

FEDERAL COURT

BETWEEN:

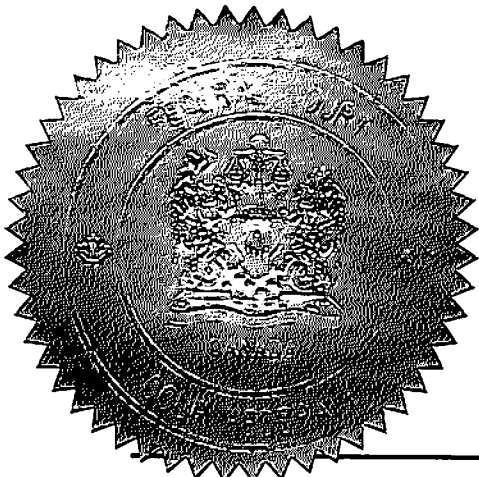
**PICTOU LANDING BAND COUNCIL
and MAURINA BEADLE**

Applicants

-and-

ATTORNEY GENERAL OF CANADA

Respondent



NOTICE OF APPLICATION
Pursuant to sections 18 and 18.1 of the *Federal Courts Act*

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicant appears on the following pages.

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 the 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.

June 24, 2011

M. GAUDREAU
REGISTRY OFFICER
Issued by: AGENT DU GREFFE
(Registry Officer)

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I HEREBY CERTIFY that the above document is a true copy of the
original issued out of / filed in the Court on the 24th
day of June A.D. 20 11
Dated this 24 day of June 20 11


APPLICATION

First Nations children and youth have an equal right to public services, care and support as every other child and youth in Canada. Children and youth with special needs are particularly vulnerable, yet the Government of Canada refuses to fund comparable services that would allow those individuals to live in their homes and communities. The Government of Canada's failure to provide for such services discriminates on the basis of race and ethnic origin and violates the rights of First Nations children and youth to the equal benefit of the laws of Canada, and violates section 15 of the *Canadian Charter of Rights and Freedoms*.

The Pictou Landing First Nation ("PLFN") is a Mi'kmaq community located in Nova Scotia on the south shore of the Northumberland Strait. The community is designated as a reserve under the *Indian Act*, RSC 1985, c. I-5, and is governed by a Band Council. Maurina Beadle and her son Jeremy Meawasige are members of the PLFN and live together on the reserve. The Pictou Landing Band Council ("PLBC") and Maurina Beadle are the Applicants in this matter.

On May 27, 2011, Barbara Robinson, the Manager for Social Programs with Aboriginal Affairs and Northern Development ("AAND", previously known as the Department of Indian and Northern Affairs Canada), denied a request by the PLBC for increased funding to provide additional care and support to the Beadles in their home. According to Ms Robinson, answering on behalf of AAND, Health Canada and the Government of Canada, the Beadles were already receiving the "normative standard of care" in Nova Scotia and therefore the family and the PLBC were not entitled to anything further. This Application challenges Ms Robinson's decision as being contrary to provincial statutes and policies, Jordan's Principle, and the right to equality under section 15 of the *Canadian Charter of Rights and Freedoms*. This Honourable Court can rely on these laws as well as its *parens patriae* jurisdiction to protect the interests of children and

provide relief to the Applicants.

Jeremy Meawasige is a 16-year old youth with severe and complex disabilities. He has been diagnosed with hydrocephalus, cerebral palsy, spinal curvature and autism. He has undergone numerous operations and has a shunt in place to drain excess cerebral fluid. He can only speak a few words and cannot walk unassisted. He is incontinent and needs total personal care including showering, diapering, dressing, spoon feeding, and all personal hygiene needs. He can become self-abusive at times, and needs to be restrained for his own safety.

Jeremy lives with his mother, Maurina Beadle, on the Pictou Landing reserve. He has lived on the reserve for most of his life. Until Ms Beadle suffered a stroke in May 2010, she was Jeremy's sole caregiver. They have a deep bond with each other, and she is often the only person who can understand his communication.

Maurina Beadle was hospitalized for several weeks after suffering a stroke in May 2010. When she was released, she required a wheelchair and was unable to provide for her own physical needs. The Pictou Landing Band Council immediately started providing 24-hour care for both Maurina and Jeremy in their home. Maurina is getting stronger, and is now able to walk with a cane. She has weakness on her right side and is unsteady on her feet. She is unable to grasp with her right hand and cannot perform most daily household tasks, including preparing meals and washing dishes. She is not strong enough to care for Jeremy, but she is able to oversee his care.

Members of the Pictou Landing First Nation who live on reserve are entitled to the same care and services as every other resident of Nova Scotia. The nature and scope of that benefit is defined by the *Social Assistance Act*, RSNS 1989, c 432, and associated regulations. Under section 9 of that Act, "all persons in need" are entitled to home care and assisted living services as may be reasonably required in the circumstances.

Under section 15(1) of the *Canadian Charter of Rights and Freedoms*, members of the Pictou Landing First Nation have the right to the equal benefit of those laws.

The Government of Canada has assumed responsibility for the administration and delivery of health programs and services on reserves across Canada. This includes community care and assisted living services for individuals who have chronic or acute illnesses or permanent disabilities and who require assistance in the home. For these needs, the Government of Canada has committed to meeting the "normative standard of care" in each province. In the case of Nova Scotia, that would mean the standard of care required by the *Social Assistance Act*.

The Province of Nova Scotia refuses to provide home care and other community health services to individuals living on reserves because the Government of Canada has assumed the responsibility of doing so.

The Government of Canada has decided to meet its obligations to members of the Pictou Landing First Nation by entering into funding and service delivery agreements with the Band Council. Pursuant to programs such as the Assisted Living Program and the First Nations Home and Community Care Program, the federal government determines block and contribution funding levels for the Band delivering these services. The funding levels are based on national formulas that take into account band population rates, but do not consider specific community needs or provincial standards or requirements. Funds are paid pursuant to the *Financial Administration Act*, RSC 1985, c. F-11 and the authority of the Treasury Board. There is nothing in the *Financial Administration Act* that precludes the Respondent from providing additional funding to the Band for exceptional circumstances. In fact, the relevant agreements with the PLBC contemplate "unforeseen circumstances" and other exceptional requests that may justify increased funding.

The Government of Canada's Assisted Living Program is designed to assist elderly and disabled First Nations peoples to remain in their homes on reserves and have an improved quality of life. Nationally, the Canadian government does not provide Assisted Living funding for children and youth with special needs, although it recognizes its obligation to do so. This has resulted in some First Nations parents giving up custody of their children to provincial authorities so that assisted living services can be accessed off reserve. This is the situation facing the Applicant Maurina Beadle. The Government of Canada's failure to provide assisted living services to special needs First Nations children and youth is rank discrimination that is contrary to the equality guarantee in the Charter. It is not in the best interests of children and youth to be removed from their families and communities so they can access services to which they should be entitled on an equal basis as others.

The Government of Canada has also committed to respecting Jordan's Principle, a rule for ensuring that First Nations children, including those with disabilities, are not denied health services or programming available to all other children due to jurisdictional disputes with or between federal and provincial/territorial governments. Once it is determined that a non-First Nations child would receive the particular service or benefit, then the government that is first approached must immediately pay for the service or benefit and resolve any jurisdictional disputes for funding afterwards. Put in another way, Jordan's Principle is a mechanism that protects the right of every First Nations child to be treated equally. Health Canada has put aside over \$11-million to pay for cases where Jordan's Principle is engaged.

The Pictou County Health Authority, a branch of the government of Nova Scotia under Nova Scotia Continuing Care, has conducted an in-depth needs assessment for Jeremy and Maurina Beadle. The PLBC has been providing the level of support and care recommended and assessed as necessary by Pictou County Health Authority and Nova Scotia Continuing Care. The PLBC has been paying, on average, \$5,088 per month for

this in-home care and support for the Beadles. The Government of Canada provides \$126,256 annually to the Band for the delivery of home care and in-home support to all the residents in their community of 600. The annual expenditure for the required needs of the Beadles alone was \$82,164 last fiscal year and is projected to be \$61,176 this year. If the Government of Canada does not provide additional funding soon to ensure the Beadles receive their recommended level of in-home care and support, the Band will have to discontinue providing these services. This will result in Jeremy Meawasige being placed in institutional care, likely far away from the Pictou Landing community and the home of his mother. Due to Jeremy's age and the level of care he requires, the placement will likely be outside of Nova Scotia.

AAND Manager Barbara Robinson was wrong in law when she concluded that, were the Beadles living off reserve, they would not be entitled under the *Social Assistance Act* to exceptional funding for their complex home care needs. Her decision is contrary to that statute and the best interests of Jeremy, and constitutes discrimination under section 15 of the *Charter*.

The Applicants makes application for:

- (a) An order quashing the decision of Barbara Robinson, Manager, AAND, rendered May 27, 2011, denying funding for home care and other in-home supports for Jeremy Meawasige and Maurina Beadle;
- (b) A declaration that the Government of Canada violated section 15(1) of the *Canadian Charter of Rights and Freedoms* by denying Jeremy Meawasige and Maurina Beadle to the equal benefit of the *Social Assistance Act*;
- (c) An order referring the matter back to the Respondent for reconsideration in

accordance with Jordan's Principle, the equality guarantee in section 15(1) of the *Canadian Charter of Rights and Freedoms*, and the reasons of this Honourable Court, and directing the Respondent to provide an appropriate level of funding for in-home care and support services;

- (d) Interim or interlocutory relief as may be requested by the Applicants;
- (e) The costs of this application; and
- (f) Such further and other relief as counsel may request and this Honourable Court may permit.

The grounds for the application are:

- (a) Maurina Beadle and Jeremy Meawasige are "persons in need" under the *Social Assistance Act*, RSNS 1989, c 432;
- (b) The Beadles require home care and home nursing care in order to live in their home on the Pictou Landing First Nations reserve;
- (c) The provincial government of Nova Scotia refuses to provide home care and home nursing care to individuals living on reserve because the Government of Canada has assumed that responsibility;
- (d) The Government of Canada has refused to provide sufficient funds to the Pictou Landing First Nations Band Council to meet the complex and exceptional needs of the Beadles;

- (e) Barbara Robinson, Manager, AAND, erred in law by concluding that, were the Beadles living off reserve, they would not be entitled to the home care and home nursing care they need and reasonably require pursuant to the *Social Assistance Act*, RSNS 1989, c 432;
- (f) By endorsing Jordan's Principle, the Government of Canada has created the legitimate expectation among First Nations peoples living on reserve that they will not be refused the same government services available to individuals living off reserve;
- (g) Sections 15(1) and 24(1) of the *Canadian Charter of Rights and Freedoms*;
- (h) Jordan's Principle, as passed by the House of Commons on December 12, 2007 (Hansard);
- (i) The common law *parens patriae* jurisdiction to protect the interests of children and incapacitated adults
- (j) Sections 31 to 34 of the *Financial Administration Act*, RSC 1985, c. F-11;
- (k) Sections 4(d) and 9 of the *Social Assistance Act*, RSNS 1989, c 432; and
- (l) Sections 18(1) and 18.1(1) of the *Federal Courts Act*.

The application will be supported by the following material:

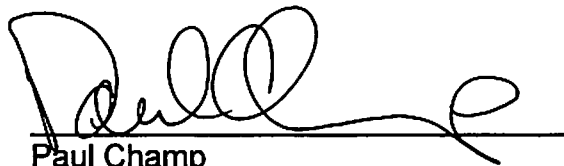
- (a) The Affidavit of Philippa Pictou, or some such other material or affidavit;
- (b) The Affidavit of Maurina Beadle, or some such other material or affidavit;

(c) Such further and other materials as counsel may advise and this Honourable Court may permit.

Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicants request a copy and that the Registrar receive a certified copy of all materials and documentation that are not in the Applicants' possession but that are in the possession of the Respondent:

- (a) disclosure of such material as was in the possession of the Respondent when the decision was made on May 27, 2011, to deny additional funding to the PLBC for services to the Beadle family;
- (b) Without limiting the generality of the foregoing, all memos, letters, emails, communications or other materials regarding the standard of care for people in need in Nova Scotia;
- (c) All materials regarding the gap in service funding for children under the Assisted Living Program;
- (d) All materials regarding government funding for Jordan's Principle, the criteria for providing such funding, and cases where requests for funding under Jordan's Principle were made and the disposition of those requests.

Dated: June 24, 2011


Paul Champ
CHAMP & ASSOCIATES

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