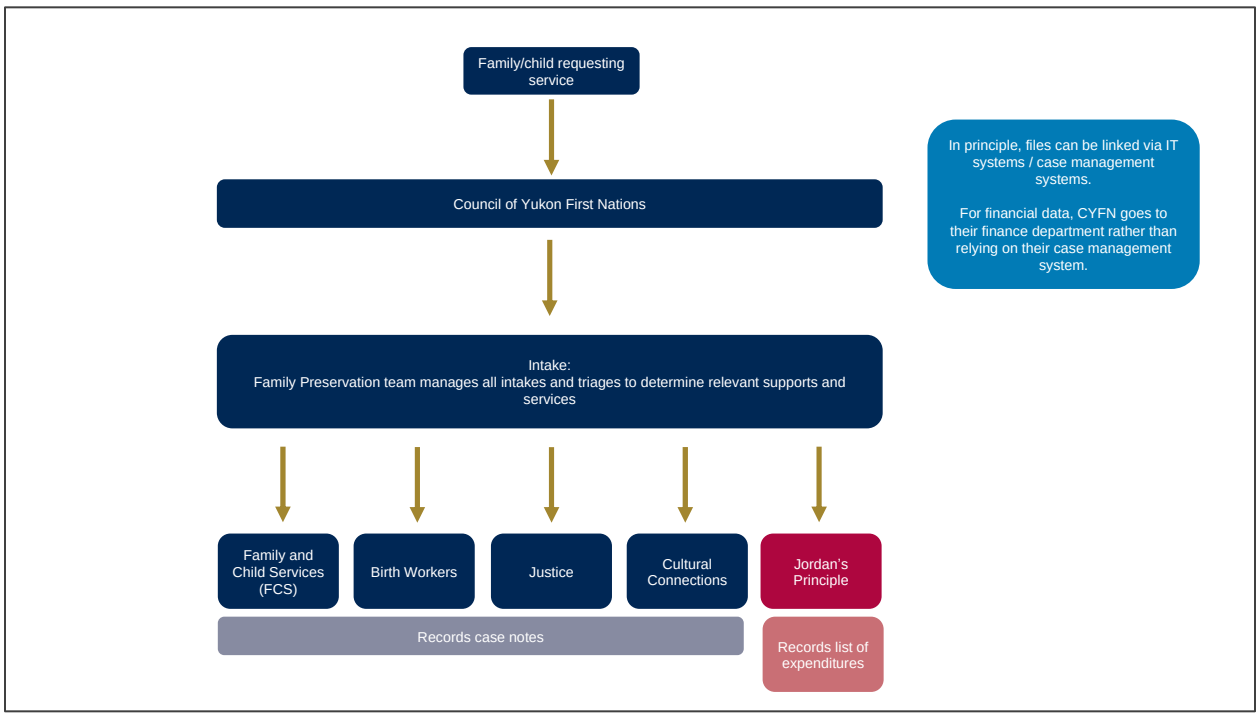
Jordan's Principle Service Coordination
Council of Yukon First Nations (CYFN)

This summary text has been reviewed and approved by the interlocutor. IFSD wishes to recognize their contribution in sharing their professional experience with Jordan's Principle.

The Council of Yukon First Nations (CYFN) built their own approach for the operationalization of Jordan's Principle. With an intake process, expenditure tracking, and case management system, CYFN is documenting how Jordan's Principle is being used to address the root causes of need.

CYFN is an urban-based service provider in child and family services, and the first Jordan's Principle service coordinator in the territory. An increase in requests led the CYFN Family Preservation Services team to build their own programs utilizing Jordan's Principle. The programs allows CYFN to triage requests, track outputs and provide culturally appropriate wrap around services.

Any family seeking support from Family Preservation Services goes through a general intake process. During intake, the family is asked to provide basic information about their needs, context related to their child and family, income sources, as well as their family goals.



Once the intake process is complete, a referral to one or more of the units and respective teams: Client Services; Prenatal and Infant Supports; Programming; Jordan's Principle.

Due to the significant volume of incoming requests, CYFN developed internal eligibility criteria and established parameters by which a family may access Family Preservation Services resources and supports. More specifically, five assessment criteria were defined:

1) Children with complex needs
2) Children living in poverty
3) Children/families who have emergencies
4) Family connections/reunification
5) Cultural connections

If a family does not meet the established criteria, CYFN directs them to complete and submit their application to ISC directly.

In fiscal year 2023-2024, CYFN was provided a contribution agreement for a “float” to cashflow approved Jordan’s Principle supports and services. This allowed CYFN to received funds up from and to request ISC directly for additional resources. This was reduced barriers for supports and services for children.

With its intake and tracking process, including expenditures associated to Jordan’s Principle, CYFN is building its own data set to capture requests. From its internal analysis, approximately 70% of all intakes are for Necessities of Life (NOL) requests associated to poverty specifically food, clothing and housing. CYFN leverages this information to build supporting wrap around programs and services.

To equip families with skills and tools, CYFN established a requirement to attend workshops to remain eligible for the NOL supports. For instance, families are asked to complete courses, whether delivered through CYFN or their First Nations, on topics such as budgeting, parenting, cultural programming, etc. If a family chooses not to attend, they are directed to apply directly to Jordan’s Principle, rather than receiving the supports through Family Preservation Services.

CYFN established the structured approach to protect and promote the integrity of Jordan’s Principle. There are different service coordination approaches that may apply rules differently across the country, which do not always reflect the spirit and intent of Jordan’s Principle. As with any service provision, not all families are pleased with CYFN’s approach. However, CYFN advocates that its current approach supports families who are most in need, while offering them ongoing opportunities to build and strengthen family skills. The goal is to provide families the skills to strength protective factors and prevent involvement with the child welfare system. To attain this set goal, root causes of need must be addressed.

The outwardly seamless approach (i.e., where a family can ask for support without specifying the type of support they are seeking) requires internal coordination and a well-functioning administration. CYFN’s approach helps clients navigate services with independence. Administering Jordan’s Principle entails a significant administrative

burden. In fact, documenting requests, expenditures, issuing cheques and purchase orders etc. are time intensive, and this strains capacity within Family Preservation Services. There is also a need to monitor potential misuse of funds, as may be the case if, for example, families sell the purchased products. While this remains an exception, this type of misuse can be damaging to Jordan's Principle overall, especially as CYFN expects that an evaluation will be carried out in the future and long term reforms.

A forward strategy for Jordan's Principle

To make Jordan's Principle more effective for children and families, CYFN focuses on defining and quantifying needs. Knowing the community is crucial to determining appropriate eligibility and effectively assessing requests. A block of funds allocated based on the identified needs within the served community could be allocated to a service coordinator like CYFN. CYFN would then be accountable for the use of the funds, while documenting requests and outcomes.

Pilots on operationalizing Jordan's Principle in different settings could be instructive, namely in urban versus on-reserve settings, with regional versus First Nation-led administration. These exercises could help define costs, areas of need, approaches, and successful strategies to support families seeking supports through Jordan's Principle.

Appendix N6

North Shore Mi'kmaq Tribal Council (NSMTC) – Jordan's Principle Case Study

This summary text has been reviewed and approved by the interlocutor. IFSD wishes to recognize their contribution in sharing their professional experience with Jordan's Principle.

NSMTC serves seven First Nations communities throughout New Brunswick. Its communities are geographically distant from one another and are often rural. NSMTC serves three regions. Currently, it operates with service coordination coming from a central location (NSMTC main office in Natoaganeg).

Key takeaways

1. Jordan's Principle (i.e., ISC) processes should be standardized and made clear. ISC processes are complex, inconsistent, and frustrating. NSMTC consistently works through long processing times, inconsistent communication regarding policy directive changes, and increasing denials of claims.
2. Originally operating as a last resort, NSMTC is seeing more applicants seek out Jordan's Principle first. The realization of the Spirit Bear Plan would help reverse this trend.
3. Local coordinators play a pivotal role in operationalizing Jordan's Principle. The diverse backgrounds and expertise of coordinators directly impact delivery of services and supports. This highlights the importance of strategic hiring decisions at a local level, as well as the need for clear communication at a national level (to ensure all applicants receive the same treatment).
4. Funding and capacity for data collection and management are lacking on the ground. This severely limits the ability to evaluate outcomes and performance or make long-term plans.
5. Communication with all stakeholders, including developing diverse organizational partnerships, has allowed NSMTC to find success for children in difficult circumstances. This includes pairing applications with existing services where possible.

NSMTC's approach to Jordan's Principle

NSMTC's involvement with Jordan's Principle began in 2017 as a gap funder, providing critical services for children in its communities where no other resources were available. Over time, the organization's role has evolved and grown, primarily in response to increasing demand for services and support within its communities.

Operational challenges with Jordan's Principal have forced NSMTC to rethink its approach. The integration of service delivery with collaborators both on and off-reserve is not only a way of accessing services, but one resulting from newfound inconsistencies in ISC's Jordan's Principle application processes.

NSMTC's Jordan's Principle staff has two teams: a service coordination team and a clinical team. The service coordination team handles all aspects of Jordan's Principle applications from intake to funding. This includes pairing an applicant with an existing service, or funding a previously non-existent service for the applicant. The clinical team delivers services to applicants (e.g., occupational therapy, speech language therapy, etc.).

The service coordination team

The service coordination team is funded through a three-year submission from the Treasury Board, with funding flowing through the tribal council. As per NSMTC's coordination agreement with ISC, it receives funding periodically throughout the year.

NSMTC adds 10% to most Jordan's Principle applications to cover administrative costs.

Service coordination team by the Numbers

The service coordination team comprises 6 FTEs:

- 1 Program Manager;
- 4 Service Coordinators (Education, Health, Social);
- 1 Service Coordinator Assistant;
- 1 Administrative Assistant;
- 1 Office Manager; and,
- 1 Complex Case Manager is not funded under service coordination but works closely with the service coordination team

The Tribal Council takes a 10% administrative fee for overhead.

The service coordination team is managed through a combination of administrative oversight from the tribal council, and day-to-day decision-making by the service coordination team's leadership, in consultation with member Nation's community-based staff and their priorities. NSMTC has a board made up of Chiefs from their seven communities.

The service coordination team has grown over time, reflecting the growing function and size of the team.

The clinical team

The clinical team comprises a group of professionals responsible for providing specialized healthcare services and support to individuals within NSMTC's communities. This team includes professionals such as speech-language therapists, occupational therapists, early intervention workers, and psychologists.

Clinical team by the Numbers

The clinical team includes:

- 2 Speech Pathologists
- 3 Occupational Therapists
- 1 Interdisciplinary Therapy Assistant;
- 1 Administrative Assistant.

The clinical team is funded through Jordan's Principle using a combination of annual individual and group applications. NSMTC builds in 10% to all applications to cover administrative costs.

The clinical team mirrors the historical lack of services within NSMTC's communities (and rural New Brunswick in general). NSMTC staff note that services are inadequate in New Brunswick, and this problem is often compounded in NSMTC's communities. Prior to the formation of the clinical team, individuals often faced barriers in accessing essential healthcare services, including long wait times and limited availability of specialists. The clinical team exists because of these gaps, and is starting to fill them. However, many gaps remain.

NSMTC's approach to Jordan's Principle is heavily influenced by the professional background of staff (e.g., health), which brings a strong clinical perspective to the organization. NSMTC has found ways of ensuring their communities access the clinical supports and services they require. For instance, certain clinicians with regularly needed services are retained on a full-time basis. NSMTC also hires contractors that bill hourly rates for their time.

NSMTC's work to integrate service delivery has identified needs and gaps in the current system. Rather than being able to access consistent and stable program tools to address needs, NSMTC is left to pursue Jordan's Principle. Jordan's Principle has supported NSMTC in doing a lot of good for children, but there are no guarantees with Jordan's Principle. Recent changes in ISC's management of Jordan's Principle have been sobering for NSMTC. Requests that were regularly approved are being escalated to Headquarters (such as capital and education requests) or are being dealt with differently from the past. While the Tribal Council previously stepped in to cover shortfalls, this is happening less frequently because of uncertainty generated by ISC.

Until ISC began changing its practices, NSMTC would cover interim costs while waiting for an approval. Now, given the shifting landscape, NSMTC is less likely to do so, because ISC approvals are less certain.

This reality is encouraging NSMTC to reflect on the sustainability of Jordan's Principle for its children and families. Discussions are ongoing about how to build and strengthen an integrated network of health and social services that operate both in communities (on-reserve) and outside of communities (off-reserve). The model, one that does not

rely exclusively on ISC, will be challenging to operate but may be the only way forward to ensure the needs of children are met.

Even with these new changes in ISC's approval practices, the provincial government and other service areas, e.g., First Nations child and family services, are coming to Jordan's Principle first to address needs. Rather than reallocating their own expenditures or seeking additional resources, these other actors and services are turning immediately to Jordan's Principle. This practice is inconsistent with the original spirit and intent of Jordan's Principle, to be a final recourse to ensure children get what they need when they need because other programs and services are unavailable. Jordan's Principle was not meant to be the only source of support.

Clinical supports are undoubtedly an asset to the communities and people NSMTC serves. They also provide another consideration for the reform of Jordan's Principle. Coordinators, at a local level, have a large amount of influence over how Jordan's Principle is implemented and delivered to communities. Jordan's Principle requests can be reflective of gaps in communities in different ways. Applications are influenced not only by the needs of the applicant but by the people and processes they interact with. This means that a community's experience with Jordan's Principle will be directly informed by the people they hire to manage the program. Hiring a coordinator with a background in social work may result in different community outcomes than hiring someone with a background in health.

Gaps

NSMTC identified several gaps in services and supports, with notable deficiencies in Non-Insured Health Benefits (NIHB), provincial education funding, and social welfare services. Existing programs often fail to cover essential healthcare needs, leaving individuals without necessary medical, dental, vision care, or disability services. Additionally, on-reserve schools receive substantially less funding compared to provincial public schools, exacerbating educational inequalities. Social welfare services may exclude on-reserve populations from provincial assistance programs, and disability supports can be limited in availability and accessibility. New Brunswick's social services face several challenges which have been independently assessed and documented (see box below, *How It All Broke*). Specific gaps highlighted by NSMTC include:

- NIHB;
- Education (both on-reserve and off-reserve);
- Disability supports;
- Early childhood development;
- In-home care;
- Special education; and,
- Daycare.

***How It All Broke: Fixing How Government Manages Social Policy in New Brunswick*,**
by the Office of the New Brunswick Child, Youth and Seniors' Advocate[1]

How It All Broke identifies systemic issues that strain New Brunswick's social services system. The report identifies five key issues that impede improved social outcomes:

(1) Human resource planning that is "detached from service standards and future needs;"
(2) Budgeting processes that are based on status quo funding amount without consideration of social outputs, outcomes, or objectives;
(3) Limited measurement and tracking of social outcomes, and a lack of relevant departmental outcome targets;
(4) A failure to incentivize and hold public servants accountable for achieving results; and
(5) Minimal preventative investment resulting in the need to continually respond to avoidable crises.[2]

The report concludes with ten recommendations to the Executive Council Office (ECO) and Department of Finance and Treasury Board (FTB). These recommendations include establishing a social policy branch within ECO; providing the social policy branch with a mandate that includes demand, social impact and scenario modelling, defining and monitoring outcome targets, providing support to line departments, etc.; and developing and harmonizing both fiscal and social outcome targets.[3]

How It All Broke highlights the importance of aligning social programming and funding with future need, outcomes, and proactive intervention.

These gaps force NSMTC and Jordan's Principle to step in and provide or fund services that should be readily available through existing systems. The lack of comprehensive, consistent support across these areas creates further demand on Jordan's Principle. This moves Jordan's Principle further away from its intended spirit (i.e., children get services when they need them).

For NSMTC, Jordan's Principle should not be used to subsidize existing, underfunded, programs. Gaps in programs (e.g., NIHB) should be addressed. NSMTC's work is identifying systemic gaps, but it is concerned that these gaps will not be addressed.

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[1] *How It All Broke* was recommended to IFSD by NSMTC staff as painting an accurate contextual picture of the challenges of working in social services in New Brunswick. IFSD has highlighted key messages from the report here.
[2] New Brunswick Child, Youth and Seniors' Advocate, *How It All Broke: Fixing How Government Manages Social Policy in New Brunswick* (Fredericton: March 2024), 6, https://static1.squarespace.com/static/5c64288d840b162eb5d3ee2a/t/65ee3ad14039a95ab3a305c3/1710111442286/HOW+IT+ALL+BROKE.pdf.
[3] New Brunswick Child, Youth and Seniors' Advocate, *How It All Broke,* 42-44.

NSMTC wants children to get the services they need. Jordan's Principle should address gaps in exceptional circumstances, rather than in regularly needed programs and services. The Spirit Bear Plan, from NSMTC's perspective is an approach to closing gaps. Ensuring existing program and service gaps are addressed and tracking what happens to children after their request to Jordan's Principle will be a step toward substantive equality for First Nations children.

Challenge: ISC

NSMTC has a positive relationship with front-line ISC staff, with whom they regularly interface. NSMTC emphasizes that the challenges presented here are symptoms of systemic challenges, and are not meant to be indictments of front-line ISC staff with whom they work.

One major issue is long wait times for application processing, which can delay critical services to children. NSMTC is experiencing stricter application-processing practices, often without clear communication or consistency. This leaves NSMTC in an uncertain and unconfident position. Services that were previously routinely approved are facing delays (e.g., educational assistants).

Second, the lack of a standardized approach and national guidelines further complicates the process, forcing NSMTC to navigate multiple, often conflicting, systems. These challenges create unpredictability and frustration for both applicants and NSMTC, hindering NSMTC's ability to deliver timely and reliable support to its communities. This is a double-edged sword: People like the clarity and facility of working with clear policy and standards, but if they were in place, such policies would be restrictive.

ISC is signaling a change in how they are managing Jordan's Principle but without clearly defining the nature or intent of the changes. NSMTC finds out what will be approved through trial and error. NSMTC perceives that ISC is tightening the purse strings, and navigating this newfound uncertainty is a challenge. Requests that were previously handled at a regional level (e.g., capital) are now going through headquarters, with requests that had been approved in the past being denied.

Challenge: Data

Data gathering and management is an ongoing challenge due to limited funding and capacity. As of the time of writing, NSMTC gathers basic information (e.g., demographics, number of children accessing services, cost per service etc.). However, there is a need for more comprehensive data, including approval and denial rates and the prevalence of specific conditions like autism. This information is essential to identify service gaps and understand community needs. Despite building an internal database (using funds from administrative fees) and collaborating with the local FNCFS provider to leverage their database, NSMTC still lacks a comprehensive case management

system. Lack of data, and the required supporting infrastructure, means effective evaluation and long-term planning cannot take place.

NSMTC is keen to demonstrate the value and impact of interventions through Jordan's Principle. They are aware that gathering and analyzing the required information is cost and time intensive. With limited staff capacity that's already stretched with the volume and complexity of requests, NSMTC is pursuing additional funding for data gathering and analysis.

NSMTC is considering their needs for a case management system. Using the case management system, they would like to track indicators (in addition to current demographic and input data). These additional variables include time to approval, the number of approved/denied requests, the special needs of children seeking support, and other needs related to requests. Gathering such information is a first step in defining needs, monitoring changes in requests, and reporting back to the tribal council on how the different needs of children are being addressed.

Conclusion

NSMTC has a committed staff that work hard to hold government entities and program providers accountable for their funding and service obligations. Their advocacy helps to ensure equitable and timely access to services for children (even though the results are not always perfect). By working directly with individuals and families, they help to empower them to navigate complex health and social systems. These actions and their demonstrated responsiveness and adaptability to evolving needs has built trust with community members. As their work continues, NSMTC wants to use data to clarify and quantify issues of discrimination with their province and leverage their findings to improve their collaborative approach to service delivery by building out their partnerships.

Appendix O

The state of cost analysis for policy areas associated with the Spirit Bear Plan

Acronyms and abbreviations

Caring Society – First Nations Child and Family Caring Society
CIRNAC – Crown-Indigenous Relations and Northern Affairs Canada
ESDC – Employment and Social Development Canada
FNCFS – First Nations Child and Family Services
IFSD – Institute of Fiscal Studies and Democracy
ISC – Indigenous Services Canada
SBP – Spirit Bear Plan

Introduction

The SBP is a call to action for the Government of Canada, Parliament, and the public service to close gaps in federally-funded services for children and families on reserve and in the Territories.[1] Complying with the SBP could alleviate pressures on Jordan's Principle in cases where the program functions as a band aid to cover gaps in other services. However, relevant service gaps are often not quantified or costed.

This analysis considers 11 action areas associated to well-being and assigns them to one or more federal programs. The federal lens is applied because of Canada's jurisdiction over First Nations' services on reserve.[2] In addition, the program lens is useful for tracking expenditures, changes over time, and related outcomes.

However, these 11 action areas connect to or represent the manifestation of different matters. For instance, intimate partner violence is a function of inter-generational trauma, under-funding of ancillary services, etc. A single program will not address or eliminate it, but may mitigate its impacts.

Table 1 presents 11 action areas that support the well-being of First Nations children and defines associated programs and services relevant to quantifying and closing gaps. The exercise, however, is illustrative. Addressing action areas associated with the SBP fully would require a multi-stakeholder effort and investment of not only funding but people instrumental for delivery.

[1] First Nations Child and Family Caring Society, "End Inequalities in Public Services for First Nations Children, Youth and Families,"
[2] *THE CONSTITUTION ACTS 1867*, 1867, Victoria, c. 3 (U.K.), Part IV, section 91, https://laws-lois.justice.gc.ca/eng/const/page-3.html#docCont and *Department of Indigenous Services Act, S.C.* 2019, c. 29, s. 336, section 6, https://laws-lois.justice.gc.ca/eng/acts/I-7.88/page-1.html.

Table 1 – Available cost analysis for gaps in policy areas associated with the Spirit Bear Plan

Legend	Not available	Partially available	Available

Policy areas	Working definition	Associated federal programs	Has gap been quantified (y/n/partial)	Has the gap been costed (y/n/partial)
Education	Access to culturally competent elementary and secondary education.	- Elementary and Secondary Education (ISC) - Community Infrastructure (ISC)	Y[3]	Y[4]
Children's Health	Programs and services to support the physical and psychological holistic wellbeing of First Nations children.	- Health System Support (ISC) - Primary Health Care (ISC) - Public Health Promotion and Disease Prevention (ISC) - Supplementary Health Benefits (ISC)	N	N

[3] Funding gaps identified and costed, see MNP LLP, "First Nations Inclusive Education Costing Summary Report," prepared for the Assembly of First Nations, (September 2023), https://afn.bynder.com/m/51ae2152ca302f67/original/AFN-Inclusive-Education-Costing-Final-Report.pdf, p. 38 and MNP LLP, "First Nations K-12 Education Transformation Review and Costing Analysis," *Assembly of First Nations*, December 11, 2024, https://afn.bynder.com/m/94c28002b27d9f7/original/First-Nations-K-12-Education-Transformation-Review-and-Costing-Analysis.pdf.
For gaps in education infrastructure, see First Nations Engineering Services Ltd, "First Nations Education Infrastructure Capital Needs Assessment," *Assembly of First Nations*, June 6, 2020, https://www.afn.ca/wp-content/uploads/2020/08/AFN-First-Nations-Education-Infrastructure-Capital-Needs-Assessment-Final-Formatted-ENG.pdf.
[4] Funding gaps identified and costed, see MNP LLP, "First Nations K-12 Education Transformation Review and Costing Analysis," *Assembly of First Nations*, December 11, 2024, https://afn.bynder.com/m/94c28002b27d9f7/original/First-Nations-K-12-Education-Transformation-Review-and-Costing-Analysis.pdf and LLP, "First Nations Inclusive Education Costing Summary Report," https://afn.bynder.com/m/51ae2152ca302f67/original/AFN-Inclusive-Education-Costing-Final-Report.pdf, p. 38.
For infrastructure cost estimates: First Nations Engineering Services Ltd, "First Nations Education Infrastructure Capital Needs Assessment."
In addition, the Office of the Parliamentary Budget Officer costed the shortfall in 2016-17, see Office of the Parliamentary Budget Officer, "Federal Spending on Primary and Secondary Education on First Nations Reserves," December 6, 2016, https://publications.gc.ca/collections/collection_2016/dpb-pbo/YN5-113-2016-eng.pdf, p. 4.
A multi-disciplinary team led by AFN and ISC provide an estimate of the cost of education infrastructure between 2023-24 and 2029-2030, see Assembly of First Nations and Indigenous Services Canada, "Closing the Infrastructure Gap by 2030 A Collaborative and Comprehensive Cost Estimate Identifying the Infrastructure Investment Needs of First Nations in Canada," *Assembly of First Nations*, March 2023, https://afn.bynder.com/m/367574a3a5cb5abe/original/1-AFN-Closing-the-Infrastructure-Gap-by-2030-National-Cost-Estimate-English-report-1.pdf, p. 26.

		- Home and Long-term Care (ISC) - Community Infrastructure (ISC)		
Emergency Services	Building community resilience through access to emergency services, along with funding for mitigation initiatives.	- Emergency Management Assistance (ISC)	Partial, some gaps identified and partially quantified[5]	N[6]
Water, Housing, and Sanitation	Access to potable water flowing from residential taps.	- Community Infrastructure (ISC) - Public Health Promotion and Disease Prevention (ISC)	Partial, gaps identified for water[7] and housing[8]	Partial, costing for water[9] and housing[10]

[5] The Office of the Auditor General identified a backlog of 112 mitigation infrastructure projects that ISC approved but has not yet funded, see Office of the Auditory General of Canada, "Report 8 – Emergency Management in First Nation Communities – Indigenous Services Canada," (2022), https://www.oag-bvg.gc.ca/internet/English/att__e_44162.html. However, there is no known estimate of the number of such projects required to meet a particular resilience benchmark.
The National Indigenous Fire Safety Council's data presents estimates on incidents of fires in First Nations communities as well as the method of fire control for residential fires (i.e., did the fire burn out before the fire department arrived), see Joe Clare, "National Indigenous Fire Safety Data Collection Evaluation: Review of Existing Practice and Recommendations for the Future," *University of the Fraser Valley*, March 2023, https://www.ufv.ca/media/assets/community-health-and-social-innovation-hub/nifsc-publications/Indigenous-Fire-Data-Collection-Evaluation--.pdf.
[6] A multi-disciplinary team led by AFN and ISC provide an estimate of the cost of climate mitigation infrastructure between 2023-24 and 2029-2030, see Assembly of First Nations and Indigenous Services Canada, "Closing the Infrastructure Gap by 2030 A Collaborative and Comprehensive Cost Estimate Identifying the Infrastructure Investment Needs of First Nations in Canada," 26.
[7] Indigenous Services Canada, "Ending long-term drinking water advisories," *Government of Canada*, last updated March 11, 2025, https://www.sac-isc.gc.ca/eng/1506514143353/1533317130660 and Evaluation Directorate, Evaluation and Policy Resdesign, Indigenous Services Canada, "Evaluation of the Water and Wastewater On-Reserve Program," *Government of Canada*, March 2021, https://www.sac-isc.gc.ca/eng/1626263417608/1626263462807.
[8] Statistics Canada, "Housing conditions among First Nations people, Métis and Inuit in Canada from the 2021 Census," *Government of Canada*, last updated September 20, 2022, https://www12.statcan.gc.ca/census-recensement/2021/as-sa/98-200-X/2021007/98-200-X2021007-eng.cfm.
[9] Office of the Parliamentary Budget Officer, "Clean Water for First Nations: Is the Government Spending Enough?," (December 2021), https://distribution-a617274656661637473.pbo-dpb.ca/8544c3674361c171dbaded06eaff8c5261695d58b608cbc5505f521aaab326fb, page 5; Indigenous Services Canada, "Appearance before the Standing Committee on Public Accounts on OAG Report 3: Access to Safe Drinking Water in First Nations Communities, June 14, 2022," last updated October 2022, https://www.sac-isc.gc.ca/eng/1658511608564/1658511670434; and Assembly of First Nations and Indigenous Services Canada, "Closing the Infrastructure Gap by 2030 A Collaborative and Comprehensive Cost Estimate Identifying the Infrastructure Investment Needs of First Nations in Canada," p. 26.
[10] Institute of Fiscal Studies and Democracy, "Cost Analysis of Current Housing Gaps and Future Housing Needs in First Nations," last updated October 18, 2021, https://static1.squarespace.com/static/5f29b2710512b20bd57bed44/t/ 618930be4ba2743dace94502/1636380867668/COO+SCA+2021+-+IFSD+National+Housing+ Need+Cost+Analysis.pdf and Office of the Parliamentary Budget Officer, "Urban, Rural, and Northern Indigenous Housing," February 11, 2021, https://distribution-a617274656661637473.pbo-dpb.ca/5b2407108abe40544f4c66d4a7fe08c47aecce914911c2f7e3bbcad23a2070fc.

Juvenile Justice	Preventive programming to keep youth free from interacting with the juvenile justice system. Support for youth in contact with the juvenile justice system.	- Indigenous Justice (Justice Canada)	N	N
Early Childhood	Support and programming for children and families to foster development and wellness in the early years of life.	- Indigenous Early Learning and Child Care Transformation Initiative (ESDC) - Public Health Promotion and Disease Prevention (ISC)	N	N[11]

[11] The Future Skills Centre determined a methodology to compare funding for on-reserve children with funding in nearby non-First Nations communities. Future Skills Centre, "Building Capacity in Indigenous Early Childhood Education," accessed March 19, 2024, https://fsc-ccf.ca/projects/building-capacity-in-indigenous-early-childhood-education/.

Child and Family Services	Protection and prevention focused services to promote the well-being of children, families, and communities.	- Child and Family Services (ISC)	Y[12]	Y[13]
Poverty Reduction	Approaches to reducing and mitigating the effects of poverty and deprivation.	- Income Assistance (ISC) - Indigenous Skills and Employment Training Program (ISC) - Nutrition North (CIRNAC)	Y, household income gap for families with children is defined[14]	N
Mental Wellness	Psychological and emotional well-being.	- Public Health Promotion and Disease Prevention (ISC) - Supplementary Health Benefits (ISC) - Home and Long-term Care (ISC)	N	N

[12] IFSD costed the gap in 2018, see Helaina Gaspard, "Enabling First Nations Children to Thrive," *Institute of Fiscal Studies and Democracy*, Report to the Assembly of First Nations pursuant to contract no. 19-00505-001, December 18, 2018, https://ifsd.ca/wp-content/uploads/2024/06/ifsd-enabling-children-to-thrive-february-2019.pdf.
IFSD determined a method to close the gap in 2020, see Helaina Gaspard, "Funding First Nations child and family services (FNCFS): A performance budget approach to well-being," *Institute of Fiscal Studies and Democracy*, 2020, https://ifsd.ca/wp-content/uploads/2024/06/ifsd-report-2020-07-funding-first-nations-child-and-family-services-fncfs.pdf. The Canadian Human Rights Tribunal ordered a reform of FNCFS in alignment with this method, see Canadian Human Rights Tribunal, Ruling, 2022 CHRT 8, fil no. T1340/7008, March 24, 2022, Part VII, section 172, https://fncaringsociety.com/sites/default/files/2022_chrt_8.pdf, p. 61.
IFSD costed this method in 2025, see Institute of Fiscal Studies and Democracy, "First Nations child and family services (FNCFS) - Phase 3," PRE-PRODUCTION DRAFT, March 1, 2025, https://ifsd.ca/wp-content/uploads/2025/03/2025-02-28_Pre-Production-Draft-1.pdf, p. 30.
[13] Institute of Fiscal Studies and Democracy, "First Nations child and family services (FNCFS) - Phase 3," p. 30.
[14] Campaign 2000 End Child & Family Poverty, VivicResearch, United Way Greater Toronto, and Family Service Toronto, "Pandemic Lessons: Ending Child and Family Poverty is Possible," 2022 Report Card on Child and Family Poverty in Canada, (February 2023), https://campaign2000.ca/wp-content/uploads/2023/02/English-Pandemic-Lessons_Ending-Child-and-Family-Poverty-is-Possible_2022-National-Report-Card-on-Child-and-Family-Poverty.pdf, page 34. For an estimate of the cost of doing nothing on First Nations poverty, see, Charles Plante, "Independent Expert Analysis Laurie-Plante Estimate on the Cost of Poverty in First Nations," in Institute of Fiscal Studies and Democracy, "First Nations Indicators of Poverty and Well-being," January 2023, p. 191.

Intimate Partner Violence	Mistreatment and abuse of partners, children, or other family members.	- Safey and Prevention Services (ISC)	N	N
Operational Capacity for Service Delivery	A First Nation's ability to design and deliver community services with requisite systems, processes, tools, skills, and resources.	- Indigenous Governance and Capacity Supports (ISC) - Health Systems Support (ISC) - First Nation Jurisdiction over Land and Fiscal Management (CIRNAC) - Indigenous Engagement and Capacity Support (CIRNAC)	N[15]	N

[15] Analysis (and potential proxies) available through rural municipalities, taking into account that, unlike municipalities, First Nations do not typically collect taxes, see, for example, Federation of Canadian Municipalities, "Rural Challenges, National Opportunity: Shaping the Future of Rural Canada," (May 2018), https://fcm.ca/sites/default/files/documents/resources/report/rural-challenges-national-opportunities.pdf; Laura Ryser, Greg Halseth, and Sean Markey, "Restructuring of Rural Governance in a Rapidly Growing Resource Town: The Case of Kitimate, BC, Canada," EchoGéo 43, (2018), (August 2022), https://journals.openedition.org/echogeo/15218; Greg Halseth and Laura Ryser, "Rapid Change in Small Towns: When Social Capital Collides with Political/ Bureaucratic Inertia," Community Development 47, no. 1 (January 2016), https://journals.scholarsportal.info/details/15575330/v47i0001/106_rcistwsccwpi.xml; Joshua Barrett and Kelly Vodden, "Partnerships in place: Facilitating rural local government entrepreneurialism in Newfoundland and Labrador," *Canadian Geographies* 67, no. 1 (Spring 2023), https://onlinelibrary.wiley.com/doi/full/10.1111/cag.12814, p.188-197; Laura Ryser, Barrett, Joshua, Markey, Sean, Halseth, Greg, and Vodden, Kelly, "Municipal entrepreneurialism: Can it help to mobilize resource-dependent small communities away from path dependency?," *Regional Science Policy & Practice* 15, no. 7 (September 2023), https://rsaiconnect.onlinelibrary.wiley.com/doi/full/10.1111/rsp3.12649?_gl=1*2e43on*_gcl_au*NjM1Nzk0ODM1LjE3MDAzMzc3MDc, p. 1477-1492; and Ryan Gibson and John Dale, "Do more, with less: The realities of local government in rural Ontario," *Canadian Geographies* 67, no. 1 (Spring 2023), https://onlinelibrary.wiley.com/doi/full/10.1111/cag.12816, page 176-187; Laura Ryser, Halseth, Greg, Markey, Sean, and Young, Andrew, "Tensions between municipal reform and outdated fiscal levers in rural British Columbia," *Canadian Geographies* 67, no. 1 (Spring 2023), https://onlinelibrary.wiley.com/doi/full/10.1111/cag.12797, p. 150-164.