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I S S U E D	FEDERAL COURT COUR FÉDÉRALE
	September 11, 2023 11 septembre 2023
File No.:	
	Kadara Thompson
OTT	1

FEDERAL COURT

B E T W E E N:

JANELLE NICOTINE-MEECHANCE

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER s. 18.1 of the Federal Courts Act, R.S.C. 1985, c. F-7.

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at *Ottawa, Ontario*.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicants' solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

September 11, 2023

Issued by: _____

(Registry Officer)

Address of local office: Thomas D’Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, Ontario
K1A 0H9

TO: ATTORNEY GENERAL OF CANADA
c/o Deputy Attorney General
Department of Justice Canada
50 O’Connor Street, 5th Floor
Ottawa, ON K1A 0H8

APPLICATION

This is an application for judicial review in respect of a decision of the First Nations and Inuit Health Branch of Indigenous Services Canada (“FNIHB”) made on August 10, 2023 and communicated to the Applicant on August 11, 2023 regarding file ISC-151233-Y1X5, in which the FNIHB External Expert Review Committee denied the Applicant’s appeal under Jordan’s Principle for funding for a modular home to provide wheelchair accessible housing for the applicant’s child, K.A. (a minor).

The Applicant makes application for the following:

1. An order quashing FNIHB’s August 10, 2023 decision and remitting the matter for re-determination consistent with the Court’s reasons on this Application;
2. Costs of the proceedings; and
3. Such further and other relief as counsel may advise and the Court may permit.

The grounds for the application are:

4. The Applicant is a member of Red Pheasant Cree Nation (“RPCN”), a First Nation in Saskatchewan, located 35 kilometres south of Battleford, in Northern Saskatchewan. RPCN is a signatory to Treaty #6.
5. RPCN has roughly 2,500 registered members, approximately 30% of whom reside on-reserve.
6. K.A. is a 3.5 year-old child. While K.A. is registered as a member of Sweetgrass First Nation (located 35 kilometres west of North Battleford), he lives on RPCN’s reserve, and has lived there with the Applicant (his mother, who is a member of RPCN) and his four older siblings since June 2021 (after moving from Saskatoon, where he was born). K.A.’s mother is a single parent.

7. K.A. has mobility impairments and requires a wheelchair to move. Despite his mobility impairments, K.A. does not live in a home that is fully wheelchair accessible. As a result, K.A. needs to be carried from his bedroom to his wheelchair outside of the room.
8. In fact, the quality of K.A.'s housing is very poor. K.A. lives in a three-bedroom home, in poor condition, with six other people. K.A.'s home does not support the basic level of hygiene and safety.
9. K.A. shares a bedroom with his mother, who has to lift him in and out of bed as his lift does not fit in the bedroom with his medically required bed. Room is so limited, that no other equipment can fit in the room. K.A. has intellectual and cognitive delays, is non-verbal and requires 24/7 care.
10. K.A.'s mother experiences extreme socio-economic hardship.
11. K.A. has received support for other services related to his needs under Jordan's Principle; however, these services do not address the basic defects in his housing situation.
12. In 2022, the Applicant made a request for renovations to her home to build an accessible extension to the home. This solution would have met K.A.'s immediate needs, but would not have provided for those needs as he grows. FNIHB denied this request in or about November 2022. Through communications between RPCN staff and ISC, this request was submitted for appeal in or about December 2022.
13. On February 28, 2023, in light of the prior denial, the Applicant made a request under Jordan's Principle for replacement accessible housing in order to meet K.A.'s needs. Specifically, the Applicant requested a wheelchair accessible modular home. This request included supporting documents, quotes and roughly fifteen letters of support from professionals. This request was designed to meet K.A.'s present needs and those going forward. The requested replacement was quoted at virtually the same cost as the extension that had been previously requested
14. K.A.'s mother required this assistance due to her socioeconomic circumstances.

15. Support for a modular home was requested, as K.A.'s current home is of such configuration that renovations to render it accessible by building an extension to the home will only meet K.A.'s needs for a short time, given that those needs are anticipated to grow as he ages.
16. On July 18, 2023, Indigenous Services Canada denied the Applicant's request related to accessible housing.
17. The Applicant then appealed.
18. On August 11, 2023, in a denial letter dated August 10, 2023 and addressed to Naomi Baptiste (who is RPCN's Jordan's Principle coordinator), the Applicant was informed that the denial was upheld on appeal.
19. After the appeal was denied, Indigenous Services Canada advised that a request for renovations to K.A.'s existing home to provide an extension would have been supported. As noted above, this solution, which was evaluated at virtually the same cost as the requested modular home, would be a temporary solution as it would not provide for K.A.'s needs as he grows.
20. The Appeal Committee's decision is unreasonable for several reasons:
 - a. It was based on a policy of excluding capital purchases from the scope of Indigenous Services Canada's response to Jordan's Principle, in reliance on predominantly irrelevant factors;
 - b. The categorical exclusion of capital purchases from Canada's response to Jordan's Principle is irrational, incomprehensible or otherwise an abuse of discretion;
 - c. It failed to consider the impact of the denial on K.A. in light of his needs, capacities and circumstances;
 - d. It failed to consider the lack of locally available and culturally appropriate services;
and

- e. It had a disproportionate impact on K.A.'s rights under subsection 15(1) of the *Canadian Charter of Rights and Freedoms* to equal protection and equal benefit of the law without discrimination based on race or national or ethnic origin.

- 21. Rules 3 and Part 5 of the *Federal Courts Rules*.

- 22. Sections 18, 18.1 and 18.4 of the *Federal Courts Act*.

- 23. The further and other grounds set out in the affidavits and memorandum to be filed in support of this Application.

- 24. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- a. The affidavits to be filed in support of the within Application and the exhibits thereto;
- b. The record before the First Nations and Inuit Health Branch of Indigenous Services Canada; and
- c. Such further and other material as counsel may advise and this Honourable Court may permit.

THIS APPLICANT REQUESTS pursuant to Rule 317 of the *Federal Courts Rules* that the First Nations and Inuit Health Branch of Indigenous Services Canada send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the First Nations and Inuit Health Branch of Indigenous Services Canada to the Applicant and to the Registry:

- 1. The full record of all material which was before the First Nations and Inuit Health Branch of Indigenous Services Canada, or formed part of its files, at the time of the Decision, including all documents, memoranda, reports, emails and other communications considered, prepared and/or collected in the preparation of File ISC-151233-Y1X5; and

2. All policies and guidelines regarding the exclusion of capital purchased from Indigenous Services Canada's implementation of Jordan's Principle.

September 11, 2023


Conway Baxter & Wilson LLP/s.r.l.
400-411 Roosevelt Avenue
Ottawa, ON K2A 3X9
David P. Taylor LSO#: 63508Q
dtaylor@conwaylitigation.ca
Tel: (613) 288-0149

Solicitors for the Applicant