

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

Solicitor for the Respondent: Mr. Jonathan D.N. Tarlton

This is the cross-examination held at Halifax, Halifax
Regional Municipality, Province of Nova Scotia on October
5, 2011, of **MS. BARBARA JEAN ROBINSON.**

EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Page</u>
1	Document entitled "Update on Jordan's Principle, the Federal Government Response" dated January 12, 2011	14
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1 October 5, 2011 - 11:38 a.m.

2

3 MS. BARBARA JEAN ROBINSON, duly called and affirmed,
4 testified as follows:

5

6 COURT REPORTER: Would you state your full name?

7 A. My full name is Barbara Jean Robinson.

8

9 CROSS-EXAMINATION BY MR. CHAMP

10

11 Q. Good morning. This is a cross-examination on
12 court file T-1045-11, Pictou Landing Band Council and
13 Maurina Beadle, applicants, and the Attorney General of
14 Canada, respondent. My name is Paul Champ and I'm
15 counsel for the applicants and we're here for the cross-
16 examination of the affidavit of Barbara Robinson which
17 was sworn on September 21st, 2011

18 Ms. Robinson, I'd just like to confirm you have a
19 copy of your affidavit here?

20 A. I do.

21 Q. And that's the affidavit that you swore in this
22 application?

23 A. Yes, it is.

24 Q. I just have a few questions for you related to
25 your affidavit. So I understand that you are a manager

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1 with Aboriginal Affairs and Northern Development?

2 **A.** Northern Development Canada, yes.

3 **Q.** Northern Development Canada, AAND now, or
4 AANDC, which ...

5 **A.** AANDC, yes.

6 **Q.** And how long have you been with AANDC and its
7 predecessor?

8 **A.** I have been with my current department since
9 2004.

10 **Q.** And it's my understanding that you have sworn
11 an affidavit in this matter because you are responsible
12 for or have some responsibility for social program
13 funding in Atlantic Canada through AANDC and also in
14 particular responsibility for the implementation of
15 Jordan's Principle in Atlantic Canada, is that correct?

16 **A.** Yes, I have the authority to approve funding
17 under Section 34 of the **Financial Administration Act** for
18 the five social programs. (Cell phone rings)

19 Just to clarify that point ...

20 **Q.** Yeah.

21 **A.** So what that means to say is that I ... (cell
22 phone rings) So just to explain, because it's a bit of a
23 bureaucratic term, so ... managers in our region are
24 delegated under the **Financial Administration Act** to
25 approve payments in accordance with the Treasury Board

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1 authorities, so for my case that would be with regard to
2 the five social programs. So I would have the
3 responsibility to approve the issue of payment in
4 accordance with the terms and conditions of the funding
5 agreement and in accordance with the terms and conditions
6 of the Treasury Board funding authority. So I have the
7 authority to approve payments, but only insofar as a
8 legal authority exists to make those payments.

9 Q. So just so I'm clear, if ... had you reached a
10 different decision here, had you determined that Pictou
11 Landing Band should receive greater funding for assisted
12 living programming in this matter, you would have had the
13 financial authority to do that, is that correct?

14 A. No, actually, you're incorrect in that
15 statement. When I said that I have the authority to
16 approve payments in accordance with the **Financial**
17 **Administration Act**, so Section 34 says ... when I tick
18 the ticky box to approve a payment, I'm saying that it's
19 a legal payment, that there is the legal authority to
20 issue that payment and that that payment is being issued
21 in accordance with the policies and terms and conditions
22 of the program.

23 So if I wanted to issue a payment that was not
24 legal, so, for example, if I wanted to issue a payment
25 that's over and above what the maximum eligible expense

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1 is, if I wanted to issue a payment to a recipient who is
2 not eligible or any other illegal payment, I don't have
3 an authority to make any payments I want to make, it's
4 always brought back within the context of what Treasury
5 Board has authorized our department to deliver, and my
6 authority as a manager is, I guess, compliant, if you
7 will, to what would be legal.

8 We have several different levels of approval, so in
9 terms of ... when you say that a payment is being issued
10 in a way that is consistent with Section 34 of the
11 **Financial Administration Act**, you are verifying or
12 certifying that that payment is being made consistently
13 with the legal authority that the program has to deliver.
14 So every program for grants and contributions is covered
15 by a Treasury Board authority that authorizes us to issue
16 payments. But when Cabinet gives us that authority, it is
17 with certain parameters around those and subject to the
18 policy that is set in place specifically to ensure that
19 managers are approving payments in accordance with the
20 way that the Government of Canada has intended those
21 payments to be delivered to eligible recipients within
22 eligible funding maximums from the authority's program
23 parameters.

24 So the fact that I have Section 34 funding authority
25 doesn't give me the authority to make any payments I

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1 would, you know, regardless of the policy, and, in fact,
2 if I were to do so, I would be stripped of my funding
3 authority under Section 34.

4 Q. And just to be clear, I'm familiar with those
5 instruments, Ms. Robinson. What I was asking you is that
6 had you reached a different ... I wasn't saying that, you
7 know, can you just spend money ...

8 A. Okay, that's ...

9 Q. ... just anytime, you know, I want to ... I
10 have power under Section 34, I'm taking you all out for
11 lunch, I'm not suggesting that. What I am asking is had
12 you reached a different conclusion about this matter, for
13 example, had you concluded that the circumstances in this
14 particular case, for example, did qualify under Jordan's
15 Principle, would you have had the legal authority to then
16 provide more funds?

17 A. Well, that's sort of a hypothetical situation.
18 In fact, the circumstances in this case were outside the
19 parameters of my legal authority to spend the money,
20 therefore, there is no other decision that I could have
21 made. So you're asking me, hypothetically, if I'm
22 presented with a case which falls within the parameters
23 of our policy and our Treasury Board authority, well,
24 that's what Section 34 is, to apply the **Financial**
25 **Administration Act** to look the policy to ensure that the

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1 payment is legal and in good order, and in that case
2 that, yes, she would. But in a case such as this one
3 where that ... where the requested payment would be
4 outside of the authority of the program to fund, outside
5 of, I guess, sort of the latitude that the Government of
6 Canada has allowed under this particular transaction,
7 this particular spending authority, there would be no
8 other decision that you could reach other than not to
9 approve the funding because it would be an illegal
10 payment.

11 **Q.** And I apologize, Ms. Robinson, it may be that
12 my questions aren't being clear on this. I fully
13 understand the position of your department that the
14 circumstances of this case did not fall within ... did
15 not fall under any authority that would allow you to
16 issue a payment, but that's not the question I'm asking.

17 Obviously there was a request for payment, therefore
18 you have a binary option of a "yes" or a "no". You said
19 no, and I understand it's the position of the department
20 that the "no" is justified. I'm just asking to confirm
21 that you would have been the official who would have had
22 the power to say "yes" had you concluded it fell within
23 the terms or the authorities that you have.

24 **A.** And again, I'm not trying to be deliberately
25 obtuse. I feel that you're asking me, hypothetically,

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1 could I approve a payment that I personally felt ... and
2 I want to be clear on this, you're asking me that I
3 personally felt was within ...

4 **Q.** That's correct.

5 **A.** ... the terms and conditions? Okay. In a
6 circumstance where a funding request falls within the
7 terms and conditions of the program, the program policy
8 that is put in place nationally which references,
9 obviously, you know, a number of things, including
10 provincial normative standards of care, if a funding
11 request falls within those and subject to appropriations
12 made by Parliament for the funding of that program
13 because Parliament votes a certain amount of money for a
14 given program in a given fiscal year, that yes, those
15 payments would be legal and that I would be the person
16 who would approve them through our financial
17 administration system.

18 **Q.** Okay. That's ... I was just trying to make
19 sure that you were the legal person who had the legal
20 power to say yes. You wouldn't have been able to say
21 well, I can definitely say no, but I can't really say
22 yes, I'd have to recommend to someone else to say yes.
23 The power would be vested in you, is that correct?

24 **A.** Within the parameters of the program and the
25 authority that I have to approve funding, yes.

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1 **Q.** Okay. One of the issues that have come up in
2 this matter is obviously Jordan's Principle, which you
3 address in your affidavit, Ms. Robinson. You speak about
4 it at paragraphs 5 to 10, and in paragraph 6 you speak to
5 what your understanding is about when Jordan's Principle
6 applies.

7 **A.** Yes.

8 **Q.** I had asked you to produce some documents this
9 morning and I'd just like to ask you a question about one
10 of them. I'm just looking at a document that is called
11 or titled "Update on Jordan's Principle, the Federal
12 Government Response" dated January 12, 2011. Do you have
13 a copy of that?

14 **A.** Yes, I do.

15 **Q.** Okay. And one of the items that I note is on
16 page 4, there's a quote there of the House of Commons'
17 motion that was passed unanimously on December 12, 2007
18 where it stays, "The government should immediately adopt
19 the child first principle based on Jordan's Principle to
20 resolve jurisdictional disputes involving the care of
21 First Nations children." And I just wanted to be clear.
22 It's my understanding that there is some disagreement
23 about the meaning of that principle and the
24 interpretation that the Department has given to that
25 principle as outlined in paragraph 6 in your affidavit?

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1 Is that fair to say, that there is some disagreement on
2 its interpretation?

3 **A.** Within our department?

4 **Q.** Not within your department but within some of
5 your provincial partners and elsewhere.

6 **A.** Well, I can't speak for other people's
7 opinions. However, I can say that both Aboriginal
8 Affairs and Northern Development Canada and Health
9 Canada, who actually created this document, are clear
10 that, as outlined in my affidavit, that there are certain
11 circumstances or criteria which must be met in order for
12 a case to be deemed a Jordan's Principle case and that
13 there is no dispute within the Federal Government
14 regarding that. I'm sure that as with any topic if you
15 go across Canada and ask a number of individuals what
16 their opinion on a given topic is, you'll get a wide
17 variety of answers. But as a representative of the
18 Government of Canada, I would, I suppose, be best
19 qualified to speak to what the federal response is to
20 Jordan's Principle and I think I've clearly outlined that
21 in my affidavit.

22 **Q.** One thing I note in the bullet there on page 4,
23 Ms. Robinson, is it refers to jurisdictional disputes
24 involving the care of First Nations children. However,
25 in paragraph 6 of your affidavit, particularly

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1 subparagraph 5, you make reference to "child with
2 multiple disabilities requiring services from multiple
3 service providers."

4 **A.** Yes.

5 **Q.** You would agree with me that that language was
6 not within Parliament's motion, correct?

7 **A.** There was a Federal response to the motion that
8 was passed in Parliament regarding Jordan's Principle,
9 and part of that Federal response on the part of the
10 Government of Canada was to look at the most vulnerable
11 children, those who have multiple disabilities requiring
12 care from multiple service providers.

13 Now the document that you have been referencing this
14 morning is a presentation prepared by Health Canada.
15 Typically with a PowerPoint presentation, it's more
16 generic. I can't speak to ... I'm not sure who prepared
17 this document specifically, but I know that, you know,
18 often PowerPoint presentations give sort of a Coles Notes
19 version or a summary. So if you wanted to have the
20 details on the Federal response to Jordan's Principle,
21 that's what is outlined in my affidavit, which is where
22 there is some greater detail than what would be provided
23 in a PowerPoint presentation that provides sort of a high
24 level summary of the approach.

25 **Q.** Yeah, I understand that, Ms. Robinson. I think

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1 I understand what you're saying, and I just want to make
2 sure that it's clear to me that what's set out in your
3 affidavit is the Federal Government response ...

4 **A.** Yes.

5 **Q.** ... to the motion passed by Parliament. But I
6 just want to make sure that we're agreed that the Federal
7 Government response is not strictly in accordance with
8 the motion passed by Parliament, is that fair to say?

9 **A.** No, I would disagree, but ... I think you've
10 just asked me for my opinion of that matter. I feel that
11 the Federal response is appropriate to the motion that's
12 passed. If you go through the various parts of the
13 Federal response that are outlined in my affidavit, you
14 will see that it does take a child first approach as
15 noted in here under circumstances where a child with
16 multiple disabilities multiple ... requiring service from
17 multiple service providers where there is a
18 jurisdictional dispute where it is within the normative
19 standard of care, that's all part of the Federal
20 response.

21 **Q.** And I appreciate it's the Federal response,
22 I'll just make sure that we're here that the reference or
23 the limitation of only children with multiple
24 disabilities requiring services from multiple service
25 providers is only ... is something that the Federal

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1 Government came up with ...

2 A. It is the Federal response.

3 Q. ... in terms of its response, but it's not in
4 the motion, correct?

5 A. Yes, that is my understanding, that ...

6 Q. So just this document, I'd like to admit it as
7 an exhibit to the cross-examination.

8 **EXHIBIT 1 - DOCUMENT ENTITLED "UPDATE ON JORDAN'S**

9 **PRINCIPLE, THE FEDERAL GOVERNMENT RESPONSE DATED**

10 **JANUARY 12, 2011**

11 Q. And, Ms. Robinson, there was another document
12 regarding Jordan's Principle that you produced for me
13 today. It's a document that says "Record of Decision" on
14 it, "Jordan's Principle, Federal/Provincial Exploratory
15 Meeting" dated February 18, 2010, Halifax.

16 A. Yes.

17 Q. So you have a copy of that document?

18 A. Yes, I do.

19 Q. Okay. And I understand from my review of this
20 document it was a meeting held between Federal Government
21 and Provincial Government officials regarding the
22 implementation or potential implementation of Jordan's
23 Principle in Atlantic Canada? Or Nova Scotia, I guess,
24 specifically.

25 A. Nova Scotia specifically, yes, because it's

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1 province by province.

2 Q. Right. And you were in attendance at that
3 meeting, correct?

4 A. Yes, I was.

5 Q. And at page 2 of that document, I see it's
6 stated there, "Federal officials described the Federal
7 response to the Jordan's Principle"?

8 A. Uh-huh.

9 Q. And then there's an outline of the four
10 components that match with what you have in your
11 affidavit, correct?

12 A. Just give me a moment to read through it.

13 Q. Absolutely.

14 A. There is a slight difference in wording between
15 the two, and it's more how the bullets are laid out. The
16 content is the same. However, rather than putting as a
17 separate bullet the fact that there must be a payment
18 dispute declared between the Federal and Provincial
19 Governments and also the section underneath of the
20 separate bullets where it states that under JP, the
21 service would continue and the primary funder would pay
22 while the dispute was being resolved. So the content is
23 the same between the two, however, one lays ... my
24 affidavit lays these out all in separate bullets whereas
25 the ... I guess the paragraph is differently organized.

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1 **Q.** Right. Yeah, there they refer to it as four
2 components, but you've taken the same information in
3 those four components and have kind of made it five
4 components ...

5 **A.** Yes, not introducing any new ...

6 **Q.** No, no. Yeah, I agree.

7 **A.** ... information, but it's ...

8 **Q.** I agree.

9 **A.** Yeah.

10 **Q.** I agree. Anyway, further down the page, we see
11 there's a paragraph that starts "It was acknowledged" and
12 it's ... it says, "It was acknowledged that some
13 provinces want to use terms other than 'multiple
14 disabilities' such as 'intensive' needs and 'medically
15 complex.'" So it's my understanding from that that the
16 Federal Government or your department recognizes that
17 some provinces don't agree with the definition that the
18 Federal Government has applied to the Jordan's Principle?

19 **A.** Well, because I don't work specifically with
20 the other provinces, the provinces reference ... it's my
21 understanding they are provinces outside of Atlantic
22 Canada, so they are outside of the scope that I would
23 directly work with. However, I believe that the
24 differences were differences of semantics in order for
25 things to match more closely provincial policy as opposed

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1 to differences of content.

2 So when you say "multiple disabilities" or
3 "intensive needs," they're sort of semantics meaning the
4 same thing, that ... so I don't think that ... if I
5 understand your question correctly, you're asking me if
6 there are differences of opinion in terms of the content
7 or application of Jordan's Principle, and again, because
8 I don't work directly with the provinces involved, it
9 would be difficult for me to comment directly on the
10 reasoning behind the request, but it would appear to me
11 to be a question of semantics rather than content.

12 Q. And then the next paragraph says: "It was
13 recognized that others have broader interpretations of
14 Jordan's Principle, but the Federal Government is
15 interested in moving forward with its scope to make
16 progress for the most vulnerable."

17 So I gather it was discussed at that meeting or was
18 recognized among those present at the meeting that there
19 are others who have broader interpretations of Jordan's
20 Principle?

21 A. Certainly if you were to do a Google search for
22 Jordan's Principle you would find a great deal of
23 information and some of it is not consistent with the
24 Federal response. However, for the Federal Government to
25 move forward in partnership with another level of

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1 government, we would be dealing specifically with the
2 Federal response to Jordan's Principle.

3 Q. I guess I just want ... I'm trying to
4 understand, Ms. Robinson, because we've already discussed
5 and agreed that the Federal response is not strictly in
6 accordance with Parliament's motion, which just refers to
7 the care of children ...

8 A. No, I don't think we've agreed on that.

9 Q. Okay. I thought we did agree that it ... that
10 multiple disabilities or any reference to disabilities at
11 all is not in the Parliament ...

12 A. Yes, but when you say that the Federal response
13 is not in accordance with it, that sounds like in some
14 way the Federal response differs from that. So I just
15 wanted to clarify that my statement was that there was a
16 private members' bill that was passed in Parliament, very
17 high level, very broad, very general, and as with many
18 things that are passed in Parliament, then it is the
19 responsibility of Federal officials to implement that,
20 and that's where the Federal response. So I just wanted
21 to be clear that I had not inferred or stated that the
22 Federal response was in any way not in accordance or
23 compliance with the private members' bill.

24 Q. I guess maybe the language "not in accordance
25 with" is not a proper way to put it. But what ... when I

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1 read these paragraphs, Ms. Robinson, it seems to me, or
2 this is my understanding, and please correct me if I'm
3 wrong, that the Federal department, your department,
4 looked at the Parliamentary motion and then, as it says
5 here, "decided to move forward within its scope to make
6 progress with the most vulnerable." So from that I kind
7 of gathered that it was the Federal Government department
8 that decided to focus on the most vulnerable children
9 first, in other words, children with multiple
10 disabilities or recognized as perhaps ... or as the most
11 vulnerable, particularly to Jordan's Principle
12 situations, and that's why the Federal response right now
13 is focused on children with multiple disabilities. But
14 and however, that would just be a first phase in the
15 sense of Jordan's Principle because, in fact, the motion
16 passed by Parliament does not limit itself to children
17 with multiple disabilities. Is that ...

18 **A.** That is not ...

19 **Q.** ... a fair understanding ... (inaudible due to
20 two speaking at once) ...

21 **A.** That is not my understanding, that this would
22 be merely a first phase. Now again, this is difficult
23 for me to comment upon because I was not involved at a
24 policy level at headquarters in determining what that
25 Federal response would be, what the intent behind it

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1 would be. However, it was clearly communicated to me, as
2 a regional official whose task of implementing Jordan's
3 Principle is the Federal response, this ... these are the
4 circumstances under which it will apply.

5 Certainly my understanding is that the Federal
6 response was jointly developed between my own department
7 and Health Canada, that it was felt by the individuals
8 who developed that response at a policy level that it was
9 consistent with the private members' bill, and that is
10 what has been communicated to regional officials to
11 implement on the ground, and that is what I have done.
12 But it has never been communicated to me in any way that
13 this is only a first phase or a partial implementation.
14 This is the Federal response to Jordan's Principle.

15 **Q.** So in short, you don't know why the language in
16 Parliament's motion was limited to children with multiple
17 disabilities. That was a policy decision made in Ottawa

18 **A.** The Federal response was developed in Ottawa,
19 yes, and communicated to regional officials.

20 **Q.** And you don't know why the motion was limited
21 to children with multiple disabilities.

22 **A.** Well, because I wasn't part of the group that
23 developed it, I would not know the rationale, other than,
24 you know, clearly there is a desire to ensure that
25 children who are in circumstances similar to Jordan

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1 Anderson, who had multiple disabilities and received
2 services from multiple service providers, would be the
3 focus of Jordan's Principle, which makes logical sense to
4 me. But again going back to you asked me if I knew what
5 the sort of underlying rationale or how the Federal
6 response was developed, well, because I wasn't part of
7 that group, I wouldn't be able to comment.

8 Q. I'd like that again marked as an exhibit for
9 cross-examination.

10 **EXHIBIT 2 - RECORD OF DECISION RE JORDAN'S PRINCIPLE**
11 **DATED FEBRUARY 18, 2010**

12 Q. So, Ms. Robinson, if I understand, then,
13 correctly how it's implemented, in Atlantic Canada
14 anyway, when I review this document, this record of
15 decision, and also your affidavit and in particular
16 paragraph 9, I see that in both this document and in your
17 affidavit there's a reference to a case-by-case approach
18 that AANDC ... we've got to come up with a better acronym
19 than that ...

20 **MR. TARLTON:** Aboriginal Affairs?

21 **MR. CHAMP:** AANDC ... that your department has
22 developed with the Atlantic provinces, anyway, which you
23 call a case-by-case approach, that you'll look at cases
24 as they come and the province ... the respective province
25 and the Federal Government will look at the particular

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1 case and determine what the appropriate response is. Is
2 that fair to say?

3 **A.** No, that is not correct.

4 **Q.** All right. How am I wrong?

5 **A.** Well, there are four provinces in Atlantic
6 Canada and three of them have chosen to proceed with a
7 case-by-case approach. In the Province of New Brunswick
8 there was a formal agreement on the implementation of
9 Jordan's Principle which outlined specific case
10 conferencing protocols as well as alternative speed
11 resolution processes, I guess.

12 So our approach was to approach the provinces, to
13 discuss Jordan's Principle with the provinces, and to
14 ask, you know, how would you like to proceed. At a
15 minimum, we were looking for provinces to provide us with
16 contact names so that on a case-by-case process as cases
17 arose, we would have someone to case conference with.
18 But in the Province of New Brunswick, the province was
19 actually quite interested in moving forward with a formal
20 case conferencing protocol implementation agreement.

21 **Q.** Okay. So ... and it's my understanding no ...
22 so the case-by-case approach is something that applies in
23 Nova Scotia ...

24 **A.** Yes.

25 **Q.** ... which is what we're dealing with here,

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1 obviously. And there is now an agreement with New
2 Brunswick, correct?

3 **A.** It's not final, signed off, but the three
4 parties who developed it are in agreement. Basically,
5 it's going through approval processes. And actually in
6 the document that you're holding in your hand, that's my
7 email to Corrinne, I think ...

8 **Q.** Yeah.

9 **A.** ... and I had said that, you know, as agreed
10 upon, when we developed the implementation agreement in
11 the Province of New Brunswick, the three parties agreed
12 that even before we had official sign-off, we would begin
13 following those protocols, so, you know, certain time
14 frames set out for case conferencing and that type of
15 thing.

16 So when this case came up, we were actually able to
17 use the implementation protocols that were put in place
18 for Jordan's Principle and it worked very well, even
19 though the final signature isn't on the document.

20 **Q.** Since you referred to that document, I don't
21 think I'll seek to enter it because we've had some
22 discussions about privacy in any event, so I don't think
23 I'll need to enter them, but maybe I'll just ask you a
24 few questions about this case.

25 We had asked you to produce documents related to any

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1 other potential Jordan's Principle cases in Atlantic
2 Canada, you produced I think both documents refer to the
3 same case ...

4 **A.** Yes.

5 **Q.** ... is that right? Okay. And it refers to a
6 child in New Brunswick who required some ... a First
7 Nations child in New Brunswick who required some kind of
8 special equipment, it seems, for a particular disability.
9 It's my understanding from reviewing these documents that
10 the department refused funding for that equipment, is
11 that correct?

12 **A.** Well, we didn't go through the full protocol on
13 that case because, as you'll see from this case,
14 initially it was brought to my attention because it had
15 been declined by Health Canada as being outside of their
16 authority, and it had initially been declined by the
17 Province of New Brunswick because the child resided on
18 reserve. So when we brought the case conferencing group
19 together, we went through the case conference protocols,
20 and within a week of that happening, the Province of New
21 Brunswick agreed to fund the item.

22 So under our funding authorities within my own
23 department, we don't have an authority to fund medical
24 equipment, and Health Canada has, obviously, their own
25 policies and stipulations about what type of medical

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1 equipment they can fund and under what circumstances.

2 So this is a case where I found that the case
3 conferencing process worked very well because in
4 discussing ... bringing the parties to the table and
5 discussing what this one would provide and what that one
6 would provide, and this was a normative standard of care,
7 this was something that the Province of New Brunswick
8 would provide to a child if the child resided off
9 reserve, and they agreed to fund the requested item
10 because, well, ultimately, Canada does provide health ...
11 (inaudible due to coughing) ... provinces and First
12 Nationals people are included in the calculation of
13 those, and this was a health medical (given?) item.

14 Q. Right. So it's my understanding that the
15 outcome of this case was that the Province in the end
16 stepped in and stepped up and paid for the equipment
17 required.

18 A. Yes, that is correct.

19 Q. And because of the case conferencing, it was
20 resolved that one of the levels of government agreed to
21 provide the equipment to that child.

22 A. Yes, that is correct.

23 Q. But just so I understand, the Federal
24 Government just took the position that they couldn't ...
25 they would not fund it because it wasn't within their

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1 mandate.

2 **A.** No, that is not correct. We had explained to
3 the Province what our protocols were for accessing the
4 funding that currently resides with Health Canada. This
5 actually was a case that we were prepared ... if the
6 Province hadn't said, well, not ... the Province said, in
7 fact, we do have the authority to fund this and they did
8 so. So that's fine, the child's needs were met. If the
9 Province had come out of case conferencing saying we
10 would provide this to a child who resided off reserve but
11 because the child resides on reserve, we don't have the
12 authority to provide this, then we would have taken this
13 case to ... you know, basically presented it to the ADMs.
14 But that is not the case. In fact, it turned out the
15 Province had the authority to fund even though the child
16 resided on reserve because it was a health item.

17 **Q.** Right. That's very helpful. I'm just going to
18 try and break that down so that I understand what
19 happened there. So, first of all, it was agreed by
20 everyone that if this child lived off reserve, he would
21 have received this equipment from the Province.

22 **A.** Yes, it was a normative standard of care for
23 the Province.

24 **Q.** It was a normative standard of care, that he
25 would have received it from the Province. But because he

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1 was on reserve, the Province took the position initially
2 that it was not their responsibility, it was the Federal
3 Government's responsibility, correct?

4 **A.** Yes. And just to give you some background
5 around that, the relationship with the Province of New
6 Brunswick is quite different in that the Province of New
7 Brunswick typically has taken the approach that they
8 simply don't provide any services on reserve. So in this
9 case, it wasn't a case that they didn't have the
10 authority to do that or that they didn't have the ability
11 to do that, it would have been their preference not to.
12 Unfortunately, for both our department and Health Canada,
13 we didn't have the legal authority to provide the piece
14 of equipment in that case because of the nature of the
15 request that we received and, you know, the three parties
16 were able to case conference and resolve the case.

17 **Q.** In the one email dated February 10, 2011 from
18 yourself to Ms. Baggley, who's here today about this
19 case, you say in the final paragraph that: "INAC does
20 not have the program mandate or funding authority to fund
21 (the blank) given that it is medical equipment, but we
22 are actively engaged in a case conferencing process with
23 Health Canada and the Province."

24 So when I read that, it was my assumption that the
25 Federal Government had taken a position that you simply

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1 weren't going to fund it, but you've indicated now that
2 there were further discussions that if, in the end, the
3 Province decided they would not pay for it under any
4 circumstances, it would have been recommended that either
5 Health Canada or your department pay for it, is that
6 correct?

7 **A.** Well, that's ...

8 **Q.** That's my understanding ...

9 **A.** Just ... okay ...

10 **Q.** I just want to make sure I understand.

11 **A.** Yeah, I just want to ...

12 **Q.** Because it's the normative standard of care ...

13 **A.** Yes.

14 **Q.** ... off reserve.

15 **A.** In this case, it appeared to be a normative
16 standard of care. The Province of New Brunswick said for
17 any other New Brunswicker, this would be paid for by the
18 Province. It was a case of a child with multiple
19 disabilities receiving services from multiple service
20 providers and the initial request was denied by Health
21 Canada and by the Province. So it appeared initially
22 that there was a gap in services, that there was a
23 jurisdictional dispute.

24 At the time that this email was sent to Corrinne,
25 you're correct in saying that, you know, this was ... I

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1 was outlining the facts. Now the case conferencing,
2 because I was giving her a heads up that we were going to
3 be case conferencing, through the case conferencing it
4 turned out, in fact, that the Province of New Brunswick
5 was able to provide services on reserve, and in that
6 sense it was resolved. There was no jurisdictional
7 dispute because one of the parties did have the authority
8 to fund the item.

9 So what I had said was if it was the case that there
10 had been a jurisdictional dispute that there is a
11 mechanism to go forward to access the JP fund.

12 Q. No, that's fine. I think we're saying the
13 exact same thing. Like this is a good-news story ...

14 A. Yeah.

15 Q. ... it sounds to me, like this sounds like a
16 good application, that in the end, number one, the child
17 did get the equipment, and number two, in a ... as a
18 backstop or a backup, the Federal Government was going to
19 ensure that this child received the normal standard of
20 care one way or the other.

21 A. Well, I can't say that the Federal Government
22 would ensure that, but I would say that the process would
23 be for the information on a file where a dispute existed
24 and where the normative standard of care was not being
25 met would be to submit that for the approval at the ADM

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1 level.

2 Q. You wouldn't have been able to make that
3 decision yourself.

4 A. No. It's associate deputy minister level
5 approval to access the Jordan's Principle fund.

6 Q. Okay. So going back to some of the first
7 questions that we canvassed around Section 34 of the
8 **Financial Administration Act**, I had asked you at that
9 time whether you had the legal authority to approve
10 funding and you concluded that it was ... that Jeremy's
11 case did fall within Jordan's Principle. It was my
12 understanding you indicated you did have the
13 authority ...

14 A. Yeah.

15 Q. ... financial authority.

16 A. I think you've missed one point, that Jordan's
17 Principle is not a program, it's not a funded program.
18 So what I have ... when I said that I have Section 34
19 authority over the five social programs in Atlantic
20 Canada, that would be income assistance, NCDR, family
21 violence funding, assisted living funding, child and
22 family services funding. These are all funded programs
23 where a Treasury Board authority exists and I can manage
24 the funding allocated to my region for those programs.

25 Jordan's Principle is not a funded program. There

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1 is an amount of money that resides with Health Canada.
2 In order to access that money, it requires ADM level
3 approval because it's not a funded program. And
4 essentially what it does is cash manage to ensure that
5 the child's needs are met while the jurisdictional
6 dispute is being resolved. So I would not personally
7 have the authority to approve funding under that. I
8 would have to brief up and the decision would be made in
9 Ottawa.

10 Q. That's very helpful. So I think we're getting
11 closer to the point I was wondering about. So if I
12 understand you correctly ... so, for example, the
13 Pictou Landing Band Council has a funding agreement with
14 your department with respect to the assisted living
15 program ...

16 A. Yes.

17 Q. ... correct? And it's my understanding ... if
18 I understand correctly, what you're saying is that had
19 you concluded that the band could or should get more
20 funding under that agreement for the assisted living
21 program, you would have had the authority to approve
22 that. Is that what you meant by ...

23 A. Yes, I can approve funding that flows through
24 the block agreement.

25 Q. No, that's great. No, okay. That clarifies

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1 things. That's excellent. But had you concluded that it
2 does not come within the funding agreement but it perhaps
3 could qualify under Jordan's Principle, you'd have had to
4 push it up to the ADM level.

5 Q. The process for accessing the Jordan's
6 Principle funding is for regional focal points to brief
7 up to the ADM level and for the decision to be made at
8 that level, yes.

9 Q. Okay. No, that's great. That's ... we're
10 clarifying the points as I think ... Mr. Tarlton ...

11 A. Oh, just to ...

12 Q. Yeah, sure.

13 A. If I can go back and make a point, though, that
14 would only be in a true Jordan's Principle case, that you
15 cannot access the Jordan's Principle fund if it's not a
16 true Jordan's Principle case within the scope of Federal
17 response, that ... I just wanted to be clear on that
18 point. So when I say that I can approve funding within
19 the treasury board funding authorities for the programs
20 that I administer, that's for the funded programs. With
21 regard to Jordan's Principle, in order to submit a case
22 for consideration by the ADM, it has to be a Jordan's
23 Principle case by definition. The fund could only be
24 accessed by a Jordan's Principle case.

25 Q. Right. Okay. I don't think that was any

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1 different from what we were saying.

2 Mr. Tarlton, now that I think about it, just to ...
3 I don't think I'll put in this longer document, but I
4 might put in the email. You both can take a look at it.
5 Are you okay with that? It looks like you've blacked
6 out ...

7 **MR. TARLTON:** Yes, I ... (inaudible due to coughing)

8 **MR. CHAMP:** ... everything that's ... is that okay?

9 **MR. TARLTON:** That's fine. Thank you.

10 **MR. CHAMP:** So for the record, we've just asked to
11 be marked as an exhibit an email regarding the New
12 Brunswick First Nation ... or Jordan's Principle case
13 that we were discussing a few minutes ago.

14 **EXHIBIT 3 - EMAIL FROM B. ROBINSON TO C. BAGGLEY DATED**
15 **FEBRUARY 10, 2011**

16 **MR. TARLTON:** So if I can briefly interrupt you for
17 a moment ...

18 **MR. CHAMP:** Absolutely. If you'd like to
19 introduce ... no problem.

20 **MR. TARLTON:** Actually, I think in light of some of
21 the answers, it probably provides complete context to it.

22 **MR. CHAMP:** That's perfectly fine.

23 **MR. TARLTON:** Thank you very much.

24 **MR. CHAMP:** So we would also seek to introduce as
25 another exhibit to the cross-examination of Ms. Robinson

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1 a document entitled "First Nations Children with
2 Disabilities, Tracking Tool for Focal Points." It's a
3 two-page document.

4 **EXHIBIT 4 - DOCUMENT ENTITLED "FIRST NATIONS CHILDREN**
5 **WITH DISABILITIES, TRACKING TOOL FOR FOCAL POINTS"**

6 Q. And then maybe further to my questions on the
7 case-by-case approach of Nova Scotia, maybe ... I'd like
8 to introduce this document as well. This is an email
9 between Ernest Walker with the Government of Nova Scotia
10 and Wade Were, I understand from Health Canada, regarding
11 Jordan's Principle and Nova Scotia, and it indicates
12 there ... there's just a nice paragraph there that sort
13 of captures, I believe, the understanding that we were
14 discussing.

15 **MR. TARLTON:** Are you referring to the last ...

16 **MR. CHAMP:** The big one, "Recently we were asked to
17 describe ... "

18 Is that a fair description, Ms. Robinson? If it was
19 a 30-page document, I probably wouldn't bother, but it's
20 a nice short one and it seems to be a nice description or
21 summary of what we were discussing.

22 A. So it summarizes that the understanding is that
23 we will resolve cases on a case-by-case basis as they
24 arise.

25 Q. A case-by-case basis, exactly.

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1 **MR. TARLTON:** We'll get this marked as an exhibit as
2 well?

3 **MR. CHAMP:** Yeah. So this is a document dated
4 December 21st, 2010, an email between Ernest Walker and
5 Wade Were. We would ask for that to be marked as an
6 exhibit. It was a document produced this morning by Ms.
7 Robinson pursuant to her direction.

8 **EXHIBIT 5 - EMAIL FROM E. WALKER TO W. WERE DATED**
9 **DECEMBER 21, 2010**

10 **Q.** So I'm not ... I'd just like to move a little
11 bit and ask you a few questions about the assisted living
12 program, Ms. Robinson. If you'd like, I'm at paragraph
13 12 of your affidavit. In paragraph 12, you refer to the
14 assisted living program funded by Aboriginal Affairs.
15 You say that:

16 The program is mandated to provide
17 funding to support the special needs
18 of chronically ill and disabled
19 persona for non-medical support
20 services and non-medical
21 institutional care to First Nations
22 people living on reserve.

23 The ALP was initially created as
24 part of the federal government's
25 general policy to provide First

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1 Nations people living on reserves
2 with access to care services
3 reasonably comparable to those
4 provided by the provinces to the
5 general population of Canadians who
6 do not reside on reserves.

7 That's ... and so, Ms. Robinson, what we're talking
8 about here, then, would be comparable care or the
9 normative standard of care as in Nova Scotia.

10 **A.** Yes, for someone who resides in the Province of
11 Nova Scotia.

12 **Q.** Right, exactly, for some ... because the Pictou
13 reserve is in ... situated within the Province of Nova
14 Scotia.

15 **A.** Uh-huh.

16 **Q.** And the funding agreement between the Pictou
17 Landing Band and the department, it's ... what is
18 attached to Ms. Pictou's affidavit, is that correct?

19 **A.** Yes, I believe Ms. Pictou did attach a copy of
20 the funding agreement, yeah.

21 **Q.** I think it's C, I think, actually? I don't
22 have any particular questions, I just want to make sure
23 that that's the agreement.

24 **A.** It is, I believe, a very relevant document,
25 however, in two respects, one being that the national

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1 policy is actually referenced in the funding agreement as
2 a service standard so it's to follow the national policy
3 which references back to the ... you know, the funding
4 limits and eligibility criteria of the reference
5 province, and the other piece that I think is very
6 relevant with regard to the funding agreement is that it
7 is a block-funded ARFA. So basically the design of the
8 ARFA agreement allows for the movement ...

9 Q. Sorry, ARFA agreement, just ...

10 A. Yes, the Aboriginal Recipient Funding
11 Agreement, so ...

12 Q. Yeah, I just want to ... I had a clue that's
13 what it was, but just for the record.

14 A. Yes. So the block funding mechanism allows the
15 band to transfer money between block-funded programs, so
16 if you're running a surplus in one area, then you can
17 transfer some of that to an area where you're running a
18 deficit to allow the greatest flexibility.

19 Q. Right. But as I understand the formula for
20 that block funding for all those different items, there
21 is a notional amount for each program. So, for example,
22 there is an amount ...

23 A. There is ...

24 Q. ... that's identified or calculated ...

25 A. Yes.

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1 **Q.** ... for assisted living programs.

2 **A.** There is a notional amount, but it is not
3 calculated by formula for all of the programs. For ...
4 assisted living, for example, is not calculated by
5 formula, it was based on historicals at the time of entry
6 in a block-funded agreement. Basically income assistance
7 is calculated in the same way. It's not formula driven
8 but it was based on actual expenditures at the time. If
9 we were to rebase tomorrow that ... there are certain
10 programs where it's calculated by formula. So, for
11 example, capital funding is calculated by formula. But
12 if we were to rebase for income assistance and assisted
13 living, it would be based on actual expenditures, so that
14 would be the compliance review, actual eligible
15 expenditures.

16 **Q.** And how do you know that?

17 **A.** Well, obviously ... I didn't begin working with
18 the department until 2004, so colleagues who were
19 involved with the ... basically the implementation of the
20 initial block-funded agreements have advised me that that
21 is the case, and I can say that I have verified that if
22 we were to rebase for income assistance and assisted
23 living, we would rebase on actual eligible expenditures.

24 Now I have to emphasize the eligible piece because
25 particularly with Pictou Landing, you know, we've had a

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1 recently compliance review with regard to income
2 assistance and there were a number of expenditures that
3 were outside of the program parameter, so ...

4 **Q.** But for the assisted living program, it's my
5 understanding that the band is in compliance, correct?

6 **A.** Well, the compliance review only took place in
7 mid September and those results have not been shared with
8 me yet. There was a compliance review that was conducted
9 on the assisted living program in September and those
10 recent results have not been shared with me yet.

11 Compliance is conducted by a different unit and typically
12 once the officers come back with their field notes and
13 finalize everything that that would be shared with me.

14 **Q.** How frequently is that compliance review
15 conducted?

16 **A.** It depends on the risk level of the band. If
17 there ...

18 **Q.** Is it generally annual?

19 **A.** Generally annual for a contribution-funded
20 band. For a block-funded band, it would only be done
21 annually if there were an elevated level of risk. There
22 is an elevated level of risk with regard to programming
23 and financial management in Pictou Landing, so I would
24 expect that funding services would be conducting annual
25 review, yes.

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1 **Q.** I had no intention of putting this to you
2 because I didn't think it was going to be relevant, but
3 I'll just show you a letter, it's dated May 3rd, 2011. I
4 see that you're copied on it. It's from your department
5 to the band indicating that they are in compliance ...

6 **A.** Yes.

7 **Q.** ... in the assisted living program?

8 **A.** And that is with regard to a compliance review
9 that would have been done on the previous fiscal year, so
10 the current compliance review is done on this fiscal year
11 and it was based on concerns that had been raised with
12 program administration by the band. So what ... you're
13 looking at a compliance review letter looking at the
14 previous fiscal year, and what I was just referencing was
15 the one that took place September 14th.

16 **Q.** So for 2010/2011 fiscal year ending, I gather,
17 March 30, 2011, the band was in compliance with the
18 assisted living program.

19 **A.** As per the compliance review, yes.

20 **Q.** As per ...

21 **A.** Since that time there have been concerns raised
22 and a subsequent compliance review has been done and I'm
23 awaiting the results of that.

24 **Q.** Okay. So getting back, then, to your affidavit
25 on how the assisted living program funding is calculated,

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1 you say at paragraph 14 that, "The eligible expenditures
2 under the ALP depends on what the province would provide
3 in the same situation to a resident living off reserve"?

4 **A.** Uh-huh.

5 **Q.** So there's a provincial set of eligible
6 expenditures? When you review what the Province spends,
7 you determine, based on what the particular ... or,
8 pardon me, when you review what the band spends on ALP
9 items, you compare it to what the Province would spend,
10 is that right?

11 **A.** When the program goes out and does a compliance
12 review, they should be looking at what the eligible
13 recipients would be, what the criteria would be for the
14 Province. So, for example, in the Province of Nova
15 Scotia, in order to access home case services, there
16 would have to be a formal assessment done of your need,
17 and then that qualified assessor would say that you need
18 21 hours of care per week for XXY. So when the
19 compliance group goes out, for each client file they
20 would be looking to see that, yes, a qualified
21 practitioner has done an assessment, has recommended that
22 they receive X number of ... so similar standards are
23 being applied. And when I referred to eligible
24 expenditures, specifically what I'm referring to is the
25 direct family support policy with the Province of Nova

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1 Scotia. So there would be, you know, a number of
2 criteria that are involved in that including, as I said,
3 assessment and also there are caps. So, for example, in
4 this case we're talking about respite care, and the
5 provincial cap for respite care is \$2,200 per month.

6 Q. I have a number of questions for you about that
7 particular topic later on, but just for right now, again
8 in paragraph 15 of your affidavit, you say, "The funding
9 under the ALP is provided through a block contribution to
10 the Pictou Landing First Nation in the amount of \$55,552
11 for the delivery of ALP eligible care." So I just want
12 to understand. So that number was, according to you,
13 derived at some point in the past based on the actual
14 needs of the band, is that right?

15 A. Yes, that is my understanding from colleagues
16 who worked back in the 1990s when the initial AFA
17 agreements were rolled out. Now in terms of whether or
18 not that continues to be the case, there is an annual
19 increase, so there would have been an historical budget
20 established based on actual needs. Then every fiscal
21 year there's an increase under the block for kind of cost
22 of living, inflation increases. Any band at any time
23 that wishes to open up its block and rebase has that
24 option.

25 However, they're rebasing the entire block, so if

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1 you are running surpluses in other areas or if you have
2 ineligible expenditures in other program areas, then you
3 would have ... you know, it would be taken at a holistic
4 level. So the fact that if you had expenditures that
5 exceeded what your funding was in one envelope and
6 expenditures that were significantly less than your
7 expenditures under another envelope, then that wouldn't
8 change the amount of funding that you were receiving
9 because you would need to demonstrate ... I don't know if
10 I'm explaining this terribly clearly because I see you
11 frowning across the table.

12 **Q.** No, no, I think so.

13 **A.** To make it very simple, if you had one program
14 that's funded \$20,000 a year and you're expending \$50,000
15 a year in that program, and if you have another program
16 where you're funded \$500,000 a year and you are only
17 expending \$100,000 a year, then you're not going to have
18 a funding increase because we look at the entire block.
19 So the whole reasoning behind the block is that it allows
20 you to move funding between program areas, and that's why
21 ... you know, if you feel that your entire agreement is
22 underfunded, then rebasing could work out very much to
23 your advantage. But again, it's always based on eligible
24 expenditures.

25 **Q.** Okay. So just getting back to the assisted

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1 living program, you say here that the band gets \$55,552
2 per year for the delivery of ALP eligible care, but you
3 would agree with me that it may well be the case that the
4 eligible expenditures that the band has under the ALP
5 actually greatly exceeds that amount.

6 **A.** I don't know if I would say "greatly." There
7 were 19 clients identified on an annual report, not all
8 of those 19 received service for the entire year.

9 On the annual report that we receive, there's no
10 amount of cost that's identified on that report because
11 it is a block-funded report. We don't reimburse actual
12 expenditures. However, if they were exceeding \$55,000 a
13 year, there is ample opportunity to transfer money in
14 from other programs. I would again make reference to the
15 income assistance where the band receives a budget of
16 \$2.6-million per year and they were significantly out of
17 compliance. They were funding individuals who reside off
18 reserve, which is not an eligible expenditure. They were
19 funding clients who were receiving income from other
20 services who would not be eligible to receive income
21 assistance. So if they brought that program into
22 compliance, there would be significant revenues within
23 the block that if they did in a given fiscal year run a
24 shortfall under assisted living, they would have the
25 ability to manage that.

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1 **Q.** But just so we're clear here, so ... Ms.
2 Robinson, so at \$55,000 per year, assuming simply for the
3 sake of argument, and I say just for the sake of argument
4 because I'll ask you questions about this later on, that
5 the eligible expenditures, for example, for respite care
6 for a particular high needs individual is capped at
7 \$2,200 a month, you would agree with me that on the basis
8 of that math, basically this band had two people with
9 high needs, that would blow their budget or that would
10 completely take up their entire budget.

11 **A.** If you had two individuals receiving \$24,000 in
12 services, give or take ...

13 **Q.** It would be about 26 if we're using the 2,200
14 number.

15 **A.** Okay. Then obviously that would be close to
16 the \$55,000 budget. However, as I have explained, that
17 is not the ... I guess the end of the line, if you will,
18 in terms of options because the band has the ability to
19 transfer surpluses from other programs into deficits in
20 that area. And if they find that the entire agreement is
21 running a deficit in terms of actual eligible
22 expenditures, they can rebase the agreement based on
23 actual needs.

24 So in that sense, I think it's a very limited view
25 to say that, well, the 55,000 would not cover more than

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1 two individuals with high needs because it's an entirety,
2 the block agreement. While there are notional
3 allocations for the various program areas, as I have
4 explained, there is the ability to transfer money from
5 other programs in. And if the entire block is deemed to
6 be underfunded by the band, than council can request a
7 rebase of the agreement and based on actual need that the
8 budget can be adjusted.

9 Q. The last time that the band's funding has been
10 rebased was in the early '90s, as you understand it, is
11 that correct?

12 A. But the band has not requested a rebase. The
13 band is very aware that they can have a rebase. I know
14 that there are ongoing discussions between my colleagues
15 in funding services and the council of the Pictou Landing
16 band regarding, I guess, the financial health of the
17 band. And while I can't speak as to why the band has not
18 looked at the option of rebasing the agreement, I would
19 assuming it's because it's not in their financial
20 interest to do so. But that remains an option at any
21 time.

22 Q. In the assisted living ... or, pardon me, the
23 block funding agreement, there is, you would agree with
24 me, a provision in there about increasing in fundings in
25 exceptional circumstances?

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1 **A.** Yes, there is a clause that speaks to
2 exceptional circumstances beyond the control of the band,
3 yes.

4 **Q.** Right. And what would qualify under that?

5 **A.** Well, I'll give you an example of another
6 community where we used that clause. There was a natural
7 disaster in Northern New Brunswick due to flooding and
8 severe weather, and in that First Nation we did deem that
9 there were exceptional circumstances beyond the control
10 of the band because it was an act of nature, and there
11 was an increase in the capital funding that was provided
12 in order to pay for the costs of the repairs that were
13 necessary after the flooding.

14 So I guess ...

15 **Q.** So natural disasters is what qualifies for
16 exceptional circumstances, is that what you're saying?

17 **A.** An exceptional circumstance would be something
18 that cannot be foreseen by the band and is outside the
19 control of the band. So if you choose to spend your
20 funding in a manner that is inconsistent with the policy
21 and the standards, if you're paying for things that are
22 not eligible under your agreement, that is not outside of
23 your control. If there is a hurricane or a flood or a
24 fire in the community, there's no way that that could be
25 foreseen, the band has no level of control over that

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1 circumstance, and that would be a good example of what an
2 exceptional circumstance is. Basically again, it goes
3 back to the management of the agreement and of the
4 programs that are funded under it.

5 **Q.** So that's a yes, you agree with me that
6 exception ... well, I'm not saying that's what I say, but
7 you would agree with me that what you said exceptional
8 circumstances means is that it's limited to natural
9 disaster, correct?

10 **A.** No, I wouldn't speculate hypothetically on what
11 might come up as exceptional circumstances, I gave that
12 as an example to demonstrate that there have been
13 circumstances under which the exceptional circumstances
14 clause has been utilized.

15 **Q.** Can you think of other examples?

16 **A.** Well, I haven't worked directly with all of the
17 files in the region. That would be a better question to
18 put to funding services, particularly given the limited
19 scope. Under the social program, the only time that I
20 have seen a social program open up for exceptional
21 circumstances has been due to basically an act of God,
22 something that could not be foreseen.

23 But just to clarify, that's invoking the exceptional
24 circumstances ...

25 **Q.** If I may interrupt, Ms. Robinson, for now,

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1 actually, from going forward, I might get into some more
2 contentious areas, I'd just ask you answer my questions
3 and then you can leave it to Mr. Tarlton to ask you any
4 questions to clarify if he feels it's necessary.

5 So I just want to understand a little bit more about
6 the assisted living program. You say in paragraph 19 of
7 your affidavit that ... you refer to the assisted living
8 program and the different types of care, type one, type
9 two, et cetera. You say in the last sentence:

10 Federal type of care does not always
11 translate easily to provincial level
12 of care. Therefore, ALP refers to
13 provincial social assistance rates as
14 a benchmark for provincial
15 comparability and to remain within
16 it's non-medical mandate.

17 As that applies to the ALP, I'm wondering if you can
18 explain to me how the ALP funding can be reasonably
19 comparable to what the Province provides when there
20 hasn't been any changes to the benchmark since the early
21 '90s.

22 **A.** Okay. To clarify, paragraph 19 is referring to
23 institutional care, and if you look at the Department of
24 Health policy, the per diem rate for institutional care
25 is broken down into two different components. One is

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1 health services and one is non-healthcare-related
2 services. So the reason why the provincial comparability
3 to income assistance rates is utilized for that
4 insitutioanl care circumstance is that the non-healthcare
5 component of institutional care within the Province of
6 Nova Scotia under the Department of Health policy refers
7 to the comfort allowance that you receive, it refers to
8 the food that is provided to the individual in the long-
9 term care facility, it refers to, you know, the
10 administrative costs, the heat, the lights, the
11 accommodation space, those things that would be covered
12 under the basic living allowance.

13 So just to clarify, this only refers to the
14 institutional care portion of the assisted living program
15 and why it's referencing social assistance rates is
16 because in the Province of Nova Scotia, the Department of
17 Health has broken out the cost of the medical piece and
18 the living expenses.

19 **Q.** Okay. But my point is still the same, I
20 believe. How can the assisted living program funded by
21 the Federal Government be reasonable comparable to the
22 Province's services off reserve when the benchmark hasn't
23 changed in what, 20 years?

24 **A.** Because there are annual increases to keep up
25 with inflation. When I said that there would have been a

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1 base budget established back in the 1990s ... okay, are
2 you referring to the base budget that would have been
3 established for the funding agreement back in the 1990s?
4 When you say 1990s ...

5 **Q.** Well, for the assisted living program.

6 **A.** For the assisted living program.

7 **Q.** I think you indicated in your previous
8 testimony that that was based on a baseline year sometime
9 back ...

10 **A.** Yes, sometime back in the 1990s, and I can't
11 say with certainty what year, but ...

12 **Q.** That's right. And also in terms of the ...
13 just while we're on that point where you mentioned that
14 it's increased according to inflation, that was not
15 actually the case for most of the last 15 to 20 years,
16 isn't that correct? It only started increasing for
17 inflation, I think, in ... I forget the year offhand,
18 2003 or 2004? Do You know?

19 **A.** Well, you're asking me about something that
20 obviously occurred before I joined the department because
21 I didn't join the department in 2004. I can't say ...

22 **Q.** So if I could just ...

23 **A.** ... for every year that I had been with the
24 department ...

25 **Q.** If I could ... just to finish that point ...

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1 **A.** You asked me a question and You didn't let me
2 finish it.

3 **Q.** No, I asked You a question about the interest
4 rate, so if I could ... or inflation rate ...

5 **MR. TARLTON:** Just ... I take your point. You both
6 obviously want to share your views here, and I just think
7 if you could allow Ms. Robinson to answer the question,
8 maybe we'll be able to move, I think, into the topic you
9 want ...

10 **MR. CHAMP:** Well, that's my difficulty, Mr. Tarlton,
11 is that it's not an issue about sharing views, it's about
12 answering questions, and I find that I'm asking questions
13 and then Ms. Robinson is taking the opportunity to expand
14 and discuss a number of issues. I haven't taken real
15 issue with that thus far, but I will say there's no way
16 I'm getting done in two hours based on the way this
17 examination is going, and I'm just trying to shorten it
18 by drawing Ms. Robinson's attention to the actual
19 question asked rather than her ... perhaps because she
20 misunderstands my question, that could be, but I'd just
21 like to draw her attention to the questions actually
22 asked. Otherwise, we might be here for some time.

23 **A.** I will try and keep my responses shorter. If I
24 may respond to the question you asked because ...

25 **Q.** What was the question I asked?

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1 **A.** You asked me about the increases that were
2 provided to Pictou Landing First Nation going back to the
3 1990s. I can respond for the period of time when I was
4 with the department that every year since 2004 Pictou
5 Landing First Nation has received an annual increase to
6 the block that is based on the inflation rate. So there
7 has been, since 2004 when I joined the department, every
8 year an increase to the block-funded amount, and that is
9 a cumulative increase.

10 **Q.** Okay. And you wouldn't know before 2004.

11 **A.** No.

12 **Q.** And since 2004, if there was any differences in
13 the provincial level of services, that would not have had
14 any impact or made any difference to the level of funding
15 provided by the Federal Government to the band, correct?
16 Just to be clear, it's based solely on inflation, so ...

17 **A.** It's based on inflation. However, if the
18 provincial expectation for service delivery increased
19 because of provincial policy changes, that might be a
20 circumstance under which the band would say it's time for
21 us to rebase our funding agreement, we believe that, you
22 know, the circumstances have changed. I'm trying to keep
23 it short, but ...

24 So to answer your question very directly, that the
25 increases are based on inflationary increases. If there

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1 are other circumstances that cause the need to increase,
2 then there is the option of rebasing the funding
3 agreement.

4 **Q.** Does the funding increase at all based on the
5 increase in the band's population?

6 **A.** There is a portion of it that is increased on
7 the basis of the band's population. Now the increases
8 are calculated in a different area of our regional
9 office. They're calculated in our financial services
10 unit. I know that the population is part of that
11 calculation.

12 **Q.** Right, okay. So the 55,000, just so we're
13 clear, it's gone up over time, at least since you've been
14 there, based on inflation, but also ...

15 **A.** Population.

16 **Q.** ... based on population.

17 **A.** Exactly.

18 **Q.** Okay. And it's also my understanding that it
19 would also then be a factor ... or another factor would
20 be the total capped funding provided by the department to
21 all First Nations in Atlantic Canada, is that correct?

22 **A.** There is provision that ...

23 **Q.** There's a ceiling, in other words?

24 **A.** There is a ceiling. If there are financial
25 pressures, we have something called a financial status

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1 report where we can raise financial pressures. One area
2 where that happens more frequently is in bands that are
3 funded by contribution where we reimburse for actuals.
4 So there might be circumstances where budgets increase
5 dramatically. We receive our budget in the region every
6 year. If there is a financial pressure, there's a
7 mechanism to go forward to identify that pressure and
8 have it funded from headquarters.

9 Q. So where I am, Mr. Tarlton, is at this point I
10 was going to start asking questions more specifically to
11 this case. I just was kind of building up to asking the
12 specifics of this case. It's now ten to one. I'm not
13 sure what the availability or calendar is with everyone
14 else. I'm wondering if it's possible that you guys are
15 open to a short break for lunch?

16 **MR. TARLTON:** Certainly. I think we can do that.

17 **MR. CHAMP:** ... and then come back, in fairness to
18 the witness as well, I'm sure. Is that okay?

19 **(LUNCH BREAK 12:50 - 1:55 p.m.)**

20 **MR. CHAMP:** So we're just back on the record. This
21 is Paul Champ, counsel for the applicants, following the
22 lunch break.

23 Just to start off, Mr. Tarlton, I had a chance to
24 make a copy of that document over lunch and I was just
25 wondering if we would be able to ... I think Ms. Robinson

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1 identified or agreed that she had received a copy of it,
2 she was cc'd, if we could have it just entered as an
3 exhibit.

4 So this is a letter dated May 3rd, 2011 from Indian
5 and Northern Affairs Canada, Brian Rumbolt, R-U-M-B-O-L-
6 T, to the council of Pictou Landing First Nation.

7 **MR. TARLTON:** Do you happen to have a copy for us?

8 **MR. CHAMP:** I don't, unfortunately ...

9 **A.** I can get you one.

10 **MR. CHAMP:** I can send you one by email as well.

11 **MR. TARLTON:** That's fine, thank you. I hadn't
12 thought ... or I wasn't intending to put it in, but then
13 that issue came up, so I thought I'd just kind of address
14 that.

15 **EXHIBIT 6 - LETTER DATED MAY 3, 2011 FROM B. RUMBOLT,**
16 **INAC, TO COUNCIL OF PICTOU LANDING FIRST NATION**

17 **MR. CHAMP:** So, Ms. Robinson, this morning we talked
18 a bit about how Jordan's Principle applies in that Nova
19 Scotia, it's assessed on a case-by-case basis?

20 **A.** Uh-huh.

21 **Q.** And so that would mean ... would that have been
22 the approach that you took to this case?

23 **A.** Yes.

24 **Q.** And in a case-by-case assessment, you would
25 look at all the facts and details of the particular case,

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1 correct?

2 **A.** Yes, and we would consult with our provincial
3 colleagues.

4 **Q.** Right. Now in this particular case, what was
5 your understanding of Jeremy's needs before you made your
6 decision?

7 **A.** At the time of the decision?

8 **Q.** Yeah.

9 **A.** As I've laid out in my affidavit, I became
10 aware of Jeremy's case late in the winter of 2011. I was
11 advised that he was a child with multiple disabilities
12 and that basically required 24-hour care in the home.
13 And there was a fairly detailed ... maybe chronological
14 ... if we just follow along with my affidavit would be
15 the easiest way ...

16 **Q.** That's fine, that's perfectly fine, absolutely,
17 yeah. If you want to refer to documents, your affidavit,
18 take a moment if you'd like.

19 **A.** So if we go back to my involvement with this
20 case, as I said, late in the winter of 2011, I was
21 advised about Jeremy's case by Susan Ross of Health
22 Canada and given some details around, you know, again a
23 special needs child and invited to participate in a case
24 conference. Now I had a prior commitment for that date
25 so one of my colleagues from the social program, Deborah

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1 Churchill, did participate in the February 28th case
2 conference regarding Jeremy's case, and she had provided
3 me with a detailed briefing of what transpired during
4 that case conference, and that's included in the email
5 from Deborah Churchill which I included with my
6 affidavit.

7 So I was aware that the First Nation and the family
8 were looking for supports for 24-hour care for Jeremy,
9 basically the level of care he would get in an
10 institutional setting within the home, without him having
11 to leave his home, and that the case was being brought
12 forward as a Jordan's Principle case.

13 So because it was being brought forward as a
14 Jordan's Principle case, I contacted my fellow focal
15 point from Health Canada, Wade Were, and also Wade and I
16 began to work on the case. So there was the initial case
17 conference, Deborah briefed me, there was a follow-up
18 case conference which brought even further information
19 forward April 29th, and I participated via teleconference
20 for that meeting. And it was during that meeting that
21 the provincial representative from the Department of
22 Community services and also the provincial representative
23 from the Department of Health and Wellness, but
24 particularly focused on (Troy?) Lees because my
25 counterpart department is the Department of Community

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1 Services and their program, the direct family support
2 program, is the comparable program for us.

3 So Mr. Lees confirmed that the Province of Nova
4 Scotia off reserve would not under any circumstances
5 provide 24-hour in-home care and that the services that
6 were being requested exceeded what would be provided by
7 the province if the client resided off reserve.

8 And following the conference call on April 19th,
9 Wade and I contacted Mr. Ernest Walker because his name
10 was the name that was provided to us as the provincial
11 contact for Jordan's Principle ... if you recall, the
12 Province of Nova Scotia didn't enter into a formal
13 agreement, but there were contact names exchanged ... and
14 brought him into the discussions regarding the case. And
15 the, I guess, contact department for me, if you will,
16 would be the Department of Community services, so it was
17 my responsibility to verify my understanding of what the
18 normative standard of care would be.

19 So if you go back to that conference in April, Mr.
20 Lees was very clear in stating that the Province would
21 not provide the requested level of care in the client's
22 home if the family resided off reserve. However, in
23 reviewing the policy, there was a reference made in the
24 policy to exceptional circumstances.

25 So I contacted Lorna MacPherson, who is a colleague

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1 of mine in the Department of Community Services, and I
2 sought to clarify under what circumstances anything above
3 the \$2,200 maximum might be considered. And Lorna was
4 very clear in stating to me that anything above the
5 \$2,200 maximum would not be considered under any
6 circumstances, not even in an end of life situation. And
7 she shared with me an internal memorandum, which I have
8 included in the affidavit, that was sent out to all
9 Provincial Government employees working in continuing
10 care and advising them that the \$2,200 maximum for
11 respite care was not to be exceeded under any
12 circumstances.

13 So it was a very clear situation that what was being
14 requested was outside of the provincial normative
15 standard of care which, if you go back to our earlier
16 discussion about Jordan's Principle, because the
17 normative standard of care was being provided, there was
18 no jurisdictional dispute. Both the Province of Nova
19 Scotia and the Federal Government were clear in our
20 understanding of what the normative standard was and what
21 existing programs could provide. Because of that, it was
22 not a Jordan's Principle case within the Federal ... you
23 know, flowing under the auspices of the Federal response
24 to Jordan's Principle, and in terms of the assisted
25 living program itself, like outside of the scope of

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1 Jordan's Principle, the assisted living program, we had
2 the funding authority to provide services up to the
3 maximum eligible, so that would be the \$2,200 a month.
4 And because of that the decision with regard to this case
5 was not to fund amounts that were outside of what the
6 funding authorities and program policy would allow, i.e.
7 not above the \$2,200 maximum, and also that this case
8 would not meet the criteria for Jordan's Principle
9 because the normative standard of care was already being
10 provided and also because there was no jurisdictional
11 dispute with the Province of Nova Scotia.

12 So that's sort of my history of involvement with the
13 case. And I did respond to ... I guess just to sort of
14 close the loop on that and trying to be conscious of
15 time, I had received a formal letter from Phillipa
16 Pictou, the director of health for Pictou Landing First
17 Nation, requesting that basically an institutional level
18 of care be provided in a monetary form. That was the
19 letter ...

20 **Q.** Can you show me that? Can you take a minute or
21 two and find it?

22 **A.** This would be Phillipa's letter with the
23 request. And because we don't have tabs marking this,
24 it's going to take awhile. No, I'm looking for the email
25 that I responded to. In fact, my email would include

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1 that email because it was a reply, so ... the email that
2 I sent to Phillipa with the decision would include
3 Phillipa's email to me.

4 Q. It's okay. Take your time. No rush. I know
5 it's a big mess of documents. In ours, we tried to just
6 sort of pick out some and put them in, but you guys have
7 them all in there.

8 A. Okay. I think the email that I'm referring to,
9 this is actually not the one with my reply on it, but
10 it's the one where she is requesting that ... and we're
11 looking at page 124: "Even if it's not a Jordan's
12 Principle case, I would like either the Federal or
13 Provincial Government to reimburse us up to the level
14 that he would qualify for if institutionalized ..."

15 And she estimated that amount to be \$350 per day.
16 Now in the Province of Nova Scotia, the provincial
17 facility per diem rate is set facility by facility, and
18 the Province has explained that to me that a lot of the
19 facilities have been grandfathered, they're not ...
20 they're provincially licensed, but they may be private
21 care homes, and that because of that there isn't a set
22 provincial per-diem rate for various levels of care in
23 the same way that there would be in New Brunswick or PEI
24 or Newfoundland and Labrador.

25 So Phillipa was estimating that the cost for

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1 institutionalized care would be \$350 a day and she was
2 requesting that either the federal or provincial
3 government reimburse the band for basically what it would
4 cost for institutional care.

5 Now as I explained in my affidavit, we only have the
6 authority to pay for institutional care within what we
7 call Federal level one and two institutional care. If
8 someone is physically residing in a long-term care
9 facility, we don't have an authority to pay what would be
10 required if they were placed in a facility while they
11 remain in their own home, that ... yeah.

12 **Q.** But in the email that you're referring to
13 there, right in her first paragraph, she says, "I have
14 attached documentation regarding the situation with
15 Jeremy that shows my argument for why the normative level
16 of care would not be institutionalization." So was it
17 your ... like I ... the way I interpret the email, and
18 it's fair enough I'm not the author of it, but I'm
19 looking to see what your understanding of it was. The
20 second paragraph where she talks about the costs of
21 institutionalization, it's my understanding that was like
22 sort of in any event ...

23 **A.** Yeah.

24 **Q.** ... a backup. If you're not going to provide
25 this level of care, you should keep in mind that if this

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1 falls apart and he has to be institutionalized, it's
2 going to cost you this, so why wouldn't you think about
3 providing this level of funding.

4 **A.** Well, no, I think she was specifically
5 requesting that we provide that institutional level of
6 care if we weren't going to provide 24-hour care, and the
7 document that she's referring to, I believe, is that
8 briefing note that ... the one that you ...

9 **Q.** Yeah, I think that's at page 43? Is that the
10 one you're ...

11 **MR. TARLTON:** I think it's also Exhibit K to Ms.
12 Pictou's affidavit, if that makes it easier to reference.

13 **A.** Yeah. So there's a lot of information included
14 in that briefing note including some arguments for why
15 they felt that the \$2,200 maximum should be exceeded in
16 this case, and I believe that that's what Phillipa was
17 referring to when she says that I've provided
18 documentation, but that would be the ... and she had also
19 provided a copy of the direct family support program
20 policy which is also included in my affidavit and in
21 hers.

22 **MR. CHAMP:** So if I understand you correctly,
23 though, Ms. Robinson, it was your position that if there
24 was any costs over \$2,200 a month, period, that was
25 beyond the normative standard of care.

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1 **A.** That is beyond what the Province of Nova Scotia
2 would provide, yes, through the direct family support
3 program.

4 **Q.** We'll deal with that in a moment. That was
5 what you say your understanding was.

6 **A.** Yeah.

7 **Q.** And so whether it was \$10,000 or \$5,000,
8 basically, from your perspective, if it was over \$2,200 a
9 month, that was beyond the normative standard of care.

10 **A.** For the assisted living program, yes. Now I'm
11 speaking about the program that I administer. Health
12 Canada also administers a similar program which works ...
13 you know, I guess you could see them as working sort of
14 hand in glove with each other because they have the home
15 community care program and we have the assisted living
16 program. The Health Canada program ... well, I'm sure
17 Susan Ross, when she is cross-examined, can provide much
18 more detail than this one, but because they provide
19 different types of services, but Health Canada's program
20 provides the medical and personal care support services,
21 there are some slight differences between the two
22 programs and between the eligibility criteria. But I'm
23 speaking specifically to the program that I administer,
24 the assisted living program, and yes, anything above the
25 \$2,200 a month would be beyond the scope of our program.

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1 **Q.** Right. But just to be clear, it's my
2 understanding that when you provided your response to Ms.
3 Pictou that the decision that's at issue here, you were
4 responding on behalf of both departments, is that
5 correct?

6 **A.** It was a joint decision that I was
7 communicating. So I guess I'm hesitant to put words into
8 the mouth of Health Canada when I know that they're going
9 to be cross-examined separately. However, I did, you
10 know, sort of as background for this want to state that
11 in addition to my following up with my colleagues in the
12 Department of Community Services, so sort of the
13 counterpart program provincially to our assisted living
14 program is the direct family support program, and that
15 would be the \$2,200 ceiling that I'm referring to. On
16 the Health Canada side, my colleague Wade Were followed
17 up with Carolyn Maxwell, who works with the Department of
18 Community Wellness, and she had indicated that on the
19 medical services side that the maximum would be 145 hours
20 of care per month, depending upon the assessed carings of
21 the individual. However, with that level of care, there
22 would need to be a plan in place basically outlining how
23 the family would manage with the 145 hours, and of course
24 I have explained also in my affidavit package that the
25 \$2,200 respite care maximum for the Department of

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1 Community Services direct family support program would be
2 reduced by any funding amount provided through any other
3 provincial program.

4 So let's say you were receiving 145 hours of care
5 from the Department of Health and Wellness, that the
6 \$2,200 a month would be reduced by whatever care is being
7 provided by the other party, that basically the programs
8 are complementary but the provincial direct family
9 support program, the \$2,200 would be reduced by any other
10 supports that are being provided provincially.

11 **Q.** If you'd turn to an email, though, at page 193
12 of your certified record there, now this is an ... these
13 are emails between Wade Were and Carolyn Maxwell?

14 **A.** Yes.

15 **Q.** And Wade Were being a Health Canada colleague
16 of yours who was working with you on this case ...

17 **A.** Uh-huh.

18 **Q.** ... and Ms. Maxwell was a point of contact with
19 the Government of Nova Scotia?

20 **A.** Yes.

21 **Q.** She was one of the people that you were
22 reaching out to try to understand what the normative
23 standard of care would be in Nova Scotia, correct?

24 **A.** One ... well, as I explained ...

25 **Q.** One of.

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1 **Q.** ... Wade was reaching out to Carolyn Maxwell,
2 although I was copied on most of the correspondence so
3 that I'd be aware. And she, Carolyn Maxwell, is the one
4 who had provided the information that the Department of
5 Health and Wellness would provide up to 145 hours of care
6 per month in a complex case where there was a care plan
7 that showed how the family was going to manage, you know,
8 for the remaining hours of the week. Basically, as long
9 as it was sustainable and safe that the Province would
10 look at that.

11 So I guess the easiest way that I can explain it is
12 that in terms of two issues, two decision points, one is
13 the assisted living program, could it provide the scope
14 of services that are being requested, and the answer is
15 no because our funding authority is limited to the
16 maximum ...

17 **Q.** But you're answering on behalf of both parties.

18 **A.** Well, there are two issues. One is can this
19 program provide this service, and the answer is no. One
20 is would this fall under Jordan's Principle. So the
21 answer coming from both departments is that no, neither
22 ... the service being requested, either 24-hour care in
23 the home or to provide that \$350 a day that you would
24 have to pay if someone were in institutional care, the
25 Province of Nova Scotia, neither through the Department

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1 of Community Services, as I verified, nor through the
2 Department of Health and Wellness, as Wade verified,
3 would the Province of Nova Scotia provide that level of
4 service to someone residing off reserve.

5 So that is ... on the Jordan's Principle things, the
6 jointly communicated decision was that this is not a
7 normative standard of care, the Province of Nova Scotia
8 would not provide this, therefore this is not a Jordan's
9 Principle ...

10 **Q.** But what about Mr. Maxwell's email here to Mr.
11 Were starting at 193 going to 194 where she says that the
12 maximum could be up around the \$6,600 a month mark?

13 **A.** The maximum is actually communicated by the
14 Department of Health and Wellness in hours of care.
15 That, I believe, is an estimate. So it's 145 hours of
16 care for any individual that the Province would provide
17 through Health and Wellness.

18 **Q.** Right. And then ... but ... and that would be
19 presumably above the \$2,200 a month limit, though,
20 correct? I mean ...

21 **A.** There will be 145 hours of care, yes.

22 **Q.** Right. And how does it work ... what is the
23 normative standard of care in the province in terms of
24 combining those two programs?

25 **A.** Okay, and that's what I've already explained

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1 when I said that the \$2,200 maximum that the Department
2 of Community Services would provide would be reduced
3 dollar for dollar for any amount that's provided through
4 any other Provincial Government agency. So if the
5 Department of Health and Wellness is providing 145 hours
6 of care, obviously that would exceed \$2,200. The
7 Department of Community Services would provide nothing in
8 that case.

9 **Q.** But if you look at this email at 193 from Mr.
10 Were to Ms. Maxwell, and just so we're clear, this is May
11 25th, 2011. That's the same day you sent your decision
12 to Ms. Pictou, correct?

13 **A.** I believe, if ... I can verify the date but it
14 will take me a few minutes to find the decision.

15 **Q.** I'm pretty sure it's the same date.

16 **A.** Yeah.

17 **Q.** And in his first paragraph there about halfway
18 through, he says, "We are left wondering how many
19 combined hours of care and type of care would be
20 allocated to the family (DCS plus DHW)." So the way I
21 understand it, Mr. Were was uncertain on the day that you
22 made your decision about what would be the normative
23 standard of care of combined hours between those two
24 programs? Is that fair to say?

25 **A.** If Wade was uncertain, I certainly was not

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1 because we had received an email from Carolyn Maxwell
2 where she clearly identified the maximum is 145 hours of
3 care from the Department of Health and Wellness. And we
4 had verified with the Department of Community Services
5 that any amounts provided through the direct family
6 support program would be reduced by any amounts received
7 from another government service or agency within the
8 Province of Nova Scotia. So I was not unclear on that
9 point. The maximum that Health and Wellness would
10 provide is 145 hours of care.

11 Q. Okay. Well, can you turn then to page 190?
12 And just at the bottom there's an email here from
13 yourself to Ms. Baggley, who's here with us today, and I
14 think Mr. Were is copied there, yeah, Mr. Were is also
15 copied. And this says ... you're writing to ... I'm
16 gathering it's to Corrinne or maybe all of them:

17 You may be aware that Wade received
18 some information from the Province of
19 Nova Scotia Department of Health that
20 conflicts with the information we
21 received from the Department of
22 Community Services on the maximum
23 level of support that would be
24 provided as the normative standard of
25 care. As a result of this

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1 development ...

2 ... and then you go on. Just, with respect, Ms.
3 Robinson, when I read that email, it doesn't sound to me
4 like it was clear in your head about what the combined
5 hours would be between those two programs as you were
6 just stating.

7 **A.** You could not be more incorrect. If you read
8 that, what I am saying is that the information provided
9 by the Department of Health and Wellness, which was a
10 maximum of 145 hours of care, is not the same as the
11 normative standard for the Department of Community
12 services, which is \$2,200 worth of care.

13 What I had suggested in the wording was to ensure
14 that we're saying that regardless of the fact that the
15 two departments have different allocations for maximum
16 care, one talking about hours or care and one talking
17 about a dollar amount of care, that the fact remains that
18 both departments have confirmed that they would not
19 provide the level of care that was being requested and
20 that is the issue for Jordan's Principle. It's not
21 whether someone will provide 145 hours of care or whether
22 someone will provide \$2,200 worth of care, it's the
23 question of the service level that is being requested, is
24 that the normative standard of care for the province, and
25 they have both said no. Neither very clearly would

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1 provide that level of service. Therefore Jordan's
2 Principle does not apply.

3 **Q.** Well, Ms. Robinson, if I couldn't be any more
4 incorrect, I was wondering if you could help me with
5 another passage in your email if you'd just turn the page
6 to 191 right at the top where you say:

7 Wade and I propose that we advise
8 Ernest Walker that we would like to
9 have a meeting with both DOH and DCS
10 officials to try and clarify the
11 normative standard of care, and in
12 the interim I (would?) send the
13 revised email.

14 So you would agree with, then, at the time you sent
15 the email, it was not clear in your mind. Isn't that
16 what you're saying there?

17 **A.** No. The 145 hours of care was clear in my mind
18 and the \$2,200 worth of care was clear in my mind.

19 **Q.** Well, it ... but, Ms. Robinson, you say right
20 here, "clarify the normative standard of care." If it
21 was clear in your mind, what did you need to clarify? Is
22 it possible you clarified it in your mind afterwards?

23 **A.** I know that I received emails from the
24 Department of Health and Wellness verifying the 145 hours
25 of care and I received emails from the Department of

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1 Community Services verifying the 2,200.

2 Q. I mean, I looked through the emails as well,
3 Ms. Robinson, and frankly I saw some of the earlier ones
4 that said sort of the very categorical statements that
5 you're suggesting now, but it seems to me that some of
6 the later ones I saw, it seemed ...

7 A. There was a very late email from Carolyn
8 Maxwell which spoke of 145 hours of care, and ...

9 Q. Right. But at a bare minimum, it seems to me
10 that at the time you issued your decision, you will were
11 not sure or you still needed ...

12 A. No, it's ...

13 Q. ... further clarification ...

14 A. These emails are ...

15 Q. If I could just finish my question, you still
16 needed further clarification about what the normative
17 standard of care would be.

18 A. I received an email from Carolyn Maxwell, or
19 Wade received an email from Carolyn Maxwell, the day of
20 the decision at 11:35 a.m. which was prior to the
21 decision being issued, and that's the email where she
22 says specifically that it's 145 hours of care per month.

23 So my dealings with my colleagues in the Department
24 of Community Services have been very clear from the very
25 beginning. The Department of Health and Wellness had

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1 provided some late information regarding the 145 hours of
2 care, and again I would encourage you to speak at length
3 with Health Canada on this. But certainly on the day my
4 decision was issued at 11:35, I had received clear
5 information from Carolyn Maxwell that the maximum would
6 be the 145 hours of care.

7 **Q.** I was just checking the time. It looks like
8 you sent your email to Ms. Pictou at 3:01 p.m., and I
9 apologize, I think that we were off on the date. This is
10 February ... or this is May 25th, and in fairness to you,
11 I'm just looking at the email that you sent to Ms. Pictou
12 is actually the 27th, so I apologize ...

13 **A.** Okay. And there were very late emails going
14 back and forth.

15 **Q.** So I'm just ... because the email that you
16 ultimately sent, and it's exact same as the one that's in
17 here, is there any other documents that would indicate
18 that you obtained further clarification between May 25th
19 and May 27th when you issued your decision?

20 **A.** In this affidavit package? If you'll give me a
21 moment to go through the emails ...

22 **Q.** That's fine.

23 **A.** I think the last clarifying email that we
24 received from the Province of Nova Scotia would have been
25 the one from Carolyn Maxwell on the 25th where she had

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1 clarified the 145 hours of care. After that there were
2 emails exchanged internally between the two departments
3 talking about the wording because it was going to be
4 communicated as a joint decision. But the email that was
5 received on the 25th did clarify the Department of Health
6 and Wellness standard of care, which is 145 hours of care
7 per month which would be less than what was being
8 requested.

9 So as of close of business on May 25th, we were
10 presented with clear information from both the Department
11 of Community Services, the Province of Nova Scotia, and
12 the Department of Health and Wellness, Province of Nova
13 Scotia, that neither department would provide the level
14 of care that was being requested, therefore, there was no
15 jurisdictional dispute.

16 **Q.** Well, let me ask you a couple of questions
17 about ... I was going to move to another topic, but I
18 just ... in fairness, Ms. Robinson, if you could look at
19 192, that would seem to be ... page 192, that would seem
20 to be the last email from Carolyn Maxwell that we're
21 talking about here?

22 **A.** On page 192?

23 **Q.** Yeah. You know, it's ... unfortunately these
24 emails are all kind of cut and pasted and it seems not
25 quite the same chronological order so it makes it hard to

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1 follow, because this email from Ms. Maxwell is 1:51 p.m.,
2 it seems, on the 25th, and it looks like it's one that
3 precedes the one that follows from you to everybody, but
4 that one's 12:03 p.m., which should be later. But in any
5 event ... I'm not sure how that came about. But in any
6 event, this one from Ms. Maxwell at 1:51 p.m. on the
7 25th, would that be the last email that you're speaking
8 about?

9 **A.** Well, I was actually looking at the one from
10 11:35 in terms of clarifying the standard of care. The
11 one that came in at 1:51 obviously was later
12 chronologically, but it did not further clarify the
13 standard of care. It's speaking specifically to talking
14 about meeting the criteria for a long-term care facility
15 and also clarifying, as I had previously mentioned, that
16 in the Province of Nova Scotia in order to get that 145
17 hours of care for, like, a 24 care plan, there has to be
18 a plan showing that that level of care is sustainable,
19 i.e. that the family can provide what would be needed to
20 augment the 145 hours. So I don't regard that as
21 clarifying the normative standard of care. The last
22 email that clarified the normative standard of care is
23 the one that came in at 11:35 there, the one talking
24 about the 145 hours of care.

25 **Q.** So the one that came in at 11:35 clarified

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1 things, but your email at 12:03 says, I still need it to
2 be clarified. Am I missing something in ...

3 **A.** I may not have opened that email at that time,
4 but I would have opened it certainly prior to the
5 decision being issued. And as I said, there ... on that
6 day of the 25th, there are a lot of emails coming in.
7 But certainly ... you're asking me in terms of my
8 understanding of the clarification. When I received that
9 email from Carolyn Maxwell verifying 145 hours of care
10 because I had already verified the \$2,200 worth of care
11 from Community Services, the normative standard was clear
12 to me at that point. Subsequent information including
13 the email later that afternoon where she talks about
14 availability of long-term care, et cetera, et cetera, did
15 nothing further to clarify the normative standard of
16 care.

17 **Q.** Okay. And just for a couple of clarification
18 purposes, for my own clarification on something, in ...
19 you're the one who prepared this certified record ...

20 **A.** Uh-huh.

21 **Q.** ... is that right? And so all these different
22 emails that are kind of put together in big long
23 documents, that was you that did that by cutting and
24 pasting out of other emails and putting it all together,
25 is that right?

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1 **A.** Well, they ...

2 **Q.** Just to make it easier, I guess ...

3 **A.** They were print copies.

4 **Q.** Yeah, but they're not print copies that all go
5 together. It looks like ... which is fine, like
6 sometimes I see people do that, but it looks like you
7 kind of cut and pasted out of other emails and slapped
8 them all into one long document? I just want to make
9 sure I understand, because, like, in fairness to you,
10 this 12:03 p.m. one that you're talking about, if you're
11 following sometimes the chain of emails, usually you look
12 before and those chain of emails go all the way back to
13 Ms. Maxwell's email of 1:51 p.m., which obviously can't
14 happen, so I'm just seeking clarification. It looks like
15 you might have just cut and ... just so that other
16 readers later on, we understand that that's what
17 happened.

18 **A.** The actual ... these copies, I believe, are the
19 physical hard copies of Wade's. We have the same emails,
20 we were copied on the same emails, in terms of if you are
21 asking me, under oath, did I print these copies out of my
22 email and bring them here, I think this particular one
23 might have been Wade's that was included, which I was
24 copied on, because it's his name as the primary
25 recipient. I think if this had come out of my email,

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1 rather than it showing as me being copied on it that it
2 might have showed me as the primary recipient.

3 Q. If it's any other help to ... and this was
4 something that I was looking to try to understand myself,
5 how they were all mushed together, but if it's of any
6 assistance to you, at 192 I see that the little cut line,
7 dot dot dot, "forwarded by Wade Were on 7/7," so on July
8 7th he's forwarded that at 10:06. I gather that would
9 have been at the time when you were trying to gather this
10 certified record?

11 A. Yes, basically when I was trying to pull
12 together everything that I had in front of me at the time
13 of making the decision, there were documents that were
14 directly printed out of my email, there were documents
15 that I had hard copies of and a number of policy things
16 that I had printed off of the internet and other sources.

17 But I guess to make it as simple as I possibly can,
18 prior to issuing my decision ...

19 Q. Go ahead.

20 A. Okay. Prior to issuing my decision, I had
21 received written confirmation from both departments that
22 the normative standard of care for Community Services
23 would be the \$2,200, the normative standard of care for
24 the Department of Health and Wellness would be 145 hours
25 of care. In neither case would they provide the level of

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1 care that was being requested. Whether or not, you know,
2 I opened a particular email before sending another email
3 to a colleague, I honestly cannot recall at this time.
4 However, I can say with certainty that I did open the
5 email and review it prior to issuing the decision.

6 Q. And that's fine, Ms. Robinson, but just getting
7 back to the question I was asking you, I was just looking
8 to understand how this record was compiled, this actual
9 physical whatever it is ...

10 A. The document ...

11 Q. (inaudible due to two speaking at once) ... if
12 I just could ...

13 A. And if I may answer ...

14 Q. Just a moment if I may ...

15 A. Yeah.

16 Q. ... if I could ask the question and then you
17 can answer it. I'm trying to assist you if I can, so I'm
18 just trying to understand myself, and when I look at it,
19 it appears to me what you did is a bunch of people
20 forwarded emails to you and then you cut and pasted out
21 an email from the forwarded email and then put it into
22 one long document and then printed that out.

23 A. I did do ...

24 Q. Does that sound ...

25 A. I did include some forwarded emails. In terms

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1 of physically putting the document together, when I
2 assembled the affidavit, it was done with ... like it was
3 not bound. There were a whole number of different emails
4 that were spread out actually on this table that were
5 then assembled together and put into this document. So
6 there were emails that I had been previously copied on,
7 there were emails that had been forwarded to me, there
8 were emails where I was the original recipient, and all
9 of this material was spread out, compiled, and then
10 someone else would have put it into the bound copy. But
11 certainly when I signed as it being the record of what
12 was in front of me at the time of the decision, it
13 included all of those emails.

14 **Q.** Fair enough. This is just purely a technical
15 point. I'm just trying to understand how it was put
16 together. Maybe this is of more assistance. If you look
17 to page 172, there's a big blank spot at the top there.
18 We don't know what that's about, but there's a big blank
19 spot. At the bottom of the page, you see in the middle
20 page a number one, okay? And if you look at those page
21 numbers at the bottom, they go on to ... up to page 35.
22 Do you follow me on that?

23 **A.** Okay. I'm on page 172. I see ...

24 **Q.** If you look at the very bottom ...

25 **A.** ... page 1, 2, 3 ...

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1 **Q.** ... there's a page ... right.

2 **A.** ... there's a page number 3.

3 **Q.** Right.

4 **A.** And then it goes to page number 1 on 175 and
5 then 2.

6 **Q.** Oh, you're right, it restarts. So, sorry, then
7 175 it seems like where this particular chain starts.

8 **A.** Okay. And then on 179 it goes back to page 1.

9 **Q.** I'm not trying to make any big point, like it's
10 you ...

11 **A.** No, I do recognize that ...

12 **Q.** ... it's you that put them together.

13 **A.** Yeah.

14 **Q.** I'm just trying to ... I'm not trying to ...
15 I'm trying to understand what You did.

16 **A.** It's not the most ...

17 **Q.** I'm trying to understand what happened. It
18 just looks like what you did is people forwarded You
19 email ... you didn't have, like, a bunch of separate
20 emails. Like I've got ... like we have an email here,
21 for example, Exhibit 5, that's an email that was printed
22 out.

23 **A.** Yes.

24 **Q.** And there you go. That's not what you were
25 doing when you had all these emails ...

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1 **A.** Everything was being assembled in a ...

2 **Q.** It looks ...

3 **A.** jumbled up. This is everything that was
4 before me in making the decision. And I admit is it a
5 little bit hard to follow in looking at it, but the
6 information is all there. You can see ...

7 **Q.** It is all ... well, that's fine, you say it's
8 all there, I'm just trying to understand how it's bound.
9 And I'm ... just so we're clear, what you did, it looks
10 like, is emails were forwarded to you, you cut and pasted
11 out of them and put them into maybe ... it looks like
12 maybe thematically related in some way, but they were not
13 necessarily chains of emails. So, like, from one ...

14 **A.** Well, no, some of them are chains of emails.

15 **Q.** Some of them are but some of them aren't. They
16 way you put them together, they're not all necessarily
17 the sequential emails. So from page 179 in the top right
18 corner going to page 212, you'll see that those are
19 numbered 1 to 34 at the bottom, and it does not look like
20 these are necessarily sequential emails. Therefore, you
21 must have put some documents together by cut and pasting
22 out. Is that not what happened?

23 **A.** Well, I never cut and pasted out. There are
24 certain emails that I printed off. You asked me if some
25 things had been forwarded to me, yes, some had. You

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1 asked me if I had been copied on some things, yes, they
2 had. The documents you're referring to ...

3 Q. This isn't a sequential document. It's not a
4 sequential document. It's not a big point, but if you
5 can just ... it's not a sequential document, would you
6 agree with me on that?

7 A. I will say that the only things that would have
8 been excluded were things that were duplicative in
9 nature. Now there were some cases where there were
10 maybe, you know, seven, eight copies of the same email,
11 that that would have been removed, yes, to avoid
12 duplication, and even as it is, there's a fair amount of
13 duplication in here where the same email you will see
14 forwarded and forwarded again.

15 Q. Which would explain why you were cutting and
16 pasting because ...

17 A. Yes.

18 Q. All I'm ... it's not a big point, I just would
19 like ...

20 A. Okay.

21 Q. ... you to just say yeah, that's what I did, I
22 was cutting and pasting ...

23 A. If information was duplicated ...

24 Q. ... to ensure ...

25 A. ... it was cut out to reduce the overall size

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1 of the volume.

2 Q. Right. So ...

3 A. And some of it in terms of you asked me
4 why there are blank spaces. I think it's just the way
5 things printed out. I do know ... you know, if you're
6 asking whether or not things can be removed from an email
7 that someone has forwarded ...

8 Q. That's not what I'm asking and I wasn't
9 implying that, I was just trying to ask a basic question
10 of how you put your record together. So it looks like
11 you cut and pasted whole emails and put them all together
12 into some order that seemed to you they were in an order
13 but were not necessarily sequential into long Word
14 documents and then printed that out.

15 A. No, they were not Word documents.

16 Q. What was ... how did ...

17 A. Out of GroupWise, that I said there were ...
18 there may have been pieces because they were duplicative
19 ... I can see your frustration and I'm trying to be as
20 clear as I can, and you're asking me about something that
21 would have been assembled several months ago. I do
22 recall that there were emails that because they were
23 already included elsewhere in the record would not have
24 been included multiple times, they would have been cut
25 out. You asked me if this was a Word document, i.e. ...

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1 **Q.** I put it ...

2 **A.** ... Microsoft Word, it's not. They're from the
3 GroupWise email system that I have.

4 **Q.** I put it to you that these aren't sequential
5 emails, that you cut and pasted them out of one document
6 and put them in another document, yes or no. If the
7 answer is no, that's fine, if it's yes, it's fine.

8 **A.** The answer is no.

9 **Q.** Fine. I think it shows what it shows, but ...
10 so let's turn to another issue in your affidavit, Ms.
11 Robinson. This whole \$2,200 a month business, how did
12 you square ... I didn't see how you addressed it ... you
13 didn't address it in your affidavit. You'd agree with me
14 that Ms. Pictou provided you with a case, a court case,
15 that showed that the \$2,200 a month was not the cap for
16 home care services, isn't that correct?

17 **A.** No, that is not correct.

18 **Q.** She didn't provide you with a case? Let's go
19 and look at the record.

20 **A.** No.

21 **Q.** No, just hold on, let's look in your record.
22 If you go ... and this is your affidavit ...

23 **A.** You've asked me two different questions and I
24 would like to respond.

25 **Q.** Just hold on. If you go to your record at page

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1 50, okay, can you tell me what that document is?

2 **A.** I would like to go back to the two questions
3 you asked me. One ...

4 **Q.** Can you tell me what that document is?

5 **A.** That document is a Supreme Court of Nova Scotia
6 Decision between the Department of Community Services and
7 an individual named Brian E. Boudreau. Now regarding
8 this document ...

9 **Q.** Now just hold on. And Ms. Pictou provided that
10 to you before you rendered ...

11 **A.** Yes.

12 **Q.** ... your decision, correct?

13 **A.** She did.

14 **Q.** Okay. And when I read your affidavit, I don't
15 see you really addressing that decision, is that fair to
16 say?

17 **A.** Absolutely not. It was not relevant to my
18 decision and I would like to explain why it was not ...

19 **Q.** Okay. Well, I'll ask you in just a moment.
20 You didn't address it in the email decision that you sent
21 either, is that correct?

22 **A.** That is correct because it was not relevant to
23 my decision.

24 **Q.** Okay. Now explain to us why it was not
25 relevant to your decision.

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1 **A.** My decision is based in policy, that basically
2 the policy reference in the funding agreement and in the
3 national policy manual is to the existing provincial
4 policy. This Supreme Court Decision has not changed the
5 existing provincial policy. The direct family support
6 policy is still in effect, the amount that is the maximum
7 eligible amount is still \$2,200. Now whether or not the
8 Supreme Court Decision may influence the future policy,
9 that is a question that ... you know, it's hypothetical,
10 whether or not the Province wants to take that under
11 advisement and revise their existing policy, but I work
12 with existing policy, and that is why it was not relevant
13 to my decision.

14 **Q.** Okay. So if I understand you correctly, you
15 follow policy, not law.

16 **A.** My legal authority to fund is rooted in the
17 policy. My legal authority to fund under the Treasury
18 Board authority is referencing the applicable provincial
19 policy. The applicable provincial policy at the time of
20 this decision was the direct family support policy, and,
21 in fact, the Province of Nova Scotia did advise me that
22 this was a recent decision that they were internally
23 taking under advisement to determine how they would
24 proceed. Whether or not they ultimately decided to
25 change their policy, as I said, that is a matter of, you

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1 know, conjecture or hypothesis. But at the time my
2 decision was made, this court decision had no bearing on
3 my decision.

4 Q. So when you say the normative standard of care,
5 you mean what the Province tells you they do, not what
6 they actually do, is that right?

7 A. Quite the opposite.

8 Q. Okay. Explain.

9 A. Because the \$2,200 a month is what the Province
10 actually does under their policy.

11 Q. Well, but if you look at this case, and I
12 assume you did read this case.

13 A. Yes.

14 Q. Okay. Look at page 53. At paragraph 9, you'll
15 see that it says:

16 Notably, the Department of Community
17 Services also took the position that
18 although the maximum amount of
19 available for ordinary respite care
20 is \$2,200 per month, Brian Boudreau's
21 case was grandfathered and ...
22 (inaudible) (cracks?) of the
23 Department, according to counsel
24 (that's hearing?) by virtue of its
25 having been in the system prior to

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1 the \$2,200 maximum amount being set,
2 and consequently Mrs. Boudreau is
3 receiving \$3,120 in total per month
4 for Brian's care.

5 So you'd agree with me that this young man's family
6 was receiving over \$3,000 per month, correct?

7 **A.** Yes.

8 **Q.** So, in fact, that's what the Province was doing
9 as a fact, correct?

10 **A.** But not in a similar case, that ... when I said
11 that I follow the relevant policy, the relevant policy is
12 the \$2,200 a month, that a case coming forward is capped
13 at \$2,200. The fact that this particular case was
14 receiving \$3,000 a month because it had been previously,
15 they're ... it's like comparing apples and oranges
16 because this is a new request coming forward. One
17 hundred percent of the time the Province has assured me
18 that a new request coming forward follows the \$2,200 cap,
19 that this court case, while it's interesting to note, is
20 not relevant to my decision and did not factor as part of
21 my decision.

22 **Q.** Did you ask your Provincial Government
23 counterparts how many other children in Nova Scotia off
24 reserve get respite care in excess of \$2,200 a month?

25 **A.** I did not. They told me that for all cases

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1 since the 2006 memorandum that was issued advising staff
2 that under no circumstances would it ever be exceeded,
3 that there have been no cases approved since that time.

4 **Q.** But ...

5 **A.** There may have been a case prior to 2006 which
6 was approved and, as this case, grandfathered, but the
7 current practice, which has been the case since 2006, and
8 Lorna MacPherson did confirm this to me, is that they are
9 not approving any cases above the \$2,200 maximum

10 **Q.** Even though you agree with me that their own
11 policy does say they can approve over \$2,200 in ...

12 **A.** Their policy says they can ... their policy
13 says ...

14 **Q.** But I thought you said you follow the policy.

15 **A.** Their policy says they can, but the practice is
16 that they can't.

17 **Q.** Okay. So you don't follow the court
18 judgements, you don't follow the policy, you follow the
19 practice that they tell you, even though the practice
20 does not necessarily apply to all the children under
21 their care, is that right?

22 **A.** The policy says that it may be considered under
23 exceptional circumstances. When I clarified well, what
24 exceptional circumstances, they said there are no
25 exceptional circumstances. I did not write the

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1 provincial policy. I need to ensure that I'm following
2 the policy as it is being implemented in the province.

3 Q. Well, if you look at page 41 in your record,
4 this is part of the policy that we were just discussing.
5 And you had this before you when you made your decision?

6 A. Uh-huh.

7 Q. And it speaks about exceptional circumstances
8 for respite care funding over \$2,200, and at 6.3.2, it
9 enumerates some criteria that may be considered by the
10 province when approving instances of exceptional
11 circumstances?

12 A. Uh-huh.

13 Q. Okay. So the first bullet says, "An individual
14 has extraordinary support needs to the extent that they
15 are reliant on others for all aspects of their support."
16 Would you agree with me that that would describe Jeremy?

17 A. Yes, I would.

18 Q. And the next bullet says, "An individual has
19 extreme behaviours that result in high levels of stress
20 within the family unit." I'm sure you can recall from
21 some of the documents you have of Jeremy's self-injurious
22 behaviour. Would you agree with me that he would fall
23 under that criteria?

24 A. Based on the documentation, yes?

25 Q. Okay. And then bullet 3, "There is no

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1 appropriate day program for an adult individual due to
2 behaviour or health-related issues." That would also
3 apply to this case, I gather?

4 **A.** Yes.

5 **Q.** Next bullet, "A single care giver has sole
6 responsibility for supporting the family with the
7 disability." That would apply in this case as well?

8 **A.** Yes.

9 **Q.** And the last bullet has to do with end of life
10 issues which don't apply here.

11 **A.** Which is why I clarified with the Province,
12 because based on my reading of this, I thought there
13 might have been some flexibility. That is why I
14 clarified with the Province and they very firmly and
15 clearly indicated that there would be no exceptions to
16 the \$2,200 maximum.

17 **Q.** Except for those that they already had made
18 exception for in years prior.

19 **A.** Obviously a prior approval, yes. But at the
20 current time, at the time the decision was made, the
21 Province of Nova Scotia would not have approved any
22 individual coming forward with a request for additional
23 care.

24 **Q.** Does that sound fair to you, Ms. Robinson, that
25 one parent with a child with the exact same needs gets

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1 more support from the Province than another parent with
2 the exact ... a child with the exact same needs?

3 **MR. TARLTON:** I'm sorry, what's the relevance of
4 asking her her personal views as to what is fair or not?

5 **MR. CHAMP:** She's the one that rendered the decision
6 here. She's the one that ...

7 **MR. TARLTON:** The decision is not based on what she
8 ... her personal perception of what is fair or not.

9 **MR. CHAMP:** It's her perception of what the
10 normative standard of care was.

11 **MR. TARLTON:** Well, then ask her what she perceives
12 to have been the normative standard.

13 **MR. CHAMP:** Well, that's what I'm testing her on ...
14 (inaudible due to two speaking at once) ...

15 **MR. TARLTON:** You asked her what she thought was ...
16 whether something was fair or not and I don't think
17 that's the same question. Please rephrase it.

18 **MR. CHAMP:** So, Ms. Robinson, when you have a
19 situation where two families have children who have the
20 same ... who are disabled and have the same level of need
21 but don't get the same level of care from the Province,
22 how do you determine, as a Federal Government official,
23 what the normative standard of care would be for the
24 Province?

25 **A.** It would be the normative standard that is in

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1 place at the time of the decision. So in this case ...

2 Q. So the child that gets less care.

3 A. At the time of the decision, the normative
4 standard would be what the Province had indicated to us.
5 The fact that ten years ago they may have approved a
6 different level for someone else is not relevant to the
7 decision on that day, that at all times as an impartial
8 civil servant, I have to look at the policy that is in
9 place, and in this case it brought me to a reference
10 policy of the Province, and when the question is asked to
11 the Province what would be approved on this day for a
12 similar case requesting similar services, that's the
13 point in time that you're looking at.

14 Q. Well, but do you know ... like under this DFS
15 policy for children, do you know how many children
16 receive care from the Province or, pardon me, receive
17 support from the Province under that policy?

18 A. No, I do not.

19 Q. Would you know, for example, if, say, 60
20 percent of the children are those who are grandfathered
21 and therefore 60 percent are getting greater? You
22 wouldn't know one way or the other?

23 A. The Province would not be required to disclose
24 that information to me on their program, no.

25 Q. But would you agree with me that if 60 percent

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1 of the children were grandfathered and were getting
2 greater than the \$2,200 amount, that would be normative,
3 more than 50 percent being normative?

4 **A.** No, that would not be because it's the point in
5 time when the decision is made. That is not the current
6 practice of the Province of Nova Scotia to approve cases
7 above the \$2,200 per month, so I would disagree that that
8 would be normative. Normative means what would be
9 approved by the Province at this point in time for this
10 case. There are many programs, federal, provincial,
11 municipal, where policies change and practices change.
12 You are always required to go by what is currently in
13 place at a point in time.

14 **Q.** So just to be clear, you didn't look into those
15 levels or anything like that because it wasn't ... in
16 your view, it wasn't relevant to your decision.

17 **A.** That is correct.

18 **Q.** Page 113 of your certified record there, it
19 looks like some kind of draft media release ...

20 **A.** Yes.

21 **Q.** ... when you issued your decision on this. And
22 at page 113, it says, "If pressed on the Nova Scotia
23 Supreme Court Decision Boudreau," there's a bullet
24 saying, "INAC understands this court decision was only
25 reached on March 2011 and the Province of Nova Scotia is

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1 still reviewing the decision internally." So do you know
2 what the Province has done about that decision now?

3 **A.** I have not been advised by the Province, but I
4 have asked them to update me when a final decision is
5 made, and at this point they have not provided me an
6 update.

7 **Q.** Do you know if that decision was appealed?

8 **A.** No, I do not.

9 **Q.** Would that have made any difference to your
10 decision?

11 **A.** Well, that's a hypothetical question.

12 **Q.** Well, I can tell you there is an answer to that
13 ... there is an answer, I'm just wondering if you ...
14 it's not hypothetical, they either appealed or they
15 didn't appeal, and I'm just wondering if whether they did
16 or not would have made a difference to your decision.

17 **A.** I am not aware whether they appealed or did not
18 appeal the decision, and in terms of my decision, the
19 factor that I take into account is the policy that is
20 before me.

21 **Q.** What do you understand the Boudreau case to
22 say?

23 **MR. TARLTON:** I'm sorry, again, that's asking for, I
24 would respectfully submit, a legal opinion as to the
25 effect of the decision. I don't think it's for her to

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1 answer, and I'm not sure how relevant it is, given her
2 previous answers.

3 **MR. CHAMP:** Yeah, I'm just thinking on that. So the
4 applicability of a court decision is irrelevant to her
5 determination or her decision. That's how I understood
6 her evidence, is that fair?

7 **MR. TARLTON:** Well, I'll leave it for what her
8 transcript of her evidence says as to what it is, but I
9 understood you were asking her as to her view or her
10 opinion as to what that decision means ...

11 **MR. CHAMP:** But it was before ...

12 **MR. TARLTON:** ... and I think that's a matter
13 ultimately for argument at the end of the ...

14 **MR. CHAMP:** I'm just trying to understand what her
15 understanding, because it was before her when she made
16 ... like I hear what you're saying, for sure, Mr.
17 Tarlton, about having a lay witness draw conclusions of
18 law. But the reason why I'm asking her is just in terms
19 of it was before her when she made her decision and what
20 was her understanding of what it meant when she made her
21 decision. Is that fair?

22 **A.** Well, perhaps ...

23 **Q.** I understand what your concern is ...

24 **A.** Yeah.

25 **Q.** ... but also at the same time do you understand

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1 what I'm trying to get at? Like maybe a way to do it is
2 just say whatever she says the case says or doesn't say
3 obviously isn't determinative in any way, but I think in
4 fairness to us, we have to get some answer from her about
5 what she understands the case to mean when she rendered
6 her own decision.

7 **A.** Well, what I understood the significance of the
8 case might be, and this isn't interpreting the law behind
9 the case ...

10 **Q.** Yeah, fair enough.

11 **A.** ... was that potentially in the future the
12 policy may change, depending on the Province's decision
13 in terms of how to respond to the case. But at the point
14 in time when I made the decision, my understanding was
15 that that had not happened at that point in time, so
16 that's why I had indicated that I did not feel it was
17 relevant. At that point in time when I made the
18 decision, the Province had not changes its policy, had
19 not made an internal decision about how it would respond
20 to or proceed regarding the case based on what was
21 communicated to me by the Province because I did ask that
22 question and was told that no internal decision had been
23 made at that time. And that is why I had said that
24 regardless of what the legal implications of that case
25 may or may not be, that at the time when I made my

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1 decision, the Province had not changed its policy.

2 **Q.** Fair enough. I'm just about done. Just a
3 couple of cleanup questions.

4 You state in your decision that 24-hour care would
5 never be funded. Was it your understanding that Jeremy
6 was receiving 24-hour care at the time you made your
7 decision?

8 **A.** I believe at the time I made my decision he
9 was, but then it had been reduced to care during the
10 daytime but 24-hour care on the weekends, more recently,
11 the most recent update that I had. So I know that he had
12 previously been receiving 24-hour care. Then there was a
13 period of time that he was receiving care for 24 hours
14 only on the weekends. But the decision wasn't based on
15 just 24-hour care, the decision was also based on whether
16 or not we could provide the equivalent amount of what
17 long-term care would cost, the \$350 a day.

18 **Q.** So that was what your understanding is. If the
19 request was \$350 a day every day for a month, if that's
20 what was being requested, you were turning ... that was
21 the basis of your decision?

22 **A.** No, 24-hour care or \$350 a day. Neither would
23 be provided by the Province.

24 **Q.** Okay. And those are the bases upon which you
25 reached your decision, that that was the understanding.

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1 **A.** Yes.

2 **Q.** Okay. One other thing. In your affidavit, if
3 you could just turn to it briefly, at paragraph 40, you
4 just say there:

5 Wade Were and I conferred with
6 headquarters officials from Health
7 Canada and AANDC before I sent the
8 email to Pictou Landing First Nations
9 to ensure that we observed due
10 diligence in our joint departmental
11 decision-making process.

12 And were those consultations by phone or were they
13 by email?

14 **A.** We had sent ... I had sent a copy of the draft
15 decision email to headquarters for them to review and it
16 had also been reviewed by my senior management team
17 within the Atlantic region, and I believe somewhere in my
18 affidavit you would have a departmental routing slip.

19 **Q.** Departmental routing slip?

20 **A.** It just shows that someone saw it and initialed
21 it and that they were fine with it. So basically ... you
22 asked me in terms of what that meant. That meant that
23 the decision, the draft, was sent to headquarters for
24 their approval, and it was also vetted through our
25 regional senior management team. And the same was true

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1 at Health Canada, that that decision email was shared
2 with both regional and senior management of Health Canada
3 before it was sent.

4 Q. Okay. And then ... just give me a moment. I
5 think I'm done.

6 **(OFF RECORD 3:00 - 3:01 p.m.)**

7 Q. Thank you, those are all the questions that I
8 have.

9 **MR. TARLTON:** If I can just have a moment, I don't
10 think I have any questions, but if I can just have a
11 moment to look back over my notes.

12 **(OFF RECORD 3:01 - 3:02 p.m.)**

13 **MR. TARLTON:** I have no questions for re-
14 examination. Thank you, Mr. Champ.

(WITNESS WITHDRAWS - 3:02 p.m.)

CERTIFICATE OF COURT TRANSCRIBER

I, Anne Louise Hood, Court Transcriber, hereby certify that I have transcribed the foregoing and that it is a true and accurate transcript of the evidence given in this matter of the **Pictou Landing Band Council and Maurina Beadle and Attorney General of Canada** taken by way of electronic recording.

Anne Louise Hood (2006-19)

November 7, 2011

Dartmouth, Nova Scotia