

Court File No. T-1045-11

IN THE FEDERAL COURT

BETWEEN:

**PICTOU LANDING BAND COUNCIL
and
MAURINA BEADLE**

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

COUNSEL:

Solicitor for the Applicant: Mr. Paul Champ

Solicitors for the Respondent: Mr. Jonathan D.N. Tarlton
and Ms. Melissa Chan

This is the cross-examination held at Halifax, Halifax
Regional Municipality, Province of Nova Scotia, on
October 6, 2011 of **MS. PHILIPPA ANN PICTOU.**

EXHIBITS

Exhibit Number	Description	Page Entered
7	Letter - March 2, 2010	108
8	Handwritten notes of Phillipa Pictou	109

1 October 6, 2011 - 1:15 p.m.

2

3 **PHILIPPA ANN PICTOU**, duly called and sworn,
4 testified as follows:

5 **REPORTER:** Please state your full name.

6 **A.** Philippa Ann Pictou.

7

8 **CROSS-EXAMINATION BY MR. TARLTON**

9

10 **MR. TARLTON:** Good afternoon. We're back on the
11 matter, Federal Court Number T-1045-11, the Pictou
12 Landing Band Council, Maurina Beadle and the Attorney
13 General of Canada. My name is Jonathan Tarlton. I'm one
14 of counsel for the Attorney General of Canada and Ms.
15 Pictou, I understand you have in front of you a copy of
16 your affidavit.

17 **A.** Uh huh.

18 **Q.** That affidavit, I believe, is dated the .. Have
19 I got it right ... the 2nd of August 2011?

20 **A.** Yes.

21 **Q.** And at the bottom of page ten of the affidavit,
22 that's your signature?

23 **A.** Yes, it is.

24 **Q.** Perhaps just to begin, I understand, according
25 to paragraph one and three of your affidavit, that you

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 currently are the Health Director of the Pictou Landing
2 First Nation?

3 **A.** Yes, uh uh.

4 **Q.** You're also a member of Pictou Landing First
5 Nation?

6 **A.** No, I'm not.

7 **Q.** Are you a member of another band?

8 **A.** Millbrook.

9 **Q.** Millbrook, okay. And the ... your
10 responsibilities as the Health Director for the Pictou
11 Landing First Nation, I think you summarize them in
12 Exhibit A to your affidavit if you want to just turn to
13 it but if I understand, you have responsibility for
14 managing the Health Center located on the reserve?

15 **A.** Yes, I do. Okay. Exhibit A is actually my
16 resume.

17 **Q.** And managing, I assume that means you
18 administer the programs that ... available to the members
19 of the reserve in respect of health matters?

20 **A.** Yes.

21 **Q.** Such as the assisted living?

22 **A.** No, actually the assisted living, I manage the
23 actual program but not the financial part because it's
24 part of the social program.

25 **Q.** Do you receive money for ... under your budget

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 for the assisted living program?

2 **A.** No.

3 **Q.** Who's responsible for that?

4 **A.** The social program. Debbie Dykstra is the
5 director of that ... is the director of the social
6 program.

7 **Q.** And she's the one who would be responsible for
8 managing the money that's provided through the federal
9 government to that program?

10 **A.** Yeah.

11 **Q.** You deal with the Health Canada program?

12 **A.** We've merged the programs to run together which
13 is the plan of what the federal government is planning to
14 do and it works more smoothly so I administer the program
15 part and the social department administers the budget for
16 assisted living and I do the health budget.

17 **Q.** So just so we're clear, on Pictou Landing
18 there's ... there's a chief and band council, correct?

19 **A.** Uh huh.

20 **Q.** And they're the elected representatives of the
21 ... of the First Nation?

22 **A.** Right.

23 **Q.** And they ... they have entered into agreements,
24 which I believe are attached as exhibits to your
25 affidavit, with the federal government?

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** Uh huh.

2 **Q.** And as a result of those agreements, they
3 receive funding from Aboriginal ... what's now known as
4 Aboriginal Affairs with respect to the assisted living
5 program?

6 **A.** Yeah.

7 **Q.** And they also receive funding from Health
8 Canada with respect to their program, correct?

9 **A.** Yeah, uh huh.

10 **Q.** They would make decisions as to ... as the
11 elected council with respect to the funding and programs.
12 You work ... let me go back. As the Health Director, you
13 report to them directly?

14 **A.** I report to the Band Manager.

15 **Q.** You report to the Band Manager?

16 **A.** Uh huh.

17 **Q.** And does the Band Manager then report to the
18 chief and council?

19 **A.** Uh huh.

20 **Q.** Who currently is the Band Manager?

21 **A.** John Paul.

22 **Q.** Okay. How long has he been ...

23 **A.** Since ... I think he started last January.

24 **Q.** Last January, okay. Do you ever directly
25 report to the chief and council?

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** We ... everyone talks. There isn't ... we
2 don't have a formal system where, say, every month we go
3 and we talk so we're all located in a tiny community.
4 I'm back and forth to the Band office, they're back and
5 forth to the Health Center so as things arise we consult
6 is the usual way of how we go about doing things and
7 yeah, so there isn't like a monthly meeting where we go
8 and have any kind of formal ...

9 **Q.** And are there other managers for other
10 programs? I know, for example, in the ... the agreement
11 entered into with Aboriginal Affairs, there are a number
12 of other programs.

13 **A.** Uh huh.

14 **Q.** For example, Income Assistance, I think band
15 support, et cetera.

16 **A.** That all goes under social.

17 **Q.** So that would be ... there would be a manager
18 for social programs?

19 **A.** Debbie Dykstra.

20 **Q.** And are there other programs and other managers
21 for those programs?

22 **A.** There's ... well, Debbie Dykstra is the
23 director the same way that I'm the Health Director and
24 then the other social programs, for instance, with the
25 Income Assistance, would be George Fraser and, you know,

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 so there's other people that manage a program, specific
2 things in the same way that at the Health Center, I'm the
3 director and, for instance, the maternal child health
4 program is run by Mary Hatfield and she reports to me and
5 it's that kind of structure.

6 **Q.** And in return, all of you managers then report
7 up to the Band Manager and from there to the chief and
8 council?

9 **A.** Yeah, the directors report to the Band Manager.

10 **Q.** The directors report to the Band Manager. And
11 from there to the chief and council?

12 **A.** Chief and council make policy decisions more
13 than ...

14 **Q.** The ... and actually that's ... brings me to a
15 question just to move into a different topic. I think
16 it's with respect to paragraph 15 of your affidavit and
17 at paragraph 15 you indicate that you made a decision in
18 June, I think, of 2010 to provide, as you describe it,
19 around-the-clock care for Jeremy and Maurina Beadle?

20 **A.** May 27th when she came home.

21 **Q.** Yes, well, yes and May 27th, I understand you
22 arranged for an assessment to be conducted by the
23 Victoria Order of Nurses, correct?

24 **A.** Yeah.

25 **Q.** And following that assessment, I take it, you

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 would have made a decision to provide around the clock
2 funding, is that right?

3 **A.** Yeah.

4 **Q.** Was that your decision and your decision alone?

5 **A.** It's not my own decision. I also met with John
6 Paul and we talked about it and I said she's got a
7 really, really serious situation right now and it's going
8 to require us putting in more care than what we would
9 normally do but we don't have any other option at this
10 point because they need the care and he agreed.

11 **Q.** Do you know if Mr. Paul would then take your
12 report to the chief and council?

13 **A.** Yeah, and I also talked to the chief and
14 council too because, you know, we just do. It's a very
15 informal kind of working thing and we check in with each
16 other all the time.

17 **Q.** Fair enough. And based on your conversations
18 and I guess what happened subsequently, is it your
19 understanding that the chief and council were aware of
20 your decision ...

21 **A.** Yeah.

22 **Q.** ... to provide this funding and they approved
23 it?

24 **A.** Yeah.

25 **Q.** You indicated that ... and moving on to

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 paragraph 16 of your affidavit, you first determined that
2 Ms. Beadle and her son required around the clock ... and
3 by that I take it a care ... or there was assistance
4 provided to them 24 hours a day, seven days a week?

5 **A.** Yes, that was what VON recommended.

6 **Q.** Okay. And you followed their recommendations?

7 **A.** I have to follow the VON's recommendation
8 because they're the people that are qualified as nurses
9 to make that decision and I'm a social worker, not a
10 nurse.

11 **Q.** And so you felt you had no discretion based on
12 that?

13 **A.** Well, I could see it was absolutely necessary
14 at that point for them to have 24-hour care. There was
15 no way that Maurina, in her situation at that point,
16 would be able to manage either with her own health or
17 with Jeremy.

18 **Q.** She ... she had suffered a stroke and she had
19 just been recently ... she had just been discharged at
20 the end of May?

21 **A.** Right, we met her that same day that she came
22 home from the hospital. We were waiting when they
23 brought her back.

24 **Q.** And so following that, you ... you arranged
25 for, as I say, two careworkers, one for ... one I guess

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 to focus on Ms. Beadle and one to focus on her son?

2 **A.** Yes, that's what the recommendation was at the
3 beginning and the reason for having two people at that
4 point was Jeremy was really distraught when she was gone
5 and she had been gone for a long time and he was
6 exhibiting difficult, abusive behaviours to himself that
7 sometimes required two people to be able to hold him and
8 care for him and Maurina was suffering from incontinence
9 and not able to walk and not able to pick anything up and
10 there was a real risk that if something happened to
11 either one of them and there was only one person, or if
12 something happened to both of them, and there was only
13 one other person in the home, that it could result in
14 something very catastrophic and at the same time, they
15 both needed to have somebody able to watch Jeremy and
16 somebody to be able to, say, watch Marina in the shower
17 at that point and so it was necessary at that point and
18 that was at the point when we decided to look at what
19 other services we could get put in place to be able to
20 meet their needs because it was so far beyond anything
21 that would normally fall under any of the programs that
22 we have on reserve.

23 **Q.** Going back to the assisted living and ... just
24 for a moment and then we'll continue on with the events
25 surrounding Maurina and Jeremy. Just in response to our

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 direction to attend and I thank you, you provided us with
2 some documentation with respect to assisted living. If I
3 understand the documents correctly, for the time period
4 relevant here which is 2010/2011, there are 19 you term,
5 I think, clients?

6 **A.** Uh huh.

7 **Q.** 19 individuals who receive assisted living?

8 **A.** Yeah.

9 **Q.** And of those and again I'm using this by the
10 information date of birth, all ... only ... only one
11 individual is ... is under 18 or a child, is that
12 correct?

13 **A.** None of them are because I don't actually put
14 Jeremy and Maurina on the assisted living thing because I
15 report them through the home and community care program,
16 that's more accurate and we haven't been paying for their
17 care through assisted living, we've been paying for it
18 through band funds and through the home and community
19 care and none of it actually covers the full cost of
20 paying for anybody's care so it's all above and beyond
21 what is in the budget.

22 **Q.** Is Jeremy's date of birth, I think it's the ...
23 December 9, 1994?

24 **MS. BEADLE:** December 9, 1994.

25 **A.** Well, maybe I did put Jeremy on that to cover

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 the care costs.

2 Q. You don't know then ...

3 A. Well, I have the ...

4 Q. When you told me you didn't ...

5 A. Okay.

6 Q. ... you're now telling me you may have?

7 A. Well, I probably put him on and not Maurina
8 then where he was getting the care.

9 Q. All right.

10 A. Just trying to remember back to when I did that
11 report and I just (inaudible due to voice trailing off).

12 Q. So you would agree with me now that his name
13 might, in fact, appear on that report?

14 A. If his birthdate is on there, yes, he is.

15 Q. Okay. Thank you. In June of 2010 you, I
16 guess, began to approach representatives of the
17 provincial government, particularly Miss Susan Stephens?

18 A. I talked to her and I talked to Tribal Councils
19 and also the federal government.

20 Q. Okay. We'll get to that ... we'll get to them
21 as well, but just so I'm clear, Maurina came out of the
22 hospital the very end of May?

23 A. Uh huh.

24 Q. And the assessment was done, I think, very
25 shortly thereafter, the very end or the beginning of

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 June? Based on ...

2 **A.** The assessment was actually done the same day
3 that she was out of the hospital because I hired the VON
4 nurse and we were actually going through and having other
5 people assessed at the same time so we actually went to
6 Maurina's house and waited until she got out of the
7 hospital so that I wouldn't have to leave her without
8 having the assessment for any period of time.

9 **Q.** And the assessment focused on her?

10 **A.** Yeah.

11 **Q.** Okay.

12 **A.** She was the person who required home care.

13 **Q.** So the ... so the original decision to provide
14 the home care was based on focusing on Maurina's needs?

15 **A.** Uh huh, because she had a stroke.

16 **Q.** Okay. So you then went and, this is at
17 paragraph 19 of your affidavit, in June you met with
18 Susan Stephens?

19 **A.** Yeah.

20 **Q.** She's the director of Standards and Policy
21 Development for the Continuing Care branch of the
22 Department of Health and Wellness of Nova Scotia?

23 **A.** Uh huh.

24 **Q.** And again, I understand that Health and
25 Wellness is, if we look at the component programs that I

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 think the ... there's the Family Services Department in
2 Nova Scotia, there's the Health and Wellness which I
3 think are at or discussed in this case ...

4 **A.** Uh huh.

5 **Q.** ... or in the materials and we have Aboriginal
6 Affairs and their assisted living program and the health
7 care program provided by Health Canada?

8 **A.** Uh huh.

9 **Q.** If I understand, and correct me if I'm wrong,
10 Health and Wellness, the provincial department of Health
11 and Wellness, is focused on the health component in the
12 sense that if there's anything to deal with licensed
13 medical professionals ... professionals, nurses, et
14 cetera, it ... it flows through their department and the
15 Department of Family Services deals with programs related
16 to respite care, personal care, dealing with matters such
17 as like housekeeping?

18 **A.** Yeah, I think continuing care deals with all of
19 that and they report to Health and Wellness.

20 **Q.** Okay.

21 **A.** Susan Stephens oversees continuing care.

22 **Q.** And so you asked her to ... or at least wanted
23 to find out how to get an assessment done for Jeremy?

24 **A.** She's been doing a whole AHTF project on
25 looking at continuing care.

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **Q.** What is AHTF?

2 **A.** Aboriginal health transition fund and they were
3 working on a project along with Lorraine Etter and so I
4 first approached Lorraine Etter from APC to try and see
5 what the best route is of hooking up with continuing care
6 to try to make sure that we had proper assessments
7 because the kind of assessment that I had done with VON
8 is basically just about what kind of home care they need
9 and I was floored as to what other kinds of need they
10 needed and I knew it was way more than what we would
11 normally provide. So I approached Lorraine and Lorraine
12 said, well, the best person to talk to is Susan so
13 Lorraine called Susan and I talked to Susan and then I
14 also met with her in June and I explained the whole case.
15 At the same time I contacted all kinds of other people
16 too. It's ... it's ... this is the main flow to this but
17 it's not the only things that if we cut it down to that
18 so it's not as complex.

19 **Q.** Why did you ... was there a reason why you cut
20 it down?

21 **A.** Because otherwise you'd have like tons and tons
22 of irrelevant kind of data because this brings it forward
23 with what we did.

24 **Q.** Is what's irrelevant what you feel is
25 irrelevant?

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **MR. CHAMP:** Pardon me?

2 **Q.** I'm just trying to say you just used the word
3 irrelevant. Do you think it's up to you to determine
4 what's ...

5 **MR. CHAMP:** I object. Ask your questions about the
6 information.

7 **Q.** In any event, you ... you went to an official
8 of the provincial government first, if I understand ...

9 **A.** I did both actually because the same day that I
10 contacted Lorraine and Susan Stephens, I also called over
11 to Health Canada and Susan Ross was on leave and I talked
12 to Peggy O'Reilly.

13 **Q.** Can you tell me where that is in your
14 affidavit?

15 **A.** It didn't come to anything. It's in my notes.

16 **Q.** It's in your ...

17 **A.** Well, in my ...

18 **Q.** In the notes you provided me earlier?

19 **A.** It's not in notes about the case conferences
20 which is ... and it's just in like "phoned Peggy
21 O'Reilly". I didn't ...

22 **Q.** You didn't speak to her in any detail about
23 this case?

24 **A.** I did but she didn't know what to do and she
25 said she'd try and see if I can get help from the family

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 and that was what she had and she was filling in for
2 Susan Ross who was on leave so it was kind of a ...

3 **Q.** Do you know how long Susan Ross was on leave
4 for?

5 **A.** She had a slipped shoulder and she came back
6 ... she went back to work in November, I believe.

7 **Q.** Okay. I understand, at least from the material
8 that was filed, you contacted her, I think, in February
9 of 2011, is that right?

10 **A.** Yes. No, well I had talked to her sooner than
11 that probably but I contacted her to come to the case
12 conferences at that point.

13 **Q.** You talked to her sooner than that probably?

14 **A.** I did.

15 **Q.** Again, where is that in your affidavit?

16 **A.** I talked all of the Health Canada people
17 regularly because I'm dealing with them on a day-to-day
18 basis and I didn't ... don't have all the specific phone
19 calls and I ... there's, you know ...

20 **Q.** All right. You were able though, through your
21 discussions with Ms. Stephens, to get approval for the
22 Province, officials of the Province, the Continuing Care
23 Department, to come in and do an assessment of Jeremy and
24 Maurina, as I understand?

25 **A.** Yes.

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **Q.** And that was done, I think, according to your
2 affidavit, it was the end of October. I think you have
3 October 27, 2010?

4 **A.** Yeah.

5 **Q.** And ... and you were... you were, I guess,
6 provided with a copy of that?

7 **A.** No, I wasn't.

8 **Q.** Okay.

9 **A.** Because it was a confidential assessment.

10 **Q.** Who received a copy of it, do you know?

11 **A.** We had ... and that's what I'm explaining.
12 Originally when they did the assessment they said that
13 they could go through it with Maurina and me because it
14 was their confidential assessment that they had and that
15 we weren't allowed to have a copy but Maurina could
16 apply, through ATIP, to receive a copy and that it would
17 go to her and if she wanted to share it with me then she
18 could and that it would cost us \$69 for each copy. And
19 so we filled out the ATIP paper to have it and then they
20 ended up sending it to me instead and they never did
21 charge us the \$69 and I had assumed they had also sent
22 one to Maurina. I didn't find out until last week that
23 she had never received one.

24 **Q.** When did you ... when did you receive that
25 assessment?

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** It was in March sometime, I think.

2 **Q.** March of 2011?

3 **A.** Yeah.

4 **Q.** Okay. So it would have been following at least
5 ... there was ... and we'll get to that shortly, there
6 were at least I think some discussions or case
7 conferencing in February but you didn't receive a copy of
8 it?

9 **A.** That's right.

10 **Q.** Again, paragraph 20, the last sentence, the
11 assessment ... and it says, This assessment has served as
12 our guide in determining the appropriate level of
13 services required by Jeremy, do you agree to that?

14 **A.** Yeah, because we met with ... the provincial
15 people came and we had a whole series of case conferences
16 where they went through in detail about what the
17 assessment contained and the idea was around looking at
18 what kinds of things could be provided and what other
19 kinds of things we needed to come up with.

20 **Q.** Okay. And there were meetings with provincial
21 officials?

22 **A.** Uh huh, yeah.

23 **Q.** And when did those meetings take place?

24 **A.** Those were all in the case conference ...
25 they're outlined ... where would they be in this

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 document? Just a second. Is there a table of contents
2 in this?

3 **MR. CHAMP**: No, there's not.

4 **A.** Okay. I'll try and find them, just one second.

5 **MR. CHAMP**: You're looking for progress notes, is
6 that what you're looking for?

7 **A.** The dates of the case conference. Do we have
8 ... I'm just trying to find exactly when they were.
9 Okay. I just have several meetings in this so we've got
10 notes on them somewhere if I can find them which have the
11 dates because I'm terrible with remembering dates off the
12 top of my head.

13 **Q.** Perhaps if I might be able to assist or help
14 direct you and I'm dealing with information that was in
15 Barbara Robinson's affidavit but I don't think it's
16 necessary (inaudible due to shuffling papers) review it
17 but certainly if you'd like to. I understand ...

18 **A.** I've got my handwritten notes that I ...

19 **Q.** Could you just wait until ... just let me ask
20 the question and it might help focus.

21 **A.** Uh huh.

22 **Q.** I understand from what ... from what Ms.
23 Robinson has said that at least her involvement began in
24 February. She received an e-mail from Susan Ross which
25 was dated, I think, February 18th. And in that e-mail

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 Ms. Ross said you had contacted her and asked regarding
2 the situation involving Jeremy and ... and his mother and
3 invited her to attend a case conference on February 28th.

4 **A.** Yeah.

5 **Q.** So that is one of the case conferencing
6 meetings?

7 **A.** Uh huh.

8 **Q.** Before February 28th, were ... how many case
9 conferences were there and who was ... who was there?

10 **A.** We had five altogether.

11 **Q.** Okay.

12 **A.** And I've got my notes, if I can find them, that
13 show what was discussed and what the dates were.

14 **MR. CHAMP:** Are you talking about your handwritten
15 notes?

16 **A.** Yeah.

17 **Q.** I've got a copy right there.

18 **MR. CHAMP:** You can maybe provide those.

19 **Q.** Sure, that would be ...

20 **MR. CHAMP:** That's not in there.

21 **A.** All right.

22 **Q.** I wasn't sure. (Inaudible due to speaking over
23 each other).

24 **A.** Remember dates and everything of exactly who
25 was where and when. So we had ...

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 Q. Just before ... just so ... these are, I
2 understand, copies of your handwritten notes ...

3 A. Yes.

4 Q. ... that you made and you provided them in
5 response of your direction to attend?

6 A. Yeah.

7 Q. And you recognize them?

8 A. Yeah.

9 Q. Okay. I see one, the first page there's one
10 February 9th?

11 A. Uh huh.

12 Q. Would that be the first?

13 A. Or the 4th I think it is. I think it's the
14 4th.

15 Q. Oh maybe it's the 4th.

16 A. Yeah (inaudible) from my day book.

17 Q. I write even worse than that. Is that though
18 the first ...

19 A. Yeah.

20 Q. ... conference so sometime in February?

21 A. Uh huh.

22 Q. Okay.

23 A. Because we had the assessments. By the time
24 they had done both the assessments it was almost
25 Christmastime and then we had to arrange for everybody to

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 come back again and by the time we could get everybody's
2 day cleared in order to be able to come and meet it was
3 February was the earliest that we could do it.

4 **Q.** Okay. And just ... just so I'm clear, were
5 there ... you were obviously present, is that right?

6 **A.** Yeah.

7 **Q.** Was Maurina there or?

8 **A.** Yes.

9 **Q.** Okay. Were there any representatives of the
10 Province of Nova Scotia there?

11 **A.** Yes.

12 **Q.** Who were they?

13 **A.** Jane Jordan who's the manager of Continuing
14 Care.

15 **Q.** Okay.

16 **A.** And then we had the physical therapist, the
17 occupational therapist, I can't remember what their names
18 are. I'm terrible with names too.

19 **Q.** And was there any ... anyone else there?

20 **A.** Then we had my community health nurse was
21 present.

22 **Q.** Okay. And I've seen her name but just for the
23 record.

24 **A.** Lori Phalen.

25 **Q.** Lori Phalen. And was there anyone else?

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** I'm trying to remember now. I think for the
2 first one it was Jane Jordan and oh ... and Candace
3 Fitzpatrick who was the woman who had done the
4 assessment.

5 **Q.** From the Victoria Order of Nurses?

6 **A.** No.

7 **Q.** Oh, sorry.

8 **A.** No, this was from the Province.

9 **Q.** Right, from the Province. The one that was
10 done in October of 2010?

11 **A.** Yeah, uh huh.

12 **Q.** Okay. So that was the first meeting. There
13 was no one there from the federal government?

14 **A.** No, because we were reviewing her file, the
15 assessment, to try to find out what kind of care she
16 needed and what kinds of access to programming we could
17 get.

18 **Q.** Okay. And when you say "she", so you were
19 reviewing Maurina's assessment or Jeremy's assessment?

20 **A.** Both of them. We started with Maurina's and
21 then we ...

22 **Q.** Okay.

23 **A.** No, we started with Jeremy's and then we did
24 Maurina's.

25 **MR. TARLTON:** All right. If we could just go off.

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **OFF RECORD** (1:41 p.m.)

2 **ON RECORD** (1:44 p.m.)

3 **MR. TARLTON:** So how long had ... how long had you
4 had a copy of the assessment reports regarding Maurina
5 and Jeremy prior to the February meeting?

6 **A.** We didn't yet.

7 **Q.** You didn't have them by then?

8 **A.** No, we didn't. They read it to us.

9 **Q.** They read it to you, okay.

10 **A.** And they said I wasn't allowed to have a copy.

11 **Q.** So that's the first time that you had any
12 information ...

13 **A.** Right.

14 **Q.** ... regarding those assessments?

15 **A.** It took several sessions to go through the
16 assessment.

17 **Q.** So if I understand this then, between June of
18 2010 and we're now into, I guess, early February ... it
19 says '10 but I'm assuming that's '11?

20 **A.** Yeah, that's a thing, I guess. It was the
21 beginning of the year and ...

22 **Q.** I can understand that. I do that myself
23 sometimes. But between June of 2010 and February of
24 2011, the ... is it fair to say that the guide for
25 determining the appropriate level of services that Jeremy

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 required was really based on that initial assessment that
2 was done by the Victoria Order of Nurse (sic) in May?

3 **A.** When ... that was the only access to any formal
4 assessment that we could get at that point and I didn't
5 feel it was adequate and that's why I went through the
6 Province to try to get the same assessment that people
7 would have access to if they lived off reserve.

8 **Q.** So you were relying on ... so with only an
9 assessment that you considered inadequate ...

10 **A.** Uh huh.

11 **Q.** ... you had made a determination to provide
12 this ... a certain care regime, I think it was 24 hours,
13 seven days a week, from roughly the end of May until
14 October of 2010 and then from October to February, I
15 think it was 15 hours a day, Monday to Friday and 24
16 hours a day Saturday and Sunday?

17 **A.** Uh huh, yeah.

18 **Q.** And again, while this was going on would you
19 ... would you report the status of this case ... of this
20 situation to the Band Manager and then from there to Band
21 council?

22 **A.** Uh huh (inaudible due to voice trailing off).

23 **Q.** So they were aware?

24 **A.** Uh uh, yeah.

25 **Q.** And they were in agreement with your approach?

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** Yeah.

2 **Q.** Okay.

3 **A.** We had no other option. We had asked for help
4 and it was, you know, we tried everything that we could
5 to try to move this ahead.

6 **Q.** Okay. You were asking for help from, I guess,
7 from the Province?

8 **A.** From all levels of government, from everybody
9 that I could talk to in all the Band ... different tribal
10 organizations, people in Health Canada at various
11 meetings. I went to home and community care meetings and
12 raised the question, what do you do in this situation,
13 what happens in other communities and nobody knew what to
14 do besides to ask the Province to come in and do the
15 assessment and so that's what we did.

16 **Q.** So by tribal councils, I take it you mean in
17 the Union of Nova Scotia Indians ...

18 **A.** Yeah, the Confederacy ...

19 **Q.** ... and the Confederacy of Mainland Mi'kmaq?

20 **A.** Yeah.

21 **Q.** And ...

22 **A.** It's an issue that they said happens in every
23 community and nobody knows how to deal with it and some
24 communities have more money than others and the
25 communities that have more money are able to provide the

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 care without it stressing the budget.

2 Q. And aside from you mentioned attempting to
3 contact Susan Ross and leaving a message with someone
4 else ...

5 A. No, I spoke to Peggy O'Reilly.

6 Q. You spoke to Peggy?

7 A. Yes.

8 Q. But you left a message that you wanted to get
9 ... initially wanted to get ...

10 A. That's right.

11 Q. ... a hold of Susan, right?

12 A. Well, I knew Susan was off and that Peggy
13 O'Reilly was filling in. In fact, I worked ... when I
14 worked in Health Canada I knew all of them very closely.

15 Q. Aside from Peggy and Susan Ross, who else did
16 you speak to from Health Canada between, I guess, the
17 summer of 2010 and February 2011?

18 A. About this case or ...

19 Q. About this case?

20 A. They would be the people that you would speak
21 to there because they dealt with home care. There wasn't
22 any other. They were the only people in home care in
23 that whole department.

24 Q. Who would those people be, you know, give me a
25 name?

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1 **A.** Peggy O'Reilly and Susan Ross. They're the
2 only ones that do home care for the federal ... for the
3 federal government and for Atlantic Canada.

4 **Q.** And I believe you indicated Susan was away
5 until November?

6 **A.** Uh huh.

7 **Q.** Did you speak to her between ... did you speak
8 to her before February 18, 2011?

9 **A.** Yeah.

10 **Q.** You did?

11 **A.** Uh huh.

12 **Q.** About the Beadles' situation?

13 **A.** Uh huh.

14 **Q.** Do you remember when you did?

15 **A.** Let me think. She ... I spoke to her while she
16 was off because we had different conversations because we
17 were friends, as well, and so she wasn't sure what to do
18 and she couldn't do anything because she wasn't at work
19 so that was when one thing (over that?) and she suggested
20 talking to Lorraine and Susan Stephens.

21 **Q.** Susan Stephens being with the Province?

22 **A.** Uh huh.

23 **Q.** And Lorraine ... sorry?

24 **A.** Etter with APC.

25 **Q.** And what does that stand for?

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1 **A.** The ...

2 **Q.** Atlantic Policy?

3 **A.** Yes.

4 **Q.** That's a ... that's not a tribal organization,
5 is it?

6 **A.** It is.

7 **Q.** Okay.

8 **A.** It represents all ... it's actually the
9 Atlantic Policy Congress of First Nations Chiefs and they
10 represent all of the ... organization of all of the
11 communities of Mi'kmaq including Atlantic Canada and
12 Quebec and Maine.

13 **Q.** Okay. Let's just move then. In your notes
14 there's a ... I guess the next meeting, there's a date of
15 February 17th and it's '11.

16 **A.** Right. Uh huh.

17 **Q.** And can you tell me again, reviewing your
18 notes, this was another case conference?

19 **A.** Yeah, this was the next follow-up to looking at
20 what we needed to look at with Jeremy.

21 **Q.** And who ... who was present at that conference?

22 **A.** Jane and the OT worker and the PT worker and
23 Maurina and me and Lori.

24 **Q.** Sorry, I'm just ... and I know OT and PT is
25 probably a term that ...

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1 **A.** Occupational therapist and physical therapist.

2 **Q.** Okay. And was there anyone else from the
3 Province?

4 **A.** Okay, just one second, let me have a look.

5 **Q.** Okay.

6 **A.** Because at one point we had talked about ... I
7 think it's the next one that we had. So we had ... I'm
8 trying to remember whether Deborah Churchill had come to
9 this one. So the next one ... I think Deborah Churchill
10 came to the next one. And I think we also had a
11 psychologist, Doreen Coady ... she's got a double-
12 barreled name. Doreen Coady ... it's Shadbolt-Coady or
13 Coady-Shadbolt. I'd have to look her name up and she had
14 also attended.

15 **Q.** And again, this meeting ...

16 **A.** And the school at that point too, they had a
17 ... the person who's in charge of the ... of the special
18 education with North Nova had also come in at that point
19 too because we were looking at how we could support
20 Jeremy towards going back into the school system again at
21 that point.

22 **Q.** Yes, I understand. I think he had been ...
23 when he was going to elementary school or more junior
24 level, he attended a different school, is that right, on
25 the reserve?

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** At some point, yes.

2 **Q.** Yes, and he had a special ...

3 **A.** I wasn't there at this point so anything I say
4 about that would be just second-hand information. I only
5 started in November.

6 **Q.** November of 2000-and?

7 **A.** Nine.

8 **Q.** Nine. I think in your notes there was a
9 reference to him saying ... or there was some indication
10 that he had been ... he had stopped school around
11 November of 2009 so would he have been ...

12 **A.** I have no idea when he had stopped school.

13 **Q.** Okay. If you don't know or recall, that's
14 fine. But anyway, there was efforts to look at him going
15 to the North Nova School, is that right?

16 **A.** Yeah.

17 **Q.** Okay. And again at this meeting, you were ...
18 again the focus of the discussion was solely on Maurina
19 and Jeremy's assessments?

20 **A.** Yeah.

21 **Q.** And what ... what needs to be done?

22 **A.** To try to find out what kinds of services we
23 could put in place to provide for their needs, what their
24 needs were, what was available, what we could access on
25 reserve. All of (inaudible due to voice trailing off.)

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1 How we ... how we could work with the Province to put a
2 plan in place that could meet their needs.

3 **Q.** So you were working with the Province to
4 develop a plan for the two of them, is that right?

5 **A.** Because they did the assessment and in order to
6 be able to establish what kind of care they needed, I
7 needed ... and well, we don't have funding on the reserve
8 to do those types of assessments, I needed to involve the
9 Province to provide the same type of assessment and the
10 federal government says that they mirror the provincial
11 programs and that we should have access to the same
12 things that are available in the Province and this was
13 one of those things that we don't have access to and
14 children like Jeremy just don't have their care assessed
15 through ... at the same level as they would if they lived
16 off reserve.

17 **Q.** Well, I guess my ... I guess though the ... in
18 the meetings that you had, at least these case
19 conferences up until now, until February, the middle of
20 February 2011, am I ... is it fair in saying that it was
21 ... you were involved with discussions with
22 representatives of the Province and various, I guess,
23 professionals in occupational therapy, physical therapy,
24 looking at programs?

25 **A.** Trying to find out what she needed and what we

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 could access and what could be put in place.

2 Q. And then you had ... there was another meeting,
3 I guess now we're into the third meeting and that's the
4 meeting in ... in ...

5 A. February 28th.

6 Q. February 28th, right. And that meeting, I
7 think, I understand there was ...

8 A. And also I should mention that ... on that
9 other meeting was the one that Deborah Churchill came to
10 I'm pretty sure.

11 Q. February 28th?

12 A. The 17th I'm pretty sure was when we had
13 involved Deborah Churchill. I've got ...

14 Q. Well, I understand again and ... I understand
15 from both Ms. Robinson and I believe ... and Ms. Ross'
16 evidence that Ms. Churchill came to the 28th meeting. In
17 fact, you had invited her on the 18th.

18 A. Okay. So we were talking about who should come
19 to the meeting. I've got her name down here so we were
20 talking about having contacted her and that she was going
21 to come to the next one.

22 Q. And that took place on February 28th?

23 A. Uh huh.

24 Q. And that involved for the first time ... this
25 is now the third case conference but for the first time

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 there are representatives of the federal government
2 there, is that right?

3 **A.** Yeah, that would be right.

4 **Q.** And do you recall at the meetings prior to
5 February 28, 2011, had the issue or the question of
6 Jordan's Principle been raised with the representatives
7 of the Province?

8 **A.** Yes. Right back in June, John Paul had gone to
9 the AGA for CMM, sounds like pension letters, and it was
10 at that point that we were trying to find out who ... how
11 to be able to access Jordan's Principle so it's actually
12 in the minutes of the AGA and at that point Wade Weir
13 sent us a Powerpoint which was the same Powerpoint that
14 we had at the health directors' meeting and all of that
15 kind of thing. And at that point then CMM was also
16 talking to APC to try to find out what to do with it and
17 they were also talking to Health Canada to try to find
18 out what to do with it and so there were all these other
19 people besides us that were trying to find out how we go
20 about accessing Jordan's Principle.

21 **Q.** Okay. Prior to that time, had ... were you
22 familiar at all with Jordan's Principle?

23 **A.** Yes, I was.

24 **Q.** You ... as you indicated you worked with Health
25 Canada ...

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** Uh huh.

2 **Q.** ... for a number of years?

3 **A.** Since 2006.

4 **Q.** And Jordan's Principle, the motion dealing with
5 Jordan's Principle, was passed by the House of Commons in
6 December of 2007?

7 **A.** Yeah.

8 **Q.** And you began ... you left the federal
9 government, I think, in ...

10 **A.** 2009.

11 **Q.** ... 2009. So what ... what was your
12 understanding of Jordan's Principle?

13 **A.** We had ... when it first was passed, we had a
14 whole series of training about it in Health Canada.

15 **Q.** Okay.

16 **A.** Where they went through and explained about
17 what it was and, you know, that they were looking at ways
18 to be able to implement it in the province and, you know,
19 we had a number of different presentations and meetings
20 talking about Jordan's Principle and so it was my
21 understanding that it was actually out there and accepted
22 since we'd all been trained on how to go about looking at
23 it.

24 **Q.** And again, based on your ... on your, I guess,
25 the training and your understanding, do you agree that

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 Jordan's Principle, first of all, when it applies, it's
2 dealing with a First Nations child who lives on a reserve
3 or ordinarily resident ...

4 **A.** Uh huh.

5 **Q.** ... such as Jeremy.

6 **A.** Uh huh.

7 **Q.** You'd agree with that?

8 **A.** That's ... originally I don't think it was as
9 specific as that and it's been made more specific as the
10 federal government has been looking at trying to define
11 it into what it needs and that's over that time period
12 they've broken it down to be what the ... what NDC and
13 Health Canada now say it is but the actual adoption of it
14 is less.

15 **Q.** Well, Jordan, who from which the ... the child
16 in question from which this motion originated, I
17 understand he was a First Nations Child?

18 **A.** Yes, he was.

19 **Q.** He lived on a reserve?

20 **A.** Uh huh. He was actually in the hospital.

21 **Q.** Well, he was in a hospital but he was ... he
22 was ... he was registered ordinarily resident on a
23 reserve?

24 **A.** Yeah.

25 **Q.** Would you agree with me, as well, that the

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 principle is ... applies when a child, a First Nations
2 child, again such as Jeremy, is assessed by health and
3 social service professionals and has been found to have
4 multiple disabilities requiring services from multiple
5 service providers, do you agree with that?

6 **A.** Uh huh. Well, that's how it's defined now,
7 yes.

8 **Q.** So you'd agree that that is how the principle
9 is defined by the federal government?

10 **A.** Yes.

11 **Q.** Yes, okay. And again, I think based on your
12 ... I guess, based on what you had heard from the
13 Province following the assessment and other information,
14 you'd agree that Jeremy fits that criteria?

15 **A.** Yes, I do.

16 **Q.** Okay. Do you also agree that the principle is
17 currently ... applies when there's a dispute between a
18 federal and provincial government?

19 **A.** Yeah.

20 **Q.** Okay.

21 **A.** Uh huh.

22 **Q.** You agree with that?

23 **A.** Yeah, I agree with that.

24 **Q.** Okay. And do you agree, as well, that the ...
25 the care for the child will continue even if there is a

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1 dispute about the responsibility?

2 **A.** I guess rather than ... its when there are
3 jurisdictional disputes not just a dispute between the
4 governments and that's cutting hairs but there's a
5 difference between a jurisdictional dispute and other
6 types of disputes.

7 **Q.** Okay. I ...

8 **A.** The jurisdictional dispute comes into play when
9 it's a question of who is responsible for providing care.

10 **Q.** Yes, as between the federal and ...

11 **A.** Right.

12 **Q.** ... the provincial government?

13 **A.** But it's not just when ... there are other
14 disputes and it doesn't ... other types of disputes when
15 it calls it to be Jordan's Principle. It's a
16 jurisdictional dispute. I was just trying to ...

17 **Q.** So you think it applies beyond a jurisdictional
18 dispute?

19 **A.** No, I think when there are jurisdictional
20 disputes that's when Jordan's Principle applies.

21 **Q.** Okay. Do you believe it ... again, I was ...
22 you went back a point but just to continue, do you also
23 believe that the principle applies to the degree that the
24 care for the child or the care for Jeremy will continue
25 if there's a dispute about responsibility and the current

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1 service provider caring for the child will continue to
2 pay for that service until ... until there's a resolution
3 of the dispute?

4 **A.** The ... under the Jordan's Principle, the
5 government is supposed to provide the care while they
6 sort out what the jurisdictional responsibility is. In
7 this case, we could never get the government to take on
8 any responsibility for it because they argued there
9 wasn't any jurisdictional dispute which actually creates
10 a jurisdictional dispute because they're providing
11 services that actually aren't offered up, you know, that
12 we can't have access to similar services off reserve.

13 **Q.** I think your ... this ... your comments may be
14 referring to the ... to the next point I was going to
15 mention that the services are ... are ... that are going
16 to be provided to the child are comparable to the
17 standard of care, the normative standard of care, I think
18 you've heard that term before. I think it's in your
19 notes?

20 **A.** Uh uh, yeah.

21 **Q.** You're familiar with it, yes?

22 **A.** Uh huh.

23 **Q.** It's the normative standard of care. So a
24 child living on a reserve, such as Jeremy, should receive
25 the same level of care as a child with similar needs

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 living off the reserve in a similar geographic location?

2 **A.** Uh huh.

3 **Q.** So you compare what would a child ... in
4 Jeremy's case, what would a off-reserve ... or a child
5 and family living off reserve in Nova Scotia in the ...
6 perhaps in the Pictou County area, what type of services
7 they would receive?

8 **A.** Uh huh.

9 **Q.** Do you agree with that?

10 **A.** Yeah.

11 **Q.** Okay.

12 **A.** Which is why we did the assessment.

13 **Q.** Right. You were ...

14 **A.** To find out kinds of services ...

15 **Q.** ... trying to find that out?

16 **A.** And to try to have the same type of assessment
17 done that he would have received if he had been off
18 reserve.

19 **Q.** Yes.

20 **A.** But the difference, too, with that is that most
21 people off reserve don't have to have ministerial
22 approval to even be assessed. They don't have to wait a
23 year or almost a year to be able to have the results.

24 **Q.** Well, that was ... the assessment was conducted
25 by the provincial government, you'd agree ...

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** Yes, it was.

2 **Q.** ... with me. So that's a matter, I guess, you
3 would take up with the provincial government?

4 **A.** I have.

5 **Q.** Not the federal government.

6 **A.** I have.

7 **Q.** Okay.

8 **A.** But it also provides for the jurisdictional
9 disputes because the federal government says that they
10 provide the same level of care as the Province. So in
11 order to determine what the Province provides, you have
12 to ask the Province which is what we did and that's why
13 it took us so long because we don't actually have access
14 to the Province even though the federal government says
15 we should.

16 **Q.** So again I'm, I guess ... again this is in
17 reference to what Ms. Robinson and Ms. Ross have
18 indicated in their evidence and I'll just ask if you
19 agree with it or not. Do you agree that the Jordan's
20 Principle doesn't create a right to funding of a service
21 that's beyond the normative standard of care. So if the
22 Province does not provide a certain standard of care in
23 its area then ...

24 **A.** I think that the Jordan's Principle is to put
25 the child first so they receive the funds and they argue

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 about where it comes from afterwards so that the child
2 doesn't go without services that they need just because
3 of who they are and the fact that they're caught between
4 the Province and the federal government.

5 **Q.** So you ... you don't ... you don't agree with
6 that. You don't agree ... you think Jordan's Principle
7 does ...

8 **A.** It's not about the money, it's about providing
9 the care and taking the responsibility to put the child
10 first so the child doesn't suffer while people argue
11 about who should care for them.

12 **Q.** Okay. And in your ... in your situation, you
13 and the Pictou Landing Band have actually done that.
14 You've provided that care to Jordan ... or not to Jordan,
15 to Jeremy and to Maurina?

16 **A.** We've put in the services to keep them going
17 until we could sort out who should be providing care and
18 also until we could find out what kind of care they
19 required because we didn't even have access to that
20 amount of information.

21 **Q.** Well now, having heard from the Province's
22 assessment back in ... I guess when you finally got it in
23 2011 but when it was ... when it was done in late 2010
24 and from, I gather, having a verbal briefing about it ...

25 **A.** Uh huh.

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **Q.** ... and you've already indicated, you'd agree
2 with me that at least insofar as Jeremy's concerned, he
3 has multiple disabilities?

4 **A.** Uh huh.

5 **Q.** They're chronic?

6 **A.** Uh huh.

7 **Q.** They go back to his ... and I realize you're
8 not a medical ...

9 **A.** Yeah.

10 **Q.** ... professional. I'm not either but from what
11 we've heard from the documents and from Jeremy's mother,
12 he has had ... he has had chronic conditions since he was
13 born.

14 **A.** That's right.

15 **Q.** Cerebral palsy, autism, water on the brain.

16 **A.** Uh huh.

17 **Q.** Those aren't conditions that have ... are going
18 to be resolved in the short term?

19 **A.** No, that's true.

20 **Q.** Would you agree with me?

21 **A.** And that's why it becomes an extraordinary and
22 exceptional case because normally his mother would be
23 able to provide his care.

24 **Q.** And his mother suffered a stroke in May of
25 2010?

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** Uh huh.

2 **Q.** And again, from what we heard and you were here
3 this morning when she gave her evidence, she's still not
4 ... she's still not fully recovered?

5 **A.** Uh huh.

6 **Q.** Would you agree with that?

7 **A.** Yeah.

8 **Q.** She still ... she still needs help>

9 **A.** She's come a long way.

10 **Q.** Yes.

11 **A.** But she still needs support.

12 **Q.** Okay. And when you were looking at programs
13 and services that were provided by the provincial
14 government and again it's in the documents, but we hear a
15 lot about, for example, the Department of Family Services
16 continuing care ... Department of Family Services, their
17 respite or program?

18 **A.** Right.

19 **Q.** Right? And I think you refer to that in your
20 affidavit at ... just give me a moment. It's Community
21 Services, it's at Exhibit G. And you've reviewed this
22 document?

23 **A.** Uh huh.

24 **Q.** I mean, you've had consultations with the
25 Province about it and they've explained to you what it's

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 ... what it involves, is that right?

2 **A.** Uh huh. Yeah.

3 **Q.** Okay. Would you agree with me that the ...
4 this program and this program, I think, is the basis for
5 this application and the claim that you're making for
6 funding, am I right?

7 **A.** This would be a program that he would be
8 eligible for if he lived off reserve.

9 **Q.** Okay.

10 **A.** He's not eligible for it because he lives on
11 reserve.

12 **Q.** Would you agree with me though that the ...
13 this program, I guess it's the Direct Family Support
14 program, do you agree with me it's not intended to
15 provide full-time, in-home support?

16 **A.** It's not intended to provide, you know, long-
17 term constant care above a certain level but there are
18 provisions in it to be able to do that.

19 **Q.** Okay. Can I ... can I turn you to ... it's
20 actually ... I think it's after the ... after the table
21 of contents. It's the policy statement, page two.

22 **A.** Yeah.

23 **Q.** Can I take you down to 1.3?

24 **A.** Uh huh.

25 **Q.** And I'll just read it to you.

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1 The DFS program provides funding for
2 the purchase of respite services to
3 assist with scheduled breaks for
4 family caregivers and is not intended
5 to provide for full-time, in-home
6 support or to compensate caregivers
7 for supporting their family member
8 with their disability.

9 That, I don't think, is applicable to this
10 situation.

11 **A.** Except did they define full-time, in-home
12 support?

13 **Q.** Well, let me ask you. Currently if I
14 understand from the evidence both you and Ms. Beadle have
15 given, there are ... they receive in-home support or
16 careworkers Monday to Friday ...

17 **A.** Uh huh.

18 **Q.** ... between 8:30 and I think is it 11:30 p.m.?

19 **A.** Yeah.

20 **Q.** Okay. And on the weekends there is 24-hour
21 coverage?

22 **A.** Uh huh. And that was because Susan Ross told
23 us that it was a liability issue to have people working
24 from the community over the weekend when neither the Band
25 office or the Health Center is available and that ... so

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 we did hire an organization outside the community to
2 provide that care.

3 Q. So you need ... you need someone who's, I take
4 it, a registered nurse or someone who ...

5 A. No, they're home care workers.

6 Q. Okay.

7 A. But during the week, Maurina's other son,
8 Jonavon, is there overnight and he provides the care as a
9 family member to provide the support that she needs over
10 the night and that's part of their contribution to caring
11 for the family. And it's not right to make a 21-year old
12 have to stay home every single night, seven days a week,
13 working through the night and so that's why over the
14 night our community health nurse feels that ... strongly
15 that it's important to give him a break so that the
16 family doesn't break down completely from the extra
17 stress of having to provide for that constant care every
18 single night and that's a lot to expect from a 21-year
19 old.

20 Q. I understand that between May I think, roughly,
21 and November, he's away fishing for much of the day?

22 A. Uh huh. Well, he sometimes goes overnight too
23 so at that point then we would have to provide to make
24 sure somebody else is available.

25 Q. So ...

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1 **A.** So it's a big stress ... it's a big stress on
2 everybody and putting stress on Maurina also can
3 contribute to her risk factor of having another setback
4 with her stroke so from looking at all of the various
5 risk factors of not providing that support to keep the
6 family functioning and to be able to keep her healing
7 from her stroke (inaudible).

8 **Q.** So I take it it's your ... it's your view that
9 15 hours out of 24 hours, Monday to Friday, and full 24
10 hour coverage for the remaining two days of the week is
11 not ...

12 **A.** What I ...

13 **Q.** ... you don't consider that full-time, in-home
14 support, yes or no?

15 **A.** No, I don't.

16 **Q.** Okay.

17 **A.** I would consider full-time 24-hour care and as
18 a social worker in my previous position, I know that
19 people off reserve received 24-hour care while they were
20 home that was funded through Community Services.

21 **Q.** I see. You know that ...

22 **A.** Because I worked as a social worker for the
23 Metro Housing Authority and for Public Health. It's in
24 my resume.

25 **Q.** Did you provide ... did you ever give an

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 example of that to either in your affidavit or when you
2 provided your submission to ...

3 **A.** It's in my resume that I worked as a social
4 worker in a number of areas.

5 **Q.** I'm not asking about your qualifications as a
6 social worker, Ms. Pictou, I'm ... I'm aware and accept
7 them. You were just giving an example of people who
8 received 24-hour care from the Province.

9 **A.** Uh huh.

10 **Q.** I'm just asking you, for example, let me turn
11 to your ... again to your affidavit. The exhibit number
12 ... number K. This is a briefing note and this was a
13 briefing note that you provided, I think, to Barbara
14 Robinson and to I think Mr. Weir and others on behalf of
15 the federal government.

16 **A.** Yes.

17 **Q.** Is that right?

18 **A.** On behalf of the federal government?

19 **Q.** Sorry, sorry.

20 **A.** No, I don't think so.

21 **Q.** No, not you, on behalf. That was my mistake.
22 They were ... they were representing the federal
23 government.

24 **A.** Right.

25 **Q.** And you were doing this on behalf of Ms. Beadle

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 and her son and Pictou Landing?

2 **A.** Uh huh.

3 **Q.** Is that right?

4 **A.** That's what we were trying to find out what we
5 could ... how we could support them.

6 **Q.** Let me go through this and this was, I think
7 ... this followed on the case conference in April, I
8 believe, in which I think Ms. Robinson attended and there
9 was some discussions with her and with the Province about
10 the normative standard of care?

11 **A.** Uh huh.

12 **Q.** So you went away from that meeting, you
13 reflected on what was said and this was your response, am
14 I right?

15 **A.** At the next meeting on my way to work, I was
16 listening to CBC and I always do and there was a ... on
17 the news it talked about a ... the Boudreau case and how
18 the Court had just done a review and that they ... the
19 response to the Boudreau case so then I researched that
20 and that's where I found out about the Boudreau case
21 and ...

22 **Q.** We'll get to that in a moment.

23 **A.** Uh huh.

24 **Q.** I just wanted to clarify this.

25 **A.** Well, this is ... and then that was what then

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 allowed me to think further to everything that I already
2 knew, all the stuff that I had gone through with the case
3 conference and the final response from Barbara Robinson
4 and then looking at ... I didn't feel that, when I left
5 that case conference, that it was the case that if the
6 government spends more than \$2200 that a child would have
7 to be forced into an institution and I knew that wasn't
8 the case off reserve because I knew people that had
9 received more funding than that and I also knew that
10 there were people that have their children at home in
11 similar cases with Jeremy so that didn't sit right with
12 me.

13 Q. I'm sorry, can I just ...

14 A. The CBC ...

15 Q. Sorry.

16 A. I was just trying to answer your question about
17 where I was ...

18 Q. I just want to clarify though when you say
19 forced into an institution, people forcing, has anyone
20 from the federal government ... no one from the federal
21 government I understand was ...

22 A. That was the ...

23 Q. ... trying to force anyone into an institution?

24 A. Well, they do. That's what happens. Maurina
25 ... if we didn't provide the care in the Band and if he

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 wasn't receiving that care, they said it would become a
2 child welfare situation.

3 Q. Who said that?

4 A. In the case conference?

5 Q. Was it Mr. Lees? Mr. Lees from the Province?

6 A. And Barbara Robinson as well. They both said
7 that at the case conference that it becomes a child
8 welfare case and, in fact, it's actually in some of their
9 e-mails that we were sent as well.

10 Q. I think, and you'd agree with me, Ms. Beadle
11 and her ... and her other son have indicated that they
12 don't wish to put Jeremy in an institution, right?

13 A. Right.

14 Q. And I think ... my understanding is and correct
15 me if I'm wrong, the Province at these ... I think the
16 meeting in April if not sooner, had, in assessing
17 Jeremy's needs, had indicated that he qualifies ...

18 A. Uh huh.

19 Q. ... his level of care needs is such that he
20 would be an eligible recipient of long-term care ...

21 A. Yeah.

22 Q. ... in a facility?

23 A. He could qualify if that was a route that a
24 parent wanted to go in.

25 Q. Yes.

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** Uh huh.

2 **Q.** And this ... and Ms. Beadle has said, I think
3 she used the words today if I'm correct "over her dead
4 body"?

5 **A.** Yeah, exactly.

6 **Q.** And ...

7 **A.** Which it would be if we cut off the funding.

8 **Q.** Okay. And when you say cut off the funding,
9 that's the funding that the Band provides?

10 **A.** Right.

11 **Q.** The Band made the decision to do that, you'd
12 agree with me?

13 **A.** The Band made the decision to make sure that
14 they got the care that they needed because we couldn't
15 access care anywhere else. And meanwhile, we made the
16 decision to go towards the Jordan's Principle and try and
17 find out who cares for children with disabilities on
18 reserve where there is no funding for children with
19 disabilities, where they don't fit into any of the
20 current programs that have funding and where the funding
21 is inadequate for the programs that we do have to cover
22 the services that we already have without having a
23 situation which falls beyond what we normally do.

24 **Q.** So you would agree with me that both the
25 Province and the federal government officials have

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 advised you, they have determined that the ... the
2 current level of services the band is providing to Jeremy
3 and his mother exceed the normative standard of care
4 under ... under the applicable provincial program for off
5 reserve that would apply to an off reserve child?

6 **A.** That was told us in the case conference, yes.

7 **Q.** And that was told to you by representatives
8 from the federal and provincial government?

9 **A.** Right.

10 **Q.** Okay.

11 **A.** But in their own policies it actually has
12 allowances for being able to access above that normative
13 level of care that they're saying is the cut-off ...

14 **Q.** The exceptional circumstances.

15 **A.** ... and they would meet every single one of
16 those. So if they lived off reserve, they would have
17 access to care beyond what we were told was the normative
18 level of care as if the normative level of care was the
19 only, you know, is what everybody gets and that's not
20 true. Normative level of care also involves what could
21 actually happen if you lived and had access to the things
22 that were provided for in that policy. Then they would
23 fall under the exceptional and extraordinary
24 circumstances and could have it extended either for a
25 short-term or a long-term rate above their \$2200 cut-off

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 that we ... and when I mentioned that, then we were told
2 that because he's on reserve, that he doesn't have access
3 to appeal and he doesn't have access to any extraordinary
4 or exceptional services. That all we get are the
5 assisted living and the home and community care and that
6 he doesn't actually fall into either. Assisted living is
7 for adults and ... that can live with assisted living so
8 they can become independent. Jeremy's not going to
9 become independent.

10 **Q.** Is it ... are you saying it's your
11 understanding that Jeremy is not eligible to receive
12 funding (inaudible due to speaking over each other)?

13 **A.** Not under the way that it's written. Barbara
14 Robinson told us that we could use it for that but it was
15 up to our discretion. But we need to use that for the
16 people that also live in our community that that funding
17 is provided for caring and so his needs go beyond the
18 type of program that is available and it is available off
19 reserve but it's not on reserve. There is no funding for
20 children with disabilities.

21 **Q.** So, in effect, you've created a new level of
22 service, a new type of benefit that Jeremy and Jeremy's
23 specific needs?

24 **A.** No, we have asked for his needs to be cared for
25 in the way that they would any other child that lives in

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 Nova Scotia. That they would have access to the kind of
2 care that they need and he doesn't get that access.
3 We're told to sink or swim. It's our decision to support
4 him or not and that's wrong.

5 Q. But I understood you just saying that,
6 according to your understanding, he would not qualify for
7 assisted living as you understand the program?

8 A. But we were told to use our assisted living
9 money to care for him so ...

10 Q. Yeah, but there's ... I guess we're getting
11 back to and it was covered yesterday, you weren't here.
12 The funding arrangement between INAC, what was then INAC,
13 Aboriginal Affairs and Pictou Landing First Nations, it's
14 a block funding agreement.

15 A. Right.

16 Q. And are you familiar with that?

17 A. Yeah, uh huh.

18 Q. There's some flexibility in that and that there
19 is money that goes to different ...

20 A. If there is enough funding there would be, yes.

21 Q. I'm sorry?

22 A. If there was enough funding to actually be able
23 to cover the needs of the community for those types of
24 programs.

25 Q. Well, if ... if the community has a surplus in

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 one area, it can ...

2 **A.** Right.

3 **Q.** ... for actual eligible expenses, use that
4 surplus to apply to an area that's in deficit, is that
5 not correct?

6 **A.** Yeah, they can.

7 **Q.** They can?

8 **A.** Uh huh.

9 **Q.** You'd agree with me?

10 **A.** But you'd need to have a surplus first.

11 **Q.** And the other alternative, of course, is that
12 the Band, if it feels that it's not receiving the
13 adequate level of service, it can ask to have the entire
14 agreement be re-based as I understand it?

15 **A.** Right. Moved into a set agreement to have it
16 looked at and at that point then it would open up every
17 single program and it would have to be reported on in a
18 different reporting format, I believe, monthly reports
19 for all of the things like social assistance and it would
20 completely alter all of the social programs in order to
21 be able to do that for the one program. It's not ... I
22 don't know of any other band that would decide to go from
23 block to set funding in order to cover one family's
24 expenses.

25 **Q.** And again, and correct me if I'm wrong, but my

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 understanding is that to ... that one ... one wishes to
2 re-base the formula, what essentially you're meaning ...

3 **A.** I've never heard of that term "re-basing the
4 formula" so I'm not sure what it means.

5 **Q.** All right. But in any event, you'd agree with
6 me that the Band, to your knowledge, hasn't ... they have
7 decided not to pursue that option with the federal
8 government?

9 **A.** Uh huh.

10 **Q.** They don't wish to re-open the agreement at
11 this time?

12 **A.** Not to move it into a set agreement in order
13 to ...

14 **Q.** When you say move into a set agreement, do you
15 know for a fact that that is the only option?

16 **A.** That's what Barbara Robinson told us at the
17 case conference.

18 **Q.** Can you tell me ... Do you have your notes
19 still? Can you tell me where that is in your notes?

20 **A.** I don't know if I wrote that down. It was in a
21 heated debate with her over the telephone and I kept
22 notes as far as what I could.

23 **Q.** A lot of things that aren't in your notes or in
24 your affidavit so I just want to be ... I just want to
25 try and get it ...

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** I was chairing meetings and debating things and
2 writing as I could so.

3 **Q.** Fair enough. But this is ... I mean, this is
4 very important not only for Ms. Beadle and her son but
5 for your community, is that not right?

6 **A.** Yeah.

7 **Q.** It would be important to keep accurate records
8 and notes, correct?

9 **MR. CHAMP:** Ms. ... I'd just like to make a comment
10 on the record in the nature of an objection. I think in
11 fairness to your cross, Mr. Tarlton, you might not want
12 Ms. Pictou to hear it. Are you okay with Ms. Pictou
13 exiting the room for a moment so I can make an objection
14 in her absence?

15 **MR. TARLTON:** Sure.

16 **MR. CHAMP:** So you can just take that.

17 **A.** Okay.

18 **WITNESS EXITS**

19 **MR. CHAMP:** I'd just like to make an objection on the
20 record with respect to your last line of questioning with
21 respect to the nature of the agreements.

22 My ... my particular difficulty is I believe you're
23 trying to put to Ms. Pictou propositions that are
24 directly contrary to the evidence that Ms. Robinson
25 provided yesterday. It's my recollection that Ms.

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 Robinson testified yesterday that if there was to be a
2 re-opening of the agreement they could only go to a set
3 agreement. That is precisely what Ms. Pictou is saying.
4 They don't ... that's what Ms. Robinson's testimony was.
5 It wasn't you couldn't go into another block funding
6 agreement. You couldn't open it up and continue with a
7 block funding agreement that's re-based. You go to
8 what's called the set agreement where the ... each
9 envelope or silo of programming gets set amounts from the
10 government and you have to report it monthly. That was
11 my understanding of what her testimony was. That's what
12 Ms. Pictou is saying now and I have difficulty with your
13 line of questioning because it seems that you're putting
14 to her a different proposition.

15 **MR. TARLTON:** Thank you. I'll ... I'll review my
16 notes just before she comes in and if that's ... if that
17 indeed's the case, I'll clarify that.

18 **MR. CHAMP:** But if you want, we can break and you can
19 call Ms. Robinson but that's my understanding of what her
20 testimony was...

21 **MR. TARLTON:** No, I ...

22 **MR. CHAMP:** ... because I examined her on that and
23 that was my understanding also from my witness so that's
24 why I examined Ms. Robinson on that point. Basically my
25 understanding of the situation is is that if the Band

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 asks ... they can't ask to have it reopened for another
2 block funding agreement to have it all re-based. If you
3 open it up, you have to move to this set agreement model.
4 You can't reopen it and have a block funding agreement
5 re-based so if they want to stick with the block funding
6 agreement, they have to stick with these bases that were
7 set in the mid or early '90's. That's my understanding
8 of her testimony.

9 **MR. TARLTON**: All right. Thank you. No, I'll take
10 that ... maybe we can take about five minutes.

11 **OFF RECORD (2:28 p.m.)**

12 **ON RECORD (2:45 p.m.)**

13 **WITNESS RETURNS**

14 **MR. TARLTON**: We broke and I ... after discussions
15 with my friend off ... in your absence, what I propose
16 ... I've reviewed my notes. I'm not sure we can fully
17 resolve it but I just intend to ask I think one more
18 question. It will be premised on Ms. Pictou's
19 understanding ...

20 **MR. CHAMP**: What her understanding was, that's fine.

21 **MR. TARLTON**: And then upon further review, if I feel
22 the need to ask further questions we can work that out.

23 **MR. CHAMP**: Sure.

24 **MR. TARLTON**: But hopefully this will ...

25 **MR. CHAMP**: At the end of the day, her understanding

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 is her understanding ...

2 **MR. TARLTON**: Yes.

3 **MR. CHAMP**: ... because she's not involved in the
4 negotiations.

5 **MR. TARLTON**: Thank you. I appreciate you bringing
6 it to my attention.

7 Again, Ms. Pictou, I had asked you just before the
8 break some questions about the re-basing. It's your
9 understanding that if, using the terminology I understand
10 came from Ms. Robinson yesterday, the Band council can
11 request the current agreement to be essentially re-based
12 or re-done. You understand that that would be to a set
13 ... what you referred to as a set agreement?

14 **A.** She talked about it as being a set agreement.
15 I don't know ... I never heard the term re-base so ...

16 **Q.** You never heard it before?

17 **A.** (Inaudible due to speaking over each other).

18 **Q.** And that's fine. Did you understand and if you
19 don't, that's fine, from your discussion ... from her
20 discussions that if the ... the new agreement or the new
21 set agreement would be based on the actual needs in the
22 specific program?

23 **A.** No. She didn't say.

24 **Q.** She didn't say that to you?

25 **A.** No, she said it ... that we could, you know,

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 open up the whole agreement and look at this set and you
2 know, if it was to provide funding for ... she didn't
3 even ... she didn't really go in there.

4 Q. That's fine.

5 A. It wasn't something that I could have done on
6 my own anyway without the Band, you know. That would be
7 between the Band ...

8 Q. That would be a decision of the Band council?

9 A. Uh huh.

10 Q. Right. And there has been no such decision to
11 your knowledge?

12 A. No.

13 Q. And that's fine. I'll move on now.

14 A. (Inaudible due to voice trailing off).

15 Q. But just one other matter and it doesn't relate
16 to this but when you ... when I asked you a question a
17 few minutes earlier, you had indicated that the ... the
18 personal attendants that you were ... that you were
19 employing for Maurina and her son ...

20 A. Right.

21 Q. ... they weren't being funded through the
22 assisted living program until Ms. Robinson mentioned it
23 to you?

24 A. They ... well, (a), the funding is almost ...
25 almost ... for assisted living we spend at least twice as

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 much as what we're given every year meeting the needs of
2 people on assisted living so beyond the \$57,000, it's
3 coming out of other places regardless.

4 **Q.** What are those other places?

5 **A.** What do you mean?

6 **Q.** Where's the money coming from?

7 **A.** Well, I don't control the assisted living
8 program and I don't control the social budget so I don't
9 know where they take the money from. I just know that
10 they're okay with taking the money from somewhere else to
11 cover the expenses.

12 **Q.** When you say "they're okay", is this the ...

13 **A.** The Band council.

14 **Q.** The Band council. And I do that because in
15 paragraph 15, going back ...

16 **A.** And I guess the social director is part of that
17 and the Band manager.

18 **Q.** Right. Just let me finish my question.

19 **A.** Sorry, I was finishing my answer.

20 **Q.** All right. You indicated that when Maurina
21 returned from hospital in May, you had arranged for the
22 assessment and then based on that assessment, you ...
23 from June to October, the Health Center, which is your
24 responsibility, correct?

25 **A.** Yeah.

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **Q.** Funded ...

2 **A.** No, we provided the care.

3 **Q.** Well, it says in your affidavit and I'll direct
4 you to ... to paragraph 15, page six. It's the ... the
5 second full sentence, the third line down.

6 **A.** Okay.

7 **Q.** From June to October 2010 the Health Center
8 funded around-the-clock care for the family.

9 **A.** Okay.

10 **Q.** That's what you said.

11 **A.** By the Health Center funding it, I probably
12 should have worded that in that the Health Center's funds
13 are part of the Band funds, is one big pot of money. I
14 can recommend expenses and I recommended that we fund for
15 the care that he would get but I don't make the final
16 decision for funding it but the Health Center is part of
17 ... I'm not the Health Center. The Health Center belongs
18 to the Band and is part of our whole infrastructure.

19 **Q.** But you're ...

20 **A.** And we all have, you know, it's a ... it's a
21 term of showing that the ... it was funded through the
22 Health Center, the decision, and it goes through health
23 programs, et cetera, et cetera but it doesn't necessarily
24 mean that it was or wasn't ... we don't run the programs
25 on the ground as being separate programs and that's what

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 I've been trying to explain. I don't ...

2 Q. You're the director though ...

3 A. Right.

4 Q. ... you're responsible for ...

5 A. Recommending.

6 Q. Sorry, we'll go off for a minute.

7 **OFF RECORD (2:52 p.m.)**

8 **ON RECORD (2:53 p.m.)**

9 Q. Sorry, we'll go back on the record. Just so
10 I'm clear ...

11 A. Uh huh.

12 Q. ... if I understand what you're saying, you're
13 the director responsible for administering the programs
14 and activities that fall under your mandate as the Health
15 Director?

16 A. Yeah, uh huh.

17 Q. But the decision as to funding the ...
18 providing the funding to provide for this around-the-
19 clock care, that came ultimately through the chief and
20 council, is that right?

21 A. Uh huh.

22 Q. Okay. But you were aware of it, you agree
23 with ...

24 A. Yeah, I recommended it.

25 Q. You recommended it, okay. It wasn't written

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 ... the sentence after that then goes on to say, "During
2 the week personal care attendants (and then this is the)
3 hired by the center through the assisted living program
4 provided the care."

5 **A.** Okay.

6 **Q.** Okay. So if I understood this to mean, correct
7 me if I'm wrong, you were using or someone had determined
8 to use the assisted living program funding to provide
9 these personal care attendants that began to work on
10 behalf of the Beadles from June to October?

11 **A.** Yeah, but probably that sentence would have
12 been better expressed because we run the programs as one
13 program. If you're looking at it from a funding
14 perspective as opposed to the way it is on the ground,
15 this is referring to the total managing of our assisted
16 living program that includes home care workers, it
17 includes VON, it includes the Pictou County Home Health
18 Care workers, it includes providing Life Line, all of
19 these pieces that are part of the program get lumped into
20 the assisted living program when in actuality, if you
21 were looking at the funding, it would be the assisted
22 living programs and the home care programs and then
23 there's (inaudible) pieces.

24 **Q.** The money all comes to you from different
25 departments of the federal government.

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** Right.

2 **Q.** Through the Band council and, I guess ...

3 **A.** Well, actually it stays at the Band council and
4 I can recommend we spend money on it. I don't personally
5 have access ...

6 **Q.** But as you say, it's ultimately one big pool of
7 money?

8 **A.** Right.

9 **Q.** There's no separate accounts that say assisted
10 living, home care?

11 **A.** No, there's just separate reports.

12 **Q.** There are separate reports.

13 **A.** When we run those two programs as one program
14 because we've amalgamated it from the point of view we
15 have the same workers that provide different things and
16 if we need to have more comprehensive types of care, we
17 have to hire VON for instance to provide care for things
18 like wound care, for acute care, for palliative care, all
19 of those things that also fall under the program that we
20 don't have the capacity to provide. So it's our assisted
21 living program that has several pots of money that apply
22 to it. So the funding and the name of the program aren't
23 necessarily synonymous with ... just because we say that
24 is the assisted living program that it's being funded
25 through ... (inaudible).

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **Q.** But your affidavit says, and I don't mean to be
2 a stickler on this point, but I just want to make sure I
3 understand it correctly. This is an affidavit that you
4 reviewed and signed and swore to as the truth.

5 **A.** Yeah.

6 **Q.** You say personal care attendants hired by the
7 Center through the assisted living program provided the
8 care from June to October 2010.

9 **A.** And they did.

10 **Q.** Okay.

11 **A.** And I'm not arguing with that, I'm just saying
12 that you're over-interpreting what assisted living
13 program means to me and what it means to you is
14 different.

15 **Q.** Well, the assisted living program, I think you
16 reference it in again as an exhibit to your affidavit,
17 okay.

18 **A.** That's fine.

19 **Q.** You've reviewed that program, you understand
20 what's in it?

21 **A.** Yeah.

22 **Q.** You agree that's ... that's your understanding
23 of what type of programs ... services are offered through
24 it?

25 **A.** Right.

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **Q.** And you ... you used, just according to your
2 affidavit, the Health Center used money from that program
3 to pay for the Beadles personal care attendants.

4 **A.** We used money from our ... from whatever
5 program I ... that's what I'm trying to say is the money
6 comes in. It's more than what we get paid by either
7 department and so whether or not the dollar that goes to
8 one person comes from one program or the dollar that
9 comes from, you know, to another person comes from that
10 program is irrelevant because it's the services that we
11 report on and the dollars up to the amount of funding
12 that we get and beyond that, it comes out of however we
13 can manage to fund over and above what it costs to
14 provide the care for the people from the community.

15 **Q.** Okay. Let's go to paragraph 16(a) which is
16 just below that. You say from ... and again I think this
17 is getting back to the care provision. "From Monday to
18 Friday a home care worker is present in the home from
19 8:30 a.m. to 11:30 p.m. This time is divided into two
20 shifts done by home care workers who earn \$10 per hour."

21 **A.** Right.

22 **Q.** "These services are funded primarily through
23 the assisted living program."

24 **A.** Uh huh.

25 **Q.** Then do you agree with what ... what's there?

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** Uh huh.

2 **Q.** Okay. And then you go on in (b) to say:
3 "During the weekend, home care workers employed by the
4 Pictou County Home Health Care Cooperative provide
5 around-the-clock care to Jeremy."

6 **A.** Right.

7 **Q.** The Center pays \$18 per hour for those services
8 through the HHC program which I take is the ...

9 **A.** It must be HCC.

10 **Q.** HCC so we're ... the program described in Ms.
11 Ross' affidavit?

12 **A.** Uh huh.

13 **Q.** Okay. Because again, I understood your earlier
14 testimony was that you weren't using money from assisted
15 living to fund the personal care workers until after Ms.
16 Robinson told you about that, I take it, around ...
17 sometime in early 2011. So that's ... my understanding
18 is incorrect?

19 **A.** I'm not sure what you're saying to tell you the
20 truth.

21 **Q.** I was ...

22 **A.** I feel like we're going in circles here.

23 **Q.** I wasn't sure what you were saying because I
24 had understood you earlier saying that money to pay for
25 these personal care workers didn't come from assisted

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 living until Barbara Robinson told you to use it.

2 **A.** No. I said that we didn't feel he was
3 qualified for the assisted living program but that we
4 provided the funding through those programs or the
5 funding of workers through those programs. The funding
6 synonymously because we employed people to do the work
7 but that we didn't feel that he fitted into either of
8 those program and I still don't feel he fits into either
9 of those programs but she said that we could use the
10 funds for that up to \$2200 a month in total, depending on
11 whatever amount of home care or assisted living or
12 percentage we want to break it up with but after \$2200,
13 it would be going beyond what we would be able to use
14 assisted living and home care funds for but that's all
15 kind of besides the point because it costs us way more
16 than what we get to run the programs anyway so the funds
17 actually come from lots of other places which I really
18 don't know how they figure it out because that's beyond
19 my program. If I give you \$10 to spend on something and
20 you end up having to spend \$20 on it and I ask you how my
21 \$10 was spent, then you don't need to tell ... it's
22 irrelevant about what happens with the other \$10 that you
23 ... that it cost you because that was something else that
24 you put into it and that's, I guess, what I'm trying to
25 explain. That both those programs are so underfunded

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1 that, you know, it's irrelevant how we fund ... how it
2 funds. It's not ... and that program-wise, he doesn't
3 fit under the intent of either program that I can
4 understand and there is no funding for children with
5 disabilities on reserve so there is no program that we
6 have access to that would pay for his care in an ordinary
7 situation which is why we've been trying to find out who
8 can.

9 Q. The other ... thank you. We'll leave the
10 assisted living program aside for the moment. I want to
11 return briefly, if I can, to the provincial programs. We
12 talked a little bit about the community service, the
13 direct family support and you've referred ... we had some
14 discussion about that before our break. I just want to
15 briefly go to, if I can, this is Exhibit H I think to
16 your affidavit, it's found in volume 2. It's the ...
17 it's the Nova Scotia Department of Health and Wellness,
18 the home care policy manual. And I take it this was ...
19 this policy was something you were interested in
20 obviously with respect to Maurina and Jeremy?

21 A. This is the newest copy of it.

22 Q. Yes. And ... and I note that. It's dated June
23 of 2011 ...

24 A. 2011.

25 Q. ... which is technically beyond the date of the

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1 decision.

2 **A.** It just came out.

3 **Q.** But have you ... did you ... did you have an
4 opportunity to review the old policy, the 1997 one, that
5 it replaced? Is it ...

6 **A.** I don't remember.

7 **Q.** Okay. So you don't know if there's any
8 differences between what's in this and what's in the
9 other?

10 **A.** I haven't put the two side by side and compared
11 them, no.

12 **Q.** There was some discussion and ... about home
13 care service that's offered by the ... and this is by ...
14 this is by Health and Wellness.

15 **A.** Okay.

16 **Q.** Okay. And I ... I believe there was some
17 discussion about ... about the home care services and
18 what are the monthly maximum limits that are established.
19 And do you know what they are?

20 **A.** Off the top of my head without reading this
21 right this minute? No.

22 **Q.** Okay. I can help you out in that regard. If
23 you turn to page 64 which Section 13.

24 **A.** And these are the ones that they have changed I
25 do believe.

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1 Q. These are the new ones.

2 A. Right.

3 Q. I guess this is ... this is what is now
4 effective June and I think ... and there may be ... there
5 may be some differences between what was in place. I
6 think in Ms. Robinson's testimony I think we heard a
7 slightly different amount but ...

8 **MR. CHAMP:** It was almost the same.

9 Q. It's almost the same.

10 **MR. CHAMP:** I thinks it's like ten off.

11 Q. I think ... I think for the purposes of what's
12 involved here I don't think it's significant. Just
13 looking down here, if you look at number 2 of the policy,
14 it says that the maximum amount of home support hours per
15 28 day service plan which may be authorized is 100.

16 A. Uh huh.

17 Q. Right. So approximate ... and again I'm ...
18 it's a good thing I went into law instead of math but if
19 I do ... I do a very, you know, off the top of my head
20 calculation, you're providing ... sorry, I should go ...
21 I should first state. I understand home support is ...
22 and it's defined in Section 10 which is at page 52 but
23 it's talking about things like meal preparation, personal
24 care, respite.

25 A. Assisted living type (inaudible due to voice

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1 trailing off).

2 Q. Yeah, I think it's more in the nature whereas,
3 and we'll get to it in a minute, home nursing visits are
4 those who ... are those visits which would involve a
5 practicing registered nurse or a licensed practical
6 nurse?

7 A. But it also has, in extraordinary
8 circumstances, when clients only require home support
9 services, the monthly maximum home support services ...
10 service limits may be waived but the maximum amount of
11 home support hours should not exceed 150 (inaudible due
12 to voice trailing off).

13 Q. And that's in a 20 ... that's a 28-day monthly
14 plan. Your ... your plan is current ...

15 A. What does that sentence even mean?

16 Q. I ...

17 A. Home support service limits. Maximum monthly
18 service limits. Maximum home nursing and support hours.

19 Q. Here's what I understand it to mean and you can
20 tell me, Ms. Pictou, if you agree or disagree. This
21 policy sets out the maximum home support hours, that's as
22 you say, more likely assisted living concepts, social
23 needs such as housekeeping, laundry, bathing, respite and
24 it also talks about home nursing visits which would
25 require a licensed nurse or nurse practitioner. Under

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1 the policy that's in effect as of June of this year, you
2 can, in a 28-day service plan, not quite a month but 28
3 days, four weeks, you can get 100 hours maximum, home
4 support hours and 60 home nursing visits, 60 hours in
5 total. Then if you go down to five it says that: "In
6 extraordinary circumstances, wherein clients only require
7 home support services, the monthly maximum home support
8 services may be waived but the maximum amount of home
9 support hours should not exceed 150 hours." So I take
10 it ...

11 **A.** I don't understand what the difference between
12 support service limits and hours is.

13 **Q.** The difference is, if I understand and this is
14 obviously something to do more with the Province, for the
15 Department of Health and Wellness, they calculate these
16 limits or ... or the normative standard in terms of hours
17 whereas a family ... the direct family support does it in
18 terms of a monetary amount, the \$2200. So here we're
19 talking ... here we're talking about hours so what I
20 think it's saying is you could, according to the policy
21 of the Province of Nova Scotia, you could, if you
22 qualified under this ... under this policy, in a 28-day
23 period, you could get up to 100 hours of home support
24 service and 60 hours of home nursing visits. And ... but
25 if you wanted to essentially dispense with the home

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1 nursing visits' requirement, you could get 150 hours of
2 home support. Is that what you understand?

3 **A.** I don't understand it at all to tell you the
4 truth and I'm not employed by the Province and I just got
5 ... part of this whole exercise has been trying to find
6 out what exactly what we do qualify for and what they do
7 provide and what they provide on reserve. I really can't
8 interpret what they mean by their policies because I've
9 never been able to make head or tail of them.

10 **Q.** Ms. Pictou, this is ... this goes right to the
11 heart of this case.

12 **A.** Right.

13 **Q.** I mean, this is about the service limits that
14 the Province ... this is the normative standard of care
15 here. It's talking about 150 hours of ... under
16 extraordinary services for home support service.

17 **A.** Well, one thing is this is a brand new policy
18 and I have ... I'm not sure what the differences are
19 between this policy and what they were.

20 **Q.** Okay. Why did you put it in as an exhibit to
21 your affidavit if it's brand new and you don't
22 understand?

23 **A.** Because it ... we were ... because it's part of
24 the case that is part of ... speaking to the provincial
25 services but I'm not saying that I'm an expert on

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 interpreting provincial policies because I have never had
2 to.

3 **Q.** Okay.

4 **A.** And that's why we're trying to find out, okay,
5 what ... what can we be offered through this? What does
6 Jeremy qualify for? And in all of these things, he
7 doesn't actually qualify for the home care services from
8 the Province because they've said he doesn't.

9 **Q.** And would you agree with me, the personal care
10 attendants that are ... that since October of ... sorry,
11 not October, excuse me. Since, I guess, the end of May/
12 beginning of June of 2010 and to present, are those
13 individuals, to your knowledge, are they providing
14 services in the nature of what we would describe as more
15 social under the assisted living program or are they more
16 in terms of health under the ... like is there ...

17 **A.** It doesn't really fit either.

18 **Q.** It doesn't?

19 **A.** No. And under this definition of assisted
20 living:

21 It's a living arrangement which is
22 characterized by the following
23 elements. Individuals are able to
24 direct their own care and reside in
25 separate, self-contained units to

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1 which they control access and some or
2 all of the individual's needs related
3 to activities of daily living are met
4 through the services provided as an
5 integral part of the person's living
6 arrangement.

7 He doesn't fit that. He can't live on his own. He
8 doesn't fit under this program. So that's why I'm saying
9 that it should go through the direct family support
10 program and that's why assisted living doesn't cover his
11 needs because he can't be independent.

12 **Q.** He can't be independent and he never will be
13 able to ...

14 **A.** Right.

15 **Q.** ... to be fully independent?

16 **A.** Exactly. So he doesn't fit under assisted
17 living.

18 **Q.** And he'll need ongoing medical and nursing
19 services, you know, with respect to, you know, seeing the
20 doctor for his shunt or any other conditions that arise.
21 He has obviously a number of serious congenital or
22 permanent conditions that they're, you know, the
23 prospects for any reversal are ... are, at least at this
24 point in time not present, would you agree with me? He's
25 never going to be able to fully function on his own?

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1 **A.** Right. That's been our whole argument and
2 everything in that he needs to have care put in place and
3 the appropriate care that meets his needs would be to be
4 able to provide him to be able to stay in the community
5 and have the services that he requires to do that to
6 support his mother to take care of him. He doesn't fit
7 under assisted living. It doesn't match the intent of
8 the program and there are no programs that provide the
9 kind of services for children with disabilities in First
10 Nations communities to allow them to remain at home in
11 spite of the intent of all of these things which is to
12 provide support for keeping families intact and I think,
13 at some point and I would have to read through and find
14 out where it says, was it the intent of any programs off
15 reserve are to allow the family to remain intact for as,
16 you know, as long as necessary. Maurina wants her family
17 intact. That's why we're, you know, it's important and
18 it's important for us to have him in the community.

19 **Q.** But Maurina's indicated that, you know, that it
20 may be a long time, if ever, before she's fully
21 recovered.

22 **A.** She's recovering all the time and his needs
23 will also get less as he ... when ... as she recovers and
24 he's able to go to get back into school for longer hours.

25 **Q.** And you're making that ... is that your view or

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 is that the view of ... is that the view of the assessors
2 or the assessor report? I'm not ...

3 **A.** That's from our ongoing observations of her
4 recovering, my discussions with our nurse and with
5 Maurina and everybody that's been involved over the last
6 year. That Maurina is recovering and as Jeremy ... also
7 when he goes beyond ... when he gets to 21, there are
8 other adult services that we can also access. And we've
9 also explored other things such as developing a group
10 home in the community, for instance, which is also not
11 available on reserve. That could be an option if one is
12 to look off reserve to be able to have people that work
13 with a group of children or adults that have special
14 needs, that are staffed and provide economic viability to
15 the community and provide other ways of meeting his needs
16 and being able to keep him in the community and those
17 were actually discussed in our case conference as well of
18 really looking outside the box at how can we provide
19 services. And the intent of our case conferences was to
20 work in partnership with the government to try and
21 resolve putting Jeremy and Maurina's needs first and
22 finding out how can we access whatever is available to be
23 able to meet their needs.

24 **Q.** Are you able to tell me today, with any
25 assurance, when Maurina will no longer require personal

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 care attendant?

2 **A.** I can say that no more than I can say when you
3 will.

4 **Q.** Can you tell me today when, if ever, Jeremy
5 would no longer require a personal care attendant?

6 **A.** No, I don't think anybody's able to make that
7 type of ...

8 **Q.** So it's indefinite?

9 **A.** As it is for any of us. That at any point, any
10 one of us can require care and hopefully people will make
11 a fair decision when we do.

12 **Q.** I just want to return very briefly, we had some
13 discussion about your ... your submission, if I can call
14 it that, or your briefing note I think which is Exhibit K
15 of your affidavit.

16 **A.** Uh huh.

17 **Q.** I want to turn your attention to ... the page
18 numbers aren't marked so it's the second to last page of
19 the briefing notes. And I want to, if I can, take you to
20 the, I guess, towards the bottom of the page. There's a
21 second to last paragraph that begins, "According to
22 IMAC's income assistance program, the income assistance
23 program manual, there are three components to the
24 assisted living program." Do you see that?

25 **A.** Yeah.

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1 Q. And this is your ... you wrote this I take it?

2 A. Yeah, I did.

3 Q. And you ... you sent that, I believe, to the
4 ... to Barbara and to the other federal officials that
5 were involved in making the decision that's the subject
6 of this court proceeding?

7 A. Uh huh.

8 Q. Is that right?

9 A. Yeah.

10 Q. And you had input, I think, from others?

11 A. No, I wrote this.

12 Q. You didn't submit it to anyone for review from
13 your office, the tribal council?

14 A. Yeah, but not to write it.

15 Q. No, no, but you just ... you wanted to be sure
16 because you were trying to figure out what you wanted to
17 say?

18 A. Uh huh. I wanted to have everybody on the same
19 page and make sure that other people wanted to ...

20 Q. Okay. And again, just reading this, "According
21 to IMAC's income assistance program, there are three
22 components for the assisted living program." You go on
23 to say in-home care which provides homemaker services,
24 foster care which provides supervision and care in a
25 family setting and institutional care which provides

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1 services in type 1 and type 2 institutions.

2 **A.** Right.

3 **Q.** Okay. Leaving aside ... foster care isn't at
4 ... isn't an issue in this case I understand?

5 **A.** And we were told that we couldn't actually
6 access that.

7 **Q.** Had you ... had you ...

8 **A.** We raised that in the case conference as well.

9 **Q.** Okay. So you were ...

10 **A.** They didn't feel that we had the capability
11 because we would have to, you know, have training
12 facilities and regulations and it's similar to what I was
13 talking about, the group home.

14 **Q.** And then institutional care which was also, if
15 I can use the words off the table, given the family's
16 feelings?

17 **A.** And on top of that, it ... the definitions ...
18 we spent a long, long time trying to find out the
19 definitions between type 1 and type 2 institutions that
20 they refer to because the federal definition is different
21 than the provincial definitions and they actually have a
22 whole project trying to determine which ones match up
23 with which. So nobody at the table could talk the same
24 language about it because it all meant different things
25 so just to add in some further jurisdictional types

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1 of ...

2 **Q.** And then there's in-home care which provides
3 homemaker services which is essentially what it ... what
4 I think Jeremy and Maurina are receiving to some degree.
5 They're receiving home care or homemaker services, right?

6 **A.** Right.

7 **Q.** So ... so that is a component they're now ...

8 **A.** That's the action of (what its need?) rather
9 than the intention of it.

10 **Q.** And then you go on and you mention and I'm glad
11 you referred to the types because there are types or
12 categories of levels of care that are ... that are ... I
13 guess there are federal levels and you say there are
14 provincial levels, right?

15 **A.** Uh huh.

16 **Q.** Okay. And you go on here ...

17 **A.** No, there's the same ... there's different
18 definitions of the levels.

19 **Q.** Okay. But there is ... there is a type 1, type
20 2, type 3 and I think type 4 or 5?

21 **A.** Yeah.

22 **Q.** Okay. And you talk about here:

23 Type 1 is residential care for
24 individuals requiring only limited
25 supervision and assistance with daily

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1 living activities for short periods
2 of time each day. And type 2 is
3 extended care for individuals
4 requiring some personal care on a 24
5 hour basis under medical and nursing
6 supervision.

7 **A.** Right.

8 **Q.** Right?

9 **A.** Uh huh.

10 **Q.** "Individuals requiring more intensive levels of
11 medical care, types 3, 4 and 5 are considered the
12 responsibility of health authorities."

13 **A.** Right.

14 **Q.** And by health authorities, you would mean?

15 **A.** Well, I didn't write that. That's taken out of
16 the manual.

17 **Q.** Okay.

18 **A.** I'm quoting it.

19 **Q.** But you're putting this in because, I take it,
20 you think it's important to your submission about Jeremy?

21 **A.** Yeah, because we can never determine how to
22 access that and it's ...

23 **Q.** Fair enough.

24 **A.** ... it doesn't fit because type 2 is extended
25 care for individuals requiring some personal care on a

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 24-hour basis under medical and nursing supervision,
2 which he's not. He doesn't need to be under a nursing
3 supervision and he doesn't require more intensive levels
4 of medical care. And he doesn't require short periods of
5 time of care either so my point is that that program is
6 not a fit for what he needs. None of it actually refers
7 to the kind of support that he needs where he needs 24-
8 hour supervision. He doesn't need 24-hour home care and
9 he doesn't, you know, he doesn't need to have a nursing
10 professional supervise him. His needs aren't that type
11 of thing where's got to have lots of drugs administered
12 and things. He needs the care of a child with a
13 disability and there is no funding and no program that
14 pays for that or that he would fit under.

15 Q. Could you ... could you turn the page then,
16 please?

17 A. Yeah.

18 Q. And this is in your ... this is your writing
19 now?

20 A. Yeah.

21 Q. This is what you're saying?

22 A. Uh huh.

23 Q. It reads ... the first sentence says, "Jeremy
24 clearly is at least eligible for a type ..."

25 A. Uh huh.

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1 Q. ... and it says, I think it's type 2. It looks
2 like an eleven.

3 A. Yeah, "... type 2 or higher level of care."

4 Q. Okay. So you're saying he's at least type 2 if
5 not higher level?

6 A. Yeah, but not under this definition because
7 this definition requires nursing supervision and all of
8 that which he doesn't need and that's what I'm trying to
9 explain.

10 Q. Okay. Well, then let's ... that's good because
11 I think we need to ... I'd like to clarify what ...

12 A. Uh huh.

13 Q. ... exactly he needs. So that's helpful. I
14 think ... do you have a copy of Ms. Robinson's affidavit?
15 If you ... let's ... let's just ... I'll turn you briefly
16 to Ms. Robinson's affidavit and it's at ... go to page
17 ... paragraph 18 and paragraph 18, in fact, goes ...

18 A. It goes missing.

19 **MR. CHAMP:** What a sec here?

20 **MR. TARLTON:** Did you find it?

21 **MR. CHAMP:** We are missing that page.

22 **MR. TARLTON:** Oh, you're missing that page.

23 **MR. CHAMP:** Oh, hold on a sec, it's just out of
24 order.

25 **MR. TARLTON:** A bit out of order?

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1 **MR. CHAMP**: Yeah, I found it.

2 **A.** It's got all these subsections to it.

3 **Q.** So this is the federal classification system.
4 So ... and in your note you're referring to ... you're
5 referring to those ... the levels that are set out here,
6 am I right?

7 **A.** I never saw these as they were set out when I
8 was writing this.

9 **Q.** Okay.

10 **A.** It would have actually been helpful if they
11 supplied us with these because I think the Province would
12 have also been interested for people at the provincial
13 table to actually figure out what it was that we were
14 talking about because we went round and round.

15 **Q.** Some of them ... maybe not all but I think some
16 of them are referred in the assisted living manual which
17 is in your exhibit. But never mind, it's not ... let's
18 go down to type 2 care. So it talks about care that's
19 ... required by a person with a
20 relatively stabilized physical or
21 mental chronic disease or functional
22 disability who, having reached the
23 apparent limit of his recovery, is
24 not likely to change in the near
25 future where there is relatively

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1 little need for diagnostic or
2 therapeutic services of a hospital
3 but who requires the availability of
4 personal care on a continuing 24-hour
5 basis with medical and professional
6 nursing supervision and provision for
7 meeting psycho-social needs. The
8 period of time during which care is
9 required is unpredictable but usually
10 consists of a matter of months or
11 years.

12 Does that ... is that your understanding of what
13 type 2 care is?

14 **A.** I ...

15 **Q.** That you were talking about it in your ... in
16 your briefing notes or is it something different?

17 **A.** I'm trying to remember back to when I was
18 writing this about whether I had any of this information.
19 I don't remember seeing this particular breakdown of it
20 in so much detail before but that's not to say I didn't
21 because I have like a ton of different things going
22 around and I was trying to sort it all out and we were
23 totally confused by all the different definitions as
24 described in the case conference when we were ...

25 **Q.** Here let me ... while you ... let me try and

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1 come at this in maybe a different way. Maybe this will
2 be of assistance. Would you agree ... first of all, can
3 we agree that Jeremy is a person who is chronically ill?
4 He has functional disabilities, physical ones?

5 **A.** I wouldn't say he's ill. He has numerous
6 disabilities but he's healthy for the most part.

7 **Q.** And we've heard them described both in your
8 affidavit and from Ms. Beadle so I don't propose to
9 repeat them but you'd agree with me he has a number of
10 functional physical disabilities?

11 **A.** Uh huh.

12 **Q.** Correct?

13 **A.** Yeah.

14 **Q.** Okay. And the ... the ... I guess the acute
15 phase, which I understand the active phase of any illness
16 he had is over so he's stable now, right?

17 **A.** Yeah.

18 **Q.** His potential for rehabilitation in terms of
19 some of ... in terms of rehabilitating some of his
20 conditions are fairly limited, would you agree with me?

21 **A.** As in, you mean, never having a disability?

22 **Q.** Yes, I mean ...

23 **A.** He will never not have a disability, yes.

24 **Q.** Okay. He'll ... and he's someone who over the
25 course of his life and hopefully it is a long one, he's

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1 going to need some ... some services help. I think in
2 your notes you mentioned you had consulted with
3 occupational physical therapists. Ms. Beadle, in her
4 evidence, had indicated she received some training I
5 think from IWK about how to help Jeremy and she's done
6 that, I mean, with that through those professionals.

7 **A.** Right.

8 **Q.** Would you agree that Jeremy may continue to
9 need those over the course of his life?

10 **A.** Yes, he does.

11 **Q.** Especially as he gets bigger and hopefully has
12 as full a life as he can.

13 **A.** Uh huh.

14 **Q.** Okay. He'll need some ... some medical
15 supervision management. He'll need to at least see the
16 doctor every three to six months, check out the shunt, a
17 few other things like that?

18 **A.** Yeah.

19 **Q.** Would you agree with me there?

20 **A.** Uh huh.

21 **Q.** Okay. And ...

22 **A.** I think we all need medical supervision to some
23 degree.

24 **Q.** Yes, but we're not all assessed as having no
25 ability to perform the actions of daily living and I ...

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** No.

2 **Q.** ... you'd agree with me that all the
3 assessments confirm he's not able to do the activities of
4 daily living such as bathing, cooking meals, et cetera.

5 **A.** Yeah, uh huh.

6 **Q.** So that's a little different from us but would
7 you also agree with me that he may need, over the time,
8 some ... occasionally some further other health
9 professionals such as nursing or others to assist him as
10 things arise?

11 **A.** Well, I don't know what he'll need over time, I
12 guess. All I can ...

13 **Q.** Okay.

14 **A.** ... deal with is what he actually needs now
15 which is what we've been trying to determine.

16 **Q.** Sure. And he'll also need help and his
17 mother's been, from the evidence we've heard both in her
18 affidavit and today, I mean she's been tremendous at
19 working with him. He has autism but to communicate with
20 him and to develop a relationship and that with him and
21 other caregivers, that's something that's going to need
22 to be addressed from time to time over ... over ... over
23 the course of his life, would you agree?

24 **A.** Yes ...

25 **Q.** Sorry.

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1 **A.** That was ...

2 **Q.** No, you're right.

3 **A.** I don't know what you were saying.

4 **Q.** The ... his ... for example, Ms. Beadle
5 described situations where sometimes he could get upset,
6 perhaps if he wasn't used to a caregiver or a new
7 situation, I think sometimes when he's at ... when he's
8 at school. Because of his autism he acts out or shows
9 his frustration or his discontent ...

10 **A.** He hurts himself.

11 **Q.** ... in other fashions. He can sometimes hurt
12 himself or just become very vocal. He may need
13 assistance to help deal with that?

14 **A.** He needs his mother in those situations is how
15 ... is what he responds best to.

16 **Q.** He responds best to his mother. I understood
17 from her evidence, and you weren't here so you can agree,
18 some of the care workers who have developed a
19 relationship with him over the time seem to be able to
20 deal with that or at least he doesn't act out towards
21 them the way he does with others he may be unfamiliar
22 with or uncomfortable with, is that true?

23 **A.** I wouldn't call what he does acting out
24 exactly. What he does is when he's frustrated is that he
25 hits himself and bangs his head and that thing as a

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 frustration of trying to communicate.

2 Q. Okay. And that's because of his autism, right?

3 A. Right.

4 Q. Socially when, you know, when we who aren't
5 autistic are frustrated, we don't usually show our
6 frustration in that way but because of his autism, that's
7 how he ...

8 A. Yeah.

9 Q. ... shows his frustration, right?

10 A. Uh huh.

11 Q. Okay. And it's, as you pointed out, it's
12 impossible or difficult to predict how long his care
13 needs are but they ... it ... would you agree with
14 me ...

15 A. I didn't say that. I said it's impossible to
16 predict what types of care needs he'll need in the future
17 but right now, we're trying to determine what it is ...
18 how to meet the needs that he has right now that Maurina
19 is unable to meet.

20 Q. And would ... and would you agree with me that
21 once you're able to determine those care needs, given his
22 situation and what appears to be his future prospects,
23 the period of time that whatever that level of care
24 ultimately is, it's ... it's difficult, if not
25 impossible, to predict? It could be a few months, it

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 could be several years, it could change, would you agree
2 with me there?

3 **A.** It ... I'm sorry, I lost track of ...

4 **Q.** The level of care. Once you ...

5 **A.** The level of care, right.

6 **Q.** Yeah, once you figure out what he needs.

7 **A.** Right.

8 **Q.** Okay. Given his ... given all of his physical,
9 his social, you know, all ... all the things that go into
10 his current state.

11 **A.** Uh huh.

12 **Q.** Once you determine what he needs to address
13 those and to help him, would you agree with me it's going
14 to be ... it will be difficult to predict how long he
15 will require those ... that ... that care?

16 **A.** Well, it's impossible to predict what anybody
17 will require in the future so I really ... I'm not into
18 fortune telling.

19 **Q.** No.

20 **A.** I don't understand what the question is.

21 **Q.** Well, let me ...

22 **A.** I can't ... and I'm also a social worker and
23 not a medical profession and it's not my scope of work to
24 predict how much care somebody requires.

25 **Q.** That's ... that's fair.

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **A.** My scope is to try to find out who can cover
2 the costs of what he needs and who can provide the care
3 that he needs and that's what I've been trying to do.

4 **Q.** Okay, that's fair enough. I'll come at it a
5 different way. He's not ... you became aware of his
6 situation in around the end of May 2010?

7 **A.** Right.

8 **Q.** Right? And we're now into ...

9 **A.** Though I knew of his ... I knew Maurina and
10 Jeremy for years before that.

11 **Q.** Oh, you knew them before?

12 **A.** But it was when Maurina had her stroke that we
13 became involved with providing services to support her.

14 **Q.** Okay. Well, let me go back to once you became
15 aware of his stroke ... her stroke, you arranged for
16 services which you've described ...

17 **A.** Uh huh.

18 **Q.** ... to be provided to them?

19 **A.** Right.

20 **Q.** And they're continuing?

21 **A.** Uh huh.

22 **Q.** Right. And you have no ... you have no set
23 plan as to when those services might end? There's no ...

24 **A.** My role as a social worker is to provide the
25 support that they need based on whatever needs to happen

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 to be able to take care of him. I can't say, sorry, we
2 ... this is too expensive so you can just kind of roll up
3 now.

4 **Q.** In your ... in your opinion and view as the
5 Health Director and your recommendation to the Band
6 council is they continue to need a level of care 15 hours
7 a day, five days a week and 24-hour care on the weekends?

8 **A.** Actually what I've proposed and tried to come
9 up with other ways to provide some of that care. For
10 instance, if the Province would agree to supervising our
11 workers, we could cut that amount that we spend on the
12 weekends down substantially because we could hire people
13 from the community and have them being supervised by the
14 Province who are available on the weekend and I've been
15 trying to actually work through, since we've filed this,
16 with contacting the Ombudsman and coming up with some
17 other ways that we can provide the care. So I'm not
18 saying that this is what they need. I haven't said any
19 of this. This is what they were assessed as needing
20 through the assessments that I've been able to access but
21 I still don't feel I've been able to access proper
22 information or proper support because we keep on going
23 round and round and round about who will cover care and
24 who will pay for it and really what I want is to make
25 sure that they get the care that they need and that it's

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 covered. I don't know who the provider should be.
2 That's why we're going through all of this but I know
3 that, at a Band level, we can't and shouldn't have to pay
4 for something just because nobody else will step in and
5 provide the services that, as any human being would see,
6 that this child needs to be at home and he needs to have
7 some services in place. What we're doing is providing
8 the services that his mother, who never accessed any
9 support for 16 years, provided 24/7 without having any
10 other financial support put in place and now she needs
11 some support. At this point I really feel she needs to
12 have the support and I'm not prepared to force her to
13 have to give up her child in order to have the care that
14 he needs.

15 **Q.** I don't think that anybody is ... is asking her
16 to or forcing her to give up Jeremy.

17 **A.** That's the end result if is it not if there's
18 no funding and if she's unable to care for him, I mean,
19 it will ... I think that's the bottom line here really.

20 **Q.** I was previously ... I wanted to ask you and
21 you've given I think the answer but just to confirm. At
22 this point in time, he's still ... or Jeremy and his
23 mother are still receiving the care plan that you
24 developed and you describe it in paragraph six ...

25 **A.** That the nurse developed, yes.

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **Q.** That the nurse developed but you approved it?

2 **A.** Yes.

3 **Q.** And the Band council approved it?

4 **A.** Right.

5 **Q.** So you've decided to take on that
6 responsibility?

7 **A.** That ... sorry, I've decided to take ...

8 **Q.** You and the Band council have decided to take
9 on this responsibility?

10 **A.** Yes, we all unanimously agree that Jeremy needs
11 to be cared for and that we're going to continue to care
12 for him until we can find some other solution. However,
13 that is very, very vulnerable. Band councils change. We
14 could have another Band council after the election in
15 November who might say, Absolutely not, there's no way
16 that we're going to support this and then what because
17 then we would have no other back-up plan so then it
18 becomes a child welfare case at which point he'd be
19 forced into care. And so this is what I'm trying to
20 avoid and I want cooperation from both levels of
21 government to achieve the care that he needs because he's
22 ... deserves that care.

23 **Q.** And you believe ... do you feel you haven't
24 received cooperation from both levels of government?

25 **A.** I haven't received full cooperation. I've

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 received case conferencing. I've received a year's
2 process of having an assessment done that if he had lived
3 off reserve he would have been entitled to have and I've
4 gotten a constant bickering back and forth about whose
5 responsibility it is to pay for and how it should be
6 ours.

7 Q. I understand that both the federal and
8 provincial governments have determined that the normative
9 standard of care is ... is not the standard that you are
10 asking for because ...

11 A. The (focal?) points have determined that but
12 when you look at other situations such as, for instance,
13 the judicial review of the Boudreau case and the judge's
14 decision in that, that any child or any person that, you
15 know, that the mandatory level of the \$2200 is a
16 budgetary policy or whatever, that actually goes against
17 the intent of the **Social Assistance Act**. When you look
18 at the intent of the **Social Assistance Act** is the
19 obligation of Community Services to provide for the care
20 for any child that ... or any person under that ... that
21 would fall under that **Act**. So then that becomes another
22 whole layer because under the **Indian Act**, the **Indian Act**
23 is supposed to provide for the necessary care for the
24 child. So does he go under Social Assistance or **Indian**
25 **Act**? Does it come under the Province or the federal

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 government? And just deciding the normative level of
2 care is, according to some policy, to save money that's
3 not right and that's not the options that you would have
4 if you lived off reserve because a social worker on their
5 own could decide to go above that standard.

6 **Q.** Do you know how many hours of care were being
7 provided to Mr. Boudreau in the case you referred to?

8 **A.** It's in the case.

9 **Q.** Do you know?

10 **A.** I can look it up. I don't know off the top of
11 my head but that ...

12 **Q.** Do you think that's important? Do you think
13 ... do you know if the hours of care being provided in
14 Boudreau are the same to those hours of care that are
15 being provided in the case of Jeremy and his mother?

16 **A.** Just one second and I will tell you. He ...
17 she receives \$3120 per month.

18 **Q.** I'm not asking about the monetary amount. I'm
19 asking about how many hours of care are being provided.

20 **A.** She gets paid ... the way that their program
21 works is that they pay the mother to hire the workers and
22 so she ... they don't ... it does... wouldn't make any
23 difference as far as they're concerned as to, you know,
24 because she would get a cheque every month and then out
25 of that she has to pay for the workers and so her whole

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 complaint was the amount that they were giving her wasn't
2 enough to cover the number of workers, the rate of pay
3 that she needed in order to have the workers. And so she
4 was asking to have an increase above what she was already
5 getting in order to be able to pay the workers a
6 reasonable salary to keep their time.

7 Q. We'll ...

8 **MR. CHAMP**: Mr. Tarlton, it says in the first
9 paragraph of the case, "Brian has autism and it is not
10 disputed that he requires constant, that is, 24-hour per
11 day care."

12 A. Yeah, and his mother's able to provide some of
13 it.

14 Q. 24-hour a day care. Well, I'll leave it
15 and ...

16 **MR. CHAMP**: I mean, we both can discuss (inaudible
17 due to speaking over each other).

18 **MR. TARLTON**: (inaudible due to speaking over each
19 other).

20 **MR. CHAMP**: I'm not really sure about what your
21 questions (inaudible due to speaking over each other).

22 Well, no, I just wanted to ask if she knew and I
23 think her answer addresses that and I'm quite happy to
24 move on. I think we're getting close to the end.

25 So ... oh, yes, now just one sort of a housekeeping

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 matter. We ... I'm still at a ... at a ... I'm a bit
2 puzzled and it probably may be me, Ms. Pictou, but I'm
3 hoping you can help me because we received the assessment
4 that you mentioned in your earlier evidence regarding
5 Jeremy.

6 **A.** Uh huh.

7 **Q.** You provided us with a copy and I thank you.
8 You've indicated through Mr. Champ that it's in the ...
9 it's in your exhibit and I'm still having trouble
10 locating. I believe I found the assessment related to
11 Maurina but I'm not sure Jeremy's is in there and I just
12 want to clarify if you can find it for me and we can
13 compare.

14 **A.** Jeremy's would be the one that would be done by
15 the Province.

16 **Q.** Yes, yes. No, and I have a copy and it's dated
17 March 8th and if you can just ... the reason I'm asking
18 is because if it's not in there I think it should be made
19 an exhibit or we can discuss how it can be made an
20 exhibit if there's any information there that needs to be
21 redacted. But if it is then I'm ... we don't need to do
22 that but I'm just ... I was looking at it over the break
23 and I'm still having trouble finding it.

24 **A.** No, we sent it so maybe it was ... didn't
25 actually get put into ... maybe ...

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 **MR. CHAMP:** Let's take a moment.

2 **MR. TARLTON:** Yeah, we can go off the record for a
3 moment then.

4 **OFF RECORD (3:45 p.m.)**

5 **ON RECORD (3:46 p.m.)**

6 **MR. TARLTON:** Back on the record. Ms. Pictou, I'm
7 just about finished but I think just to finish off
8 matters and to clarify for the record I'd like to
9 introduce an exhibit. This is a document dated ... the
10 date on it is March 8, 2011. It's addressed to you and
11 it's ... it relates to a photocopy of a consultation
12 report I think in respect to Jeremy Nathaniel and forgive
13 my mispronunciation there, is it ME-wa-seej.

14 **MS. BEADLE:** No. Me-was-ke.

15 **Q.** Meawasige, thank you. Do you recognize that?

16 **A.** Yes, I do.

17 **Q.** Okay. Can that be marked as an exhibit?

18 **MR. CHAMP:** Yes, please.

19 **EXHIBIT 7 - LETTER DATED MARCH 8, 2010 (MARKED AND**
20 **ENTERED)**

21 **Q.** And lastly and this is a copy of notes that you
22 made with respect to I think case conferences or your
23 involvement in this matter?

24 **A.** That's just what I jotted down.

25 **Q.** Yeah. And I think they go from February

PHILIPPA PICTOU, Cross-Examination by Mr. Tarlton

1 through I think one is marked February, 2010 but I think
2 we've agreed that's actually ...

3 **A.** Yeah.

4 **Q.** ... 2011?

5 **A.** 2011.

6 **Q.** And you ... those are your notes?

7 **A.** Yeah.

8 **Q.** You made ... they're a true copy of them?

9 **A.** Uh huh.

10 **Q.** And they were made contemporaneously with the
11 dates in question?

12 **A.** Yeah.

13 **Q.** Can they also be made an exhibit?

14 **MR. CHAMP:** Please. Thank you.

15 **EXHIBIT 8 - HANDWRITTEN NOTES OF PHILIPPA PICTOU**

16 **(MARKED AND ENTERED)**

17 **MR. TARLTON:** And I think we are done. Thank you
18 very much, Ms. Pictou.

19 **A.** Thank you.

20 **MR. CHAMP:** I just have one or two areas of re-
21 direct. Actually, if it's okay, what I'm going to do,
22 before we even start, I'm just going to go (inaudible)
23 Maurina and just ask her questions.

24 **MR. TARLTON:** That's fine, that's fine.

25

PHILIPPA PICTOU, Re-Direct Examination by Mr. Champ

1 OFF RECORD (3:50 p.m.)

2 ON RECORD (4:00 p.m.)

3

4

RE-DIRECT EXAMINATION BY MR. CHAMP

5

6 MR. CHAMP: All right. So on the record. I just
7 wanted to just clarify a couple things from your
8 testimony, Phillipa.

9 A. Uh huh.

10 Q. You spoke about ... there were some questions
11 to you about your interactions or communications with
12 Health Canada in 2010?

13 A. Right.

14 Q. And you mentioned some interaction with Peggy
15 O'Reilly?

16 A. Right.

17 Q. Can you just explain again because it jumped
18 around a bit?

19 A. Uh huh.

20 Q. I'm not sure if I got it straight. Did you
21 actually speak with Peggy O'Reilly in 2010?

22 A. Yes.

23 Q. And ... and what was the nature of your
24 discussion or discussions with her?

25 A. Just trying to get a sense from her about what

PHILIPPA PICTOU, Re-Direct Examination by Mr. Champ

1 we do as around the program and funding for Jeremy and
2 Maurina.

3 Q. Do you recall if you spoke to her once or
4 twice?

5 A. Once, and she really didn't know what I should
6 do at that point because she was filling in for Susan and
7 she had just started.

8 Q. Okay. And there was another point just ... I
9 just wanted to clarify also. In terms of assisted living
10 program on the reserve, it was your testimony that ...
11 that Debbie Dykstra is the ... the director for social
12 programs?

13 A. Social programs.

14 Q. So she's the social program director, but you
15 have a role in the delivery of some of those programs?

16 A. Right.

17 Q. And can you just explain that in more detail or
18 explain that?

19 A. I'll try to. Assisted living falls under the
20 social program. And when I first took the job, nobody
21 was ... there was no Health Director. There hadn't been
22 a Health Director or a nurse since June of 2009 and so
23 they had ... when I started ... I'm just trying to think.
24 I'm trying to make it the least complicated possible so
25 we don't go around in circles. When I started then

PHILIPPA PICTOU, Re-Direct Examination by Mr. Champ

1 Debbie had been managing the home care and assisted
2 living programs but it made more sense for it to come
3 back to health. I guess it had been bounced back and
4 forth to health so I inherited it at that point. And
5 then we worked together, council and myself, to try to
6 actually make it work better as a merged program from the
7 point of view of delivering the programming part but she
8 still holds the financial part of it because it's part of
9 the social budget. Same thing with the Headstart Program
10 which is a health program but because it takes place in
11 the school and the Director of Education does all the
12 day-to-day managing of the program and I'm responsible
13 for the budget because it's part of the health budget and
14 by being responsible for the budget means I do the
15 reports and I can authorize the expenses. Although she,
16 in consultation with me, can make decisions around
17 activities.

18 **Q.** Just ... and also on the Health Center, there's
19 some questions about the budget and so forth of the
20 Center. Just to be clear, is the Center itself a
21 separate corporation or entity?

22 **A.** No, it's not. It's just a building belonging
23 to the Band and we're not separate from the Band.

24 **Q.** Okay. And then there was also obviously a
25 bunch of questions around these assessments that were

PHILIPPA PICTOU, Re-Direct Examination by Mr. Champ

1 conducted by the Province in October 2010 but that you
2 didn't get the actual physical copies until March 2011.
3 When ... I think you testified to this but I just want to
4 make sure I understood.

5 **A.** Uh huh.

6 **Q.** When were those ... I know you didn't get the
7 physical reports until March 2011. When were the
8 contents or the recommendations made known to you?

9 **A.** Started in February with the case conferences
10 when they would read through the report and tell us what
11 was in it.

12 **Q.** Okay. And then we also know that in your
13 affidavit you say that in October 2010 the level of care
14 provided reduced?

15 **A.** Uh huh.

16 **Q.** Based on what assessment?

17 **A.** Okay.

18 **Q.** Was it based on the provincial assessment?

19 **A.** In October I was able to hire a nurse and so
20 then one of the things that we did was when she started
21 working, in fact the week that she started I'm thinking I
22 had introduced her to Maurina and Jeremy and asked her to
23 follow along what was happening and at that point when we
24 felt through being able to reassess it that we were able
25 to reduce it down so that we weren't providing the night

PHILIPPA PICTOU, Re-Direct Examination by Mr. Champ

1 care. That she was able to work with Jonavon to make
2 sure that he was able and comfortable with doing what
3 needed to happen in the night.

4 Q. Okay. And in your affidavit you were asked a
5 few questions about Exhibit I which is all the different
6 assessments or almost all the assessments are in there
7 and we have in there and you're asked about the initial
8 assessment that was conducted in May of 2010 which I'm
9 just showing you now.

10 A. Yeah, uh huh.

11 Q. Was there another big formal assessment like
12 that done in October 2010 by Pictou?

13 A. No wait, that's February. (Inaudible).

14 Q. Like I also noticed in here we've also got all
15 these progress notes.

16 A. I know. I'm just trying to remember.
17 (Inaudible). Okay, December 2010 we're changing the
18 needs. So I think Cathy had come and reassessed them in
19 September if I remember correctly. I'd have to go back.

20 Q. What is this document (inaudible) September 9th
21 (inaudible).

22 A. (Inaudible) September 9th and that was
23 (inaudible - shuffling papers). So we did ... sorry, I'm
24 just trying to remember. We've done so many ..

25 Q. No, just take a moment.

PHILIPPA PICTOU, Re-Direct Examination by Mr. Champ

1 **A.** ... different types of things that I can't
2 remember all of them.

3 **Q.** I think it's already been established today
4 that I'm not very good on what those different
5 reports ...

6 **A.** I don't have my day book either from then. I
7 wish ... it looks like it was (inaudible). Okay, that's
8 December.

9 **Q.** In the progress notes, some of these progress
10 notes I see a September 9, 2010 reassessment, drop down
11 to one worker.

12 **A.** Uh huh. From having had two ... when we had to
13 have ...

14 **Q.** Two workers on all the time, right.

15 **A.** Two people, yes, and I think at that point ...
16 in fact, that was Cathy Carruthers had come back and done
17 a reassessment at that point.

18 **Q.** And who is that?

19 **A.** She was the VON nurse that we had hired and I
20 think I had had her come back in and have a look to see.
21 December ... to replace shunt. We had to do it again
22 once he had the shunt replaced.

23 **Q.** But each time they do an assessment, would they
24 do a big formal assessment like that?

25 **A.** No, they can add to the backs of it so that's

PHILIPPA PICTOU, Re-Direct Examination by Mr. Champ

1 why it's confusing.

2 Q. Okay.

3 A. And is this Maurina's one? Yeah, okay, this is
4 for Maurina. Lori did it in December. September 9th.
5 They're written in all these different things because
6 it's got these different parts to update and I think
7 it's ...

8 Q. I guess the big thing and I just wanted to
9 clarify if there's ... there's not a separate full
10 report?

11 A. No.

12 Q. Or assessment since September 2010?

13 A. No, because you can update and we can
14 constantly add on all these pages.

15 Q. Okay.

16 A. But once a year we do the whole thing again to
17 make sure that everything else has ...

18 Q. That's all I was ... you're okay with those?

19 **MR. TARLTON:** That's fine.

20 Q. You saw what I was trying to get at?

21 **MR. TARLTON:** I think so.

22 Q. And in ... Phillipa, there was some questions
23 ... that's fine for that.

24 A. Yeah, it's just driving me nuts that nobody had
25 initialed that one. They should have put their initials

PHILIPPA PICTOU, Re-Direct Examination by Mr. Champ

1 behind it but maybe she just thought that it was only her
2 doing it.

3 Q. There were some questions to you about your
4 affidavit and paragraph 16 of your affidavit where it
5 sets out the schedule of the current support regime ...

6 A. Right.

7 Q. ... I guess you could say.

8 A. Uh huh.

9 Q. Now, these workers and the schedule, is this
10 just for Jeremy?

11 A. It's ... it's for both of them really when you
12 ... because although Maurina doesn't need the support
13 work in the way that she did when she first had her
14 stroke, she does need support for Jeremy so, I mean, and
15 she needs support with doing things like cooking and some
16 of those things and cleaning and doing dishes that are
17 for her, right, so it's kind of hard to figure out
18 exactly what ... because she's not able to wash dishes
19 and wash floors and do all those types of things and so
20 they do that part of the work and then they also do
21 things like feed Jeremy and change him and supervise
22 what's going on.

23 Q. Okay.

24 A. So it's not as simple as just saying that it's
25 all Jeremy either and that Maurina would still require

PHILIPPA PICTOU, Re-Direct Examination by Mr. Champ

1 support even if she was a single person without having
2 Jeremy. She'd still need to have somebody come in and do
3 her housework.

4 Q. Okay. Okay, great. And then there was also,
5 in some your testimony, there was a bunch of questions
6 about your ... your interactions with the provincial
7 government, federal government and you had testified
8 about ... you were saying that you were trying to get the
9 Province to supervise care over the weekend ...

10 A. Uh huh.

11 Q. ... as this would reduce costs. Can you just
12 explain ... can you just clarify that? How would that
13 reduce the cost?

14 A. Because the reason that we have to hire the
15 Pictou County Home Health Care people at \$18 an hour is
16 for liability reasons that Susan Ross had said that
17 because the Health Center and the Band council are closed
18 and there's no way to be able to ensure that we can be
19 accessed when everything is closed that liability-wise,
20 if we had people working in the community and there was
21 an issue, if they got hurt, Maurina or Jeremy got hurt,
22 et cetera, et cetera and there wouldn't be anybody that
23 would be able to step in and maintain that coverage or
24 any kind of liability because they're supposed to be able
25 to report to a supervisor at any particular time. So we

PHILIPPA PICTOU, Re-Direct Examination by Mr. Champ

1 have to pay \$18 an hour instead of the \$10 an hour to
2 hire them and so what I've been trying to discuss and
3 seeing if we can get anywhere with it, is if they were
4 able to report to the Province on the weekends instead of
5 ... and to be supervised so if there was an emergency,
6 there'd be a back-up person, right. The other issue is
7 that over the weekend that if one of our workers got sick
8 and we were away and they were unable to come, she'd be
9 left without care because there wouldn't be any mechanism
10 for being able to put anybody else as a back-up. So
11 having them available then they have back-ups and, you
12 know, they take on that management piece that we can't
13 provide on the weekends.

14 **Q.** Okay. And then just a final question. You
15 were asked or you said that no one was saying that
16 Maurina has to give up her son and you answered that yes,
17 that's the bottom line here or I'm paraphrasing as I
18 understand your answer. Could you just clarify what you
19 meant by that?

20 **A.** Right now she's able to have Jeremy because the
21 Band council has agreed to pay for his care while we're
22 figuring out how we can put something in term ... in long
23 term into effect for her. If that changes then she
24 wouldn't have access to the support that she's getting
25 and it would then turn it into a child welfare situation

PHILIPPA PICTOU, Re-Direct Examination by Mr. Champ

1 or a health problem where she was taking on the care that
2 she wasn't able to provide at which ... at which point it
3 could become that she would have to put him into care.

4 **Q.** But no one is saying that she has to give up
5 her son. Did anyone say what the alternative would be if
6 you ... did anyone say what the alternative would be if
7 the Band ... like at any of these case conferences, did
8 anyone say what the alternative would be if the Band
9 could not or would not provide the in-home services?

10 **A.** Yes, they said that it would be
11 institutionalization because you can only access up to
12 that certain cut-off and after that everybody would be
13 required to be institutionalized who was in that similar
14 situation.

15 **Q.** And who was saying that in the case conference?

16 **A.** Both Barbara Robinson and the ... I can't think
17 what his first name is, Lees from Community Services
18 (inaudible due to speaking over each other).

19 **Q.** And what ... and just so we understand clearly,
20 what does institutionalization mean? Where would Jeremy
21 have to go?

22 **A.** There's only one institution in Nova Scotia for
23 children under 18 and I guess it's in Kentville. But
24 then they were also arguing about whether or not that
25 institution would be able to meet his needs if he was put

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1 there or whether he would have to be placed outside the
2 province in a different institution that is able to ...
3 and I don't have a clue about what their capacity is or
4 isn't but this was this whole kind of huge argument that
5 came about in the case conference around what kinds of
6 services would be in place and what they would do and how
7 that would happen.

8 **Q.** And how far is Kentville from Pictou Landing?

9 **A.** It's ... let's see, it's two hours to Halifax.
10 It's about another hour and a half to Kentville from
11 Halifax so about three and a half hours on a good day.

12 **Q.** And when a child goes into an institution, what
13 is the custody relationship between a parent and their
14 child?

15 **A.** She would have to give guardianship to the ...
16 I'm not sure if it goes automatically to the Province in
17 that situation. I haven't been involved with somebody
18 being institutionalized (inaudible) but the parent loses
19 all rights to make any decisions about the child and
20 loses guardianship and the institution or whichever ... I
21 don't know how it ... how it works as far as who actually
22 gets guardianship but the parent loses the guardianship
23 and so they lose the right to be able to make day-to-day
24 decisions, to make decisions about his medical care, his
25 social needs, even they can limit access to the person.

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1 It can be only during certain times and basically they
2 become a ward of the state, I guess, bottom line.

3 **MR. CHAMP:** Okay. Thank you. Those are all the
4 questions that I have.

5

6 **WITNESS WITHDREW**

7

8

CERTIFICATE OF COURT TRANSCRIBER

I, Sandra Towers, Court Transcriber, hereby certify that I have transcribed the foregoing and that it is a true and accurate transcript of the proceedings in this matter of the **Pictou Landing Band Council and Maurina Beadle and Attorney General of Canada** taken by way of electronic recording.

Sandra Towers
Court Transcriber
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DARTMOUTH, NOVA SCOTIA
November 7, 2011