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Court File No:

**FEDERAL COURT**

**BETWEEN:**

**WARREN SCHOFER**

Applicant

- and -

**ATTORNEY GENERAL OF CANADA**

Respondent

**NOTICE OF APPLICATION**

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.

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 applicant's 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.

Date: \_\_\_\_\_

Issued by: \_\_\_\_\_  
(Registry Officer)

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

**TO:**                    **THE ATTORNEY GENERAL OF CANADA**  
Office of the Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa, Ontario K1A 0H8

**AND TO:**        **INDIGENOUS SERVICES CANADA**  
Jordan's Principle and Inuit Child First Initiative Appeals Secretariat  
10 rue Wellington  
Gatineau, QC K1A 0H4

## APPLICATION

1. This is an application for judicial review made pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 in respect of the final decision of the Expert Review Committee of the Jordan's Principle and Inuit Child First Initiative Appeals Secretariat of Indigenous Services Canada (ISC) dated 4 July 2023, which was first communicated to the Applicant on 4 July 2023 (the Decision).

2. In the Decision ISC states: "that the decision to deny your request for funding legal services/fees and travel expenses to legal appointments, originally denied on June 1, 2023, has been upheld as of June 30, 2023 ... In evaluating your request, the committee reviewed the previous decision and reconsidered the unique needs of Maia and Sasha and whether the requests should be provided in order to ensure the application of substantive equality, culturally appropriate services, and/or to safeguard the best interest of the child in the provision of services."

### **Applicant & Children All Indigenous Status Indians & Registered Members of First Nation**

3. Maia (aged 9)(Registration No.: 1870325001) and Sasha (aged 12)(Registration No.: 1870324901) are both Indigenous children benefiting from Aboriginal and Treaty Rights as protected by s-s. 35(1) of the *Constitution Act, 1982* as well as Indigenous Rights as codified in the *United Nations Declaration on the Rights of Indigenous Peoples* as adopted into Canadian law by the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14. They are Status Indians under the *Indian Act*, R.S.C. 1985, c. I-5, as well as Registered Members of the Fort William First Nation, which is a signatory of the Robinson-Huron Treaty of 1850.

The Applicant Warren Schofer is the father of both Maia and Sasha, who is himself a Status Indian, Registered Member of the Fort William First Nation, and a beneficiary of the same rights as Maia and Sasha benefit from.

### **Medical Evidence Establishes Special Educational Needs of Indigenous Children**

4. Maia and Sasha both have special educational needs. They have previously qualified for and benefitted from ISC Jordan's Principle funding to meet those needs. For example, on 25 May 2022, ISC confirmed in writing that "the request which was submitted to Jordan's Principle for an Educational Assistant, Tutoring and Tutoring Materials on behalf of Maia ... and Sasha ... have been approved for up to \$43,363.84."

5. On 28 June 2023 Sasha's physician Dr. Muadh Abounaja wrote in a letter that "Sasha ... has been my patient since 2018. Sasha was diagnosed with an intellectual disability. As per the psychoeducational assessment dated June 2021, Sasha requires one-to-one support due to the significant challenges that she faces in the classroom. From 2022 to the present, Sasha has been working with an educational assistant (EA) and given special education resources and accommodations ... Sasha has the right to the same opportunities as others, regardless of the difficulties she faces ... According to Sasha's father, the school will be withdrawing the EA and special education resources permanently starting in the fall of 2023. As a result, Sasha will not be given any accommodation or resources for her learning disabilities. This will negatively impact Sasha's academic performance." On 23 May 2023, Sasha's Speech Language Pathologist confirmed that she "has been diagnosed with a Receptive-Expressive Language disorder and Dysfluency" and that she "required a multi-modal approach to learning."

6. On 6 June 2023 Maia's Registered Psychologist Marie Sutherby confirmed in a letter: "She was referred by her father for difficulties related to anxiety and somatic complaints. Maia was previously diagnosed with a Specific Learning Disorder ... Results from Maia's psycho-educational assessment report note challenges related to auditory working memory and processing speed which appeared to be interfering with her development ... According to Maia's father, the school will be withdrawing special education resources in the fall of 2023. As a result, it is possible that Maia's social-emotional-behavioural and academic functioning may be negatively impacted."

### **Indigenous Children Already Had Jordan's Principle Funding Meeting Their Needs**

7. Both Sasha and Maia had EAs funded through Jordan's Principle assisting them in the 2022/2023 school year within the Golden Hills School Division, a public school board in the Strathmore, Alberta area. On 25 March 2023, Yvon V. Préfontaine, a partner with Brownlee LLP Barristers and Solicitors whose biography describes him as formerly "the senior lawyer in the Alberta School Board Associations legal department" wrote to the Applicant: "Please be advised that our services have been retained by the Board of Trustees of Golden Hills School Division ... This school year, for Maia, Jordan's Principle has provided funding for a .5 FTE Educational Assistant (E.A.) for additional classroom supports. For Sasha, Jordan's Principle has provided funding for a full time (1.0) E.A. ... Golden Hills Schools Division is able to support the continued Jordan's Principle funding only for the remainder of the 2022/23 school year ending June 30, 2023 ... it is unlikely Golden Hills would be in a position to support an application for the supports being sought for Maia ... With respect to Sasha ... it is also unlikely that Golden Hills would support an application for the program ... having an education assistant can be

stigmatizing for a student of Sasha's age ... this would hamper her development and decrease her inclusion from a social perspective ... assistance being sought would either not be appropriate or in fact would be detrimental to their academic and social development."

### **School Board's Unlawful Actions Only Have a Legal Solution to Meet Needs of Children**

8. The Indigenous children's non-Indigenous School Board having thus "lawyer up," the Applicant quite reasonably turned to the federal Jordan's Principle office at the ISC for federal funding for legal services to legally assist Sasha and Maia in maintaining their EAs which Jordan's Principle was fully funding via ISC, and for which their provincially administered School Board is unlawfully making excuses to get rid of despite no resource implications to them, where the medical evidence clearly demonstrates that the EAs are beneficial to the educational development of both Indigenous children. On 19 June 2023, ISC's Albert Region Jordan's Principle - Child First Initiative informed the Applicant that his request for funding for "Legal Services/Fees" in the amount of \$200,000, and for "Travel Expenses to Legal Appointments" in the amount of \$6,000 has been denied because despite the Applicant having provided ISC extensive documentation that legal action being unlawfully taken by the provincial School Board was preventing his Indigenous daughters from benefitting from readily available federal Jordan's Principle funding for EAs. ISC claimed that "the request does not directly link the requested financial supports, to the unmet health, social or educational needs of the children." ISC did not propose any other level of funding for legal services, nor did it claim that legal services were not something that could be funded by Jordan's principle.

9. In turn, the Applicant's request for reconsideration and appeal of that ISC initial order was denied, which constitutes the basis for this judicial review application. There is no exclusion of legal services from potential funding by ISC under Jordan's principle. The funding model is inclusive, not exclusive. A March 2022 study commissioned by ISC, authored by Professors Metallic and Friedland and Shleby Thomas, entitled "Doing Better for Indigenous Children and Families: Jordan's Principle Accountability Mechanisms Report" (Caring Society & Department of Indigenous Services Canada, 2022) found at p. 71: "as long as federal and provincial governments have power and control over services for Indigenous children and families, and particularly as long as processes to access essential services remain individualized, there will be a continued need for advocacy and legal services. Indigenous children and families require access to ... lawyers who can support them in their attempts to access substantive equality in services from the federal and provincial governments ...."

**The Applicant makes an application for:**

- (a) an Order in the nature of *certiorari*, quashing or setting aside in whole or in part the Decision;
- (b) an Order referring the matter back to an impartial decision maker at Indigenous Services Canada to reconsider the matter in accordance with principles of procedural fairness and natural justice, and pursuant to such directions as this Honourable Court considers to be just and appropriate;
- (c) an Order that Indigenous Services Canada shall make a redetermination of the Decision within 48 hours of being informed of this Court's order pursuant to the Canadian Human Rights

Tribunal requirements that ISC has up to 48 hours to make a determination for all non-urgent Jordan's Principle cases;

(d) an Order for the Applicant's costs in this matter;

(e) such further and other relief as counsel may advise and this Honourable Court may permit.

**The grounds for the application are:**

1. pursuant to sections 17, 18.1(4)(a), (b), (c), (d) and (f) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, the decision maker failed to observe a principle of natural justice, procedural fairness or other procedure that they were required by law to observe, or otherwise act upon, fettered or refused to exercise their jurisdiction or discretion in failing to find that the Applicant's daughters Maia and Sasha qualified for Jordan's Principle funding for legal services to overturn the School Board's decision to deny them fully funded Educational Assistants which Jordan's Principle was already funding, thus leading to a provincial school authority frustrating the federal implementation of Jordan's Principle where the medical evidence and pre-existing Jordan's Principle funding supported there being unmet health, social or educational need of the Children;
2. that ISC erred in law in its interpretation of its obligations under Jordan's Principle, s. 35 of the *Constitution Act, 1982*, the *United Nations Declaration on the Rights of Indigenous Peoples Act*, and the *Indian Act*;
3. that ISC erred in law in failing to consider relevant evidence before it;

4. that the decision is so unreasonable having regard to the evidence properly before ISC as to amount to an error in law;

5. such further and other grounds as the Applicant may advise and this Honourable Court permits.

The Applicant proposes that the application for judicial review be heard at Ottawa, and in the English language.

**This application will be supported by the following material:**

1. The affidavit of the Applicant Warren Schofer.
2. Such other materials as counsel may adduce and this Honourable Court may admit.

The applicant requests, pursuant to Rule 317 of the *Federal Court Rules*, that ISC send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the ISC to the Applicant and to the Registry:

All notes (including meeting notes), correspondence, documents, materials, internal memoranda, correspondence, and other papers, documents, things or records (in paper, electronic or other formats, including emails and information stored in electronic databases) prepared for, received, reviewed, considered or relied upon by the ISC within the Government of Canada relating to the Decision.

DATE: 3 August 2023



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**FEDERAL COURT**

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**NOTICE OF APPLICATION**

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