

e-document		T-2872-24-ID 1
F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
October 25, 2024 25 octobre 2024		
Jonathan Macena		
OTT	1	

File No.:

FEDERAL COURT

B E T W E E N:

MARY ISAAC

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.

October 25, 2024

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 (“FNIHB”) of Indigenous Services Canada (“ISC”) made on August 30, 2024 regarding file ISC-173824-D3P5, in which ISC denied the Applicant’s request under Jordan’s Principle for funding for in-home supports and transportation assistance to meet the educational, social and development needs of her children D.I., a First Nations child with Fetal Alcohol Syndrome, a diagnosis on the autism spectrum, and a learning disability, J.I., who is being treated for Attention Deficit Hyperactivity Disorder and who has a speech delay, and B.I., who has a speech delay, behavioural difficulties, significant sleep difficulties, and a suspected Attention Deficit Hyperactivity Disorder diagnosis, which decision is presently under reserve at ISC’s External Expert Review Committee, which has not rendered a decision on the Applicant’s appeal filed September 27, 2024 despite the Applicant having requested expedited consideration of the appeal so that a decision be rendered by October 18, 2024.

The Applicant makes application for the following:

1. An order quashing FNIHB’s decision;
2. An order that funding for the previously-approved in-home supports and transportation supports continue to August 31, 2025, subject to re-evaluation within four weeks in the event that the Government of Nova Scotia begins providing supports to D.I., J.I. and B.I.
3. Costs of the proceedings; and
4. Such further and other relief as counsel may advise and the Court may permit.

The grounds for the application are:

5. The Applicant is the mother of D.I., J.I. and B.I. D.I., J.I. and B.I. a registered members of Potlotek (Chapel Island), a First Nation in Nova Scotia, located approximately 112 kilometers northeast of Antigonish. Potlotek has approximately 753 registered members, roughly 575 of whom live on-reserve.

6. The Applicant was placed in foster care when she was 10 years-old and has not resided in her community since that time.
7. D.I. is an 11 year-old child. D.I. has been in the Applicant's care since birth, when she legally adopted him. D.I. has significant developmental needs, as he has Fetal Alcohol Syndrome, has been diagnosed on the autism spectrum, and has a learning disability.
8. The Applicant's daughter, J.I., is 10 years old. She is being treated for Attention Deficit Hyperactivity Disorder ("ADHD") and a speech delay.
9. The Applicant's son, B.I., is 4 years old. He has a speech delay, significant sleep difficulties, behavioural difficulties, and a suspected ADHD diagnosis (though he is too young for diagnostic tests to properly be run).
10. The Applicant is a single parent and has cared for her children alone since 2020.
11. The Applicant was born with cerebral palsy. She has long lived with mobility impairments. However, her circumstances significantly changed in September 2022, when she was hit by a truck at an intersection, while crossing a road. The Applicant had significant injuries requiring surgery and a lengthy hospital stay. It is anticipated she will receive a further surgery related to her injuries from this accident in 2025.
12. The Applicant has been unable to work since the accident. The Applicant's mobility impairments have been compounded by the accident, to the point that she is no longer able to go up and down stairs in her own home (something she was able to do prior to the accident).
13. As a result of her mobility impairments, the Applicant's ability to see to her children's daily activities of living has been compromised. By way of example, these limitations include:
 - a. her children's bedrooms, and the bathroom used for bathing, are upstairs, so she is not able to support her 11-, 10- or 4-year-old children with their morning or evening routines, or with bathing;

- b. she is also not able to tend to the orderliness on her home's second floor, where her children's bedrooms and main washroom are located; and
 - c. in the event of an emergency in the night, such as a fire in the home or a medical event such as vomiting, diarrhea, or significant respiratory symptoms, the Applicant is unable to make it upstairs to tend to her children.
- 14. Given their diagnoses and developmental challenges, the Applicant's children require significant extracurricular activities for stimulation. Each child has been approved under Jordan's Principle for supports linked to their diagnoses such as speech therapy, Tae Kwon Do lessons, swimming lessons and, in B.I.'s case, a daycare placement on-reserve (located 22 kilometers from the Applicant's residence).
- 15. While D.I. and J.I. take the school bus to get to and from school (located 2.5 kilometers away from the Applicant's residence), the Applicant is not able to attend school on her own to collect either child in the event they are sick or injured at school (and, in any event, a sick or injured child cannot realistically walk 2.5 kilometers home).
- 16. In 2022, while she was convalescing from the accident in a rehabilitation hospital, the Applicant began exploring options for in-home supports to assist her in meeting her children's needs.
- 17. From September 2022 to May 2023, while the Applicant was in the hospital, ISC supported 24/7 in-home supports for the Applicant's children. These were supported via a request made by the Confederacy of Mainland Mi'kmaq (which was providing support to the Applicant in their role as a Service Coordinator funded by ISC), so that the Applicant's children would not be taken into care by provincial child welfare authorities.
- 18. The supports from September 2022 to May 2023 were construed by ISC as a series of short-term approvals pending alternate funding or supports being put in place. As a result, the Confederacy of Mainland Mi'kmaq was required to repeatedly re-apply for funding during this time period. The First Nations Child and Family Caring Society of Canada also intervened on the Applicant's behalf with ISC officials at times when funding was denied

due to documentation issues (though this funding was restored on re-review by senior ISC officials on more than one occasion).

19. Roughly a month after the Applicant was discharged from the hospital, in or about June 2023, ISC terminated funding for the in-home supports. As a result, provincial child welfare authorities opened a child protection file related to the Applicant's children. Funding was restored that same month, such that the involvement of child welfare authorities did not progress.
20. Throughout the period in which ISC has funded in-home and transportation supports for the Applicant's children under Jordan's Principle, ISC officials repeatedly insisted that other services or supports should be put in place to meet the children's needs. However, as the Applicant and service coordinators working with her repeatedly advised ISC, there was no accessible housing available to her and provincial services she had been able to access had denied her requests (including one program on the basis of her children's being eligible to receive services from FNIHB). The applicant remains on three separate waitlists for accessible affordable housing.
21. From April 1, 2023 to July 2024, ISC provided funding for a social worker to assist the Applicant in finding accessible housing and to explore options for her children's care needs. The social worker was not able to find or access any such alternative supports.
22. Beginning in March 2024, the Mi'kmaw Native Friendship Centre received case management funding from ISC to assist the Applicant in connecting to alternative supports or programs. However, the Mi'kmaw Native Friendship Centre coordinator was not able to find or access any such alternative supports.
23. In July 2024, following one of the Applicant's periodic re-applications for supports, ISC advised that it would be reducing the level of in-home supports from 24-hours per day to 12-hours per day. The Applicant retained counsel and provided further recommendations from experts to ISC, following which ISC restored supports to 24-hours per day until the end of August 2024.

24. In August 2024, the Applicant applied for 12 months of in-home supports, on the basis of much of the same information on the strength of which ISC had restored 24-hour benefits just weeks prior. Specifically, to support her Jordan's Principle request, the Applicant provided ISC with, among other things, four letters of recommendation from licensed or registered professionals involved in the child's care and a prescription:
- a. A letter from Dr. Maude MacInnis, the Applicant's family's primary care physician;
 - b. A letter from Dr. Monique MacFarlane Conrad, a physical medicine and rehabilitation specialist at the Nova Scotia Rehabilitation Centre;
 - c. A letter from Dr. Oliva Ortiz-Alvarez, the Applicant's children's paediatrician; and
 - d. A letter from Tiffany Hallett, a social worker and SchoolsPlus Facilitator at the Government of Nova Scotia's SchoolsPlus Antigonish Hub.
25. However, on August 30, 2024, ISC approved only 9 weeks of supports and advised that it would permanently withdraw in-home supports on October 31, 2024.
26. On September 3, 2024, without notice to the Applicant, ISC reported to provincial child welfare authorities that it was withdrawing the Applicant's in-home supports effective October 31, 2024.
27. During the week of September 23, 2024, provincial child welfare authorities opened an investigation with respect to the Applicant's children. The Applicant has been in repeated contact with provincial child welfare officials since that time.
28. On September 27, 2024, the Applicant appealed the denial of the home renovations request. Given the impending withdrawal of services date, the Applicant requested a decision on her file by Friday, October 18, 2024.
29. On October 2, 2024, the Applicant provided a further letter to the Appeal Committee from Anne Marie MacDonald, a social worker at Nova Scotia Continuing Care, confirming that the homecare services for which the Applicant is approved do not cover her children.

30. On October 18, 2024, an ISC official contacted the Applicant's counsel to confirm that all documentation had been submitted. The Applicant's counsel confirmed that the file was complete.
31. On October 21, 2024, provincial child welfare authorities indicated that they would need to conduct an assessment of the Applicant's parenting capacities in order to determine the level of intervention they would make.
32. As of the date of filing (October 25, 2024), the Applicant has not received a decision with respect to her appeal.
33. FNIHB's decision is unreasonable for several reasons:
 - a. It was based on a policy of excluding extended in-home supports in the face of a lack of available provincial services from the scope of ISC's response to Jordan's Principle, in reliance on predominantly irrelevant factors;
 - b. The termination of in-home supports without indicating to the Applicant the alternatives she had not pursued is irrational, incomprehensible, or otherwise an abuse of discretion;
 - c. The termination of transportation supports in a way that makes it impossible for the Applicant's children to access other supports approved by ISC pursuant to Jordan's Principle (speech therapy, Tae Kwon Do lessons, swimming lessons, and daycare for B.I.) is irrational, incomprehensible, or otherwise an abuse of discretion;
 - d. Contrary to the principle of responsive justification, the Committee failed to consider the severe impact of the decision on the Applicant and D.I., J.I. and B.I., including on the children's possible removal from their mother's care and loss of access to supports outside the home that are important to their developmental needs;
 - e. FNIHB failed to consider the impact of the denial on D.I., J.I. and B.I. in light of their needs, capacities, and circumstances, including the attendant risks to their safety due to the impact of inaccessibility of their home on their mother's ability to care for them;

- f. FNIHB failed to make a decision that respected the constraints imposed upon it as, contrary to the Back-to-Basics Approach to the implementation of Jordan's Principle, the Committee's reasoning was not child-specific;
 - g. FNIHB's reasoning was based on an irrational chain of analysis;
 - h. FNIHB's decision was not justified in light of the facts, including the letters of recommendation and/or the prescription from licensed or registered professionals involved in A.F.'s care;
 - i. FNIHB's decision failed to engage with the Applicant's submissions, including but not limited to the lack of provincial services to meet the children's needs; and
 - j. FNIHB's decision had a disproportionate impact on D.I.'s, J.I's and B.I'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.
34. Given ISC's External Expert Review Committee's failure to render an expedited decision on the Applicant's appeal and the impending termination of the in-home and transportation supports on October 31, 2024, the internal appeal procedure is not an adequate alternative remedy available to the claimant.
35. Furthermore, given ISC's External Expert Review Committee's failure to render an expedited decision on the Applicant's appeal, the decision made below is a continuous course of conduct, such that the 30-day period for seeking judicial review has not yet begun to run.
36. In the alternative, this Court ought to exercise its discretion under subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7 to extend the time for filing given the Applicant's continued intention to pursue this application, the potential merit of the application due to the clear wording of the Canadian Human Rights Tribunal's orders, the lack of any prejudice to the Respondent, and the delay being explained by the External Expert Review

Committee's not yet having provided its decision (despite ISC's announced intention to terminate the in-home and transportation supports on October 31, 2024).

37. Rule 3 and Part 5 of the *Federal Courts Rules*.

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

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

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

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

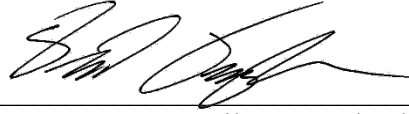
- a. The affidavits to be filed in support of the within Application and the exhibits thereto;
- b. The record before FNIHB; and
- c. Such further and other material as counsel may advise and this Honourable Court may permit.

THIS APPLICANT REQUESTS pursuant to Rule 317 of the *Federal Courts Rules* that the Jordan's Principle and Inuit Child First Initiative Appeals Secretariat 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 Jordan's Principle and Inuit Child First Initiative Appeals Secretariat of Indigenous Services Canada to the Applicant and to the Registry:

1. The full record of all material which was before the Jordan's Principle and Inuit Child First Initiative Appeals Secretariat 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-170847-K6S0; and

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

October 25, 2024



Conway Baxter Wilson LLP/s.r.l.
400-411 Roosevelt Avenue
Ottawa, ON K2A 3X9
David P. Taylor LSO#: 63508Q
dtaylor@conwaylitigation.ca
Emma Williams LSO#: 82380A
ewilliams@conwaylitigation.ca
Tel: (613) 288-0149

Solicitors for the Applicant