CFN: A-158-13

FEDERAL COURT OF APPEAL

B E T W E E N:

ATTORNEY GENERAL OF CANADA

Appellant

-and-

PICTOU LANDING BAND COUNCIL and MAURINA BEADLE

Respondents

RESPONDENTS' FACTUM

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OVERVIEW

> *I am profoundly disappointed to note in Chapter 4 of this Status Report that despite federal action in response to our recommendations over the years, a disproportionate number of First Nations people still lack the most basic services that other Canadians take for granted.*[1]

1. This case is about the right of First Nations families to access the same level of public services available to other Canadians. Many children with disabilities and their families rely on continuing care services in the home. These public services are generally provided by provincial governments according to local legislation. But provinces refuse to extend those same services to First Nations children who live on reserves, arguing it is a matter of federal jurisdiction. While not conceding the jurisdictional issue, the Government of Canada has assumed responsibility for ensuring the delivery of continuing care programs and services on reserves at levels "reasonably comparable" to those offered by the province of residence.

2. Jeremy Meawasige is a teen-ager with multiple disabilities and high care needs. He and his mother Maurina Beadle are Mi'kmaq and live on the Pictou Landing reserve in Nova Scotia. Until May 2010, Maurina was able to care for her son without government support or assistance. When Maurina suffered a stroke, the Pictou Landing Band Council began providing in-home support to her and Jeremy.

3. The Government of Canada funds the Pictou Landing Band Council ("PLBC") to deliver continuing care services to people in need on the reserve. In May 2011, the PLBC asked for additional funding to ensure the Beadles received the same level of care and services available to those living off reserve. On May 27, 2011, Canada refused this request, claiming that the PLBC was asking to fund services in excess of the "normative standard of care" in the province of Nova Scotia.

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[1] Status Report of the Auditor General of Canada to the House of Commons, Matters of Special Importance (Ottawa, 2011) at p. 6

4. The Federal Court concluded that the Appellant erred regarding the level of care available off reserve in Nova Scotia, and that, in accordance with Jordan's Principle, a policy adopted by the Government of Canada, the Appellant should provide additional funding to the PLBC to deliver Jeremy's home care needs. The Court did not address the Respondents primary argument that the denial constitutes discrimination contrary to section 15 of the *Canadian Charter of Rights and Freedoms*.

5. The Respondents submit that the appeal should be dismissed. The Court below properly interpreted Jordan's Principle as requiring governments to ensure that First Nations children receive the same level of care and services available off reserve. The policy was adopted pursuant to the *Financial Administration Act* and has the force of law. Alternatively, First Nations children living on reserve have the right to equal benefit of the law under section 15 of the *Charter*, and the Appellant's decision to deny additional funding is an unconstitutional exercise of discretion.

PART I - FACTS

Background of Jeremy and Maurina

6. Jeremy Meawasige is a teen-ager with multiple disabilities and high care needs. He has been diagnosed with hydrocephalus, cerebral palsy, spinal curvature and autism. He can only speak a few words and cannot walk unassisted. He is incontinent and needs total personal care including showering, diapering, dressing, spoon feeding, and all personal hygiene needs. He can become self-abusive at times, and needs to be restrained for his own safety. [2]

[2] Reasons for Judgment and Judgment of Justice Mandamin, dated April 4, 2013 (hereinafter "Reasons for Judgment") at para. 6 [Appeal Book ("AB"), Vol. I, Tab 2, p. 5-6]

7. Jeremy lives on the Pictou Landing reserve with his mother, Maurina Beadle, and his older brother Jonavan. Maurina is Jeremy's primary caregiver and was able to care for her son in the family home without government support or assistance until she suffered a stroke in May 2010.[3]

8. Jeremy and Maurina have a deep bond with each other, and she is often the only person who can understand his communication and needs. In raising Jeremy, Maurina spent countless hours training him to walk and uncross his eyes with special exercises. She also discovered and fostered Jeremy's love of music. She sings to him when he is upset or does not want to cooperate. Her voice calms Jeremy and makes him feel at ease. When Jeremy engages in self-abusive behavior, Maurina's singing can soothe him and make him stop. The family spends every summer on the "Pow-Wow Trail", travelling to communities in the Maritimes where Pow-Wows are held. Maurina says Jeremy is happiest when he is dancing with other First Nations Peoples and singing to traditional music. Jeremy has never engaged in self-abusive behavior while at a Pow-Wow.[4]

Continuing Care Services on Reserves

9. Continuing care services, such as assisted living and home care services for people with disabilities, are generally considered a provincial responsibility under s. 92 of the *Constitution Act, 1867*. However, provinces have refused to provide these services on First Nations reserves due to disagreements with the federal government over constitutional responsibility. Consequently, such services have historically been funded and provided by the Government of Canada through Health Canada and the Department of Indian and Northern Affairs of Canada "as a matter of policy, not as a

[3] Reasons for Judgment, para. 7 [AB, Vol. I, Tab 2, p. 6]
[4] Reasons for Judgment, para. 10 [AB, Vol I, Tab 2, p. 7]

matter of legal or other obligation." [5]

10. Since the early 1980s, Health Canada and Indian and Northern Affairs (now known as Aboriginal Affairs and Northern Development Canada, or "AANDC") have worked together to provide personal care and home care services on reserves. While the federal government's objective was to provide services "reasonably comparable" to those available off reserve, internal studies in 1989 and 1997 concluded that this standard was not being met. The 1997 study found that First Nations individuals living on reserves "did not have access to the same scope and quality of in-home care services as those offered by provincial or territorial programs" and "funding levels were inadequate to meet the existing needs".[6]

11. Today, AANDC's Assisted Living Program ("ALP") and Health Canada's First Nations and Inuit Home and Community Care Program ("HCCP") form the basis of continuing care services offered on reserves. The ALP funds services to people with disabilities for items such as non-medical personal care, food preparation, housekeeping and laundry. The HCCP provides home support, medical equipment and nursing services to the elderly, people with disabilities, and the chronically ill. [7]

12. While the ALP and HCCP are funded by different government departments, they provide similar services along a continuum of care. The programs are designed to complement one another, but not to provide duplicate funding for the same service.[8]

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[5] Assisted Living Program: National Manual, Indian and Northern Affairs Canada, February 2005 ("Assisted Living Program Manual"), paras. 1.1.5, 1.2.2, 1.4.2, 1.6.2, 1.6.3 and 1.7.1 for quote [AB, Vol. I, Tab 5, pp. 220-224, 226-227]
[6] Assisted Living Program Manual, paras. 1.2.1 to 1.2.4 and 1.2.7 to 1.2.10, paras. 1.2.3 and 1.2.10 for quotes [AB, Vol. I, Tab 5, pp. 220-222]
[7] Reasons for Judgment, paras. 12-13 [AB, Vol. I, Tab 2, pp. 7-8]
[8] Reasons for Judgment, para. 14 [AB, Vol. I, Tab 2, p. 8]

Funding Levels and Agreements with the Pictou Landing Band Council

13. AANDC and Health Canada enter into contribution funding agreements with First Nations band councils to deliver the services offered under the Assisted Living Program and Home and Community Care Program. First Nations band councils are required to administer the programs "according to provincial legislation and standards". [9]

14. Under the PLBC's block contribution agreement with AANDC for the ALP, the Band Council was receiving $55,552 annually for eligible services. Under a similar agreement between PLBC and Health Canada for the HCCP, the Band received $75,364 annually.[10]

15. These funding agreements contain clauses that allow for increased funding where the continued effective delivery of services is threatened by special circumstances. The ALP funding agreement states that the Band can seek additional funding in "exceptional circumstances" which were "not reasonably foreseen" at the time the agreement was entered into. The HCCP agreement has a similar clause which refers to necessary increases due to "unforeseen circumstances". [11]

Service Available Off Reserve in Nova Scotia

16. In Nova Scotia, the *Social Assistance Act* ("*SAA*") governs the funding of personal home care services for people with disabilities. Section 9(1) of the *SAA* provides that persons in need shall be furnished with "assistance", which is defined by

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[9] Assisted Living Program Manual, paras. 1.2.1, 1.9.3 and 1.9.4 for quote [AB, Vol. I, Tab 5, pp. 220, 228 and 229]
[10] Reasons for Judgment, para. 15 [AB, Vol. I, Tab 2, p. 8]
[11] Reasons for Judgment, para. 79 [AB, Vol. 1, Tab 2, p. 28]; AANDC Funding Agreement, para. 3.4 [AB, Vol. 1, Tab 5, p. 161]; and Agreement between Health Canada and Pictou Landing Band, para. 23 [AB, Vol. 1, Tab 5, p. 99]

regulation as including home care and home nursing services. [12] The Nova Scotia Department of Community Services is responsible for implementing the *SAA* and funds home care for people with disabilities through the Direct Family Support Policy. [13]

17. While there is no legislative or regulatory maximum level of service that may be granted to a person in need under the *SAA*, the Direct Family Support Policy provides that the funding for home care "shall not normally exceed" $2,200 per month. However, the Policy states that additional funding may be granted in "exceptional circumstances".[14]

18. In 2006, the Nova Scotia Department of Community Services issued an internal directive stating that the maximum funding under the Direct Family Support Policy was to be limited to $2,200 only, which effectively meant that the Policy provision for "exceptional circumstances" should be ignored. [15]

19. On March 9, 2011, the Nova Scotia Supreme Court ruled in *Boudreau* that the "directive" limiting funding to $2,200 per month had no legal basis. In that case, a single mother had applied for more funding to ensure adequate personal care services for her severely disabled son. While the Department acknowledged that the care needs requested were appropriate, it maintained that it simply could not provide more than $2,200 per month due to its own internal directive. The Court concluded that the statute had no such limitation and people with disabilities ought to be entitled to more than $2,200 per month for home care services when assistance

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[12] *Social Assistance Act,* RSNS 1989, c 432, section 9; and *Municipal Assistance Regulation,* N.S. Reg. 76/81, section 1(e)

[13] Direct Family Support Policy, *Department of Community Services,* July 28, 2006 ("Direct Family Support Policy") [AB, Vol. 2, Tab 5, p. 428]

[14] Reasons for Judgment, para. 80 [AB, Vol. 1, Tab 2, p. 28]; Direct Family Support Policy, paras. 5.4.1 and 6.3 [AB, Vol. 2, Tab 5, p. 446 and 449]

[15] Memorandum of Lorna MacPherson, Coordinator of Services for Person with Disabilities, dated October 13, 2006 [AB, Vol. 3, Tab 7, p. 767]; and Reasons for Judgment, paras. 37, 59 and 92 [AB, Vol. 1, Tab 2, p. 15, 22 and 32]

"reasonably meets" the needs of the particular individual. As a result, Boudreau was to receive additional funding to the level of approximately $4,000 per month.[16]

20. People with disabilities in Nova Scotia also have access to home care services provided through the Department of Health and Wellness. Through the province's Home Care Program, individuals receive up to 150 hours of home support services. This represents approximately $6,600 per month in home-care services.[17] Nova Scotia's Direct Family Support Policy and Home Care Policy Manual both exclude First Nations children living on reserve from services provided by the province.[18]

Jordan's Principle and Equality in Public Services for Children

21. First Nations People living on reserve sometimes face barriers when trying to access public services that are normally regulated and funded by provincial governments. In some cases, jurisdictional disputes arise between different levels of government regarding who should pay for services to First Nations Peoples living on reserves. As a result of these disputes, First Nations Peoples living on reserves are at times denied or experience significant delays when seeking access to basic services otherwise available to individuals living off reserve.[19]

22. One tragic example of this situation involved Jordan River Anderson, a young

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[16] *Nova Scotia (Community Services) v. Boudreau*, 2011 NSSC 126, at paras. 1, 8-9, 59, 61-63, 70-72 and 87 [AB, Vol. 3, Tab 7, pp. 718, 720, 744-745, and 748-749]

[17] Home Care Policy Manual, Nova Scotia Department of Health and Wellness, June 1, 2011 ("Home Care Policy Manual"), p. 64 [AB, Vol. 2, Tab 5, p. 523]; Email from Susan Stevens to Wade Were, dated May 20, 2011, p. 188 [AB, Vol. 2, Tab 5, pp. 854-855]

[18] Reasons for Judgment, para. 94 [AB, Vol. 1, Tab 2, p. 33]; Direct Family Support Policy, para.5.3.1 [AAR, Vol. 2, Tab 3, p. 402]; Nova Scotia Home Care Policy Manual, pp. 59-60 [AAR, Vol. II, Tab 3, pp. 480-491]

[19] Jordan's Principle Fact Sheet, First Nations Child and Family Caring Society of Canada ("Jordan's Principle Fact Sheet"), pp. 1-2 [AB, Vol. 2, Tab 5, pp. 611-612]; Update on Jordan's Principle: The Federal Government's Response, January 12, 2011, p. 3 [Supplementary Appeal Book ("SAB"), Tab 1]; Assisted Living Program Manual, para. 1.1.5 [AB, Vol. 1, Tab 5, p. 220]

boy with severe disabilities from Norway House Cree Nation in Manitoba. He unnecessarily remained in hospital for over two years due to jurisdictional disputes between different government departments over the payment of home care. Jordan never had a chance to live in a family environment because he passed away before the dispute could be resolved.[20]

23. In honour of Jordan's legacy, "Jordan's Principle" was developed. Jordan's Principle aims to prevent First Nations children from being denied prompt access to services because of jurisdictional disputes between different levels of government. According Jordan's Principle, the government department that is first contacted for a service otherwise available off reserve must pay for it without delay or disruption. The paying government can pursue repayment of expenses afterwards, but services cannot be disrupted during negotiations. Jordan's Principle is a mechanism to prevent First Nations children from being denied equal access to benefits or protections available to other Canadians as a result of Aboriginal status.[21]

24. On December 12, 2007, the Parliament of Canada unanimously voted in favor of Jordan's Principle. The Private Member's Bill states that the "government should immediately adopt a child-first principle, based on Jordon's Principle, to resolve jurisdictional disputes involving care of First Nations children".[22]

25. While the House of Commons resolution was not binding, Jordan's Principle was adopted by the federal government and jointly implemented by AANDC and Health Canada.[23]

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[20] Reasons for Judgment, para. 17 [AB, Vol. 1, Tab 2, p. 9]; Jordan's Principle Fact Sheet, p. 1-2 [AB, Vol. 2, Tab 5, pp. 611-612]; and Update on Jordan's Principle: The Federal Government's Response, January 12, 2011, p. 3 [SAB, Tab 1]

[21] Reasons for Judgment, paras. 17-18 and 81 [AB, Vol. 1, Tab 2, pp. 9 and 28-29]

[22] Reasons for Judgment, paras. 82-83 [AB, Vol. 1, Tab 2, pp. 29-30]; and Parliament of Canada, House of Commons, Journals, No.36 (39th Parliament, 2nd Session), December 12, 2007 (Hansard)

[23] Reasons for Judgment, para.84 [AB, Vol. 1, Tab 2, pp. 30-31]; Robinson Affidavit, paras.5-10 [AB,

Home Care Services for Maurina and Jeremy

26. In May 2010, Maurina was hospitalized for several weeks after she suffered a stroke. When she was released, she required a wheelchair and assistance with her own personal care. As a result of her condition, she was also unable to provide care for Jeremy. The Pictou Landing Band Council immediately started providing 24-hour care for both Maurina and Jeremy in their home. Between May 27, 2010 and March 31, 2011, the PLBC spent $82,164 on in-home care services for Maurina and Jeremy.[24]

27. As months passed, Maurina's condition improved. She became stronger and gained the ability to walk on her own by using a cane, to do her own groceries and to read and sing to Jeremy. In spite of her progress, Maurina she was unable to provide the high level of care needed by Jeremy without support.[25]

28. The PLBC continued to provide home care to Maurina and especially Jeremy. In October 2010, the Pictou Landing Health Centre arranged for an assessment of Maurina and Jeremy's needs. Since that time, the Health Centre has provided the family with in-home services as recommended by the assessment. From Monday to Friday, a personal care worker is present from 8:30 a.m. to 11:30 p.m. Over the weekends, there is 24 hour care. This level of care met Jeremy's need for 24-hour care, less what his family could provide.[26]

Vol. 3, Tab 7, pp. 654-655]; and "Jordan's Principle – The Federal Government Response" [AB, Vol. 3, Tab 7, pp. 755-766]

[24] Reasons for Judgment, para.8 [AB, Vol. 1, Tab 2, p. 6]

[25] Home Care Assessment of Maurina Beadle, pp. 9-12 [AB, Vol. 2, Tab 5, pp. 569-572]

[26] Reasons for Judgment, para.9 [AB, Vol. 1, Tab 2, p. 6]; and Pictou Affidavit, para. 16 [AB, Vol. 1, Tab 5, p. 72]

PLBC's request for additional funding for Jeremy and Maurina

29. Philippa Pictou, the PLBC's Health Director, began to make various inquiries with federal and provincial government officials in hopes of obtaining additional funding to provide the Beadle family with the services they required. By February 2011, the costs associated with caring for Jeremy and Maurina were approximately $8,200 per month. This represented nearly 80% of the Band Council's total monthly HCCP and Assisted Living budget for personal and home care services.[27]

30. On February 16, 2011, Ms. Pictou contacted Susan Ross, Atlantic Regional Home and Community Care Coordinator for Health Canada, to discuss Jeremy and Maurina's situation. Ms Pictou expressed her view that the situation met the definition of Jordan's Principle. Ms. Ross arranged for representatives of Health Canada and AANDC to attend a February 28, 2011 case conference with provincial officials regarding the family's need.[28]

31. Ms. Pictou arranged for another meeting with federal and provincial government officials on April 19, 2011. During this meeting, Ms. Pictou explained in detail Jeremy and Maurina's home care needs, referring to individual medical assessments that had been conducted to evaluate their respective limitations. Ms. Pictou also explained that the family generally required home care from 8:30 a.m. to 11:30 p.m. AANDC Manager Barbara Robinson participated.[29]

32. On May 12, 2011, Ms. Pictou wrote to Health Canada and AANDC officials to

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[27] Reasons for Judgment, paras.11 and 16 [AB, Vol. 1, Tab 2, pp. 7-8]
[28] Reasons for Judgment, paras.16 and 19 [AB, Vol. 1, Tab 2, pp. 8-9]
[29] Reasons for Judgment, para. 20 [AB, Vol. 1, Tab 2, p. 9]; Pictou Affidavit, para. 23 [AB, Vol. 1, Tab 5, p. 74]

formally request additional funding so that the Band Council could continue to provide home care services to Maurina and Jeremy. Attached to her email was a briefing note describing Maurina and Jeremy's situation and their home care needs.[30] In her briefing note, she wrote:

> According to the Community Services vs Brian E. Boudreau case, the obligations of the Department pursuant to the SAA and Regulations are met when the "assistance" reasonably meets the "needs" in each specific case. Jeremy Meawasige's reasonable "need" for "homecare" is 24 hours a day, 7 days a week **(less the time his family can reasonably attend to his care).**[31]

33. Ms. Pictou attached a copy of the *Nova Scotia v. Boudreau* case and referred to the criteria for "exceptional circumstances" under the Nova Scotia Direct Family Support Policy. Her briefing note explained that the unexpected expenses for Jeremy and Maurina were consuming the majority of the Band's budget for both ALP and HCCP programs. She said that the Band continued to pay for the services out of respect for Jordan's Principle, but that the PLBC needed reimbursement for some of its costs since May 2010 and more funding to meet Jeremy's ongoing care needs.[32]

34. The PLBC is a small First Nation with some 600 members. Jeremy's exceptional care needs consumed nearly 80% of the PLBC's total monthly ALP and HCCP budget for personal and home care services. This is not a cost that the PLBC could sustain without additional funding. [33]

35. In the absence of more funding from AANDC, it was recognized that the only other option for Jeremy would be institutionalization far from his mother and the

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[30] Reasons for Judgment, para.22 [AB, Vol. 1, Tab 2, p.10]
[31] Reasons for Judgment, para.101[AB, Vol. 1, Tab 2, pp. 34-35]; and Briefing Note (emphasis added) [AB, Vol. 2, Tab 5, p. 601]
[32] Briefing Note [AB, Vol. 2, Tab 5, p. 598-600 and 602]
[33] Reasons for Judgment, para.108 [AB, Vol. 1, Tab 2, p.37]

Pictou Landing community. He would be disconnected from his community and his culture, removed from family and the only home he has known.[34]

36. On May 27, 2011, AANDC Manager Barbara Robinson sent her decision to Philippa Pictou. The decision was delivered on behalf of both AANDC and Health Canada. The email stated that additional funding would not be granted because 24-hour home care is not available off reserve.[35] Ms Robinson's affidavit confirms that she relied on provincial government officials who stated that the normative standard of care off-reserve was $2,200 per month, with no exceptions. [36]

Federal Court Judgment

37. On April 4, 2013, Justice Mandamin of the Federal Court allowed the application for judicial review, finding that the Appellant had erred by failing to provide additional funds to the PLBC for the exceptional circumstances presented by Jeremy's case. The Court held that Jordan's Principle was adopted by the federal government and that it applied in this case. In that regard, the Court was satisfied that Jeremy's circumstances were indistinguishable from *Boudreau* and he would have received home care services worth more than $2,200 per month if he lived off reserve. Since the PLBC and Ms Beadle had shown that the federal government's funding could not ensure that Jeremy would receive the provincial level of care, the Court directed the Appellant to provide additional funding to the PLBC. [37]

38. The Court also concluded that AANDC's decision was flawed because officials misapprehended the amount of outside care required by the Beadle family. Finally,

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[34] Reasons for Judgment, para.110 [AB, Vol. 1, Tab 2, p.37]
[35] Reasons for Judgment, paras. 24-27 [AB, Vol. 1, Tab 2, p.11]; Email from Barbara Robinson to Philippa Pictou, dated May 27, 2010, p. 1 [AB, Vol. 2, Tab 5, p. 604]
[36] Affidavit of Barbara Robinson, paras. 32-36 and 38 [AB, Vol. 3, Tab 7, pp. 662-664]
[37] Reasons for Judgment, para. 84, 86, 96-98, 106 and 120 [AB, Vol. 1, Tab 2, pp. 30-31, 33-34, 36, and 40]

the Court decided not to deal with the *Charter* argument as Jordan's Principle disposed of the case.[38]

PART II – THE ISSUES

39. The Respondents submit that the following issues are raised by this judicial review:

a) What is the appropriate standard of review?

b) Did the decision-maker err in determining the normative standard of care for persons in need under the Nova Scotia *Social Assistance Act*?

c) Does Jordan's Principle apply?

d) Did the decision-maker exercise her discretion in a manner that violated section 15(1) of the Charter?

e) Was the decision based on a serious misunderstanding of the evidence?

f) What was the proper remedy in this case?

[38] Reasons for Judgment, paras. 101, 105 and 121 [AB, Vol. 1, Tab 2, p. 34-36 and 40]

PART III – ARGUMENT

ISSUE 1: Standard of review

40. On appeal of a judgment by the Federal Court on an administrative law matter, this Honourable Court must in effect "stand in the shoes" of the reviewing court and determine if the correct standard of review was selected and applied.[39]

41. The Applications Judge found that the case involved questions of fact and questions of mixed law and fact as they relate to Jordan's Principle. The Court stated that AANDC officials likely had some expertise in interpreting policy and Jordan's Principle. The Court also found that the AANDC Manager was not specifically required to interpret Nova Scotia legislation or jurisprudence, and determining the normative standard of care was a factual exercise. For these reasons, the Court concluded that the appropriate standard of review was reasonableness.[40] The Court did not address the *Charter* issue and the relevant standard of review.

42. The Respondents submit that the Applications Judge erred in considering the standard of review issue. In particular, the Respondent submits that determining the standard of care or services available under the Nova Scotia *Social Assistance Act* is a legal question, not a factual one. In the context of this case, the decision maker also needed to understand jurisprudence, namely *Nova Scotia (Community Services) v. Boudreau*. Interpreting statutory provisions and caselaw are inherently legal exercises.[41]

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[39] *Feimi v. Canada (Citizenship and Immigration),* 2012 FCA 325, para. 17
[40] Reasons for Judgment, paras. 73-76 [AB, Vol. 1, Tab 2, pp. 26-27]
[41] *Price v Canada*, 2012 FCA 332 at para. 14: "Questions of statutory interpretation are questions of law to be reviewed on a standard of correctness." And see *Marino Gonzalez v Canada*, 2011 FC 389 at para. 22 on interpreting jurisprudence.

43. The Supreme Court of Canada has held that, generally, questions of law should be reviewed on a correctness standard. [42] The decision-maker in this case was not an adjudicative tribunal with a particular statutory mandate or expertise. Rather, she was a federal government official interpreting provincial law in order to render an administrative decision. To the extent the decision-maker needed to properly consider questions of law, the decision must be reviewed on a standard of correctness. [43]

44. The Court did not address the *Charter* issue and whether the exercise of discretion by the AANDC Manager needed to comport with Ms Beadle's right to equal benefit of the law, as guaranteed by section 15 of the *Charter*. *Dunsmuir* is clear that the appropriate standard of review for issues involving the *Charter* must be one of correctness. [44] Had the Applications Judge considered the question, he would have found that the appropriate standard of review on the *Charter* issue was correctness.

45. Finally, the Respondents agree with the Federal Court that reasonableness is the appropriate standard of review for the pure finding of fact at issue in the case – that is, the level of care requested by the PLBC.

ISSUE 2: Normative Standard of Care under *Social Assistance Act*

46. The Appellant contends that the Applications Judge erred in determining the "normative standard of care" for persons in need under the provincial *Social Assistance Act* ("*SAA*") by relying on the Nova Scotia Supreme Court's ruling in *Boudreau* rather than the statements of provincial officials.[45] The Respondents submit

[42] *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, at para. 51
[43] *Dunsmuir*, *supra*, paras. 55 and 58.
[44] *Dunsmuir*, *supra*, para. 58
[45] Appellant's Memorandum of Fact and Law, paras. 72 and 81-88

that the Federal Court was correct in considering the applicable statutory provisions and jurisprudence, and refusing to accept the erroneous and contrary views of provincial officials who lost the *Boudreau* case.

47. In Nova Scotia, social services and assistance for people with disabilities are provided under the *SAA*. Section 9 of the *SAA* states that, subject to regulations, the government "shall furnish assistance to all persons in need". Under s. 18 of the *Municipal Assistance Regulations*, "assistance" is defined to include "home care".

48. While the *SAA* gives the provincial cabinet authority to make regulations prescribing maximum amounts of assistance for a person in need, no limit has been established.[46] Nova Scotia's Direct Family Support Policy states that the funding for respite to people with disabilities "shall not normally exceed" $2,200 per month. The Policy states that additional funding may be granted in certain "exceptional circumstances", such as:

- an individual has extraordinary support needs to the extent that they are reliant on others for all aspects of their support;
- an individual has extreme behaviours;
- there is no appropriate day program for the individual; and
- a single care giver has sole responsibility for supporting the family member with a disability.[47]

49. The AANDC decision-maker in this case conceded in cross examination that Jeremy and Maurina met all of the above criteria. However, she nevertheless concluded this Policy did not reflect Nova Scotia's normative standard of care because a provincial official had issued a separate directive that stated no funding in

[46] *Social Assistance Act,* RSNS 1989, c 432, section 9; *Nova Scotia (Community Services) v. Boudreau,* 2011 NSSC 126 ("Boudreau"), at para. 61
[47] Direct Family Support Policy, paras. 5.4.1 and 6.3 [AB, Vol. 2, Tab 5, pp. 446 and 449]

excess of $2,200 would ever be provided. The AANDC manager also indicated that she had read *Boudreau*, a judgment which rejected the $2,200 monthly cap as unlawful. [48] As explained by Justice Rosinski in *Boudreau*, the benefit conferred through the *SAA* is the right of persons in need to be furnished with the assistance they require. The Court stated:

> How much "assistance" as defined in the *Municipal Assistance Regulations* is the care obligations vis-à-vis Brian Boudreau? In my view, **the obligation of the Department pursuant to the SAA and Regulations are met when the "assistance" reasonably meets the "need" in each specific case.**[49]

50. Ms Robinson inexplicably concluded that the *Boudreau* judgment was "not relevant" to her decision. [50] The Respondents submit that this is an error of law and the decision was properly quashed for this reason alone. It is recognized that, at the time Ms Robinson rendered her decision in May 2011, *Boudreau* was a very recent ruling. Indeed, it appears that Nova Scotia was contemplating an appeal and communicated that to the Appellant.[51] But this cannot justify AANDC's complete disregard of a court judgment that sets out the normative standard of care under provincial legislation – i.e., assistance that "reasonably meets" the need in each specific case.

51. As the Federal Court held, the PLBC was required to administer the ALP and HCCP programs "according to provincial legislation and standards".[52] The Appellant suggests that the "normative standard" in this case should be restricted to the general rule of $2,200 per month, and should not include "exceptional cases". But

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[48] Cross examination of B. Robinson, pp. 88-90 and 92-94 [AB, Vol. 4, Tab 11, pp. 1357-1359 and 1361-1363]
[49] *Boudreau*, *supra*, paras. 60-62, 62 for quote (emphasis added)
[50] Cross examination of B. Robinson, p. 88-90 [AAR, Vol. III, Tab 7, p. 723-724] Cross examination of B. Robinson, pp. 88-90 [AB, Vol. 4, Tab 11, pp. 1357-1359]
[51] Indian and Northern Affairs Canada/Health Canada Media Lines [AB, Vol. 2, Tab 6, p. 638]
[52] Reasons for Judgment, para. 79 [AB, Vol. 1, Tab 2, p. 28]

the simple fact is that in law, policy and fact, Nova Scotia's Ministry of Community Services does provide additional funding to individuals residing off reserve with exceptional needs. Boudreau was receiving more than $2,200 before his judgment, and was entitled to a further increase afterwards because, the Nova Scotia Court found, he had exceptional needs. For these reasons, the Federal Court was correct to find that the "normative standard of care" must encompass provincial statutory provisions and regulations that provide for more funding in exceptional cases.[53]

52. Finally, the Federal Court was correct to find that representations by provincial officials that were contrary to law should not have changed the AANDC manager's position. As the Court held,

> She knew the legislated provincial policy provided for exceptional circumstances. She knew the provincial officials were administratively disregarding the Department of Social Services legislated policy obligations. She was also put on notice by the PLBC of this issue as they had provided her with a copy of the Boudreau decision. Ms Robinson's mandate from Treasury Board does not extend to disregarding legislated provincial policy. [54]

53. These findings were manifestly correct and should not be disturbed on appeal.

ISSUE 3: Application and Interpretation of Jordan's Principle

54. The Federal Court ruled that the Government of Canada voluntarily adopted and implemented Jordan's Principle, and therefore its obligations should be binding. The Court also held that the AANDC manager had narrowly construed Jordan's Principle, and it should apply in a case like Jeremy's where it can be shown that a First Nations child living on reserve is not receiving the same level of care and

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[53] Reasons for Judgment, paras. 96-97 [AB, Vol. 1, Tab 2, pp. 33-34]
[54] Reasons for Judgment, para. 93 [AB, Vol. 1, Tab 2, p. 33]

services available off reserve. [55] The Appellant contends that the Court erred in finding that Jordan's Principle could create substantive binding obligations, and that in any event it should only apply when there was an acknowledged monetary dispute between different levels of government.

55. It should be noted that the Respondents did not take the position in the Court below that Jordan's Principle represented a free-standing legal obligation. Rather, the Respondents submitted that Jordan's Principle was a mechanism for understanding and operationalizing the Charter right to equality in the unique constitutional context of First Nations living on reserve. However, the Respondents submit on appeal that the Court was correct in finding that Jordan's Principle is binding on the Appellant, irrespective of Charter considerations.

(i) Application of Jordan's Principle

56. The Appellant argues at great length that Jordan's Principle is nothing more than a House of Commons resolution, and therefore is not binding at law.[56] But the Federal Court fully recognized that a Parliamentary resolution cannot create binding obligations on the government. However, the Court observed that Jordan's Principle was adopted and implemented by the Appellant.[57] In the Court's analysis, the federal government was bound to respect Jordan's Principle once it had undertaken to do so.

57. The Courts have held several times that government policies may have the force of law in certain circumstances. The Federal Court of Appeal has found employment policies in the federal public service to be binding in certain

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[55] Reasons for Judgment, paras. 84, 96-97, 106 and 111 [AB, Vol. 1, Tab 2, pp. 30, 36 and 37]
[56] Appellant's Memorandum of Fact and Law, paras.44-50
[57] Reasons for Judgment, paras. 82-84 and 106: "Parliament has unanimously endorsed Jordan's Principle and the government, while not bound by the House of Commons resolution, has undertaken to implement this important principle." [AB, Vol. 1, Tab 2, pp. 29-30 and 36]

circumstances,[58] and even the Supreme Court of Canada ruled that the advertising policy of a transit authority could be viewed as "law".[59]

58. Should Jordan's Principle be recognized as a policy that has the force of law? First, the policy is not simply administrative in nature. In that regard, it doesn't provide guidance in how to apply a particular statute. On the contrary, Jordan's Principle is a policy that authorizes AANDC to provide additional funds for services to First Nations children ordinarily resident on reserve who are not receiving the standard of care available off reserve.[60] Barbara Robinson, the ANNDC decision-maker in this case, confirmed in cross examination that she has authority under s. 34 of the *Financial Administration Act* to approve funding in cases that meet the Jordan's Principle definition.[61] In the present case, the Respondents submit that Jordan's Principle is a policy adopted by the federal government that has the force of law.

59. In determining whether Jordan's Principle is a policy with the force of law, it is also important to consider the unique legal and constitutional context of public service delivery to First Nations people living on reserve. Normally, provincial governments provide home care and other public services to Canadians. But provinces have taken the position that they are not required to do so for First Nations ordinarily resident on reserve, leaving the federal government to assume responsibility.[62] As the Auditor General of Canada has highlighted, First Nations living on reserve receive

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[58] *Gingras v. Canada*, [1994] F.C.J. No. 270 (FCA) at para. 64. And see *Myers v. Canada (Attorney General)*, [2007] F.C.J. No. 1246 (FC) at para. 26.
[59] *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, 2009 SCC 31 at paras. 58-60 and 64-65
[60] Jordan's Principle – The Federal Government Respondent & Update on Implementation [AB, Vol 3, Tab 7, pp. 755-766]; and Record of Decision, dated February 18, 2010, p. 2: "The federal and provincial governments would agree to 'back-stop' the community in situations where the costs of continuing to provide care become a significant budget challenge for community agencies." [SAB, Tab 2, p. 12]
[61] Cross-examination of B. Robinson, pp. 7-8 [AB, Vol. 4, Tab 11, pp. 1276-1277]
[62] Assisted Living Program Manual, paras. 1.4.2, 1.6.1-1.6.4, and 1.7.1 [AB, Vol. 1, Tab 5, pp.224 and 226-227]

health and other public services from the federal government without any sort of legislative base. As a result, a wide range of complex social programs are delivered on reserve through the unsatisfactory mechanism of policy:

> The federal government has often developed programs to support First Nations communities without establishing a legislative or regulatory framework for them. Therefore, for First Nations members living on reserves, there is no legislation supporting programs in important areas such as education, health, and drinking water. Instead, the federal government has developed programs and services for First Nations on the basis of policy. As a result, the services delivered under these programs are not always well defined and there is confusion about federal responsibility for funding them adequately.[63]

60. The Appellant has elected to meet the important public responsibility of delivering public services to First Nations on reserve by way of policy rather than through a proper statutory framework. In this context, and given the statutory authority of the *Financial Administration Act*, the Respondents submit that Jordan's Principle has the force of law once it has been adopted by the federal government.

(ii) Interpretation of Jordan's Principle

61. The Appellant claims that the Federal Court erred by finding that Jordan's Principle is engaged even if the federal and provincial levels of government erroneously maintain that the requested service is not available off reserve and therefore no jurisdictional dispute exists.[64] The Respondents submit that Jordan's Principle should not be narrowly interpreted, and can apply where government officials adhere to a demonstrably incorrect position about the level of services available off reserve.

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[63] Status Report of the Auditor General of Canada to the House of Commons, Chapter 4 – Programs for First Nations on Reserves (Ottawa, 2011) at p. 3

[64] Appellant's Memorandum of Fact and Law, paras. 53-56

62. The aim of Jordan's Principle is to ensure that a First Nations child living on reserve receives the same level of care and services as a child with similar needs living off reserve.[65] Sometimes, gaps in service arise because of jurisdictional disputes between the provincial and federal governments about responsibility to pay for the service. Jordan's Principle is designed to prevent denial of service due to jurisdictional disputes, but the overriding purpose is to ensure that First Nations children are not denied services simply because they live on a reserve. Given the vulnerability of the population involved, the Federal Court was quite right to find that Jordan's Principle should not be narrowly interpreted, and should include situations where the federal and provincial officials "maintain an erroneous position on what is available to persons in need of such services in the province and both then assert there is no jurisdictional dispute."[66]

63. Moreover, AANDC considered the PLBC's request for funds under Jordan's Principle in a manner consistent with the above interpretation. At all times, there was never any dispute or disagreement that the province was not responsible for paying for Jeremy's home care services.[67] If the Appellant's interpretation of Jordan's Principle was correct, that fact would have ended the inquiry as there was no jurisdictional dispute between the province and the federal government, strictly speaking. But AANDC instead looked into the "normative standard of care" for home care services off reserve, clearly suggesting that the point of the investigation was to determine <u>what</u> was available off reserve, not <u>who</u> was paying.[68] For all of these reasons, the Respondents submit the Federal Court did not err and the appeal should be dismissed.

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[65] Update on Jordan's Principle – The Federal Government Respondent, p. 6 [SAB, Tab 1, p. 6]
[66] Reasons for Judgment, para. 86 [AB, Vol. 1, Tab 2, p. 31]
[67] Reasons for Judgment, para. 94 [AB, Vol. 1, Tab 2, p. 33]; and Direct Family Support Policy, para.5.3.1, which states province will not provide services on reserve [AAR, Vol. 2, Tab 3, p. 402]
[68] Emails between B. Robinson and A. Peters, dated May 11, 2011 [AB, Vol. 3, Tab 7, p. 793-794]; and Decision of B. Robinson, dated May 27, 2011 [AB, Vol. 2, Tab 5, p. 604]

ISSUE 4: Right to Equal Benefit of the Law under section 15(1) of the Charter

64. The Federal Court found it was unnecessary to address the Respondents' *Charter* claim that the decision to deny additional funding for Jeremy's home care was discriminatory and contrary to s. 15(1) of the *Charter of Rights and Freedoms.* The Respondents submit that this Honourable Court should consider these arguments as a further basis to uphold the order of the Court below.

65. While the federal government may enter into contribution agreements with Band Councils to provide services, such agreements cannot supersede its obligations under the *Charter*.[69] Moreover, at all times the government's exercise of discretionary powers must conform with the *Charter*. [70] In the present case, the Respondents submit that Ms Robinson had a duty to consider the request for additional funding under the relevant contribution agreements in a manner that respects the Beadles' rights to receive equal benefits compared to those residing off-reserve in their province of residence.

i. Section 15 and Jordan's Principle

66. Section 15 of the *Charter* confers on all individuals equality before and under the law. Its purpose is two-fold. First, it expresses a commitment - deeply ingrained in our social, political and legal culture - to the equal worth and dignity of all persons. As Justice McIntyre remarked in *Andrews*, section 15 "entails the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration". Second, it

[69] *Société des Acadiens et Acadiennes du Nouveau-Brunswick Inc. v. Canada,* [2008] S.C.J. No. 15 at paras. 23-24
[70] *Eldridge v. British Columbia,* [1997] 3 SCR 624, ("*Eldridge*"), para. 22; *Little Sisters Book and Art Emporium v. Canada,* [2000] 2 SCR 1120, para. 130-133; and *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 at para. 114

entrenches the goal of rectifying and preventing discrimination against particular groups who have suffered social, political and legal disadvantage in our society.[71]

67. For First Nations, Jordan's Principle is a means by which the fundamental objectives of section 15 can be achieved. The overlapping responsibilities of the federal and provincial governments towards First Nations individuals living on reserves are unique in Canada's constitutional order. As a result, jurisdictional disputes sometimes arise between governments as to which level is responsible to deliver and pay for programs or services. The purpose of Jordan's Principle is to ensure that the most vulnerable segment of the First Nations population – children – are never denied access to services available to non-Aboriginals living off-reserve in the same province.

68. The central purpose of Jordan's Principle is to promote and operationalize substantive equality for First Nations peoples. The failure to respect Jordan's Principle will very often trigger a breach of section 15. This is what is alleged in the Application.[72]

ii. Equal benefit of the law

69. Section 15 guarantees to all individuals equal benefit of the law. In this case, the Respondents claim that AANDC's failure to respect Jordan's Principle caused Jeremy and Maurina to be denied equal benefit of the *Social Assistance Act*. As explained by the Court in *Boudreau*, the benefit conferred through the *SAA* is the right of persons to assistance that "reasonably meets" the need in each specific case, without arbitrary financial caps. [73]

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[71] *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143, at p. 171; and *Eldridge,* para. 54
[72] Notice of Application for Judicial Review, [AB, Vol. 1, Tab 3, p. 49]
[73] *Boudreau*, paras. 60-62

70. Nova Scotia will not provide home care services or benefits under the *SAA* to First Nations individuals living on reserve.[74] Nevertheless, there appears to be no dispute between the parties that First Nations peoples living on reserve should enjoy the same right to home care and other services available off reserve under the *SAA* and related policies. Since the Appellant has assumed full responsibility for funding the delivery of these services, the Respondents submit that the federal government incurs a constitutional duty under s. 15 of the *Charter* to ensure First Nations peoples enjoy the same benefit of the law available under provincial statutes and programs.

iii. Discrimination on the basis of an enumerated or analogous ground

71. Denying First Nations Peoples living on reserve with equal benefit of the law creates a distinction on the basis of their race and ethnic origin and, as such, is prohibited by section 15. While place of residence is generally not considered an analogous ground of discrimination under section 15, "Indian Reserves" as a place of residence are intrinsically linked with Aboriginal identity. The Supreme Court of Canada has held that residence on a reserve constitutes "a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity", and therefore an analogous ground under s. 15(1).[75]

iv. Discretionary decision constitutes discrimination

72. Regardless of the vehicle chosen by the government to fulfill its objectives, government programs must comply with the *Charter.* As explained by the Supreme Court of Canada in *Eldridge*, "The rationale for this principle is obvious: governments should not be permitted to evade their *Charter* responsibilities by implementing

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[74] Reasons for Judgment, para. 94 [AB, Vol. 1, Tab 2, p. 33]; and Direct Family Support Policy, para.5.3.1 [AAR, Vol. 2, Tab 3, p. 402]

[75] *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203 (QL), at paras. 13-14, 13 for quote.

policy through the vehicle of private arrangements".[76] The fact that home care services on reserve are provided by Canada through funding agreements ought not to prevent Jeremy and Maurina from receiving the equal benefit of the *SAA* and related programs. As explained by the Supreme Court in *Douglas/Kwantlen*:

> [T]he agreement was entered into by government pursuant to statutory power and so constituted government action. To permit government to pursue policies violating *Charter* rights by means of contracts and agreements with other persons or bodies cannot be tolerated.[77]

73. The Appellant conceded that the PLBC would need additional funding to ensure that Jeremy and Maurina would continue receiving a level of home care that exceeds $2,200 per month. In that regard, Ms Robinson's decision appeared to turn on whether the "normative standard of care" could, in exceptional circumstances, include home care services that cost more than $2,200.

74. Importantly, Ms Robinson did not take issue with the needs of Jeremy and Maurina, the exceptional circumstances of their situation, or the detrimental effect on the Band's budget. Indeed, she conceded in cross examination that Jeremy and Maurina would meet the criteria for "exceptional circumstances" under the provincial Direct Family Support Policy. [78]

75. The exceptional and unanticipated health needs of the Beadle family jeopardized the Band's ability to provide the services the family reasonably requires and would likely be entitled to off reserve. In this narrower context, the Respondents

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[76] *Eldridge, supra*, para. 40
[77] *Douglas/Kwantlen Faculty Association v Douglas College,* [1990] 3 SCR 570 at para. 18
[78] Cross examination of B. Robinson, pp. 94-94 [AB, Vol. 4, Tab 11, pp. 1362-1363]; and Direct Family Support Policy, paras. 5.4.1 and 6.3.2 [AB, Vol. 2, Tab 5, p. 449]

submit that Ms Robinson had a duty to exercise her discretion under the relevant funding agreements in a manner that conforms with s. 15(1) of the *Charter*. [79]

76. Both the AANDC and Health Canada funding agreements contained clauses that allowed the Appellant to provide additional funding to the Band in "exceptional" or "unforeseen" circumstances.[80] In the present case, the Appellant was aware that existing funding levels could not reasonably provide for the home care services required by Maurina and Jeremy. In that regard, the needs of the Beadle family consumed nearly 80% of the Band's overall budget for in-home care.[81] Presented with this evidence, the decision-maker ought to have found that the Band Council was facing "unforeseen" and "exceptional" circumstances warranting additional discretionary funding. The failure to do so caused Jeremy and Maurina to be denied an equal benefit under the law and, as such, violated the *Charter.*

77. The Supreme Court of Canada has repeatedly emphasized that discrimination claims must be evaluated contextually, with an understanding of claimant's place within a legislative scheme and society at large. Contextual factors help to determine whether an impugned law or decision perpetuates disadvantage or stereotyping.[82] In the present case, First Nations peoples have experienced significant historical disadvantages and racism in Canadian society. It is widely recognized that First Nations peoples living on reserves "lack the most basic services that other Canadians take for granted."[83]

78. The sad facts of this case suggest that the promise of equality enshrined in

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[79] *Eldridge, supra,* at paras. 29-30; and *PHS Community Services Society*, *supra*, at para. 114
[80] Reasons for Judgment, para. 79 [AB, Vol. 1, Tab 2, p. 28]; AANDC Funding Agreement, para. 3.4 [AB, Vol. 1, Tab 5, p. 161]; and Agreement between Health Canada and Pictou Landing Band, para. 23 [AB, Vol. 1, Tab 5, p. 99]
[81] Reasons for Judgment, paras.11 and 16 [AB, Vol. 1, Tab 2, pp. 7-8]
[82] *Withler v. Canada,* [2011] 1 SCR 396 at paras 63-66
[83] Status Report of the Auditor General of Canada to the House of Commons, Matters of Special Importance (Ottawa, 2011) at p. 6

the *Charter*, and reflected in the First Nations context by Jordan's Principle, is far from a reality to individuals living on reserves.

v. Infringement cannot be justified under section 1 of the Charter

79. Once a *Charter* violation is established, the Appellant bears the burden to show that the infringement is justified in a free and democratic society. Financial cost is almost never sufficient to establish a s. 1 defence, and such an argument certainly cannot stand in this case. There can be no justification in a free and democratic society for denying equal home care services to Jeremy and Maurina. As a disabled First Nations child living on reserve, Jeremy has compounded and intersecting disadvantages and is particularly vulnerable. The Court should be particularly sensitive to his vulnerable position and ensure it carefully scrutinizes the Crown's arguments in the present case.

ISSUE 5: Decision based on a serious misunderstanding of the evidence

80. The Respondents argued in the Court below that Ms Robinson's decision was unreasonable because it was based on a serious misapprehension of evidence about the level of care requested by the PLBC. The Court agreed with these submissions, but the Appellant contests the issue on appeal. For the reasons that follow, the Respondents submit that the Court's finding should not be disturbed.

81. Ms Robinson denied the Band Council's request on the basis that 24 hour care was not available off reserve.[84] However, this was not what was requested by the Band Council. In Ms. Pictou's request for additional funding, she stated: "Jeremy Meawasige's reasonable 'need' for 'homecare' is 24 hours a day, 7 days a week, less

[84] Email from Barbara Robinson to Philippa Pictou, dated May 27, 2010, p. 1 [AB, Vol. 2, Tab 5, p. 604]

the time his family can reasonably attend to his care."[85] Ms. Robinson erred by characterizing the Band Council's request as funding for 24 hour care.[86]

82. Since Ms Robinson failed to understand what was requested by the Band Council, it cannot be said that the request for additional funding was properly or fairly considered. Courts have held that a decision-maker's misapprehension of facts or evidence constitutes a palpable and overriding error.[87] In this case, Ms Robinson's misapprehension of the request not only affected the fact-finding process, it formed the very basis for the denial of the request. This amounts to an unreasonable error.

ISSUE 6: Proper Remedy

83. In exceptional circumstances, courts on applications for judicial review may issue "directed verdicts" or orders in the nature of *mandamus* directing the decision-maker to reach a certain decision.[88] The Court below held that this was an appropriate case to exercise this exceptional power, finding that access to health care under Jordan's Principle "calls for an immediate timely response".[89]

84. In unusual cases, Courts may order a directed verdict where there is a concern that further delays may cause harm to the individual involved.[90] In the present case, *Boudreau* was, and remains, a clear and unequivocal finding that a person can receive home care funding in excess of $2,200. Further, Maurina and

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[85] Briefing Note [AB, Vol. 2, Tab 5, p. 601]
[86] Email from Barbara Robinson to Lorna MacPherson, dated May 13, 2011 [AB, Vol. 3, Tab 7, p. 810]
[87] *Ontario (Director, Disability Support Program) v. Crane* (2006), 83 OR (3d) 321 (Ont.CA) (QL) at paras. 35-36
[88] *Canada (Minister of Human Resources Development) v. Rafuse*, 2002 FCA 31 (CanLII), para. 14; *Canada (Public Safety and Emergency Preparedness) v. LeBon*, 2013 FCA 55, at paras. 13-14; and *Federal Courts Act*, RSC 1985, c. F-7, subsections 18(1) and 18(3)
[89] Reasons for Judgment, paras.11 and 16 [AB, Vol. 1, Tab 2, pp. 7-8]
[90] *LeBon*, *supra*, at para. 14

Jeremy have lived in limbo long enough, uncertain whether the home care currently provided will suddenly stop, causing Jeremy to be removed from his home and community. For all of these reasons, the Respondents submit that the Court exercised its discretion reasonably in applying the remedy it did.

PART IV – ORDER SOUGHT

85. The Respondents submit that the appeal should be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of October, 2013.

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PART V – LIST OF AUTHORITIES

STATUTES AND CONSTITUION

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, *1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, ss. 1 and 15

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Financial Administration Act, RSC 1985, c. F-11, section 34

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