Court File No. A-158-13

FEDERAL COURT OF APPEAL

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

- and -

PICTOU LANDING BAND COUNCIL
and MAURINA BEADLE

Respondents

**MOTION RECORD OF THE PROPOSED INTERVENER
ASSEMBLY OF MANITOBA CHIEFS SECRETARIAT INC.
(Motion for Leave to Intervene)**

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Secretariat Inc.

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NOTICE OF MOTION
(Motion for Leave to Intervene)

TAKE NOTICE THAT the Assembly of Manitoba Chiefs Secretariat Inc. (the "AMC Secretariat") will make a motion to the Court in writing under Rules 109 and 369 of the Federal Court Rules.

THE MOTION IS FOR an Order granting the following:

1. Leave for the AMC Secretariat to intervene pursuant to Rule 109 of the Federal Court Rules.

2. Leave to allow the AMC Secretariat to file a Memorandum of Fact and Law and to present oral arguments at the hearing of the appeal with respect to whether Mandamin, J. erred in

his determination that the decision of Ms. Barbara Robinson, Manager, Social Programs, Aboriginal Affairs and Northern Development Canada ("AANDC"), not to reimburse the Pictou Landing Band Council for in-home health care for Jeremy Meawasige beyond the normative standard of care identified by her was unreasonable.

3. That the AMC Secretariat be consulted on hearing dates for the hearing of the appeal.

4. That the AMC Secretariat be served with documents by the parties.

5. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. Federal Court Rule 109 allows the Court to grant leave to intervene on terms and conditions that are appropriate if the proposed intervener will assist in the determination of a relevant legal issue.

2. The fundamental issues raised in this appeal relate to the legal status of Jordan's Principle and its interpretation. This appeal also raises the question of whether it was appropriate for Mandamin, J. to have exercised his discretion not to remit the matter back for reconsideration.

3. Due to its specific knowledge and expertise regarding Jordan's Principle, the AMC Secretariat is well situated to provide useful assistance to this Honourable Court with respect to the determination of the legal issues for which it seeks leave to intervene.

4. The AMC Secretariat has been granted intervener status in other proceedings in order to represent the interests of Manitoba First Nations.

5. The federal government and the Manitoba government have interpreted Jordan's Principle narrowly so that it is only engaged when there are disputes between the federal and provincial governments about which level of government will pay for services. In addition, Jordan's Principle only applies to First Nations children in Manitoba who have multiple disabilities and require services from multiple providers.

6. The AMC Secretariat is aware of many First Nations children with disabilities in Manitoba who are still not receiving comparable services. The AMC Secretariat is not aware of any First Nations families in Manitoba that have gone through a formalized Jordan's Principle case conferencing process for a resolution. The AMC Secretariat's position is that the lack of access to comparable services stems primarily from the narrow interpretation given to Jordan's Principle by the federal and provincial governments and a lack of an effective case conferencing and resolution process.

7. In the AMC Secretariat's experience, jurisdictional disputes do not only arise between the federal and provincial governments. Rather, jurisdictional disputes also arise between AANDC and Health Canada about which department will pay for services. These disputes leave First Nations children with disabilities in Manitoba needlessly suffering and unable to access comparable services.

8. The AMC Secretariat is directly affected by the outcome of this appeal because it raises legal issues relevant to the implementation of Jordan's Principle in Manitoba.

9. The legal issues for which the AMC Secretariat seeks leave to intervene are justiciable issues that are in the public interest.

10. The positions advanced by the AMC Secretariat on the legal issues for which it seeks leave to intervene are substantially different from those advanced by the parties.

11. The interests of justice are better served with the AMC Secretariat's intervention in this appeal. The AMC Secretariat is involved in the ongoing work of the Manitoba/Canada Joint Committee on Jordan's Principle and is also the political body responsible for communicating with First Nations leadership, communities and families regarding the implementation of Jordan's Principle in Manitoba.

12. The AMC Secretariat has brought this motion now and not earlier so as to review the written arguments filed by the parties. The AMC Secretariat has moved as expeditiously as possible to serve and file these motion materials so as not to delay or disrupt these proceedings.

13. If granted leave to intervene, the AMC Secretariat would not present arguments with respect to the evidence on the record or the findings of fact made by the Application Judge.

14. If granted leave to intervene, the AMC Secretariat would not seek costs and would ask that no costs be awarded against it.

15. The Respondents have consented to the AMC Secretariat's motion for intervention. The Appellant has not consented to the AMC Secretariat's motion for intervention.

16. Such further or other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Marcel Luke Hertlein Balfour, affirmed January 29, 2014.

2. Such further or other material as counsel may submit and this Honourable Court will allow.

January 29, 2014

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Tab 2

Court File No. A-158-13

FEDERAL COURT OF APPEAL

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

- and -

PICTOU LANDING BAND COUNCIL
and MAURINA BEADLE

Respondents

AFFIDAVIT OF MARCEL LUKE HERTLEIN BALFOUR
AFFIRMED THIS 24th DAY OF JANUARY, 2014
(Motion for Leave to Intervene)

I, MARCEL LUKE HERTLEIN BALFOUR, of the City of Winnipeg, in the Province of Manitoba, SOLEMNLY AFFIRM THAT:

1. I am the Acting Executive Director of the Assembly of Manitoba Chiefs Secretariat Inc. ("AMC Secretariat"), and as such have personal knowledge of the facts and matters herein deposed to, except where same are stated to be based upon information and belief.

2. On July 26, 2013 I was appointed as Acting Executive Director of the AMC Secretariat. From April 1, 2012 to July, 2013, I was the Special Advisor to the former Executive Director of the AMC Secretariat.

3. I am a member of the Norway House Cree Nation, the same First Nation of which Jordan River Anderson was a member. From March 2002 to March 2006, I was elected Councillor on the Council of the Norway House Cree Nation. From March 2006 to March 2010, I was the elected Chief of the Norway House Cree Nation.

4. During the time I was elected Norway House Cree Nation Chief, I was also a member of the Assembly of Manitoba Chiefs Task Force on Health and Social Development, which is the Chiefs Committee responsible for the implementation of Jordan's Principle.

The AMC Secretariat's General Expertise

5. The Assembly of Manitoba Chiefs was established to devise collective and common political strategies and mechanisms for coordinated action by First Nations and their organizations. Those common strategies and mechanisms relate to several policy areas, including education, the environment, health and social development, housing, and women, children and families.

6. The Constitution of the Assembly of Manitoba Chiefs identifies the mandate of the Assembly of Manitoba Chiefs that is carried out through the Chiefs-in Assembly and includes:

- promoting, preserving and protecting Aboriginal and Treaty rights for First Nation people in Manitoba;
- preserving and enhancing the rights and freedoms of First Nations in Manitoba as distinct peoples;
- strengthening and restoring the foundations of First Nations cultures, traditions, languages, economies and societies;

- affirming First Nation rights as peoples to exercise and practice self-determination and self-government; and
- protecting the integrity and authority of each First Nation's customs, laws, and practices.

Attached hereto and marked Exhibit "A" is a copy of the Constitution of the Assembly of Manitoba Chiefs adopted in September 1994.

7. The Constitution of the Assembly of Manitoba Chiefs also identifies that it is governed by the Chiefs of its member First Nations, who meet in assembly several times per year. The Grand Chief is elected by the Chiefs-in-Assembly for a three year term. The Executive Council of Chiefs is composed of the Grand Chief, five Chiefs selected by northern First Nations and five Chiefs selected by southern First Nations. Several Chiefs Committees have been established to facilitate the implementation of decisions made by the Chiefs-in-Assemblies or the Executive Council of Chiefs.

8. To better address and facilitate their unified political action, the Chiefs-in-Assembly established the AMC Secretariat, a provincially incorporated entity which is composed of technical advisors and support staff. The AMC Secretariat is the administrative and logistical arm charged with providing information and support to the Chiefs-in-Assembly and implementing their directions and decisions. The AMC Secretariat was provincially incorporated in 1988 as a not-for-profit corporation. Attached hereto and marked Exhibit "B" is a copy of By-Law No. 1 relating to the AMC Secretariat.

9. At the time the Assembly of Manitoba Chiefs was established there were 61 recognized First Nations in Manitoba consisting of 64,315 First Nation citizens. Today there are 63 First Nations, and 6 of the 20 largest bands in Canada are in Manitoba. According to Aboriginal Affairs and Northern Development Canada ("AANDC"), as of March, 2012 there were 140,975 registered Manitoba First Nations members. Out of that population, 59.8% are under the age of 30 and 60.2% live on reserves in Manitoba. Out of the 63 First Nations communities, 23 are not accessible by all-weather roads.

10. Over the years, the AMC Secretariat has been granted intervener status in other proceedings in order to represent the interests of Manitoba First Nations. Recently, the AMC Secretariat was granted standing to participate in the inquiry into the death of Phoenix Sinclair, a 5-year old First Nations child who lived on the Fisher River Cree Nation reserve. The focus of the inquiry was on how Manitoba's child welfare system failed to protect Phoenix Sinclair, who had been in foster care or in the care of others for much of her life. More recently, the AMC Secretariat was granted standing to participate in the inquest into the death of Brian Sinclair, an Aboriginal man who died after spending 34 hours in the waiting room of a Winnipeg hospital's emergency room without ever receiving treatment.

11. In addition to representing the common interests of Manitoba First Nations, the Assembly of Manitoba Chiefs works closely with the Assembly of First Nations on a national level. The Assembly of First Nations collectively represents the political interests of 633 First Nations across Canada.

The AMC Secretariat's Special Knowledge and Expertise regarding Jordan River Anderson and Jordan's Principle

12. During the period of time that Jordan River Anderson was alive and I was a Norway House Cree Nation Council member, the Norway House Cree Nation repeatedly requested that the provincial and federal governments resolve their disputes so that he could be discharged from the hospital and live in a medically assisted family home. At that time, the AMC Secretariat also assisted Jordan, his family and the Norway House Cree Nation in trying to access the services he needed. Those disputes were not resolved before Jordan passed away on February 5, 2005.

13. In 2004, the Norway House Cree Nation identified the jurisdictional disputes that caused a lack of services for children with disabilities as a high priority issue. With funding from the Keenanaow Trust Fund, a Children's Special Services pilot project was developed ("the CSS NHCN Pilot Project") and services were delivered by the Kinosao Sipi Minisowin Agency ("KSMA"). During the three years the CSS NHCN Pilot Project operated, approximately 40 children with a range of medical conditions and disabilities living on the Norway House Cree Nation reserve received services through KSMA. Those services were community-based, voluntary and family-centered and included respite, homemaking services, educational activities, occupational therapy, and speech and language therapy.

14. The funding for the NHCN CSS Pilot Project expired in December 2006. Additional funding from the federal and provincial governments could not be obtained so the KSMA could only provide the children who were in the NHCN CSS Pilot Project with a minimum level of services.

15. In a Resolution adopted at an Assembly of Manitoba Chiefs General Chiefs Assembly held on January 24 and 25, 2006, a copy of which is attached as Exhibit "C", the Chiefs-in-Assembly resolved to:

- direct the federal and provincial governments to implement a "Child First Principle" to resolve inter-governmental jurisdictional disputes;
- meet with federal and provincial governments to establish a jurisdictional dispute resolution table with fair and effective First Nation representation; and
- refer to the Child First Principle as "Jordan's Principle" in honour of the memory of Jordan River Anderson and to respect his family and community.

16. On December 12, 2007, the House of Commons unanimously voted in favour of a private member's motion supporting Jordan's Principle. That motion stated in part: "That, in the opinion of the House, the government should immediately adopt a child first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children".

17. In April 2008 a Federal/Provincial Working Group undertook a case review of the 29 children still receiving services from KSMA through the NHCN CSS Pilot Project. The findings of that case review were set out in a report prepared by the Federal/Provincial Technical Working Group in March 2009. A copy of the report was provided to the AMC Secretariat.

18. The Federal/Provincial Working Group's report revealed important information about the quality and level of services for children with disabilities living on the Norway House Cree Nation reserve, including that:

- the policies, practices and decision making at all levels of government impacted the availability and accessibility of services in Norway House Cree Nation;

- families of children with disabilities living on reserve face a number of additional challenges, for example overcrowding and homes that need modifications to be accessible;

- accessing services for children with disabilities who live on reserve is particularly difficult because of a fragmented service delivery system, gaps and inconsistencies in service delivery, and geographical location; and

- children with disabilities living on the Norway House Cree Nation reserve have to rely on a spectrum of services based on a principle of "last resort" and funding for essential program components only.

19. After the Federal/Provincial Working Group case review, Health Canada and Indian and Northern Affairs Canada agreed to provide funding for the children who were still receiving services from KSMA through the NHCN CSS Pilot Program, but only from April 1, 2009 to March 31, 2010.

20. According to a press release issued by the provincial government on September 5, 2008, a copy of which is attached as Exhibit "D", Manitoba was the first province to begin working with the federal government on issues relating to Jordan's Principle.

21. The Manitoba/Canada Joint Committee on Jordan's Principle ("the Joint Committee") was established and to my knowledge began meeting in June, 2008. The Joint Committee was comprised of senior officials from Health Canada, AANDC, Manitoba Health, and Manitoba Family Services and Consumer Affairs. Despite requests from the AMC Secretariat to be a member, there was no First Nations representation on the Joint Committee at the time it was established.

22. The Joint Committee interpreted Jordan's Principle as applying only to disputes between the federal and provincial governments about which level of government will pay for services. In addition, Jordan's Principle will only apply if the child has multiple disabilities and requires services from multiple service providers.

23. The AMC Secretariat's position is that the Joint Committee narrowed the scope of Jordan's Principle in a way that does not accurately reflect its spirit and intent. Without any First Nations input or involvement, the Joint Committee restricted Jordan's Principle to disputes between the federal and provincial governments and to children with multiple disabilities who require services from multiple providers.

24. The AMC Secretariat's position is that Jordan's Principle, as originally and unanimously passed by the House of Commons in December 2007, has a much broader interpretation. The AMC Secretariat's position is that Jordan's Principle should encompass all jurisdictional disputes that involve the care of First Nations children with disabilities, whether they be between the provincial and federal governments, between federal government departments, or between service providers and a provincial or federal government department. Jordan's Principle should also apply to all children with disabilities, not only those with multiple disabilities who require services from multiple providers. In addition, Jordan's Principle should not be limited to only medical issues, but should have a broader application.

25. On January 19, 2011, the Chiefs-in-Assembly adopted a Declaration for the Implementation of Jordan's Principle, a copy of which is attached hereto as Exhibit "E". In that

Declaration, the First Nations governments of Manitoba called on the federal and provincial governments to "ensure that action is taken this year to fully, and without equivocation, implement in spirit, intent and practice Jordan's Principle, in his homeland of Manitoba, and across Canada". The Declaration also noted that:

> We recognize that, to date, no region or province in Canada has fully implemented the Child First principle. Regions where the provincial/territorial and federal government have announced intentions to act, have demonstrated their own definition of Jordan's Principle that is narrow in scope, exclusive to children who meet government-defined criteria rather than meeting the needs of children first, which disregards the fullest intent and meaning of Jordan's Principle – the Child First Principle;

26. It has only been since April, 2012 that a member of the Assembly of Manitoba Chiefs Task Force on Health and Social Development has been on the Joint Committee. The AMC Secretariat also now has representation on the Joint Committee's Terms of Reference Officials Working Group (TOROWG).

27. The AMC Secretariat has a Jordan's Principle Implementation Team, which is an internal team of staff responsible for such things as drafting resolutions, raising awareness about Jordan's Principle, and communicating with First Nations leadership and families when there is a potential Jordan's Principle situation.

Current status of Jordan's Principle Implementation in Manitoba

28. Currently the TOROWG continues to meet regularly to discuss implementation of Jordan's Principle in Manitoba. The TOROWG has been working on a case conferencing process, however to the AMC Secretariat's knowledge that process has not yet been formalized.

In addition, despite several offers to facilitate, the AMC Secretariat is not aware of any families that have gone through a formalized case conferencing process for a resolution.

29. The AMC Secretariat is currently in the process of arranging an independent evaluation of the TOROWG's proposed case conferencing process to determine if it is effective in resolving disputes, not only with respect to which government will pay for the services, but also with respect to determining the normative standard of care. In the AMC Secretariat's experience, it is often difficult to determine the normative standard of care because unlike non-First Nations communities, many First Nations communities in Manitoba are not accessible by all-weather roads.

30. Despite the work done by the Joint Committee and the TOROWG, the AMC Secretariat is aware of many First Nations children in Manitoba who are still not receiving the services they need. In addition, to the AMC Secretariat's knowledge the only way First Nations children in Manitoba are able to access comparable services is if they are put into the child welfare system. It is the position of the AMC Secretariat that the lack of access to comparable services stems primarily from the narrow interpretation given to Jordan's Principle by the Joint Committee before there was First Nations input or involvement, and the lack of an effective case conferencing and resolution process.

31. In the AMC Secretariat's experience, jurisdictional disputes that arise regarding First Nations children with disabilities in Manitoba are not only those that occur between the provincial and federal governments. Rather, jurisdictional disputes that prevent First Nations children with disabilities in Manitoba from receiving comparable services also arise between

AANDC and Health Canada about which department will pay. The AMC Secretariat's position is that Jordan's Principle ought to apply to these cases as well because they result in the same situation that Jordan Anderson was in when the dispute was between the provincial and federal governments.

32. The AMC Secretariat is also aware of First Nations children with disabilities in Manitoba who are not receiving comparable services because they do not have multiple disabilities. The AMC Secretariat's position is that Jordan's Principle should apply to these children as well.

33. The AMC Secretariat has a direct interest in the outcome of this appeal because it raises legal issues relevant to the legal status and interpretation of Jordan's Principle, as well as the principles of equity of access to services and equity of outcome emphasized by the Royal Commission on Aboriginal Peoples. The AMC Secretariat is involved in the ongoing work of the Joint Committee and the TOROWG and is also the political body responsible for communicating with First Nations leadership, communities and families regarding the implementation of Jordan's Principle in Manitoba.

The AMC Secretariat's Intervention in this Appeal

34. The AMC Secretariat is seeking leave to intervene on the following legal issues:

- the legal status of Jordan's Principle;
- the interpretation of "jurisdictional disputes"; and
- the appropriate remedy in a Jordan's Principle case.

35. If leave to intervene is granted on the first issue, the AMC Secretariat intends to argue that Jordan's Principle is a legally binding obligation on the part of the federal and provincial governments. The AMC Secretariat's intent is to argue that the sources of this legal obligation are the fiduciary duty owed by the federal and provincial governments to Canada's First Nations, the Honour of the Crown and/or domestic customary law.

36. If leave to intervene is granted on the second issue, the AMC Secretariat intends to argue that Jordan's Principle ought to be given a broad interpretation that reflects its spirit and intent. More particularly, the AMC Secretariat intends to argue that the term "jurisdictional disputes" should not be restricted to disputes between the federal and provincial governments about who will pay for services. Rather, it should be interpreted to include disputes about the normative standard of care, disputes between federal government departments about which department will pay, and disputes between service providers and federal and/or provincial government departments.

37. If leave to intervene is granted on the third issue, the AMC Secretariat intends to argue that although deference is generally owed to a decision-maker by a reviewing court, Jordan's Principle disputes weigh in favour of the court exercising its discretion not to remit a matter back for reconsideration.

38. I have been advised by the AMC Secretariat's legal counsel and do believe that the lawyer for the Pictou Landing Band Council and Maurina Beadle consents to its motion for leave to intervene. I have also been advised by the AMC Secretariat's legal counsel and do believe that

the Attorney General of Canada does not consent to this motion for leave to intervene. Attached hereto and marked as Exhibit "F" is a copy of a letter dated December 18, 2013 from counsel for the Attorney General of Canada.

39. I make this Affidavit in support of the AMC Secretariat's motion for leave to intervene in this proceeding and for no other purpose.

AFFIRMED BEFORE ME)
at the City of Winnipeg, in the)
Province of Manitoba, this)
29th day of January, 2014)
)
)

Beverly Froese
A Notary Public in and for
the Province of Manitoba

Marcel Balfour
MARCEL LUKE HERTLEIN BALFOUR

Tab A

ASSEMBLY OF MANITOBA CHIEFS SECRETARIAT INC.
2nd Floor – 275 Portage Avenue • Winnipeg. Manitoba • R3B 2B3 • Telephone: (204) 956-0610 • Fax: (204) 956-2109

CONSTITUTION OF THE ASSEMBLY OF MANITOBA CHIEFS

Adopted on September 1994

This is exhibit "A" referred to in the Affidavit of Marcel Lux Herleen Balfour affirmed ~~sworn~~ before me this 29th day of January A.D. 2014

Beverly Froese

A NOTARY PUBLIC IN AND FOR THE PROVINCE OF MANITOBA

Revised: March 23, 2010
Brokenhead Ojibway Nation

CONSTITUTION OF THE ASSEMBLY OF MANITOBA CHIEFS

PREAMBLE

The Chiefs of the General Assembly of the Assembly of Manitoba Chiefs, having been convened, and

AFFIRMING that our peoples are the original peoples of this land having been put here on Turtle Island (North America) by the Creator; and

RECOGNIZING that through the Creator laws were developed to govern all our relationships for us to live in harmony with nature and mankind; and

DECLARING that the primary law of First Nation governments is the spiritual law through which the Creator defined our rights and responsibilities; and

STATING that we as autonomous peoples, have maintained our freedoms, languages, culture and traditions from time immemorial; and

ACKNOWLEDGING that the rights and responsibilities ascribed to us as peoples by the Creator cannot be altered, abrogated or diminished by any other Nation; and

NOTING that our aboriginal (First Nation) title, aboriginal (First Nation) rights and international Treaty rights exist and are recognized by International law; and

ACCEPTING that the Royal Proclamation of 1763 is binding on both the Crown in right of the United Kingdom and Canada; and

STATING that the Constitution of Canada is an instrument which protects our aboriginal title, aboriginal rights (collective and individual), international Treaty rights and the inherent right to self-determination; and

AFFIRMING that as Nations, our governmental powers, authorities and responsibilities are inherent and have existed since time immemorial; and

NOTING that recognition of the existence of the Canadian Constitution does not dilute, impair or undermine the sovereign status of First Nations of Manitoba; and

AFFIRMING that the right to self-determination and self-government of First Nations of Manitoba transcends the confines or circumscription of the Canadian state; and

DECLARING that our Nations are part of the International community;

-- ARE DETERMINED to be guided by the mission statement:

To protect our First Nation governments from further encroachment and to prevent any action by any Nation, group, jurisdiction or government from violating the integrity and freedoms of self-determination and from violating individual and collective rights of First Nations;

To reaffirm our belief in the sovereign equality of Nations and the fundamental rights of First Nations peoples;

To seek justice for the obligations arising from our International Treaties; and;

To promote and ensure social progress, harmony and the quality of life among our peoples;

AND FOR THESE ENDS,

To ensure respect of our culture, our diversity, our independence and our distinctiveness;

To practise tolerance, consensus and strive for harmony;

To unite our strength to maintain our security, traditions and nationhood;

To utilize domestic and international means for the promotion of the political, economic, spiritual and social advancement of our peoples; and

To join together our First Nations in political unity and solidarity for the collective advancement of our peoples on issues of common interest.

SO, WE THE CHIEFS HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH COMMON POLITICAL RIGHTS AND FREEDOMS.

ACCORDINGLY our respective governments, through the Chiefs of First Nations of Manitoba assembled in the City of Winnipeg on September 14, 1994 agree to affirm the establishment of the Assembly of Manitoba Chiefs and now agree to the present Constitution of the Assembly of Manitoba Chiefs.

IDEALS

ARTICLE 1

In every forum of the Assembly of Manitoba Chiefs, diplomatic and political relations as well as governmental comity between First Nations shall be guided by the following ideals:

(a) By virtue of our rich heritage, historical experience, contemporary experience and traditional values of sharing, non-interference, trust, honour, respect, harmony and traditional teachings; the First Nations possess common interests and aspirations to exercise their political will in collective approaches and strategies through consensus.

(b) By virtue of the recognition and affirmation of our mutual freedom to determine our political status and self-determination, First Nations possess the knowledge and political will to respect the sovereignty of each First Nation.

(c) By virtue of the recognition and respect for our mutual sovereign equality, and sovereign autonomy, First Nations can establish collective political relations in a cooperative manner.

(d) By virtue of our mutual belief in justice and respect for our jurisdictions, First Nations can establish collective political relations that will not prejudice a single First Nation.

PRINCIPLES

ARTICLE 2

The Assembly of Manitoba Chiefs, in Assembly, in the pursuit of the ideals stated in Article 1 and under their guidance, shall subscribe and maintain the following principles:

1. We state and accept that each First Nation has the inherent right to self-determination and to self-government by virtue of its nationhood and its autonomy and sovereignty is not impaired by decisions of other First Nations.

2. We accept that First Nations in Manitoba, as independent Nations, signed international covenants known as Treaties and accordingly these Treaty rights must be upheld and maintained. First Nations recognize that collective power and action is necessary for the preservation and integrity of these Treaty rights.

3. We recognize and accept that First Nations have an inherent and fundamental relationship with the land and natural environment. First Nations assert that this relationship and the rights thereto include rights to lands, resources and jurisdictions over our traditional territories.

4. We accept that the right of First Nations to self-determination and self-government is inherent and not derivative. The plenary power and authority of the First Nations in Manitoba can give cause to exist, a delegated form of authority known as the Assembly of Manitoba Chiefs. Any or all action by the Assembly of Manitoba Chiefs that exceed the purpose, authority, responsibility and jurisdiction will be of no force or effect.

5. We acknowledge and accept that the Assembly of Manitoba Chiefs, an organization formed to act on behalf of the First Nations of Manitoba derives its power, mandate and responsibility from the sovereignty of those First Nations. The institutions entrusted to exercise this delegation, function with the fullest respect for the sovereignty of each First Nation and the ascribed duty and performance will comply with such delegation.

6. We acknowledge and accept that the Assembly of Manitoba Chiefs serves to advance the rights and aspirations of First Nations in Manitoba and to protect the best interests of First Nation peoples of Manitoba and future generations.

7. We accept that where it is necessary to identify, priorize and initiate collective action on certain issues, that such decisions shall occur at regularly convened Assemblies.

8. We accept that duties, responsibilities and contributions involved in our collective efforts shall be shared on an equitable basis between First Nations and their various institutions.

9. We state that our collective efforts undertaken by First Nations in Manitoba shall respect and enhance the political and legal equality of our peoples, the fundamental human rights of individuals, the equality of men and women and deference to First Nation Elders. These efforts are in concert with our respect for and the promotion of our collective and individual rights.

10. We state that any collective action by the Assembly of Manitoba Chiefs shall never derogate or deny our inherent aboriginal and Treaty rights.

11. The Assembly of Manitoba Chiefs shall not affiliate itself with any other Provincial or Territorial or National or International First Nation organization without the support of the member First Nations of the Assembly of Manitoba Chiefs.

MANDATE

ARTICLE 3

The Mandate of the AMC is, through the Chiefs-in-Assembly, to devise collective and common political strategies and mechanisms for coordinated action by First Nations and their organizations to:

1. Promote, preserve, and protect Aboriginal and Treaty rights for First Nations people in Manitoba;

2. Preserve and enhance the rights and freedoms of First Nations in Manitoba as distinct peoples;

3. Strengthen and restore the foundations of First Nations cultures, traditions, languages, economies, and societies;

4. Affirm First Nations rights as peoples to exercise and practise self-determination and self-government; and

5. Protect the integrity and authority of each First Nation's customs, laws, and practises;

6. Preserve and enhance the role and equal participation of First Nation women within the political, economic and social spheres of First Nation governments and organizations.

For the greater certainty, the AMC will function as a political coordinating entity only on the common issues and strategies mandated by the Chiefs-in-Assembly and not as a program and service delivery entity.

The AMC will support specific First Nations issues as mandated by the Chiefs-in-Assembly.

MEMBERSHIP

ARTICLE 4

1. All First Nations in Manitoba have the right to seek membership in the Assembly of Manitoba Chiefs. The Assembly Secretariat shall maintain a schedule of First Nation members.

2. The Chiefs-in-Assembly may recognize the formation of a new First Nation and the right of that Nation to seek membership in the Assembly of Manitoba Chiefs.

3. The Chiefs-in-Assembly may confer special membership or participation rights upon First Nation organizations.

4. Membership entails a commitment among member First Nations in Manitoba to strive for political unity and to support the Assembly of Manitoba Chiefs and its instruments.

INSTRUMENTS

ARTICLE 5

1. The principal instruments of the Assembly of Manitoba Chiefs are designated as:

   The Chiefs in Assembly

   The Executive Council of Chiefs

   The Assembly of Manitoba Chiefs Secretariat Inc (the "Assembly Secretariat")

   The Chiefs Committees of the Assembly of Manitoba Chiefs

2. Subsidiary committees or instruments that are necessary or required, may be established by the Manitoba Chiefs-in-Assembly.

   The Council of Elders

THE CHIEFS-IN-ASSEMBLY

ARTICLE 6

1. The Chiefs-in-Assembly shall consist of all the Chiefs of those First Nations in Manitoba who choose to exercise their right to be members of the Assembly of Manitoba Chiefs.

2. Each First Nation in Manitoba which is a member of the A.M.C. shall have one elected representative in the Chiefs-in-Assembly.

3. In the absence of a Chief of a First Nation in Manitoba, designated elected representatives, who are accredited officially in writing by the Chief of that First Nation for that purpose, may participate in the Chiefs-in-Assembly forum.

4. In the absence of a Chief who may not have an elected Council, designated representatives or proxies who are accredited officially in writing by that member First Nation for that purpose, may participate fully in the Chiefs-in-Assembly forum.

FUNCTIONS AND POWERS

ARTICLE 7

1. The Chiefs-in-Assembly is a political forum for First Nations in Manitoba to conduct nation-to-nation discussions and to address common issues and concerns for the purpose of developing and accepting common strategies and initiatives.

2. The Chiefs-in-Assembly as a political forum and source of all authority for collective action shall function as a coordinating and cooperative body for common strategies and initiatives.

3. The Chiefs-in-Assembly shall elect the Grand Chief of the Assembly of Manitoba Chiefs.

4. The Chiefs-in-Assembly shall elect the Regional Chiefs of the Assembly of First Nations. The Chiefs-in-Assembly shall recognize the right of Chiefs of First Nations which are not members of the Assembly to vote for the Regional Chief of the Assembly of First Nations.

5. The Chiefs-in-Assembly shall ensure that the composition of all its delegated committees reflect the principles of: respect for diversity, equal regional representation; and shared decision making responsibility.

6. The Chiefs-in-Assembly may, by resolution mandate the establishment of working groups or Chiefs Committees on any particular subject matter to facilitate the implementation of the decisions or resolutions made by Chiefs-in-Assembly.

7. The Chiefs-in-Assembly may instruct the Executive Council to proceed with an implementation process regarding any subject matter.

8. The Chiefs-in-Assembly as outlined in Article 14 may remove the Grand Chief of the Assembly of Manitoba Chiefs.

9. The Chiefs-in-Assembly may remove the Regional Chief of the Assembly of First Nations as outlined in Article 15.

DECISION MAKING

ARTICLE 8

1. Decisions of the Assembly of Manitoba Chiefs-in-Assembly shall be made by consensus if possible. Unless otherwise specified herein, if a vote is required, a decision is made when it reflects a simple majority of a quorum of Chiefs. A quorum is established when attendance reflects 50% plus one, of Chiefs of the member First Nations when the assembly is called to order by the Chair.

2. In the event of voting, each Chief or duly recognized delegate shall have one vote.

ASSEMBLIES

ARTICLE 9

The Chiefs-in-Assembly shall meet:

1. Once a year within 180 days of the fiscal year end to deal with year end business.

2. In General Assemblies on or about the month of September, December and March.

3. In Special Assemblies to be convened by the Grand Chief of the Assembly of Manitoba Chiefs at the request of the Executive Council to deal with issues of an emergency nature which otherwise cannot be dealt with expeditiously at the General Assemblies.

PROCEDURE

ARTICLE 10

The Assembly of Manitoba Chiefs-in-Assembly shall adopt its own Rules of Procedure.

EXECUTIVE COUNCIL OF CHIEFS

Role, Composition and Authority

ARTICLE 11

1. The Executive Council of the Assembly of Manitoba Chiefs shall function as a source of authority between Assemblies and shall be composed of the Grand Chief, 5 Chiefs selected by northern First Nations and 5 Chiefs selected by southern First Nations. Quorum for the Executive Council shall consist of six members.

2. The Executive Council may make representations on behalf of the First Nations of Manitoba consistent with properly delegated mandates.

3. The Executive Council shall set priorities on common issues and shall have plenary authority over all Chiefs Committees as a measure of greater cooperation, efficiency and effectiveness.

4. On matters of concern to an individual First Nation that will not prejudice other First Nations, the Executive Council may consider a request from any First Nation and decide on the best course of action or support.

5. The Executive Council will ensure written reports are provided at assemblies indicating progress on mandates and resolutions.

6. The Executive Council shall include the Grand Chief who will chair all Executive Council meetings and shall be responsible for ensuring the Assembly Secretariat implements the decisions of the Executive Council in accordance with the Articles of Incorporation and By Laws of the Assembly Secretariat. Decisions of the Executive Council shall be made by consensus if possible.

7. The Executive Council derives its mandate exclusively from this Constitution and from resolutions passed by Chiefs-in-Assembly. In exceptional circumstances the Executive Council may exercise its plenary powers.

8. The Executive Council shall appoint from among its membership, an Acting Grand Chief who shall assume the responsibility of the Grand Chief in his/her absence.

9. The Executive Council shall meet six times a year to provide direction on the decisions made by the Chiefs-in-Assembly and to make decisions on all issues that arise between Assemblies.

10. The Executive Council may convene special assemblies.

11. The Executive Council can call special meetings to deal with emergency matters.

ACCOUNTABILITY

ARTICLE 12

The Executive Council shall be accountable to the Assembly of Manitoba Chiefs-in-Assembly.

GRAND CHIEF
Role, Authority and Accountability

ARTICLE 13

1. The Grand Chief derives his/her authority and mandate from this Constitution and resolutions passed by the Assembly of Manitoba Chiefs-in-Assembly and the Executive Council of Chiefs.

2. The Grand Chief is a member of the Executive Council of Chiefs through his/her position as chairperson and functions as a member of a collective leadership.

3. The Grand Chief has a political role and is the principal spokesperson on common issues and accordingly may take a leadership role in advocating the rights and interests of First Nations in Manitoba.

4. The Grand Chief is accountable both to the Assembly of Manitoba Chiefs-in-Assembly and to the Executive Council of Chiefs.

5. The Grand Chief shall be responsible for regular political and financial reports both to the Executive Council of Chiefs and to the Assembly of Manitoba Chiefs-in-Assembly.

6. The Grand Chief shall maintain and direct the Assembly Secretariat in accordance with the Articles of Incorporation and By Laws of the Assembly Secretariat and with directions set by the Executive Council of Chiefs and the Assembly of Manitoba Chiefs-in-Assembly.

7. The Grand Chief with his Executive privilege may participate as an active member of the Chiefs Committees of the Assembly of Manitoba Chiefs and has the mandate to assist in the coordination of the planning and operations of the various units of the Assembly of Manitoba Chiefs.

8. In the absence of the Grand Chief, the Executive Council of Chiefs shall in accordance with Article 11 appoint AN Acting Grand Chief.

9. The office of Grand Chief is a full time term position with the honoraria being determined by the Executive Council of Chiefs.

ELECTION AND TERM

ARTICLE 14

1. The Grand Chief must be a member of a First Nation in Manitoba.

2. The Grand Chief is elected by the Assembly of Manitoba Chiefs-in-Assembly for a three year term of office.

3. The Grand Chief shall be elected by the Assembly of Manitoba Chiefs-in-Assembly by a simple majority of registered Chiefs or delegates.

4. After the expiration of the three year term, the Grand Chief is eligible for re-election.

5. The Grand Chief may be removed from office during a term by a majority vote of the registered Chiefs or delegates at a Special Assembly convened by the Executive Council of Chiefs for that purpose. Prior to such a vote, the Grand Chief will be allowed a reasonable opportunity to address the Chiefs-in-Assembly on the matter before them.

6. In the event that the office of Grand Chief becomes vacant, whether through removal from office, resignation, death or incapacity, the Executive Council of Chiefs shall appoint a Deputy Grand Chief to serve as the Acting Grand Chief until such time that allows for an election to the office of Grand Chief.

ASSEMBLY OF FIRST NATIONS REGIONAL CHIEF
Election and Term

ARTICLE 15

1. The Regional Chief must be a member of a First Nation in Manitoba.

2. The Regional Chief is elected by the Assembly of Manitoba Chiefs-in-Assembly for a three year term of office.

3. The Regional Chief shall be elected by the Assembly of Manitoba Chiefs-in-Assembly by a simple majority of registered Chiefs or delegates.

4. After the expiration of the three year term, the Regional Chiefs is eligible for re-election but may be removed from office by a majority of the registered Chiefs or delegates at a Special Assembly convened by the Executive Council of Chiefs for that purpose. In any removal process, the Regional Chief will be afforded an opportunity to present his/her side of the matter.

5. In the event that the office of Regional Chief becomes vacant, whether through removal from office, resignation, death or incapacity, the Executive Council of Chiefs shall appoint a First Nation member to serve as Acting Regional Chief until such time that allows for an election to the office of Regional Chief.

6. The Regional Chief is accountable to the Assembly of Manitoba Chiefs-in-Assembly and to the Executive Council of Chiefs.

7. Direction and functional guidance will be provided by the Executive Council of Chiefs.

8. The Regional Chief shall attend Executive Council meetings in an ex-officio manner.

9. The Regional Chief, upon request, shall be available for other Chiefs' Committee meetings.

10. The Regional Chief shall ensure the interests of First Nations in Manitoba are represented at the national level.

11. The Regional Chief shall reside in Manitoba.

ASSEMBLY SECRETARIAT
Role and Authority

ARTICLE 16

1 The Assembly Secretariat was incorporated on May 17, 1988 as a non share capital corporation under the *Corporations Act (Manitoba)* and a "non profit organization" under the *Income Tax Act (Canada)* to support the activities and initiatives of the Assembly of Manitoba Chiefs.

2 The Assembly Secretariat is dedicated exclusively to the social, cultural, educational and economic development of First Nations people who for the most part live on reserves in Manitoba and is centrally managed and controlled from one or more reserves in Manitoba.

3 For greater certainty, the incorporation of the AMC Secretariat does not derogate from the inherent rights of the First Nations of Manitoba, including treaty and aboriginal rights; nor does the said incorporation in any way subject the Assembly of Manitoba Chiefs or this Constitution to Canadian corporate law.

Role, Function and Accountability

ARTICLE 17

1. Under the direction of the Grand Chief and its Board of Directors, the Assembly Secretariat shall implement decisions made by the Assembly of Manitoba Chiefs-in-Assembly and by the Executive Council of Chiefs and by the Chiefs' Committees.

2. The Assembly Secretariat shall be accountable through its Board of Directors to the Grand Chief and to the Executive Council of Chiefs.

3. To assist the Executive Council of Chiefs and Chiefs Committees in formulating responses, positions, strategies and work plans on common issues and concerns.

4. To collect and compile resource material and literature with the objective of providing data and information to substantiate First Nations' positions and assertions on various areas of endeavor and activity.

5. To assist the Executive Council of Chiefs and Chiefs Committees in coordinating their activities on common issues and, in particular, to assist in the organization of

workshops, committee meetings, conferences and Chiefs' assemblies.

6. To assist the Executive Council of Chiefs and Chiefs' Committees in coordinating and preparing for meetings with provincial and federal government officials and Ministers on common issues, including Treaty and Aboriginal rights.

7. To provide professional and expert advice and assistance on common issues including organizational assistance, research and planning, advocacy on positions, implementation of mandates, analysis and review of policies, programs, laws, constitutional matters and other matters that affect Treaty and aboriginal rights.

8. To develop a body of knowledge and expertise in the area of self-determination, self-government, land and resource rights, Treaties and Treaty rights, international law and indigenous peoples, and more particularly on those common issues that Chiefs Committees' have been established to address on behalf of all Manitoba First Nations.

9. To prepare budgets, receive, administer and distribute funds and transact business and engage in such activities that are necessary for the maintenance and management of the Assembly Secretariat in order to achieve fruition of designated objectives.

10. To work in a coordinated, cooperative and complementary manner with First Nation tribal, political, and other organizations to ensure optimum use of resources.

11. To implement Manitoba First Nations self-determination, control and jurisdiction in research and reliable, accurate statistics, based on First Nations principles of ownership, control, access and possession (OCAP) of First Nations data and information; free prior and informed consent; and First Nations ethical standards.

CHIEFS COMMITTEES
Role, Function and Accountability

ARTICLE 18

1. The Chiefs Committees of the Assembly of Manitoba Chiefs shall consist of Chiefs selected on a basis of interest, expertise and equitable regional representation.

2. The Executive Council of Chiefs may appoint Chiefs to various committees as

regular members.

3. Councillors may be designated to sit as Committee members in the place of Chiefs at the discretion of their respective tribal organization or First Nation.

4. Committee meetings shall be open to Manitoba First Nation Chiefs who are members of the Assembly of Manitoba Chiefs and who may wish to participate in an ex-officio capacity.

5. The Grand Chief of the Assembly of Manitoba Chiefs may participate on Chiefs Committees.

6. Regular members of Chiefs Committees are responsible for; attending Committee meetings (three consecutive absences will be construed as resignation from regular membership); bringing forward the particular issues, concerns and positions of the First Nations they represent on the Committee; reporting to and consulting with the First Nations they represent on the Committee concerning the deliberations of the Committee; and fostering coordinated and cooperative efforts in the common interest of First Nations in Manitoba.

7. The Assembly of Manitoba Chiefs-in-Assembly through resolution, have established the following Chiefs Committees:

Self-determination and Treaties Committee
Health and Social Development Committee
Justice Committee
Child Welfare Committee
Education Committee
Housing Committee
Economic Development Committee
International Affairs Committee
First Nations Women's Committee

8. Further Committees may be established by Assembly of Manitoba Chiefs-in-Assembly or by the Executive Council of Chiefs as may be necessary to address issues and concerns on an as required basis.

9. The purpose of the Chiefs Committees is to facilitate the implementation of the decisions made by Assembly of Manitoba Chiefs-in-Assemblies or the Executive Council of Chiefs. Chiefs' Committees should also assess requirements for further direction and may recommend resolutions for consideration by the Assembly of Manitoba Chiefs-in-Assembly.

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10. The Chiefs Committees are accountable to the Assembly of Manitoba Chiefs-in-Assembly and to the Executive Council of Chiefs. Any questions on Chiefs Committee mandates shall be referred to the Executive Council of Chiefs. Chiefs' Committees shall report on mandates and progress at general assemblies.

11. The Chiefs Committees shall each select a Chairperson from among their respective memberships. Meetings are to be held at least quarterly depending upon the availability of funds for such meetings.

12. A simple majority of the regular members shall constitute a quorum and no business shall be conducted in the absence of a quorum.

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COUNCIL OF ELDERS
Composition, Role and Function

ARTICLE 19

1. The Council of Elders shall consist of Elders representative of the First Nations in Manitoba. The size and membership of the Council of Elders will be determined by the Executive Council of Chiefs with the advice of First Nations and tribal organizations.

2. The Executive Council will select a representative from the Council of Elders who will assist in Assemblies, Executive meetings and Special Assemblies.

3. The Council of Elders will provide advice and functional guidance to the Chiefs-in-Assembly.

4. The Council of Elders may make recommendations to the Executive Council and to the Assembly of Chiefs-in-Assembly.

AMENDMENTS

ARTICLE 20

1. The Constitution may be amended by two thirds (⅔) of the Chiefs, of the member First Nations of the Assembly of Manitoba Chiefs present at an Annual Assembly or any General Assembly and a positive vote of two thirds (⅔) of those present.

2. Notice of amendments must be in writing and given to Chiefs of the member First Nations of the Assembly of Manitoba Chiefs at least thirty (30) calendar days prior to an Annual Assembly or any General Assembly. Such notice must include specific information on the proposed amendments.

3. Amendments shall take effect immediately after being adopted pursuant to Article 20, item 1.

ADOPTION OF THE CONSTITUTION

ARTICLE 21

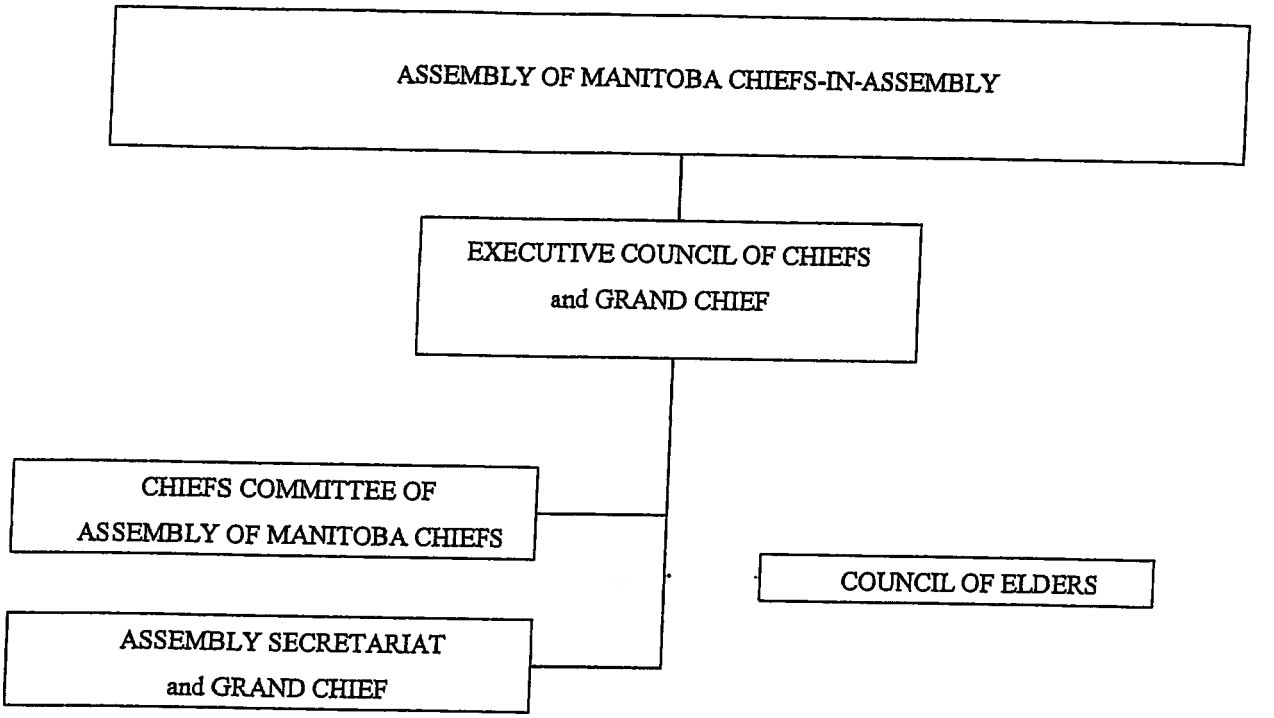
This constitution is adopted by the Assembly of Manitoba Chiefs-in-Assembly on the 14th day of September 1994 at Winnipeg, Manitoba.

PREAMBLE, APPENDIX AND SCHEDULES

ARTICLE 22

The Preamble, Appendix or Schedules form an integral part of this constitution.

ASSEMBLY OF MANITOBA CHIEFS



Functions as a political forum. Source of all authority for collective action and sits at least once a year.

Functions as a source of authority between Assemblies, ensures mandates implemented, sets priorities on common issues, meets at least four times a year. Has plenary authority over all Chiefs Committees. Composed of Grand Chief, Chairpersons of Tribal Councils, M.K.O., F.N.C. and Independent First Nations.

APPENDIX A

GLOSSARY OF TERMS

ABORIGINAL First Nations in Manitoba prefer to use the term First Nations or terms such as Anishinabe, Dene, Dakota or Ininew to describe themselves as peoples. The term Aboriginal is used in the same context found in the Canadian Constitution especially section 25 and 35.

FIRST NATION A generic term to describe the original peoples of this land. Only status treaty peoples have the right to use this terminology. Some years ago, the term aboriginal meant the original peoples, and since the Constitution of Canada in 1982, the term aboriginal has been used in a wide context.

INDEPENDENT FIRST NATION A First Nation in this province that does not belong to a Tribal organization or a regional organization but is a member of the Assembly of Manitoba Chiefs.

PROXY A person who is substituted or deputed by another to represent him and act for him. Usually done through writing or a written instrument. Used also to describe the instrument containing the appointment.

QUORUM The number of members who must be present in a deliberative body before business may be transacted.

TRADITIONAL TEACHINGS A term used by elders and traditional peoples to describe their way of life and daily conduct. This term includes the following: (a) wisdom; (b) love; (c) respect; (d) bravery (courage); (e) honesty; (f) humility; (g) truth.

APPENDIX B

CHIEFS-IN-ASSEMBLY RULES AND PROCEDURES

1. **Official Delegates**

1.1 The delegate must be a Chief of a First Nation in Manitoba who upon registration shall be automatically recognized as the official delegate.

1.2 In the absence of a Chief, designated elected representatives or elected proxies, who are accredited officially in writing by that member First Nation for that purpose, may participate fully in the Chiefs-in-Assembly forum.

1.3 Each member First Nation in Manitoba shall have only one official delegate at all times.

1.4 In the absence of a Chief who may not have an elected Council, designated representatives or proxies who are accredited officially in writing by that member First Nation for that purpose, may participate fully in the Chiefs-in-Assembly forum.

2. **Registration**

2.1 All delegates must be registered daily for the Chiefs-in-Assembly. The registration desk will be open each morning at 8:00 a.m.

3. **Quorum**

3.1 To commence the Assembly, a quorum of delegates representing the majority of member First Nations must be registered on the first day of the Assembly.

3.2 A quorum for the Assembly is established when 50% plus one of all the Chiefs/Delegates of the member First Nations are present, when the Assembly is called to order by the Chair.

3.3. Once a quorum is established at the commencement of an Assembly each day, pursuant to Section 3.1, the Chiefs-in-Assembly may conduct business and pass resolutions notwithstanding a quorum does not exist throughout the remainder of the Assembly that day.

3.4 Resolutions will be addressed individually. There will be no blanket resolutions. Resolutions which cannot be addressed in the time available may be deferred until

the next assembly or referred to the executive council for consideration and discretionary action.

3.5 The agenda shall be adopted by resolution.

3.6 Each Chief or delegate shall have one vote.

3.7 Decisions should be reached if possible by consensus. If consensus appears to be unattainable then a positive vote of a simple majority of registered delegates will be sufficient to carry the resolution or decision.

3.8 Only official delegates are entitled to speak to the Assembly and only official delegates may move, second or discuss resolutions. Upon request an advisor, technician or other person may speak to a resolution or agenda topic.

3.9 When addressing the Assembly, delegates must identify themselves and the First Nation they represent.

3.10 When speaking to an issue and subject to the discretion of the chair, the initial speaker will be allowed 5 minutes for presentation to the issue. Subsequent delegates will be allowed 3 minutes on that issue. The initial speaker will be allowed supplementary time to further address the issue.

4. **Resolutions**

4.1 The Assembly Secretariat shall be responsible for the formation of a resolution committee.

4.2 All resolutions must have a mover and seconder who are identified.

4.3 All resolutions must be presented to the resolution committee for scrutiny and refinement.

4.4. Resolutions shall be moved and seconded by official delegates.

4.5 The mover and seconder of each resolution must be in attendance when a resolution is presented.

4.6 All resolutions adopted at the Assembly shall be referred to the Executive Council of Chiefs for implementation.

4.7 All resolutions adopted at the Assembly shall be deemed to have collective authority of the First Nations of Manitoba.

4.8 Draft resolutions must be forwarded to the Assembly Secretariat for review by the Resolution Committee and advance distribution to all Chiefs and Councils, no less than four weeks prior to the date of the next Chiefs' Assembly.

4.9 Until such time as the advance submission of Resolutions is fully operational, the current procedure of Resolutions being introduced from the floor of the Chiefs-in-Assembly also be maintained.

CONSTITUTIONAL AMENDMENTS

1. **SPECIAL CHIEFS ASSEMBLY ON RESTRUCTURING**
May 20, 21 & 22, 1997, Winnipeg, Manitoba

Certified Resolution May-97.012
Re: Constitutional Amendments to Reflect Gender Equality

Amendments are reflected in sections:
- Article 18
- Rules and Procedures

2. **10TH ANNUAL GENERAL ASSEMBLY**
September 15, 16, 17, 1998, Dakota Tipi First Nation

Certified Resolution Sept-98.17
Re: Reforming the Composition of the AMC Chiefs Committees

Amendments are reflected in sections:
- Article 18

Certified Resolution Sept-98.18
Re: Changing the Composition and the size of the AMC Executive Council

Amendments are reflected in sections:
- Article 11

3. **11TH ANNUAL GENERAL ASSEMBLY**
November 2, 3 & 4, 1999, Sioux Valley Dakota Nation

Certified Resolution Nov.99-05
Re: Amendment of Article 9 - Assemblies

Amendments are reflected in sections:
- Article 9

Certified Resolution Nov.99-06
Re: Amendment of Article 11 - Executive Council / Chiefs

Amendments are reflected in sections:
- Article 11

Constitutional Amendments (cont'd)

Certified Motion
Re: Appendix B - Chiefs in Assembly Rules and Procedures

Amendments are reflected in sections:
- Appendix B - Section 3.2
- Appendix B - Section 3.3

4 **GENERAL ASSEMBLY ON THE FRAMEWORK AGREEMENT INITIATIVE**
November 27, 28 & 29, 2001, Opaskwayak Cree Nation

Certified Resolution Nov-01.01
Re: Amendment of Assembly of Manitoba Chiefs Constitution - Section 3-Appendix B-Quorum.

Amendments are reflected in sections:
- Appendix B - Section 3.1
- Appendix B - Section 3.3

Certified Resolution Nov-01.02
Re: Amendment of Assembly of Manitoba Chiefs Constitution

- Appendix B - Section 1 - 1.1
- Appendix B - Section 1 - 1.2
- Appendix B - Section 1 - 1.4

5. **ASSEMBLY OF MANITOBA CHIEFS GENERAL ASSEMBLY**
January 23, 24, 25, 2007, Long Plain First Nation

Certified Resolution Jan-07-01
Re: Constitutional Amendment Article 17 to Provide Specific Mandate for Research

Amendment is reflected in:
- Article 17

Certified Resolution Jan-07-02
Re: Delete Section 3.3, Appendix B – Quorum (adopt new provision)

Amendment is reflected in:
- Appendix B

6. **SPECIAL CHIEFS ASSEMBLY ON TRCM AND FIRST NATIONS HEALTH**
March 23 & 24, 2010, Brokenhead Ojibway Nation

Certified Resolution Mar-10.02

Re: To Amend the Constitution of the Assembly of Manitoba Chiefs and the Articles of Incorporation of the Assembly of Manitoba Chiefs Secretariat Inc.

Amendments reflected in:

- Article 5(1)(point 3)
- Article 11(6)
- Article 13(6)
- Article 16(1)
- Article 17(1) and (2)

Tab B

BY-LAW NO. 1

A by-law relating generally to the transaction of the business and affairs of **Assembly of Manitoba Chiefs Secretariat Inc.**

CONTENTS
SECTION ONE – INTERPRETATION

1.1 **DEFINITIONS** - In the By-laws of the Corporation, unless the context otherwise requires:

"ACT" means *The Corporations Act* of Manitoba (the "Act"), R.S.M. 1987 c.225 and the Regulations passed pursuant to that Act and any legislation that may be substituted therefor;

"BOARD" means the Board of Directors of the Corporation;

"BY-LAWS" means this By-law and all other by-laws of the Corporation from time to time enacted by the Corporation and being in force and effect;

"CORPORATION" means the body corporate incorporated or continued under the Act and named in the Articles;

"MEETING OF MEMBERS" means an annual meeting of Members and/or a special meeting of Members of the Corporation;

"MEMBER" means a person described in Section 9.1;

"PERSON" includes an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative.

1.2 **INTERPRETATION** - All terms which are contained in the By-laws of the Corporation and which are defined in the Act, but not defined in any by-law, shall have the meanings given to such terms in the Act; words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; words importing persons include individuals, bodies corporate, partnerships, trusts and unincorporated organizations.

This is exhibit "B" referred to in
the Affidavit of Marcel Lavoie
Herlen Balfour
affirmed sworn before me this 29th
day of January A.D. 2014
Beverly Froese

A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA

SECTION TWO - BUSINESS OF THE CORPORATION

2.1 **OFFICE** - Until changed in accordance with the By-Law, the registered and head office of the Corporation shall be located and the Corporation shall be managed and controlled from a reserve, as defined in the *Indian Act,* located in Manitoba.

2.2 **CORPORATE SEAL** - Until changed by the Board, the corporate seal of the Corporation shall be in the form, if any, impressed.

2.3 **FINANCIAL YEAR** - The financial or fiscal year of the Corporation shall be determined by the Board of Directors.

2.4 **EXECUTION OF INSTRUMENTS** - The Board may from time to time direct the manner in which and the person or persons by whom any Deeds, transfers, assignments, contracts, obligations, certificates and other particular instrument or class of instruments may or shall be signed. Any signing officer may affix the corporate seal to any instrument requiring the same.

2.5 **BANKING ARRANGEMENTS** - The banking business of the Corporation, including, without limitation, the borrowing of money and the giving of security therefor, shall be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the Board. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the Board may from time to time prescribe or authorize.

2.6 **VOTING RIGHTS IN OTHER CORPORATIONS** - The signing officers of the Corporation may execute and deliver proxies and/or arrange for the issuance of voting certificates or other evidence of the right to exercise the voting rights attaching to any securities held by the Corporation. Such instruments, certificates or other evidence shall be in favour of such person or persons, as may be determined by the officers executing such proxies and/or arranging for the issuance of voting certificates or such other evidence of the right to exercise such voting rights. In addition, the Board may from time to time direct the manner in which and the person or persons by whom any particular voting rights or class of voting rights may or shall be exercised.

SECTION THREE - ACCOUNTS AND NON PROFIT CHARACTER

3.1 **RECORDING OF MONIES** - All monies received by the Corporation shall be deposited in the Corporation's bank account as nearly as possible from day to day and all payments shall be made by cheque on the Corporation's bank.

3.2 **ACCOUNTING RECORDS** - The Directors shall cause accounts to be kept of the assets and liabilities of the Corporation, of all monies received by the Corporation, of all monies invested by the Corporation and of all monies distributed by the Corporation and of the matters in respect of which credits and expenditures take place.

The books of the Corporation shall be kept at the registered office of the Corporation.

3.3 **TREASURER'S REPORT** - The Treasurer shall, at least once in every year and

more often if deemed proper by the Board, place before the Board a statement of receipts and disbursements and a balance sheet.

3.4 **APPOINTMENT OF AUDITORS OR ACCOUNTANTS** - The Members, at the annual meeting of Members, shall, after considering the recommendation of the Board, in addition to transacting such other business as referred to in Section 9.2, appoint an independent chartered accountant or a firm of independent chartered accountants to be either the auditor(s) or the accountant(s) of the Corporation for the coming year and to audit or otherwise comment and report on all of the accounts, records, and financial affairs of the Corporation at the next annual meeting of the Board and Members of the Corporation.

3.5 **MAINTENANCE OF NON PROFIT STATUS** - The Board shall at all times conduct the affairs of the Corporation in such a manner so as to maintain the non profit status of the Corporation in accordance with the provisions of the *Income Tax Act (Canada),* as the Board shall determine from time to time. To the extent that the Articles of Incorporation or any constating documents of the Corporation shall refer to the Corporation as having a political purpose or undertaking, such term is to be interpreted as referring to First Nations being recognized as an order to government in Canada.

3.6 **MAINTENANCE OF INDIAN ACT STATUS**– The Board shall at all times conduct the affairs of the Corporation in such a manner so as to allow qualified employees to claim a tax exemption under section 87 of the *Indian Act.*

SECTION FOUR – DIRECTORS

4.1 **NUMBER OF DIRECTORS AND QUORUM** - Until changed in accordance with the By-law of the Corporation, the Board shall consist of a minimum of Three (3) Directors and a maximum of Nine (9) Directors. The quorum for the transaction of business at any meeting of the Board shall consist of a majority of Directors then in office or such greater number of Directors as the Board may from time to time determine. Subject to section 4.16, each Director is authorized to exercise one (1) vote.

4.2 **QUALIFICATION** - No person shall be qualified for election as a Director if he is less than eighteen (18) years of age; if he is of unsound mind and has been so found by a court in Canada or elsewhere; if he is not an individual; if he has the status of a bankrupt or suspends payments or makes a compromise with his creditors.

4.3 **ELECTION AND TERM OF OFFICE** - The First Directors shall be those persons named in the Articles, together with those additional Directors, if any, appointed by the aforementioned First Directors (collectively, the "Founding Board") and shall all be considered to be elected Directors and shall each be appointed for a term expiring at the first annual meeting of Members;

Save and except for the appointment of Directors to the Founding Board and subject to Section 4.1, the Directors shall be elected by the Members and shall serve until the next annual meeting of Members or until their successors are elected or appointed, provided that unless otherwise revoked by one or more of them, in the event the Members do not hold such an election, they shall be deemed to have given their proxy for the selection of the Board of Directors jointly to (1) the Chief Executive Officer, being the Grand Chief and

(2) the Executive Council of Chiefs, all of whom are selected by the Members in Assembly.

Directors shall be eligible for re-election at the annual meeting of the Members.

4.4 **REMOVAL OF DIRECTORS BY MEMBERS** - Subject to the provisions of the Act, the Members may, by resolution of a two-thirds majority of Members passed at a special meeting of Members, remove any elected Director from office and the vacancy created by such removal may be filled at the same meeting, failing which it may be filled by the Directors.

4.5 **VACATION OF OFFICE** - A Director ceases to hold office when:

(a) he dies;

(b) he is removed from office by a resolution of the Members, in accordance with Section 4.4;

(c) he is of unsound mind and has been found so by a Court in Canada or elsewhere;

(d) he has the status of a bankrupt, or suspends payments, or makes a compromise with his creditors;

(e) his written resignation is sent or delivered to the Corporation or, if a time is specified in such resignation, at the time so specified, whichever is later; or

(f) he is not re-elected and his successor is elected.

The Board may continue to act notwithstanding any vacancy in their number.

4.6 **REMOVAL OF DIRECTORS FOR FAILURE TO ATTEND AND VACANCIES** - In the event of a Director failing to attend three (3) consecutive meetings of the Board without reasonable excuse, the sufficiency whereof shall be in the sole discretion of the Board, the Board may rescind and terminate such Director's appointment as a member of the Board, and the Board shall, within a reasonable time thereafter, appoint a replacement to fill such vacancy for the unexpired portion of such term. Subject to the provisions of the Act, a quorum of the Board may fill a vacancy in the Board. In the absence of a quorum of the Board, the Board shall forthwith call a special meeting of Members to fill the vacancy.

4.7 **ACTION BY THE BOARD** - Subject to the provisions of the Act, the Board shall have the full power in all things to manage and administer the business and affairs of the Corporation, which shall, for greater certainty, include the authorization for and on behalf of the Corporation to purchase stocks, bonds, debentures and other securities and to invest the funds of the Corporation therein. Subject to Sections 4.8 and 4.9, the powers of the Board may be exercised by resolution passed at a meeting at which a quorum is present. Where there is a vacancy in the Board, the remaining Directors may exercise all the powers of the Board so long as a quorum remains in office.

4.8 **MEETINGS BY TELEPHONE** - If all the Directors consent, a Director may participate in a meeting of the Board or of a committee of the Board by means of such telephone or other communication facilities as permit all persons participating in the

meeting to hear each other and a Director participating in such a meeting by such means is deemed to be present at the meeting, provided that the Director's participation will be subject to the requirement under Section 4.10 that a majority of meetings take place on a reserve. For greater certainty, the location of any Director participating by telephone will be taken into account in determining where the meeting is taking place. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Board and of committees of the Board held while a Director holds office.

4.9 **MEETINGS BY OTHER ELECTRONIC MEANS** – The Directors of the Corporation may meet by other electronic means that permits each Director to communicate adequately with each other, provided that:

(a) The Board of Directors of the Corporation has passed a resolution addressing the mechanics of holding such a meeting and dealing specifically with how security issues should be handled, the procedures for establishing quorum and recording votes;

(b) Each Director has equal access to the specific means of communication to be used; and

(c) Each Director has consented in advance to meeting by electronic means using the specific means of communication proposed for the meeting.

4.10 **PLACES OF MEETINGS** - Meetings of the Board may be held at any place in Manitoba, provided that a majority of meetings (which shall include a majority of meetings at which fundamental decisions relating to the Corporation are made) shall be held on a reserve in Manitoba.

4.11 **CALLING OF MEETINGS** - Meetings of the Board shall be held from time to time and at such place as the President, failing whom, the Vice-President, failing who, not less than two (2) Directors may determine.

4.12 **NOTICE OF MEETING** - Notice of the time and place of each meeting of the Board shall be given in the manner provided in Section 10.1 to each Director not less than seven (7) days before the time when the meeting is to be held. A notice of meeting of Directors need not specify the purpose of the business to be transacted at the meeting, except where the Act requires such purpose of business to be specified. A Director may in any manner waive notice of or otherwise consent to a meeting of the Board. Except as provided herein, no public notice or advertising of any meeting of the Board shall be required.

4.13 **FIRST MEETING OF NEW BOARD** - Provided a quorum of Directors is present, each newly elected Board may, without notice, hold its first meeting immediately following the meeting of Members at which such Board is elected.

4.14 **ADJOURNED MEETING** - If a meeting of Directors is adjourned for less than thirty (30) days, it shall not be necessary to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjoumed. If a meeting of Directors is adjourned by one or more adjournments for an aggregate of thirty (30) days or more, notice of the adjourned meeting shall be given as for an original meeting.

4.15 **CHAIRMAN** - The President of the Corporation, failing whom, the Vice-President, shall be the Chairman of any meeting of the Board. If no such Officer is present, the Directors present shall choose one of their number to be the Chairman.

4.16 **VOTES TO GOVERN** - At all meetings of the Board, every question and all powers, authority and discretion exercised by the Board shall be decided by a majority of the votes cast on the question. In case of an equality of votes, the Chairman of the meeting shall be entitled to a second or casting vote.

4.17 **CONFLICT OF INTEREST** - A Director or Officer who is a party to or who is a Director of or has a material interest in any person who is a party to a material contract or proposed material contract with the Corporation shall disclose in writing to the Corporation or request to have entered in the minutes of meetings of Directors of the Corporation the nature and extent of his interest at the time and in the manner provided by the Act. Any director or Officer so interested shall not vote on any resolution to approve the contract, except in the manner and to the extent provided in the Act.

4.18 **REMUNERATION AND EXPENSES** - The Board may fix the remuneration of the employees of the Corporation and may formulate the policy of the Corporation in relation to the reimbursement of expenses. The Directors or Officers of the Corporation shall not receive any remuneration for the providing of their services; provided, however, by a decision of the Board of Directors, shall be entitled to be reimbursed for such expenses properly incurred by them in attending to the affairs of the Corporation. The Board may appoint such Officers and engage such employees, solicitors, property managers, agents, consultants and developers and other persons at such salaries or for such remuneration as the Board may deem proper or necessary and may incur such expenditures incidental to the conduct of the affairs of the Corporation and carry out its objects as may appear proper and the Board shall approve the payment of all such salaries, remuneration and expenditure.

SECTION FIVE – COMMITTEES

5.1 **COMMITTEE OF DIRECTORS** - The Board may appoint any number of committees of Directors and delegate to such committee powers permitted to be delegated to the committee by Section 6 hereof, provided that a majority of the Members of such committee shall be residents of Manitoba. Director committee members shall receive no remuneration for serving as such, but are entitled to reasonable expenses incurred in the exercise of their duty.

5.2 **TRANSACTION OF BUSINESS** - Subject to the provisions of Section 4.8 hereof, the powers of a committee of Directors may be exercised by a meeting at which a quorum is present or by resolution in writing signed by all the members of such committee who would have been entitled to vote on that resolution at a meeting of the committee. Meetings of such committee may be held at any place in Manitoba, provided that a majority of meetings (which shall include a majority of meetings at which fundamental decisions relating to the Corporation are made) shall be held on a reserve in Manitoba.

5.3 **ADVISORY COMMITTEES** - The Board may from time to time appoint such other committees as it may deem advisable, but the functions of any such other committees

shall be advisory only.

5.4 **PROCEDURE** - Unless otherwise determined by the Board, each committee shall have the power to:

(a) fix its quorum at not less than a majority of its Members;

(b) elect its Chairman; and

(c) regulate its procedure.

SECTION SIX – OFFICERS

6.1 **APPOINTMENT** – The President and Chief Executive Officer shall be the individual selected by the members in Assembly as the Grand Chief of the Assembly of Manitoba Chiefs. The Board may from time to time, from among its own members, appoint Vice-Presidents (to which title may be added words indicating a seniority or function), a Secretary, a Treasurer and such other Officers as the Board may determine, including one or more assistants to any of the Officers so appointed. The Board may specify the duties of any such Officers.

6.2 **PRESIDENT** - The President shall be the Chief Executive Officer, and shall preside as Chairman over all meetings of the Board, and, subject to the authority of the Board, shall have general supervision of the business of the Corporation; the President shall preserve order and decorum and exercise supervision over all committees and shall be an ex officio member of all committees and he shall have such other powers and duties as the Board may specify.

6.3 **VICE-PRESIDENT** - A Vice-President shall, in the absence of the President, perform the functions of the President and shall have such powers and duties as the Board may specify.

6.4 **SECRETARY** - The Secretary, if in attendance, shall be the Secretary of all meetings of the Board and shall enter or cause to be entered in records kept for that purpose minutes of all proceedings thereat; he shall give or cause to be given, as and when instructed, all notices to Members, Directors, Officers, auditors and members or committees of the Board; he shall be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Corporation and of all books, papers, records, documents and instruments belonging to the Corporation, except when some other Officer or agent has been appointed for that purpose; and he shall have such other powers and duties as the Board or the President may specify.

6.5 **TREASURER** - The Treasurer shall keep proper accounting records in compliance with the Act and shall be responsible for the deposit of money, the safekeeping of securities and the disbursement of the funds of the Corporation; he shall render to the Board annually and whenever required an account of all his transactions as Treasurer and of the financial position of the Corporation; and he shall have such other powers and duties as the Board or the Chief Executive Officer may specify.

6.6 **POWERS AND DUTIES OF OTHER OFFICERS** - The powers and duties of all other Officers shall be such as the terms of their engagement call for or as the Board or the President may specify.

6.7 **VARIATION OF POWERS AND DUTIES** - The Board may from time to time and subject to the provisions of the Act, vary, add to or limit the powers and duties of any Officer.

6.8 **INABILITY OF OFFICER OR DIRECTOR TO PERFORM DUTIES** - If any Officer or Director is unable to perform his functions or discharge his duties as such Director or Officer, the Board may appoint such other Director(s) or Officer(s) to perform the functions and/or to discharge the duties of that Director or Officer.

6.9 **TERM OF OFFICE** - Each Officer appointed by the Board shall hold office for a term of one (1) year or until his/her successor shall be appointed.

6.10 **DISCLOSURE OF INTEREST** - An Officer shall disclose his interest in any material contract or proposed material contract with the Corporation in accordance with Section 4.17.

6.11 **AGENTS AND ATTORNEYS** - Subject to Section 7.2, the Board shall have power from time to time to appoint agents or attorneys for the Corporation in or outside Canada, with such powers of management or otherwise (including the power to sub-delegate) as may be thought fit.

SECTION SEVEN – DELEGATION

7.1 **DELEGATION BY THE BOARD OF DIRECTORS** - Subject to 7.2, the Board may from time to time delegate to and retain an Executive Director or delegate to such one or more of the Directors and Officers of the Corporation, as may be designated by the Board, all or any of the powers conferred upon the Board pursuant to the Act or any articles or by-laws of the Corporation, to such extent and in such manner as the Board shall determine at the time of each such delegation.

7.2 **EXCEPTION** - The Board shall not delegate any authority or power exclusively conferred on it by the Act.

SECTION EIGHT - PROTECTION OF DIRECTORS, OFFICERS AND OTHERS

8.1 **LIMITATION OF LIABILITY** - No Director or Officer shall be liable for the acts, receipts, neglects or defaults of any other Director or Officer or employee, or for joining in any other act or conformity, or for any loss, damage or expense occurring to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any of the monies, securities or effects of the Corporation shall be deposited, or for any loss occasioned by an error of judgment or oversight on his part, or for any other loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office or

in relation thereto, unless the same are occasioned by his own wilful neglect or default; provided that nothing herein shall relieve any Director or Officer from the duty to act in accordance with the Act or from liability for any breach of the provisions thereof.

8.2 . **INDEMNITY** - Subject to the limitations contained in the Act, the Corporation may indemnify a Director or an Officer of the Corporation, a former Director or Officer of the Corporation or a person who acts or acted at the Corporation's request as a Director or Officer of a body corporate of which the Corporation is or was a shareholder or creditor (or a person who undertakes or has undertaken any liability on behalf of the Corporation or any such body corporate) and his heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he has made a party by reason of being or having been a Director or Officer of the Corporation or such body corporate (or having undertaken any such liability) if:

(a) he acted honestly and in good faith with a view to the best interests of the Corporation; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful;

and shall so indemnify such a person as aforesaid who has been substantially successful in the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a Director or Officer of the Corporation or body corporate against all costs, charges and expenses reasonably incurred by him in respect of such acts or proceedings, notwithstanding Sub-paragraphs (a) and (b) above.

8.3 **INSURANCE** - Subject to the limitations contained in the Act, the Corporation may purchase and maintain such insurance for the benefit of its Directors and Officers as such, as the Board may from time to time determine.

SECTION NINE - MEMBERS

9.1 **MEMBERSHIP** - The Members of the Corporation shall consist of the First Nations who are members in good standing of the Assembly of Manitoba Chiefs or any successor organization. The Members shall be represented by the Chief of that Member at the relevant time or any other person accepted by policy or resolution in place of that Chief.

9.2 **ANNUAL MEETINGS** - The annual meeting of Members shall be held immediately following the annual meeting of the Board of Directors for the purposes of electing Directors, receiving and considering the financial statements and the auditor's or accountant's report for the preceding year and any other reports required by the Act to be placed before the annual meeting, appointing auditors and or dispensing with their appointment in lieu of the appointment of accountants and for the transaction of such other business as may properly be brought before the meeting. For greater certainty, the Members shall and shall be deemed to exercise management and control of the Corporation, which management and control shall be exercised at and from a reserve in Manitoba.

9.3 **SPECIAL MEETINGS** - The Board or the President shall have power to call a special meeting of Members at any time.

9.4 **PLACE OF MEETINGS** - Meetings of Members may be held at any place in Manitoba, provided that a majority of meetings (which shall include a majority of meetings at which fundamental decisions relating to the Corporation are made) shall be held on a reserve in Manitoba.

9.5 **NOTICE OF MEETINGS** - Notice of the time and place of each meeting of Members shall be given in the manner provided in Section 10.1, not less than twenty-one (21) days before the date of the meeting, to each Director, to the auditor, if any, and to each Member who at the close of business on the record date for notice, if any, is entered in the register as a Member. Notice of a meeting of Members called for any purpose other than consideration of the financial statement and auditor's report, election of Directors and re-appointment of the incumbent auditor shall state the nature of such business in sufficient detail to permit the Members to form a reasoned judgment thereon and shall state the test of any special resolution to be submitted to the meeting. Any person entitled to notice may in any manner waive notice of or otherwise consent to a meeting of Members.

9.6 **LIST OF MEMBERS ENTITLED TO NOTICE** - For every meeting of Members, the Secretary shall prepare a list of Members entitled to receive notice of the meeting.

9.7 **MEETINGS WITHOUT NOTICE** - A meeting of Members may be held without notice at any time and place permitted by the Act:

(a) if all the Members entitled to vote thereat are present in person or represented by a proxy or, if those not present or represented by a proxy, waive notice of or otherwise consent to such meeting being held; and

(b) if the Directors are present or waive notice of or otherwise consent to such meeting being held;

and at such meeting, any business may be transacted which the Corporation at a meeting of Members may transact.

9.8 **CHAIRMAN** - The Chairman of any meeting of Members shall be the President, failing whom, the Vice-President. If the Secretary of the Corporation is absent, the Chairman shall appoint some person, who need not be a Member, to act as Secretary of the meeting.

9.9 **PERSONS ENTITLED TO BE PRESENT** - Any interested party, together with the Members, Directors and auditor of the Corporation, shall be entitled to be present at a meeting of Members.

9.10 **QUORUM** - A quorum for the transaction of business at any meeting of Members shall be the number of persons first selected by the Members, as amended by the Members at a future meeting at which a quorum is present, such persons present in person, each being a Member entitled to vote thereat or a duly appointed proxy for an absent Member so entitled. If a quorum is present at the opening of any meeting of

Members, the Members present or represented by proxy may proceed with the business of the meeting notwithstanding that a quorum is not present throughout the meeting. If a quorum is not present at the opening of any meeting of Members, the Members present or represented by proxy may adjourn the meeting to a fixed time and place, but may not transact any other business.

9.11 **PROXIES** - Every Member entitled to vote at a meeting of Members may appoint a proxyholder, or one or more alternate proxyholders, who need not be Members, to attend and act at the meeting in the manner and to the extent authorized and with the authority conferred by the proxy. A proxy shall be in writing, executed by the Member or his attorney, shall conform with the requirements of the Act and shall be in substantially the form from time to time approved by the Directors of the Corporation.

9.12 **VOTES TO GOVERN** - At any meeting of the Members, every question shall, unless otherwise required by the Articles or By-laws, be determined by the majority of votes cast on the question. In case of an equality of votes, either upon a show of hands or upon a poll, the Chairman of the meeting shall not be entitled to a second or casting vote.

9.13 **VOTING** - Subject to the provisions of the Act, any question at a meeting of Members shall be decided by a show of hands, unless a ballot thereon is required or demanded as hereinafter provided. Upon a show of hands, every person who is present and entitled to vote shall have one vote, notwithstanding that such person may qualify as a Member under Section 9.1. Whenever a vote by a show of hands shall have been taken upon a question, unless a ballot thereon is so required or demanded, a declaration by the Chairman of the meeting that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the meeting shall be prima facie evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against any resolution or other proceeding in respect of the said question, and the result of the vote so taken shall be the decision of the Members upon the said question.

9.14 **BALLOTS** - On any question proposed for consideration at a meeting of Members and whether or not a show of hands has been taken thereon, any Member entitled to vote at the meeting may require or demand a ballot. A ballot so required or demanded shall be taken in such manner as the Chairman shall direct. A requirement or demand for a ballot may be withdrawn at any time prior to the taking of the ballot. If a ballot is taken, each person present shall be entitled to one vote.

9.15 **ADJOURNMENT** - If a meeting of Members is adjourned for less than thirty (30) days, it shall not be necessary to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned. If a meeting of Members is adjourned by one or more adjournments for an aggregate of thirty (30) days or more, notice of the adjourned meeting shall be given as for an original meeting.

9.16 **RESOLUTION IN WRITING** - A resolution in writing signed by all the Members entitled to vote on that resolution at a meeting of Members is as valid as if it had been passed at a meeting of the Members, unless a written statement with respect to the subject matter of the resolution is submitted by a Director or the auditors to the Corporation in accordance with Subsections 105(2) and 162(5) of the Act.

SECTION TEN - NOTICES

10.1 **METHOD OF GIVING NOTICE** - Any notice (which term includes any communication or document) to be given (which term includes sent, delivered or served) pursuant to the Act, the By-laws or otherwise to a Member, Director, Officer, auditor or member of a committee of the Board, shall be sufficiently given if delivered personally to the person to whom it is to be given or if delivered to his recorded address or if mailed to him at his recorded address by prepaid ordinary or air mail or if sent to him at his recorded address by any means of prepaid transmitted or recorded communication. A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given on the third (3rd) day after deposit in a post office or public letter box; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered to the appropriate communication company or agency or its representative for dispatch. The Secretary may change or cause to be changed the recorded address of any Member, Director, Officer, auditor or member of a committee of the Board in accordance with any information believed by him to be reliable.

10.2 **COMPUTATION OF TIME** - In computing the date when notice must be given under any provision requiring a specified number of days' notice of any meeting or other event, the date of giving the notice shall be excluded and the date of the meeting or other event shall be included.

10.3 **UNDELIVERED NOTICES** - If any notice given to a Member pursuant to Section 10.1 is returned on two (2) consecutive occasions because he cannot be found, the Corporation shall not be required to give any further notices to such Member until he informs the Corporation in writing of his new address.

10.4 **OMISSIONS AND ERRORS** - The accidental omission to give any notice to any Member, Director, Officer, auditor or member of a committee of the Board or the non-receipt of any notice to any Member, Director, Officer, auditor or member of a committee of the Board or any error contained in any such notice not affecting the substance of the notice shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

10.5 **WAIVER OF NOTICE** - Any Member (or his duly appointed proxyholder), Director, Officer, auditor or member of a committee of the Board may at any time waive any notice, or waive or abridge the time for any notice required to be given to him under any provision of the Act, the regulations thereunder, the By-laws or otherwise and such waiver or abridgment shall cure any default in the giving or in the time of such notice, as the case may be. Any such waiver or abridgement shall be in writing, except a waiver of notice of a meeting of Members or of the Board, which may be given in any manner.

SECTION ELEVEN - EFFECTIVE DATE (AND REPEAL)

11.1 **EFFECTIVE DATE** - This By-law shall come into force when confirmed by the Members in accordance with the Act.

11.2 **AMENDMENT** - The provisions of this or any other by-law of the Corporation may

be enlarged, altered, amended or rescinded at any regular meeting of the Board and when confirmed by a two-third majority vote of the Board members present at such meeting and thereafter, confirmed by the Members in accordance with the Act.

ENACTED by the Board.

WITNESS the Corporate Seal of the Corporation.

President

Secretary

Tab C

This is exhibit "C" referred to in the Affidavit of Marcel Lake Herkesi Balfour affirmed sworn before me this 29 day of January A.D. 20 14 Beverly Friesen

A NOTARY PUBLIC IN AND FOR THE PROVINCE OF MANITOBA

ASSEMBLY OF MANITOBA CHIEFS
GENERAL CHIEFS ASSEMBLY
LONG PLAIN FIRST NATION
JANUARY 24 & 25, 2006

CERTIFIED RESOLUTION

RE: JORDAN'S PRINCIPLE TO RESOLVING JURISDICTIONAL DISPUTES IMPACTING FIRST NATIONS CHILDREN AND YOUNG PEOPLE

Moved by:

A/Chief Fred Muskego
Norway House Cree Nation

Seconded by:

Chief Tina Leveque
Brokenhead First Nation

CARRIED

WHEREAS, Canada has signed and is bound by International Laws and Conventions on: Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; and more specifically, The Rights of the Child; all, guaranteeing the right of non discrimination; and

WHEREAS, section 15.1 of the Canadian Charter of Rights and Freedoms guarantees every resident of Canada equal benefit and protection of law without discrimination; and

WHEREAS, despite these international and domestic laws First Nation children in need of medical care have needlessly suffered during delays in treatment arising from jurisdictional disputes between Canadian governments and departments; and

WHEREAS, AMC Grand Chief's letter to Prime Minister Paul Martin April 05, 2004 requested Canada to resolve these jurisdictional disputes that are not experienced by non-First Nation children; and

WHEREAS, Norway House Cree Nation requested provincial and federal governments to resolve jurisdictional and financial obstacles regarding Jordan, a child from the community; and

WHEREAS, the First Nations Child and Family Caring Society of Canada **"Wen De"** report determined that jurisdictional disputes have a significant impact on status Indian children and recommended changes such as the **"Child First Principle"** to address the issue; and

WHEREAS, Jordan, a First Nation child from Norway House Cree Nation unnecessarily remained in hospital for two years while two federal government departments disputed which one would pay for the costs of his care in a family home. Jordan passed away never having lived in a family home.

ASSEMBLY OF MANITOBA CHIEFS
GENERAL CHIEFS ASSEMBLY
LONG PLAIN First Nation
JANUARY 24 & 25, 2006

CERTIFIED RESOLUTION

RE: JORDAN'S PRINCIPLE TO RESOLVING JURISDICTIONAL DISPUTES IMPACTING FIRST NATIONS CHILDREN AND YOUNG PEOPLE

THEREFORE BE IT RESOLVED, that the Chiefs-in-Assembly direct the federal and provincial governments to implement the **"Child First Principle"** in resolving inter-governmental jurisdictional disputes.

FURTHER BE IT RESOLVED, that the AMC meet with federal and provincial governments to establish the jurisdictional dispute resolution table with fair and effective First Nation representation.

FINALLY BE IT RESOLVED, in honor of the memory of Jordan and with respect to his family and community, that the **"Child First Principle"** to resolving jurisdictional disputes be termed **"Jordan's Principle"** and be implemented without delay.

CERTIFIED COPY
of a resolution adopted on
January 24 & 25, 2006 in
LONG PLAIN FIRST NATION, Manitoba

Grand Chief Ron Evans

Tab D

This is exhibit "D" referred to in the Affidavit of Marcel Luke Hertlein Balfour affirmed/sworn before me this 29th day of January A.D. 20 14

Beverly Hoese

A NOTARY PUBLIC IN AND FOR THE PROVINCE OF MANITOBA

News Release - Manitoba

Francais

September 5, 2008

MANITOBA REACHES AGREEMENT WITH FEDERAL GOVERNMENT TO IMPLEMENT JORDAN'S PRINCIPLE

The province has reached an agreement with the federal government to implement Jordan's Principle in Manitoba so that First Nations children with multiple disabilities will continue to receive needed care without delays or disruptions resulting from jurisdictional disputes, Health Minister Theresa Oswald announced today.

"We want to move ahead quickly to ensure First Nations children with multiple disabilities on reserves have access to needed health and social services," said Oswald. "The federal and provincial governments have agreed to a solution honouring Jordan's Principle and putting the care of the child first."

"Parents and children dealing with multiple disabilities have enough on their plates without having to worry about whether the services they need will be disrupted by disagreements between governments," said federal health Minister Tony Clement. "The federal government is working with provinces to assist all parties involved in a First Nations child's care to work collaboratively. We are pleased that our work with Manitoba is progressing."

The Province of Manitoba and the federal government have agreed that First Nations children on reserves with multiple disabilities who access multiple service providers should receive the same level of service, in a culturally appropriate way, as children with similar needs living in similar geographic locations.

The ministers said both governments will use individual case reviews to resolve most issues. While governments resolve any remaining issues, they will ensure services continue to be provided. Over the next several months, the governments will work together to formalize and finalize processes including a dispute resolution mechanism. In the interim, agreed-upon principles and processes will apply to ensure that another case like Jordan's does not occur.

"I'm pleased for the sake of all children and families that Manitoba is the first province in Canada to move to implement Jordan's Principle. This is a complex issue and there is more work to be done but progress has been made," said Healthy Living Minister Kerri Irvin-Ross. "While that work continues, this agreement will help families who need these services get the care they need."

"We are pleased to have reached an agreement with Manitoba, the first agreement of its kind between the federal government and a province, on Jordan's Principle," said federal Indian and Northern Affairs Minister Chuck Strahl. "This agreement will ensure that the necessary care for First Nations children is not disrupted by a lack of clarity of jurisdictional responsibility."

Jordan's Principle is named for Jordan Anderson, a young First Nations boy who was born with severe disabilities. Jordan's Principle puts the needs of children with multiple disabilities first and supports the principle that needed care not be delayed

or disrupted by jurisdictional disputes.

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ASSEMBLY OF MANITOBA CHIEFS
DECLARATION FOR THE IMPLEMENTATION OF JORDAN'S PRINCIPLE

We declare, that we, as First Nations governments, have had our Aboriginal (First Nation) title, aboriginal (First Nation) rights and Treaty rights recognize in both international law and the Constitution of Canada;

We declare, that we support the United Nations Declaration on the Rights of Indigenous Peoples which states that we have the collective right to live in freedom, peace and security as distinct Peoples and shall not be subjected to any act of genocide or any other act of violence including forcibly removing our children or group to another group;

We declare, that the principle of free, prior and informed consent must be the fundamental principle for any State actions that may impact any and all of our rights;

We, as First Nations governments in Manitoba, recognize that the short life of Jordan River Anderson has left a legacy that advocates for the rights of all First Nations children to be entitled to and receive adequate and appropriate services and supports for a quality of life enjoyed by all other children in Canada. Jordan's Principle is a Child First principle which applies to all government services available to children, youth and their families;

We recognize that, to date, no region or province in Canada has fully implemented the Child First principle. Regions where the provincial/territorial and federal government have announced intentions to act, have demonstrated their own definition of Jordan's Principle that is narrow in scope, exclusive to children who meet government-defined criteria rather than meeting the needs of children first, which disregards the fullest intent and meaning of Jordan's Principle – the Child First Principle;

We, the First Nations governments in Manitoba, declare that:

- The implementation of Jordan's Principle must be demonstrated by action that meets the physical, emotional, mental, and spiritual needs of the child at the point of which such a need is identified, and that the Crown government, or department in first contact with the child to deliver and pay for services and supports without delay or disruption, and work out reimbursement later.
- All sovereign power and authority within the territories of the First Nations of Manitoba declare the right and responsibility to protect the First Nations children in Manitoba and uphold their rights consistent with the sacred teachings of the Denesuline, Anishinabe, Ininew, Oji-Cree, and Dakota Nations, as well as United Nations Declaration on the Rights of Indigenous Peoples, United Nations Convention on the Rights of the Child, United Nations Convention on the Rights of Persons with Disabilities, and the Charter of Rights and Freedoms of Canada. The obligation to meet the needs of the child first must always supersede government interests to establish jurisdictional dispute processes or policy implementation policies.
- We will not allow any legislative authority to enforce inequitable and unjust policies, legislation, and/or practice that will diminish the physical, emotional, mental, and spiritual well-being of our children. First Nations in Manitoba must be adequately represented, as determined in the collective capacity of the 63 Chiefs of Manitoba, and engaged in meaningful participation in all aspects of planning, development, decision-making, and implementation of Jordan's Principle as declared by the First Nations in Manitoba.

We call upon the Crown Governments of Canada and Manitoba to ensure that action is taken this year to fully, and without equivocation, implement in spirit, intent, and practice Jordan's Principle, in his homeland of Manitoba, and across Canada.

DECLARED on January 19, 2011, at the Assembly of Manitoba Chiefs General Assembly in Opaskwayak Cree Nation, Manitoba.

This is exhibit "E" referred to in the Affidavit of Marcel Lucke
Herlein Balfour
affirmed before me this 29th
day of January A.D. 2014

A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA
Beverly Roese

TAB E

TAB F

66

Department of Justice Canada
Atlantic Regional Office
Suite 1400, Duke Tower
5251 Duke Street
Halifax, Nova Scotia B3J 1P3

Ministère de la Justice Canada
Bureau régional de l'Atlantique
Pièce 1400, Tour Duke
5251, rue Duke
Halifax (Nouvelle-Écosse) B3J 1P3

Telephone: (902) 426-7916
Facsimile: (902) 426-8796
E-Mail: melissa.chan@justice.gc.ca

Our File: AR-17-86309-1
Notre dossier:

Your file: unknown
Votre dossier:

Via Facsimile
(204) 985-8544

December 18, 2013

Beverly Froese
Public Interest Law Centre
300-287 Broadway
Winnipeg, Manitoba
R3C 0R9

Dear Ms. Froese:

Re: *Attorney General of Canada v Pictou Landing Band Council et al*
Court File No.: A-158-13

Thank you for your correspondence dated December 4, 2013 advising that the Assembly of Manitoba Chiefs plans to seek leave to intervene in the above-noted matter.

I am writing to advise that the Attorney General of Canada will not be providing its consent to your motion to intervene, as we do not agree that the test for intervention has been satisfied.

Yours truly,

Melissa Chan
Counsel
Civil Litigation and Advisory Services

MRC/

This is exhibit "E" referred to in the Affidavit of Marcel Luke Herbert Balfour affirmed ~~sworn~~ before me this 29th day of January A.D. 2014

Beverly Froese

A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA

Canada

TAB 3

Court File No. A-158-13

FEDERAL COURT OF APPEAL

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

- and -

PICTOU LANDING BAND COUNCIL
and MAURINA BEADLE

Respondents

MEMORANDUM OF FACT AND LAW
OF THE PROPOSED INTERVENER
ASSEMBLY OF MANITOBA CHIEFS SECRETARIAT INC.
(Motion for Leave to Intervene)

INDEX

PART I – STATEMENT OF FACTS

Overview

1. In *Pictou Landing Band Council* v. *Canada (Attorney General)*, 2013 FC 342, Mandamin J. granted the Respondents' application for judicial review of the decision made by Ms. Barbara Robinson, Manager, Social Programs, Aboriginal Affairs and Northern Development Canada (AANDC) not to reimburse the Pictou Landing Band Council for in-home health care provided to Jeremy Meawasige beyond the normative standard of care identified by her.

2. The Appellant has filed an appeal of the decision of Mandamin J. to this Honourable Court.

3. The Assembly of Manitoba Chiefs Secretariat Inc. ("the AMC Secretariat") seeks leave to intervene in this appeal on the following legal issues:

(1) the legal status of Jordan's Principle;

(2) the interpretation of Jordan's Principle, in particular the meaning of the term "jurisdictional disputes"; and

(3) the appropriate remedy in a Jordan's Principle case.

4. The AMC Secretariat respectfully submits it meets the test for leave to intervene. The AMC Secretariat brings a distinct perspective to these proceedings and has specific expertise regarding Jordan's Principle. Further, the AMC Secretariat is directly affected by the outcome of this appeal, its positions on the justiciable legal issues are materially different from those of the parties, and it would serve the interests of justice if leave to intervene were granted.

The Assembly of Manitoba Chiefs and the AMC Secretariat

5. The Assembly of Manitoba Chiefs is governed by the Chiefs of its member First Nations. The Grand Chief is elected by the Chiefs-in-Assembly, and the Executive Council of Chiefs is composed of the Grand Chief, five Chiefs selected by northern First Nations and five Chiefs selected by southern First Nations. Several Chiefs Committees have been established to facilitate the implementation of decisions made by the Chiefs-in-Assemblies or the Executive Council of Chiefs.[1]

6. The Assembly of Manitoba Chiefs devises collective and common political strategies and mechanisms for coordinated action by First Nations in Manitoba and their organizations, including in the areas of health and social development. In addition to representing the common interests of Manitoba First Nations, the Assembly of Manitoba Chiefs works closely with the Assembly of First Nations on a national level. The Assembly of First Nations collectively represents the political interests of 633 First Nations across Canada.[2]

7. At the time the Assembly of Manitoba Chiefs was established there were 61 recognized First Nations in Manitoba consisting of 64,315 First Nation citizens. Today there are 63 First Nations, and 6 of the 20 largest bands in Canada are in Manitoba. As of March 2012 there were 140,975 registered Manitoba First Nations members. Out of that population, 59.8% are under the age of 30 and 60.2% live on reserves in Manitoba. Out of the 63 First Nations communities, 23 are not accessible by all-weather roads.[3]

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1 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at para7.
2 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at paras 5 and 11.
3 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at para 9.

8. To better address and facilitate their unified political action, the Chiefs-in-Assembly established the AMC Secretariat, a provincially incorporated entity which is composed of technical advisors and support staff. The AMC Secretariat is the administrative and logistical arm charged with providing information and support to the Chiefs-in-Assembly and implementing their directions and decisions.[4]

9. The AMC Secretariat has been granted intervener status in other proceedings in order to represent the interests of Manitoba First Nations. For instance, the AMC Secretariat was granted standing to participate in the inquiry into the death of Phoenix Sinclair and the inquest into the death of Brian Sinclair.[5]

The AMC Secretariat's expertise regarding Jordan River Anderson and Jordan's Principle

10. When Jordan River Anderson was alive, the Norway House Cree Nation repeatedly requested that the provincial and federal governments resolve their disputes so he could be discharged from the hospital and live in a medically assisted family home. During that period of time the AMC Secretariat also assisted Jordan, his family and the Norway House Cree Nation in trying to access the services he needed. Those disputes were not resolved before Jordan passed away on February 5, 2005.[6]

11. After Jordan River Anderson passed away, the Assembly of Manitoba Chiefs advocated for the implementation of a "Child First Principle" to resolve jurisdictional disputes that caused

4 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at para 8.
5 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at para 10.
6 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at para 12.

First Nation children with disabilities to needlessly suffer because of delays in receiving services. In a Resolution adopted at a General Chiefs Assembly held on January 24 and 25, 2006, the Chiefs-in-Assembly resolved to meet with federal and provincial governments to establish a jurisdictional dispute resolution table with fair and effective First Nation representation. In addition, the Chiefs-in-Assembly resolved to refer to the Child First Principle as "Jordan's Principle" in honour of the memory of Jordan River Anderson and to respect his family and community.[7]

12. On December 12, 2007, the House of Commons unanimously voted in favour of a private member's motion supporting Jordan's Principle. That motion stated in part: "That, in the opinion of the House, the government should immediately adopt a child first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children".[8]

13. In April 2008, a Federal/Provincial Working Group undertook a case review of children receiving services through a Children's Special Services Pilot Project that had been created by the Norway House Cree Nation in 2004. The Federal/Provincial Working Group's report revealed important information about the quality and level of services for children with disabilities living on the Norway House Cree Nation reserve, including that:

- the policies, practices and decision making at all levels of government impacted the availability and accessibility of services;
- families of children with disabilities living on reserve face a number of additional challenges, for example overcrowding and homes that need modifications to be accessible;

7 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at para 15 and Exhibit "C".
8 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at para 16.

- accessing services for children with disabilities who live on reserve is particularly difficult because of a fragmented service delivery system, gaps and inconsistencies in service delivery, and geographical location; and

- children with disabilities living on the Norway House Cree Nation reserve have to rely on a spectrum of services based on a principle of "last resort" and funding for essential program components only.[9]

14. Manitoba was the first province to begin working with the federal government on issues relating to Jordan's Principle. The Manitoba/Canada Joint Committee on Jordan's Principle ("the Joint Committee") was established and began meeting in June, 2008. The Joint Committee was comprised of senior officials from Health Canada, AANDC, Manitoba Health, and Manitoba Family Services and Consumer Affairs. Despite requests from the AMC Secretariat to be a member, there was no First Nations representation on the Joint Committee at the time it was established.[10]

15. Without any First Nations input or involvement, the Joint Committee restricted Jordan's Principle to disputes between the federal and provincial governments about which level of government would pay for services. In addition, the Joint Committee determined that Jordan's Principle only applies to children with multiple disabilities who require services from multiple service providers.[11]

16. On January 19, 2011, the Chiefs-in-Assembly adopted a Declaration for the Implementation of Jordan's Principle. In that Declaration, the First Nations governments of Manitoba called on the federal and provincial governments to "ensure that action is taken this

9 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at paras 13, 14, 17, 18 and 19.
10 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at paras 20 and 21.
11 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at paras 22 and 23.

year to fully, and without equivocation, implement in spirit, intent and practice Jordan's Principle, in his homeland of Manitoba, and across Canada". The Declaration also stated:

> We recognize that, to date, no region or province in Canada has fully implemented the Child First principle. Regions where the provincial/territorial and federal government have announced intentions to act, have demonstrated their own definition of Jordan's Principle that is narrow in scope, exclusive to children who meet government-defined criteria rather than meeting the needs of children first, which disregards the fullest intent and meaning of Jordan's Principle – the Child First Principle;[12]

17. Since April 2012, a member of the Assembly of Manitoba Chiefs Task Force on Health and Social Development has been a member of the Joint Committee. The AMC Secretariat also now has representation on the Joint Committee's Terms of Reference Officials Working Group (TOROWG). In addition, the AMC Secretariat has a Jordan's Principle Implementation Team, which is an internal team of staff responsible for such things as drafting resolutions, raising awareness about Jordan's Principle, and communicating with First Nations leadership and families when there is a potential Jordan's Principle situation.[13]

Current status of Jordan's Principle implementation in Manitoba

18. Currently the TOROWG continues to meet regularly to discuss implementation of Jordan's Principle in Manitoba. The TOROWG has been working on a case conferencing process, however to the AMC Secretariat's knowledge that process has not yet been formalized. The AMC Secretariat is in the process of arranging an independent evaluation of the TOROWG's proposed case conferencing process to determine if it is effective in resolving disputes, not only with respect to which government will pay for services, but also with respect to determining the normative standard of care.[14]

12 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at paras 25 and Exhibit "E".
13 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at paras 26 and 27.
14 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at paras 28 and 29.

19. Despite the work done by the Joint Committee and the TOROWG, the AMC Secretariat is aware of many First Nations children with disabilities in Manitoba who are still not receiving the services they need. In addition, despite several offers to facilitate, the AMC Secretariat is not aware of any First Nations families in Manitoba who have gone through a formalized case conferencing process for a resolution.[15]

20. To the AMC Secretariat's knowledge, the only way First Nations children in Manitoba are able to access comparable services is if they are put into the child welfare system. In addition, to the AMC Secretariat's knowledge, there are First Nations children with disabilities living on reserves in Manitoba who are not receiving comparable services because they do not have multiple disabilities.[16]

21. In the AMC Secretariat's experience, jurisdictional disputes that arise regarding First Nations children with disabilities are not only those that occur between the federal and provincial governments. In the AMC Secretariat's experience, jurisdictional disputes that prevent First Nations children with disabilities from receiving comparable services on reserve also arise between AANDC and Health Canada about which department will pay. Further, in the AMC Secretariat's experience, it is often difficult to determine the normative standard of care because unlike non-First Nations communities, many First Nations communities in Manitoba are remote and not accessible by all-weather roads.[17]

15 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at para 30.
16 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at paras 30 and 32.
17 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at paras 29 and 31.

PART II – POINT IN ISSUE

22. The only point in issue in this motion is whether the AMC Secretariat meets the test for leave to intervene pursuant to Federal Court Rule 109.

PART III – ARGUMENT

The test for leave to intervene

23. Federal Court Rule 109 requires a proposed intervener to describe how it wishes to participate in the proceedings and how that participation would assist the Court in determining a related factual or legal issue.

24. In *Canadian Airlines International Ltd.* v. *Canada (Human Rights Commission)*, [2010] 1 F.C.R. 226, this Honourable Court enumerated several factors that ought to be considered on a motion for leave to intervene, namely:

> (1) Is the proposed intervener directly affected by the outcome?
>
> (2) Does there exist a justiciable issue and a veritable public interest?
>
> (3) Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?
>
> (4) Is the position of the proposed intervener adequately defended by one of the parties to the case?
>
> (5) Are the interests of justice better served by the intervention of the proposed third party?
>
> (6) Can the Court hear and decide the case on its merits without the proposed intervener?[18]

18 *Canadian Airlines International Ltd.* v. *Canada (Human Rights Commission)*, [2010] 1 F.C.R. 226, at para 8.

25. In addition, the Court noted that an interest merely "jurisprudential" in nature is not sufficient to meet the test for leave to intervene. Rather, it is incumbent on the proposed intervener to "show in its application for leave what it would bring to the debate over and beyond what was already available to the Court through the parties".[19]

26. In *Canadian Pacific Railway Company* v. *Boutique Jacob Inc.*, 2006 FCA 426, this Honourable Court held that it is not necessary for all of the above enumerated factors to be met in order for the Court to grant a motion for leave to intervene. Nadon, J.A. stated that "in the end, the Court has the inherent authority to allow intervention on terms and conditions which are appropriate in the circumstances".[20]

The AMC Secretariat meets the test for leave to intervene

27. The AMC Secretariat respectfully submits it meets the test for leave to intervene in this appeal on the following legal issues:

(1) the legal status of Jordan's Principle;

(2) the interpretation of Jordan's Principle, in particular the meaning of the term "jurisdictional disputes"; and

(3) the appropriate remedy in an application for judicial review relating to a Jordan's Principle case.

(a) The AMC Secretariat is directly affected by the outcome of this appeal

28. The AMC Secretariat has a genuine interest in the issues raised in this appeal and is directly affected by the outcome. The Assembly of Manitoba Chiefs and the AMC Secretariat are involved in the implementation of Jordan's Principle in Manitoba through membership on the

19 *Canadian Airlines International Ltd.* v. *Canada (Human Rights Commission)*, [2010] 1 F.C.R. 226, at paras 11 and 12.

20 *Canadian Pacific Railway Company* v. *Boutique Jacob Inc.*, 2006 FCA 426, at para 21.

Joint Committee and representation on the TOROWG. In addition, the AMC Secretariat is the political body responsible for communicating with First Nations leadership, communities and families regarding the implementation of Jordan's Principle in Manitoba.[21]

29. Although work has been done by the Joint Committee and the TOROWG to implement Jordan's Principle in Manitoba, there are a number of significant issues that are not settled or are in dispute. As a result, many First Nations children with disabilities living on reserve in Manitoba still do not have access to comparable services. In addition, there are challenges associated with determining the normative standard of care in Manitoba given that many First Nations communities are not accessible by all-weather roads. Further, to the AMC Secretariat the success of the implementation of Jordan's Principle in Manitoba has not been demonstrated, as it is not aware of any families that have gone through a formalized case conferencing process for a resolution.[22]

30. The decision of this appeal by this Honourable Court will set a precedent or provide useful guidance for future Jordan's Principle cases. The AMC Secretariat will be directly affected by the outcome given its ongoing involvement in the implementation of Jordan's Principle in Manitoba and its relationship with First Nations leadership, communities and families.

(b) There are justiciable issues and a veritable public interest

31. The three issues for which the AMC Secretariat seeks leave to appeal are justiciable because they are questions of law and not political or policy decisions that are outside the Court's jurisdiction to decide. Further, they are important public interest issues as the Court's decision

21 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at paras 26 and 33.
22 Affidavit of Marcel Luke Hertlein Balfour affirmed January 29, 2014, at paras 28, 29 and 30.

will not only affect the parties to this appeal, but will also affect federal and provincial governments, First Nations governments and First Nations children with disabilities living on reserves across the country.

(c) The AMC Secretariat's positions are materially different from those advanced by the parties

(i) The legal status of Jordan's Principle

32. In his reasons for judgment, Mandamin, J. held that once the federal government undertook to implement Jordan's Principle, it assumed a legal obligation to deliver programs and services comparable to provincial standards.[23]

33. In its written argument filed in this appeal, the Appellant's position is that Jordan's Principle is a non-binding resolution that does not create enforceable legal rights or obligations. The Appellant argues that Jordan's Principle is not a statute, regulation or policy that provides legal authority to act, but instead is solely a procedural mechanism to resolve jurisdictional disputes. In their written argument filed in this appeal, the Respondents' position is that Jordan's Principle is a policy adopted by the federal government that has the force of law.

34. If leave to intervene is granted on this issue, the AMC Secretariat intends to argue that Jordan's Principle is a legally binding obligation on the part of the federal government. The AMC Secretariat's position is that once Jordan's Principle was endorsed and implemented by the federal government, a legal obligation arose out of the fiduciary duty owed by the federal government to Canada's First Nations, the Honour of the Crown and/or domestic customary law.

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23 *Pictou Landing Band Council* v. *Canada (Attorney General)*, 2013 FC 342, at paras 84, 106, 111 and 113.

(ii) The interpretation of Jordan's Principle and meaning of "jurisdictional disputes"

35. In his reasons for judgment, Mandamin, J. held that "Jordan's Principle is not to be narrowly interpreted" and he rejected the Appellant's argument that Jordan's Principle is only engaged when there is a dispute between the federal and provincial governments about which level of government will pay for services. Mandamin, J. determined that Jordan's Principle was engaged in the circumstances of this case because "the absence of a monetary dispute is not determinative if both levels of government maintain an erroneous position on what is available to persons in need of such services who live off reserve and then both assert there is no jurisdictional dispute".[24]

36. In its written argument, the Appellant's position is that Mandamin, J. erred in his interpretation of Jordan's Principle. The Appellant maintains its position that Jordan's Principle is only engaged when there is a jurisdictional dispute between the federal and provincial governments about who will pay, and not when there is a dispute about what services should be funded. In their written argument, the Respondents argue that Mandamin, J.'s decision was correct and Jordan's Principle is engaged if the federal and provincial government are not correct regarding the level of services provided off reserve.

37. If leave to intervene is granted on this issue, the AMC Secretariat intends to argue that Mandamin, J. was correct in finding that Jordan's Principle is engaged when there are disputes about the normative standard of care. The AMC Secretariat intends to advance the additional argument that Jordan's Principle should be engaged whenever there is a dispute that results in a First Nations child with one or more disabilities being denied access to comparable services.

24 *Pictou Landing Band Council* v. *Canada (Attorney General)*, 2013 FC 342, at paras 86 and 95.

More particularly, the AMC Secretariat intends to argue that the term "jurisdictional dispute" should include disputes between federal government departments about which department will pay for services, and disputes between service providers and federal and/or provincial government departments.

(iii) The appropriate remedy in a Jordan's Principle case

38. In his reasons for judgment, Mandamin, J. explained his reasons for exercising his discretion not to remit the matter back for reconsideration. In particular, he cited the need for an immediate timely response in a Jordan's Principle case and the exceptional circumstances in Jeremy Meawasige's particular situation.

39. In its written argument, the Appellant argues that Mandamin, J. erred in exercising his discretion not to remit the matter back for reconsideration, as this is an exceptional remedy only to be granted in the clearest of cases. In their written argument, the Respondents' position is that Mandamin, J. exercised his discretion appropriately for the reasons given in his judgment.

40. If leave to intervene is granted on the this issue, the AMC Secretariat's intent is to make submissions regarding the need for guidance from this Honourable Court as to the appropriate remedy in a judicial review of a decision relating to Jordan's Principle. More particularly, the AMC Secretariat intends to argue that although deference is generally owed to a decision-maker, the unique nature of Jordan's Principle and the potential serious consequences to children and their families if there are additional delays in accessing services are factors that weigh in favour of the reviewing court exercising its discretion not to remit a matter back for reconsideration.

(d) The interests of justice are better served by the intervention of the AMC Secretariat

41. The AMC Secretariat respectfully submits that the interests of justice are better served if it is granted leave to intervene. The AMC Secretariat brings the unique perspective of its member First Nations who represent the common interests of over 140,000 registered First Nations members in Manitoba, approximately 60% of whom live on reserves.

42. The AMC Secretariat respectfully submits it can make a valuable contribution to this proceeding by advancing arguments relevant to the important legal issues that will be considered by this Honourable Court.

PART IV – ORDER SOUGHT

43. Should this Honourable Court find the requirements of Federal Court Rule 109 have been met, AMC respectfully requests that leave to intervene be granted on such terms and conditions as are appropriate in the circumstances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29th DAY OF JANUARY, 2014.

Beverly Froese

AIMÉE CRAFT/BEVERLY FROESE
Counsel for the Proposed Intervener
Assembly of Manitoba Chiefs

TAB 4

Federal Court  Cour fédérale

Date: 20130404

Docket: T-1045-11

Citation: 2013 FC 342

Toronto, Ontario, April 4, 2013

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

PICTOU LANDING BAND COUNCIL AND MAURINA BEADLE

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Pictou Landing Band Council and Ms. Maurina Beadle apply for judicial review of the decision of Ms. Barbara Robinson, Manager, Social Programs, Aboriginal Affairs and Northern Development Canada (AANDC), not to reimburse the Pictou Landing Band Council (PLBC) for in-home health care to one of its members beyond a normative standard of care identified by Ms. Robinson.

[2] The Applicants also request that the Court make an order pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*], directing the Respondent to reimburse the PLBC for exceptional costs incurred providing home care to Jeremy Meawasige and his mother, Ms. Beadle, from May 27, 2010 to the present.

[3] I have decided to grant the application for judicial review because I have determined Jordan's Principle is applicable in this case. Having decided as I have, I need not consider the application for an order for reimbursement pursuant to section 24(1) of the *Charter*.

[4] My reasons follow.

Background

[5] The Pictou Landing Band Council is the elected government of the Pictou Landing First Nation and makes governance decisions concerning its members, including the allocation of funding received from the federal government through block contribution agreements. This includes funding from AANDC and Health Canada to deliver continuing care services to members in need on the Pictou Landing Reserve.

[6] The other Applicant is Ms. Maurina Beadle, a 55 year-old member of the Pictou Landing First Nation. Her son, Jeremy Meawasige, is a teenager with multiple disabilities and high care needs. He has been diagnosed with hydrocephalus, cerebral palsy, spinal curvature and autism.

Jeremy 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.

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

[8] After her stroke, Ms. Beadle was unable to continue to care for Jeremy without assistance. She was hospitalized for several weeks, and when she was released, required a wheelchair and assistance with her own personal care. The PLBC immediately started providing 24 hour care for both Ms. Beadle and Jeremy in their home. Between May 27, 2010 and March 31, 2011, the PLBC spent $82,164.00 on in-home care services for Ms. Beadle and Jeremy.

[9] The PLBC continued to provide home care support to Ms. Beadle and Jeremy. In October 2010, the Pictou Landing Health Centre arranged for an assessment of the family'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 meets Jeremy's need for 24-hour care, less what his family can provide. The family providers are Ms. Beadle, to the degree she has recovered from her stroke and Jeremy's older brother, Jonavan, who attends to assist.

[10] Ms. Beadle and her son Jeremy have a deep bond with each other. His mother is often the only person who can understand his communication and needs. She spent many hours training him to walk and helping him with special exercises. She discovered his love of music and sings to him when he is upset or does not want to cooperate. Her voice calms him and can make him desist in self-abusive behaviour. She takes him on the pow-wow trail, travelling to communities where pow-wows are held. She says Jeremy is happiest when he is dancing with other First Nations people and singing to traditional music. Jeremy has never engaged in self-abusive behaviour on those occasions.

[11] By February 2011, the costs associated with caring for the family were approximately $8,200 per month. This represented nearly 80% of the PLBC's total monthly budget for personal and home care services funded by AANDC under the Assisted Living Program (ALP) and by Health Canada under the Home and Community Care Program (HCCP).

The Assisted Living Program and the Home and Community Care Program

[12] The ALP is administered by the PLBC and has both an institutional and in-home care component. The ALP provides funding for non-medical, social support services to seniors, adults with chronic illness, and children and adults with disabilities (mental and physical) living on reserve and includes such things as attendant care, housekeeping, laundry, meal preparation, and non-medical transportation.

[13] The Home and Community Care Program is also administered by the PLBC. Under the HCCP, the PLBC is required to prioritize and fund essential services before support services and Health Canada spells out what falls under each of these headings. The HCCP provides funding to assist with delivery of basic in-home health care services which require a licensed/certified health practitioner or the supervision of such a person. The PLBC determines how the contribution agreement dollars for the HCCP are spent in the provision of basic in-home health care services.

[14] The ALP and the HCCP are programs designed to complement each other, but not to provide duplicate funding for the same service. If a type of care, such as respite care, is already being paid for by one of the programs, it will not be an eligible expense under the other.

[15] Under the current block contribution agreement between the PLBC and Aboriginal Affairs and Northern Development Canada [AANDC] the PLBC receives $55,552.00 for funding eligible ALP services. Under the block contribution agreement between PLBC and Health Canada, the PLBC receives $75,364.00.

Request for Funding

[16] On February 16, 2011, Ms. Philippa Pictou, the Health Director at the Pictou Landing First Nation Health Centre contacted Ms. Susan Ross, the Atlantic Regional Home and Community Care Coordinator at Health Canada. Ms. Pictou expressed her opinion that Jeremy's case met the definition of Jordan's Principle and asked Ms. Ross to participate in case conferencing regarding his needs.

[17] Jordan's Principle was developed in response to a sad case involving a severely disabled First Nation child who remained in a hospital for over two years due to jurisdictional disputes between different levels of government over payment of home care on his First Nation community. The child never had the opportunity to live in a family environment because he died before the dispute could be resolved. Jordan's Principle aims to prevent First Nations children from being denied prompt access to services because of jurisdiction disputes between different levels of government.

[18] Jordan's Principle is a child-first principle that says the government department first contacted for a service readily available off reserve must pay for it while pursuing repayment of expenses. 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.

[19] On February 28, 2011, a case conference was held regarding Jeremy's needs. In attendance were provincial care assessors from the Nova Scotia Department of Health and Wellness, the Pictou Landing Community Health Nurse, representatives of the PLBC, and Ms. Ross and Ms. Deborah Churchill on behalf of Canada.

[20] On April 19, 2011, a second case conference took place to discuss Jeremy's needs. Because Ms. Pictou had earlier requested that Jeremy's situation be considered a Jordan's Principle case, Ms. Barbara Robinson, the Jordan's Principal focal point for AANDC, was asked to participate. Both Ms. Ross and Ms. Robinson attended the second case conference, as did Mr. Troy Lees, a civil servant with the Nova Scotia provincial Department of Community Services.

[21] At the second case conference, Mr. Lees explained what the province would provide to a child with similar needs and circumstances off reserve. He explained there was a departmental directive that a family living off reserve could receive up to a maximum of $2,200 per month in respite services. Mr. Lees also stated that the province would not provide 24-hour care in the home by funding the equivalent to the costs of institutional care.

[22] On May 12, 2011, Ms. Pictou wrote to Health Canada and AANDC officials to formally request additional funding so that the PLBC could continue to provide home care services to Ms. Beadle and Jeremy. Attached to the request was a briefing note describing Ms. Beadle's and Jeremy's situation and their home care needs. Also attached was a copy of the Nova Scotia Supreme Court's March 29, 2011 decision in *Nova Scotia (Department of Community Services) v Boudreau*, 2011 NSSC 126, 302 NSR (2d) 50 [*Boudreau*].

[23] On May 27, 2011, Ms. Robinson, the Manager for Social Programs and the Jordan's Principle focal point for AANDC, emailed her decision to Ms. Pictou. The decision was delivered on behalf of both AANDC and Health Canada. In her decision, Ms. Robinson concluded there was no jurisdictional dispute in this matter as both levels of government agreed that the funding requested was above what would be provided to a child living on or off reserve. Ms. Robinson determined that Jeremy's case did not meet the federal definition of a Jordan's Principle case.

Decision Under Review

[24] Ms. Robinson [the Manager] informed Ms. Pictou of her decision to refuse the PLBC's request for additional funding for Jeremy's case by an extensive email dated May 27, 2011. She advised that she had an opportunity to confer with provincial health authorities and verified that the request for the provision of 24-hour home care for Jeremy would exceed the normative standard of care.

[25] The Manager recognized the First Nation's right to enhance the services that are provided to this family through own source revenues, but emphasized that services that exceed the normative standard of care and which are outside of the federal funding authorities would not be reimbursed through the AANDC Assisted Living or Health Canada Home and Community Care Programs.

[26] The Manager went on to state that provincial officials had confirmed that Jeremy's care needs would meet the placement criteria for long term institutional care, and that depending upon the classification of the long term care facility, the expenses associated with Jeremy's care would e fully funded by the AANDC Assisted Living, Institutional Care Program and/or the Province of Nova Scotia. However, she recognized this was a personal decision and that Jeremy's mother did not wish to place her child in a long term care facility.

[27] The Manager concluded by noting that although the case did not meet the federal definition of a Jordan's Principle case, AANDC and Health Canada would continue to work with stakeholders and to participate in case conferencing as required.

Relevant Legislation

[28] The *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 provides:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.	15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

[29] The *Social Assistance Act*, RSNS 1989, c 432 [*SAA*] provides:

> 9 (1) Subject to this Act and the regulations the social services committee shall furnish assistance to all persons in need, as defined by the social services committee, who reside in the municipal unit.
>
> [Emphasis added]

[30] The *Municipal Assistance Regulations*, NS Reg 76-81 provides:

> 1. In these regulations
>
> (e) "assistance" means the provision of money, goods or services to a person in need, including
>
> (i) items of basic requirement: food, clothing, shelter, fuel, utilities, household supplies and personal requirements,

(ii) items of special requirement: furniture, living allowances, moving allowances, special transportation, training allowances, special school requirements, special employment requirements, funeral and burial expenses and comforts allowances. The Director may approve other items of special requirement he deems essential to the well being of the recipient,

(iii) health care services: reasonable medical, surgical, obstetrical, dental, optical and nursing services which are not covered under the Hospital Insurance Plan or under the Medical Services Insurance Plan,

(iv) care in homes for special care,

(v) social services, including family counselling, homemakers, home care and home nursing services,

(vi) rehabilitation services;

[Emphasis added]

Arguments of the Parties

Applicants' Submissions

[31] The Applicants organized their submissions according to the issues they identified.

What is the appropriate standard of review?

[32] The Applicants submit the central issue raised in this judicial review is whether the decision-maker ought to have exercised her discretion to provide additional funding to the PLBC for continuing care services. The Applicants submit that in the particular circumstances of this case, a positive decision was necessary to ensure Jeremy and Ms. Beadle continue to receive equal benefit

under the law as guaranteed by section 15 of the *Charter*. The Applicants submit the appropriate standard of review for issues involving the *Charter* is invariably one of correctness.

[33] The Applicants also submit that the Respondent erred in law by failing to properly interpret and apply the Nova Scotia *SAA* in accordance with the jurisprudence of the Nova Scotia Supreme Court. As an error of law, the Applicants submit the standard of review on this issue must also be correctness.

[34] Finally, the Applicants allege that the impugned decision was based on a serious misapprehension of the evidence following a gravely flawed fact-finding process. The Applicants submit this Court has held that the Government of Canada may be held to a reasonableness standard when exercising discretionary power pursuant to contribution funding agreements with First Nations Bands.

Did the decision-maker err in law in interpreting and applying the Nova Scotia Social Assistance Act?

[35] The Applicants submit the ALP Manual and the relevant funding agreement with the PLBC both state that funding is provided to bands to ensure individuals living on reserve receive services "reasonably comparable" to those provided by the province. The Applicants submit the Respondent denied additional funding to the PLBC on the grounds that Jeremy and Ms. Beadle would only be entitled to home-care services to a maximum of $2,200 per month if they lived off reserve. The Applicants argue that in reaching this decision, the Respondent committed an error of law.

[36] 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". Section 18 of the *SAA* provides the Governor in Council to make regulations pursuant to the *SAA*. Under s 1(e)(iv) of the *Municipal Assistance Regulations*, NS Reg 76-81 "assistance" is defined to include "home care".

[37] Nova Scotia's Direct Family Support Policy from 2006 states that the funding for respite to people with disabilities "shall not normally exceed" $2,200 per month. The Policy also states that additional funding may be granted in "exceptional circumstances". The Applicants submit Ms. Robinson conceded in cross-examination that Jeremy and Ms. Beadle met much of the criteria under the "exceptional circumstances" portion of the policy. However, the Applicants submit Ms. Robinson concluded this Policy did not reflect Nova Scotia's normative standard of care because a provincial official had issued a separate directive that stated that no funding in excess of $2,200 would ever be provided.

[38] The Applicants submit that in cross-examination Ms. Robinson also indicated that she had read the judgment in *Boudreau*, where the Nova Scotia Supreme Court concluded that the $2,200 monthly cap was not lawful or binding in any way.

[39] The Applicants cited from the Court decision in *Boudreau* at paras 61 & 62 stating:

> What does the SAA obligate the Department to do in the case at Bar? I note s. 27 of the SAA permits regulations "prescribing the maximum amount of assistance that may be granted" but no regulations relevant to the case at Bar are in place.

...

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

[40] The Applicants submit that Ms. Robinson stated in cross-examination that the *Boudreau* judgment was "not relevant" to her decision. They submit this is an error of law and that the decision must be quashed for this reason alone.

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

[41] The Applicants submit that even if the refusal to provide additional funding to the PLBC is not found to be discriminatory, the decision remains unreasonable as it was based on a serious misapprehension of evidence and on a gravely flawed fact finding process.

[42] The Applicants argue that the decision is unreasonable because it was based on an erroneous understanding of what was actually being requested by the PLBC. The Applicants point to Ms. Robinson's decision of May 27, 2011 to illustrate that Ms. Robinson denied the PLBC's request on the basis that 24 hour care was not available off reserve. However, the Applicants submit this was not what was requested by the PLBC.

[43] The Applicants point to a particular paragraph in Ms. Pictou's Briefing Note which was attached to the request for additional funding which states:

> 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), but which department is obliged to meet his care needs?

The Applicants submit that this demonstrates that Ms. Robinson erred by characterizing the PLBC's request as funding for 24-hour services as well as additional assistance for meal preparation and light housekeeping.

[44] The Applicants argue that since Ms. Robinson failed to understand what was requested by the PLBC, it cannot be said that the request for additional funding was properly or fairly considered. The Applicants submit that Courts have held that a decision-maker's misapprehension of facts or evidence constitutes a palpable and overriding error. *Crane v Ontario (Director, Disability Support Program)*, (2006), 83 OR (3d) 321 (ON CA) at paras 35-36. The Applicants submit that in this case, Ms. Robinson's misapprehension of the PLBC's request not only affected the fact-finding process, but it formed the very basis for the denial of the request. The Applicants submit this amounts to an unreasonable error.

[45] The Applicants submit Ms. Robinson also ignored relevant information before her. The Applicants argue the provincial Home Care Policy confers up to $6,600 per month in home care services to people with disabilities, and is not capped at $2,200. The Applicants argue that presented

with this evidence, Ms. Robinson's assertion that the normative standard of care off reserve is invariably limited to $2,200 per month is untenable and that this amounts to an error in law.

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

[46] The Applicants claim that the decision to deny additional funding to the PLBC so that it could continue providing Jeremy and Ms. Beadle with home care was discriminatory and contrary to s. 15(1) of the *Charter*. The Applicants submit that while the federal government may enter into contribution agreements with Band Councils to provide services, such agreements cannot supersede its obligations under the *Charter*. The Applicants also submit that the government's exercise of discretionary powers must conform to the *Charter*. The Applicants argue that Ms. Robinson had a duty to consider the requests for additional funding under the relevant agreements in a manner that respects the Beadles' rights to receive equal benefits compared to those residing off reserve in their province of residence.

[47] The Applicants submit that for First Nations people living on reserve, Jordan's Principle is a means by which the fundamental objectives of s. 15(1) can be achieved.

[48] The Applicants argue that the exceptional and unanticipated health needs of the Beadle family jeopardize the PLBC's ability to provide the services the family reasonably requires and would likely be entitled to off reserve. The Applicants submit that Ms. Robinson had a duty to exercise her discretion under the relevant funding agreements in a manner that conforms to s. 15(1) of the *Charter*.

[49] The Applicant also argues that infringement under s. 15(1) cannot be justified under s. 1 of the *Charter*. 98

Respondent's Submissions

[50] The Respondent's submissions are similarly organized according to the issues identified by the Respondent.

The standard of review is reasonableness

[51] The Respondent submits the question of whether the service provided by the PLBC exceeded the provincial normative standard of care is a question of fact and requires a decision maker to gather facts about the assistance needs of the claimant, the treatments required, and the nature of the disabilities at issue. The Respondent asserts that it also requires fact gathering about the services that are currently available to similar people living off reserve and gathering factual information from provincial authorities and the federal program requirements. The Respondent submits the decision maker is entitled to give significant weight to the definition of the normative standard of care provided by the provincial authorities.

With respect to the assessment of the request made by the Applicants, the Respondent submits the determination of what was actually requested is a question of fact. Ms. Robinson was required to review Jeremy's situation and determine what their request constituted based on all of the material submitted. The Respondent submits that the Supreme Court of Canada in *Dunsmuir v New*

Brunswick, 2008 SCC 9 [*Dunsmuir*] has determined that where a question is a factual determination which depends purely on the weighing of evidence, the applicable standard of review is reasonableness. The Respondent submits that where, as here, the underlying factual and legal issues cannot be separated, the appropriate standard of review is still reasonableness. *Dunsmuir* at paras 53-54.

[52] The Respondent submits that the standard of reasonableness in the present case is particularly appropriate because the decision maker was asked to make a determination of eligibility under a federal policy for which she was the expert designated authority in a discrete and special administrative regime, with particular expertise, and with the unique ability to interact with provincial authorities whose cooperation is required to make the necessary determination. The Respondent submits that the reasonableness standard is the most reflective of the nature of the inquiry and the context in which it takes place.

[53] Regarding the *Charter* issue, the Respondent submits there is no standard of review of this issue in this Court. The Respondent argues that the *Charter* issue is a matter of constitutional law and not administrative law. This is the first time that the s. 15 argument has been raised in this matter. The Respondent submits this is the Court of first instance for the determination of the constitutional question.

Jordan's Principle was not engaged *in this case*

[54] The Respondent submits that in order to determine whether Jordan's Principle was engaged, Ms. Robinson had to determine if there was a jurisdictional dispute between Canada and Nova Scotia regarding the provision of funding for Jeremy's care and if the funding provided by Canada met the normative standard of care in Nova Scotia.

[55] The Respondent submits there was no jurisdictional dispute. Both Canada and Nova Scotia agreed that Jeremy's situation entitled him to receive institutional care and the Province acknowledged it would pay for those services over and above federal authority.

[56] The Respondent argues that Ms. Robinson determined the normative standard of care for in-home services in Nova Scotia was $2,200 per month as a result of her consultation with provincial officials from multiple departments, and after raising with them the applicability of the *SAA*, the Direct Family Support Policy, the Health and Wellness Program, and the recent decision of the Nova Scotia Supreme Court in *Boudreau*. The Respondent submits Ms. Robinson brought all of the Applicants' concerns and arguments before the provincial officials who informed her that the amount Jeremy would receive if he lived off reserve would be no more than $2,200.

[57] The Respondent asserts that Ms. Robinson's approach to determining the normative standard of care was correct and her conclusion that the request was beyond the normative standard of care was reasonable. The Respondent submits the provincial officials were in the best position to

say what services are available to residents of the province living off reserve and thus using this information as a basis for her decision was reasonable.

[58] Regarding the Applicants' submissions on the applicability of the *Boudreau* case, the Respondent submits *Boudreau* is a case about exceptional circumstances to the provincial standard of care but does not purport to change the standard of care itself. The provincial authority had already determined that Boudreau required in-home care in an amount less than what the PLBC has provided here. Also, the $2,200 limit had not previously been applied in Boudreau's case because he had been "grandfathered".

[59] The Respondent submits that the situation in *Boudreau* is quite different from Jeremy's because Boudreau was receiving exceptional circumstances funding prior to the October 2006 Directive from the Department of Community Services that indicated the maximum for respite in-home care was $2,200 per month, with no exceptions. Moreover, the Respondent submits Canada and Nova Scotia have already determined that the applicable standard for Jeremy is institutional, not respite care. The Respondent submits the Applicants are trying to use the *Boudreau* case to create a new standard of care that neither the Province nor Canada recognizes.

The request for additional funding was properly assessed

[60] The Respondent submits the evidence is clear that the Applicants requested the equivalent of 24-hour per day care, and only for Jeremy, contrary to the Applicants' arguments that Ms. Robinson misapprehended the request for additional funding.

[61] The Respondent submits the Applicants allege that they requested only funding for in-home care 24 hours per day, 7 days per week, less what Jeremy's own family could provide. For this proposition, the Respondent notes the Applicants rely on a specific sentence in the Briefing Note Ms. Pictou prepared on Jeremy's case which was sent to Health Canada and AANDC.

[62] The Respondent submits that in the immediately preceding paragraph in the Briefing Note, Ms. Pictou refers to 24 hour per day, 7 days a week care without any limitation regarding family assistance. Further, the Respondent argues that in the email with the formal request for additional funding (to which the Briefing Note was attached), Ms. Pictou stated:

> Even if it is not a Jordan's Principle case, I would like either the Federal or Provincial Government to reimburse us up to the level that he would qualify for if institutionalized (estimated by Community Services to be $350 per day).

[63] The Respondent submits it was reasonable for Ms. Robinson to conclude that the Applicants had requested the funding equivalent of 24 hour per day in-home care, and to verify whether that need was beyond the normative standard of care that the province would provide for in-home care for any Nova Scotian.

[64] Even if the Applicants' request could be interpreted as 24 hours minus what family members could provide (which is not admitted), the Respondent submits Ms. Robinson's factual finding that the Applicants' funding request exceeded the provincial standard for in-home care is reasonable given the evidence.

The decision does not violate section 15(1) of the Charter.

[65] The Respondent submits the decision not to grant the request for additional funding up to the daily rate of institutional care does not discriminate against Jeremy or any other First Nations child. First, the Respondent submits the benefit the Applicants requested is not a benefit provided by law. Under the ALP and HCCP, the PLBC has funding to provide their community with reasonably comparable services to those that would be available to the off reserve population. The Respondent submits funding for those benefits was and is available to Jeremy, and he is treated no differently from any other Nova Scotian with similar needs. There is no distinction on which a discrimination claim can rest.

[66] The Respondent submits that Jordan's Principle clearly is not engaged in this case. Jordan's Principle was adopted to ensure that no First Nations child would be denied services while governments debated over the jurisdictional responsibility to provide an eligible service. The Respondent argues that what is at stake in this case is not a jurisdictional dispute at all, but a claim that the PLBC's decision to provide in-home care to one of its members beyond the normative provincial standard of care legally obliges Canada to fund such services.

[67] The Respondent submits that the evidence clearly indicates that Jeremy's needs well exceed the levels of in-home care that would be available to anyone living off reserve in Nova Scotia. This was confirmed by the provincial officials who indicated that this level of in-home care would not be available and institutionalization would be the supported option. The Respondent submits this is not a case where the application of federal programs or policies denies a benefit that would otherwise be

available to someone else. The Respondent argues that the Applicants are attempting to create a benefit out of the ALP and HCCP that simply does not exist at law.

[68] The Respondent submits that neither Ms. Robinson's decision, nor the structure of the ALP and HCCP funding itself creates any distinction between Jeremy and a person with similar disabilities and care needs that is not living on a reserve. The Respondent notes that under the ALP and the HCCP, Canada has elected to provide funding for services that are reasonably comparable with people living off reserve so that no such distinction will be created. In this regard, the Respondent submits Ms. Robinson was required to verify the provincial normative standard of care, and did so by specifically enquiring with the provincial authorities whether, if Jeremy was living off reserve, funding for his care needs could be provided in-home. The Respondent submits that the information provided to Ms. Robinson from the provincial authorities was clear that if Jeremy lived off reserve, the supported option would be institutionalization, and that the maximum funding he could receive for in-home care if he remained in the home was $2,200 per month.

Issues

[69] In my view the following issues arise in this case:

1. Was Jordan's Principle engaged in this case?
2. Did the Manager properly assess the request for funding?
3. Did the Manager exercise her discretion in a manner that violated section 15(1) of the *Charter*?

Standard of Review

[70] The Supreme Court of Canada held in *Dunsmuir* that there are only two standards of review: correctness for questions of law and reasonableness involving questions of mixed fact and law and fact. *Dunsmuir* at paras 50 and 53.

[71] The Supreme Court also held that where the standard of review has been previously determined, a standard of review analysis need not be repeated. *Dunsmuir* at para 62.

[72] I have been unable to find any previous jurisprudence in which Jordan's Principle and the appropriate standard of review in determining the "normative standard of care off reserve" has been considered.

[73] I note that this matter involves questions of fact, and questions of mixed law and fact as they relate to a question of policy, that of Jordan's Principle. There is no privative provision and the matters are determined by an official designated as an AANDC departmental "focal point for Jordan's Principle" which is suggestive of expertise.

[74] The Manager was required to determine what it was that the PLBC was requesting. This was a factual determination based on the submissions of Ms. Philippa Pictou and information provided in case assessments. The Manager was also charged with determining whether this case met the criteria for a Jordan's Principle case. As the Jordan's Principle focal point for AANDC the Manager had a specialized expertise in this matter.

[75] Finally, the Manager was required to determine the normative standard of care that would be available from provincial health authorities to individuals living off reserve in the same circumstances as Jeremy. There appears to be no specific procedure for her to follow to determine what the normative standard of care is. The Manager was not specifically tasked with interpreting and applying the *SAA* or any jurisprudence. Essentially, it was a fact-finding exercise which would attract a reasonableness standard of review.

[76] In *Dunsmuir* questions of mixed fact and law and fact give rise to a standard of reasonableness. *Dunsmuir* at paras 50 and 53. Accordingly, I agree with the Respondent that the appropriate standard of review for the Manager's decision with respect to Jordan's Principle is reasonableness.

Analysis

[77] The issues in this case revolve around the question of on-reserve, in-home support for Jeremy, a First Nation child with multiple handicaps who was cared for by his mother until the time of her stroke.

[78] The Applicants submit Canadian children with disabilities and their families rely on continuing care generally provided by provincial governments according to provincial legislation. Provincial governments do not provide the same services to First Nations children who live on reserves. The federal government assumed responsibility for funding delivery of continuing care programs and services on reserve at levels reasonably comparable to those offered in the province of

residence. Such services have been historically funded and provided by the federal government through AANDC and Health Canada as a matter of policy.

[79] AANDC and Health Canada entered into a funding agreement with the PLBC to deliver services offered under the ALP and HCCP. The PLBC is required to administer the programs "according to provincial legislation and standards." The ALP funding agreement states the PLBC can seek additional funding in "exceptional circumstances" which are 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".

[80] Personal home care services off reserve for people with disabilities in Nova Scotia are governed by the *Social Assistance Act*. Section 9(1) of the *SAA* provides persons in need shall be provided with assistance, including home care and home nursing services. The Nova Scotia Department of Community Services implements the *SAA* and funds home care for people with disabilities through the Direct Family Support Policy. The policy provides that funding for home care shall not normally exceed $2,200 per month but states additional funding may be granted in exceptional circumstances.

Was Jordan's Principle engaged in this case?

[81] As stated above, Jordan's Principle was developed in response to a case involving a severely disabled First Nation child who remained in a hospital due to jurisdictional disputes between the federal and provincial governments over payment of home care services for Jordan in his First

Nation community. The child never had the opportunity to live in a family environment because he died before the dispute could be resolved. Jordan's Principle aims to prevent First Nations children from being denied prompt access to services because of jurisdiction disputes between different levels of government.

[82] Jordan's Principle says the government department first contacted for a service readily available off reserve must pay for it while pursuing repayment of expenses. While Jordan's Principle is not enacted by legislation, it has been approved by a unanimous vote of the House of Commons. Such a motion is not binding on the government.

[83] In order to understand the status of Jordan's Principle, it is helpful to have regard to the Hansard reports of the debate in the House of Commons. The private member's motion of May 18, 2007 reads:

> That, in the opinion of the House, the government should immediately adopt a child first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children.

The motion was further debated on October 31, 2007 and again on December 5, 2007. At that time, a member of the governing party stated:

> I support this motion, as does the government. I am pleased to report the Minister of Indian Affairs and Northern Development and officials in his department are working diligently with their partners in other federal departments, provincial and territorial governments, and first nations organizations on child and family services initiatives that will transform the commitment we make here today into a fact of daily life for first nations parents and their children.

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> That is not all. In addition to implementing immediate, concrete measures to apply Jordan's principle in aboriginal communities, I would like to inform the House and my colleague that the government is also implementing other measures to improve the well-being of first nations children...

The vote in the House of Commons on December 12, 2007 was unanimous, recording Yeas: 262, Nays: 0.

[84] Clearly, Jordan's principle was implemented by AANDC. Ms. Barbara Robinson, Manager – Social Programs, was designated the Jordan's Principle focal point for AANDC in Atlantic Canada. She described AANDC's implementation of Jordan's Principle in the following terms:

> Jordan's Principle is a child-first principle which exists to resolve jurisdictional disputes between the federal and provincial governments regarding health and social services for on-reserve First Nations children. It ensures that a child will continue to receive care while the jurisdictional dispute between the provincial and federal government is resolved but does not create a right to funding that is beyond the normative standard of care in the child's geographic location.
>
> Jordan's Principle applies when:
>
> a) The First Nations child is living on reserve (or ordinarily resident on reserve); and
>
> b) A First Nations child who has been assessed by health and social service professionals and has been found to have multiple disabilities requiring services from multiple service providers; and
>
> c) The case involves a jurisdictional dispute between a provincial government and the federal government; and
>
> d) Continuity of care – care for the child will continue even if there is a dispute about responsibility. The current service provider that is caring for the child will continue to pay for the necessary services until there is a resolution; and

e) Services to the child are comparable to the standard of care set by the province – a child living on reserve (or ordinarily resident on reserve) should receive the same level of care as a child with similar needs living off-reserve in similar geographic locations.

[Emphasis added]

[85] The Respondent submits there is no evidence that a jurisdictional dispute exists between the Province of Nova Scotia and the federal government for the provision of in-home care services. Both provincial health authorities and AANDC and Health Canada agree that the maximum Jeremy would receive if he lived on or off the reserve is $2,200 for home care services.

[86] I do not think the principle in a Jordan's Principle case is to be read narrowly. The absence of a monetary dispute cannot be determinative where officials of both levels of government 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.

[87] I would observe that the normative standard of care in this case encompasses the provincial rules for the range of services available to persons in Nova Scotia residing off reserve. Jordan's Principle would have been meant to include services for exceptional cases where allowed for in the province where the child is geographically located.

[88] While there is an administratively prescribed maximum level of $2,200 per month for in-home services in Nova Scotia, the statutorily mandated policy has been found to encompass exceptional cases that may exceed that maximum.

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[89] In *Boudreau*, a Nova Scotia Court heard an application for a *certiorari* order by the Department of Community Services of the Assistance Appeal Board decision holding that Boudreau, a 34-year old adult off reserve with multiple handicaps, was entitled to receive increased home care services under the exceptional circumstances provision of the Direct Family Services Policy and also under section 9 of the *SSA*.

[90] The Court found the application for *certiorari* to be valid because the Appeal Board erred in referring to *Employment Support and Income Assistance Act* instead of the *SAA*. However, the Court declined to make a *certiorari* order because it found the Department of Family Community Services had a clear obligation to provide "assistance" to Boudreau as required by section 9 of the *SSA*. In the alternative, the Court found even if the respite decision by the Department was discretionary, the facts accepted established the assistance was essential and the Department's obligations included the additional finding requested.

[91] The effective result in *Boudreau* is that a person with multiple handicaps residing off reserve was entitled to receive home services assistance over the $2,200 maximum limit which the Court observed "cannot override the legislation and regulations".

[92] In the case at hand, the Manager stated in cross-examination that her legal authority to fund is rooted under the Treasury Board authority referencing the applicable provincial policy. She acknowledged she was told by provincial officials that the provincial policy provides they can fund above the $2,200 level but they can't because of the directive. She acknowledged she was informed the Department of Family Services provincial policy says there may be exceptional circumstances

but provincial officials told her there would be no exceptional circumstances recognized. Ms. Robinson stated she needed to ensure she was following the provincial policy as it is being implemented.

[93] The Manager does not need to interpret the *SAA* and *Regulations*. She was clearly informed by provincial officials of the legislatively mandated policy. 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 also was put on notice by the PLBC of this issue as they had provided her with a copy the *Boudreau* decision. Ms. Robinson's mandate from Treasury Board does not extend to disregarding legislated provincial policy.

[94] 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 also states that additional funding may be granted in "exceptional circumstances". Finally, the Direct Family Support Policy explicitly states that First Nations children living on reserves are not eligible to services from the Province.

[95] As I stated, Jordan's principle is not to be narrowly interpreted.

[96] In this case, there is a legislatively mandated provincial assistance policy regarding provision of home care services for exceptional cases concerning persons with multiple handicaps which is not available on reserve.

[97] The Nova Scotia Court held an off reserve person with multiple handicaps is entitled to receive home care services according to his needs. His needs were exceptional and the *SAA* and its *Regulations* provide for exceptional cases. Yet a severely handicapped teenager on a First Nation reserve is not eligible, under express provincial policy, to be considered despite being in similar dire straits. This, in my view, engages consideration under Jordan's Principle which exists precisely to address situations such as Jeremy's.

[98] I find the Manager's finding that Jordan's Principle was not engaged is unreasonable.

Did the decision-maker properly assess the request for funding?

[99] The Manager took part in case conferences in which provincial health officials, First Nation officials and other AANDC and Health Canada officials took part. As a result of taking part in these case conferences, she had a full understanding of the issues and care needs Jeremy required. She was able to obtain opinions from the health assessors as to what was needed in Jeremy's case.

[100] I begin by addressing the factual issue in the PLBC request for funding. The monetary amount is necessarily linked to the extent of care home care support required for Jeremy although not for Ms. Beadle's personal needs who, presumably is within the normal scope of the ALP and HCCP funded home care services.

[101] The Applicants have stated that the request for additional funding was for "Jeremy Meawasige's reasonable 'need' for 'homecare' [as] 24 hours a day, 7 days a week, less the time his

family can reasonable attend to his care." [Emphasis added] This paragraph is found in the briefing note attached to the request for additional funding. On the other hand, the Respondent submits that the paragraph preceding the paragraph cited by the Applicants indicates that the request is for 24 hour care, 7 days a week.

[102] It is clear from the PLBC's submissions that at the time of the Manager's decision, the Pictou Landing Health Centre provided the family with a personal care worker from 8:30 am to 11:30 pm from Monday to Friday, and 24 hour care over the weekends by an off reserve agency. As I understand it, the 24 hour care on the weekends was in response to the Pictou Landing Health Centre being closed over the weekend rather than the need for 24-hour home care. On the evidence, the request for in home support did not cover the overnight period during weekdays.

[103] Moreover, one has to have regard for the extent of family support. It must be remembered that, before her stroke, Ms. Beadle provided for all of Jeremy's needs without government assistance. Ms. Beadle has recovered to some extent from her stroke and helps Jeremy as she can. Jeremy's older brother stays overnight to also assist. When one considers the importance of Ms. Beadle to Jeremy's communicative and personal needs, it seems to me that the family support is not inconsequential. I find the request for Jeremy's in home support was not for 24 hours a day, 7 days a week.

[104] It is not entirely clear exactly what amount is being requested. I do note, as the Respondent pointed out, the PLBC requested it would like to be reimbursed up to the level that Jeremy would qualify for if institutionalized. This amount, as estimated by the Department of Community

Services, was $350 per day. The $350 per day represents the equivalent expense to have Jeremy live in an institution. However, it is clear the PLBC was not asking to institutionalize Jeremy; rather, it was proposing that as a means of quantifying the request for finding.

[105] The Manager was required to assess the factual circumstances, the submissions made and the recommendations and information provided by the in-home assessors. I conclude that the Manager erred in determining that what was being requested was 24 hour in home care. This was an unreasonable finding based on all the information provided.

Application of Jordan's Principle

[106] Issues involving Jordan's Principle are new. The principle requires the first agency contacted respond with child-first decisions leaving jurisdictional and funding decisions to be sorted out later. 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.

[107] The PLBC is required by its contributions agreements with AANDC and Health Canada to administer the programs and services "according to provincial legislation and standards". When Ms. Beadle suffered her stroke, the PLBC responded and provided the needed services for her and Jeremy.

[108] The PLBC is a small First Nation with some 600 members. The exceptional circumstances here have required nearly 80% of the costs of the PLBC total monthly ALP and HCCP budget for personal and home care services. In short, this is not a cost that the PLBC can sustain.

[109] Jordan's Principle applies between the two levels of government. In this case the PLBC was delivering program and services as required by AANDC and Health Canada in accordance with provincial legislative standards. The PLBC is entitled to turn to the federal government and seek reimbursement for exceptional costs incurred because Jeremy's caregiver, his mother, can no longer care for him as she did before.

[110] I also note that the only other option for Jeremy would be institutionalization and separation from his mother and his community. His mother is the only person who, at times, is able to understand and communicate with him. Jeremy would be disconnected from his community and his culture. He, like sad little Jordan, would be institutionalized, removed from family and the only home he has known. He would be placed in the same situation as was little Jordan.

[111] I am satisfied that the federal government took on the obligation espoused in Jordan's Principle. As result, I come to much the same conclusions as the Court in *Boudreau*. The federal government contribution agreements required the PLBC to deliver programs and services in accordance with the same standards of provincial legislation and policy. The *SAA* and *Regulations* require the providing provincial department to provide assistance, home services, in accordance with the needs of the person who requires those services. PLBC did. Jeremy does. As a consequence, I conclude AANDC and Health Canada must provide reimbursement to the PLBC.

[112] It is to be observed that AANDC does not deny that home services be provided for Jeremy; rather it denies funding home services above the $2,200 administratively imposed provincial maximum which the Court found in *Boudreau* cannot override provincial legislation and regulation.

[113] The PLBC has met its obligations under its funding agreement with AANDC and Health Canada. The participating federal departments, particularly AANDC, have adopted Jordan's Principle. In my view, they are now required by their adoption of Jordan's Principle to fulfil this assumed obligation and adequately reimburse the PLBC for carrying out the terms of the funding agreements and in accordance with Jordan's Principle.

[114] In the alternative, much as in *Boudreau*, if the implementation of Jordan's Principle is discretionary, the federal government undertook to apply Jordan's Principle when exceptional circumstances arose. The facts of Jeremy's situation clearly establish the exceptional circumstances necessary to meet this requirement. The federal government cannot deny is obligation to provide additional funding not requested by PLBC for Jeremy.

[115] In either situation, the PLBC is, in my view, due reimbursement and additional funding from AANDC and Health Canada for Jeremy's needs. I note both AANC and Health Canada have expressed willingness to continue to work with PLBC to resolve the situation.

[116] Jordan's Principle is not an open ended principle. It requires complimentary social or health services be legally available to persons off reserve. It also requires assessment of the services and

costs that meet the needs of the on reserve First Nation child. The funding amount is not definitively determined in accordance with these requirements, in that the needs of Jeremy and Ms. Beadle are somewhat mixed, the case conferences did not appear to quantify the costs involved, and alternative reimbursement amounts were proposed. In result, the amount remains to be addressed by the parties.

[117] I conclude the decision-maker did not properly assess the PLBC request for funding to meet Jeremy's needs. The request for judicial review succeeds and the Manager's decision is quashed.

[118] There remains the question of whether or not, in the circumstances, reconsideration should be ordered. Clearly, deference is due to the administrative entity that makes decisions within the realm of its expertise.

[119] In *Stetler v the Ontario Flue-Cured Tobacco Growers' Marketing Board*, 2009 ONCA 234 at paragraph 42, the Ontario Court of Appeal stated:

> While "[a] court may not substitute its decision for that of an administrative decision-maker lightly or arbitrarily", exceptional circumstances may warrant the court rendering a final decision on the merits. Such circumstances include situations where remitting a final decision would be "pointless", where the tribunal is no longer "fit to act", and cases where, "in light of the circumstances and the evidence in the record, only one interpretation or solution is possible, that is, where any other interpretation or solution would be unreasonable": *Giguère v. Chambre des notaires du Quebec*, 2004 SCC 1 (CanLII), [2004] 1 S.C.R. 3 at para. 66.

[120] When one considers Jordan's Principle calls for an immediate timely response regardless of jurisdictional questions and the exceptional circumstances that arise here in Jeremy's case, I am of the view this constitutes an exceptional circumstance warranting this Court to not remit the matter back for reconsideration but to direct the that the PLBC is entitled to reimbursement beyond the $2,200 maximum as it relates to Jeremy's needs for assistance. The remaining question is the amount of reimbursement which I consider must be left to the parties.

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

[121] Having decided as I did, I need not consider the *Charter* submissions by the Applicant and Respondent.

Costs

[122] In oral submissions, the Respondent did not oppose the Applicants' submission for costs, should the latter be successful, acknowledging the matter to be complex but suggesting the middle range of Column 3.

[123] I thank both parties for their able submissions in addressing this complex but important matter.

Conclusion

[124] I conclude the Manager failed to consider the application of Jordan's Principle in Jeremy's case as required.

[125] I also find the Manager's refusal of the PLBC reimbursement request was unreasonable.

[126] The application for judicial review is granted and I hereby quash the impugned decision.

[127] I do not remit the matter back for reconsideration but direct that the PLBC is entitled to reimbursement by the Respondent beyond the $2,200 maximum as it relates to Jeremy's needs for assistance.

[128] I would award costs to the Applicants for two counsel at the middle range of Column 3.

121

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The May 27, 2011 decision of the Manager is quashed.

3. I direct that Applicant PLBC is entitled to reimbursement beyond the $2,200 maximum by the Respondent as it relates to Jeremy's needs for assistance.

4. Costs for the Applicants for two counsel at the middle range of Column 3.

"Leonard S. Mandamin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1045-11
STYLE OF CAUSE:	PICTOU LANDING BAND COUNCIL AND MAURINA BEADLE v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HALIFAX, NOVA SCOTIA
DATE OF HEARING:	JUNE 11, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	MANDAMIN J.
DATED:	APRIL 4, 2013

APPEARANCES:

Paul Champ Anne Levesque	FOR THE APPLICANTS
Jonathan D.N. Tarlton Melissa Chan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Champ & Associates Ottawa, Ontario	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT

TAB 5

CITATION: CANADIAN AIRLINES INTERNATIONAL LTD. *V.* CANADA (HUMAN RIGHTS COMMISSION), [2010] 1 F.C.R. 226 A-346-99

Canadian Airlines International Limited and **Air Canada** (*Appellants*)

v.

Canadian Human Rights Commission, Canadian Union of Public Employees (Airline Division) and **Public Service Alliance of Canada** (*Respondents*)

INDEXED AS: CANADIAN AIRLINES INTERNATIONAL LTD. v. CANADA (HUMAN RIGHTS COMMISSION) (F.C.A.)

Federal Court of Appeal, Richard C.J., Létourneau and Noël JJ.A.—Montréal, February 15, 2000.

* Editor's Note: Although this judgment was not selected for full-text publication after it was rendered on February 15, 2000, because it is frequently cited by both counsel and the Federal Courts, it is now being published in the *Federal Courts Reports* in order to facilitate access to the profession.

Practice — Parties — Intervention — Appeal from interlocutory decision of Federal Court Trial Division granting Public Service Alliance of Canada (PSAC) leave to intervene in judicial review applications pertaining to Canadian Human Rights Tribunal decision — Motions Judge providing no reasons for order granting leave — Relevant factors to consider in determining whether to grant intervention set out herein — PSAC failing to demonstrate how expertise would assist in determination of issues placed before Court by parties —PSAC's interest "jurisprudential" in nature — Such interest alone not justifying application to intervene — Without benefit of motion Judge's reasoning, not possible to see how intervention could have been granted without falling into error — Appeal allowed.

STATUTES AND REGULATIONS CITED

Canadian Human Rights Act, R.S.C., 1985, c. H-6, s. 11.
Federal Court Rules, 1998, SOR/98-196, r. 109.

CASES CITED

REFERRED TO:

Rothmans, Benson & Hedges Inc. v. Canada (Attorney General), [1990] 1 F.C. 74, (1989), 41 Admin. L.R. 102, 29 F.T.R. 267 (T.D.); *Rothmans, Benson & Hedges Inc. v. Canada (Attorney General)*, [1990] 1 F.C. 84, (1989), 41 Admin. L.R. 155, 29 F.T.R. 272 (T.D.); *Rothmans, Benson & Hedges Inc. v. Canada (Attorney General)*, [1990] 1 F.C. 90, (1989), 45 C.R.R. 382, 103 N.R. 391 (C.A.); *R. v. Bolton*, [1976] 1 F.C. 252 (C.A.); *Tioxide Canada Inc. v. Canada*, [1995] 1 C.T.C. 285, (1994), 94 DTC 6655, 174 N.R. 212 (F.C.A.).

APPEAL from an interlocutory decision of the Federal Court—Trial Division granting the Public Service Alliance of Canada leave to intervene in judicial review applications pertaining to a decision

of the Canadian Human Rights Tribunal (*Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.*, [1998] C.H.R.D. No. 8 (QL)). Appeal allowed.

APPEARANCES

Peter M. Blaikie for appellants.
Andrew J. Raven for respondent Public Service Alliance of Canada.

SOLICITORS OF RECORD

Heenan Blaikie, Montréal, for appellants.
Raven, Allen, Cameron & Ballantyne, Ottawa, for respondent Public Service Alliance of Canada.

The following are the reasons for judgment rendered in English by

[1] NOËL J.A.: This is an appeal from an interlocutory decision of the Trial Division granting the Public Service Alliance of Canada (PSAC) leave to intervene in the judicial review applications brought by the Canadian Human Rights Commission (the Commission) and the Canadian Union of Public Employees (Airline Division) (CUPE). These judicial review applications pertain to a decision of the Canadian Human Rights Tribunal (the Tribunal) [*Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.*, [1998] C.H.R.D. No. 8 (QL)] rejecting a complaint by CUPE, that the appellants paid discriminatory wages to their flight attendants, pilots and technical operations personnel.

[2] By this decision, the Tribunal held *inter alia* that the above-described employees of Air Canada and Canadian Airlines International Limited (Canadian) work in separate "establishments" for the purposes of section 11 of the *Canadian Human Rights Act* [R.S.C., 1985, c. H-6] since they are subject to different wage and personnel policies.

[3] PSAC did not seek to intervene in the proceedings before the Tribunal.

[4] The Tribunal's decision was released on December 15, 1998. The Commission and CUPE filed judicial review applications on January 15, 1999, and PSAC's application for leave to intervene was filed on May 6, 1999. The sole issue with respect to which leave to intervene was sought is whether the pilots, flight attendants and technical operations personnel employed by Air Canada and Canadian respectively are in the same "establishment" for the purposes of section 11 of the Act.

[5] The order allowing PSAC's intervention was granted on terms but without reasons. The order reads:

The Public Service Alliance of Canada (the Alliance) is granted leave to intervene on the following basis:

(a) the Alliance shall be served with all materials of the other parties;

(b) the Alliance may file its own memorandum of fact and law by June 14, 1999, being within 14 days of the date for serving and filing the Respondent Canadian Airlines International Limited and the Respondent Air Canada's memoranda of fact and law as set out in the order of Mr. Justice Lemieux, dated March 9, 1999;

(c) the Applicant Canadian Union of Public Employees (Airline Division) and the Applicant Canadian Human Rights Commission and the Respondents Canadian Airlines International Limited and Air Canada may file a reply to the Alliance's memorandum of fact and law by June 28, 1999, being 14 days from the date of service of the Alliance's memorandum of fact and law;

(d) the parties' right to file a requisition for trial shall not be delayed as a result of the Alliance's intervention in this proceeding;

(e) the Alliance shall be consulted on hearing dates for the hearing of this matter;

(f) the Alliance shall have the right to make oral submissions before the Court.

[6] In order to succeed, the appellants must demonstrate that the motions Judge misapprehended the facts or committed an error of principle in granting the intervention. An appellate court will not disturb a discretionary order of a motions judge simply because it might have exercised its discretion differently.

[7] In this respect, counsel for PSAC correctly points out that the fact that the motions Judge did not provide reasons for her order is no indication that she failed to have regard to the relevant considerations. It means however that this Court does not have the benefit of her reasoning and hence no deference can be given to the thought process which led her to exercise her discretion the way she did.

[8] It is fair to assume that in order to grant the intervention the motions Judge would have considered the following factors which were advanced by both the appellants and PSAC as being relevant to her decision:[1]

(1) Is the proposed intervener directly affected by the outcome?

(2) Does there exist a justiciable issue and a veritable public interest?

(3) Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?

(4) Is the position of the proposed intervener adequately defended by one of the parties to the case?

(5) Are the interests of justice better served by the intervention of the proposed third party?

(6) Can the Court hear and decide the case on its merits without the proposed intervener?

[9] She also must have had in mind rule 109 of the *Federal Court Rules, 1998* [SOR/98-106] and specifically subsection (2) thereof which required PSAC to show in the application before her how the proposed intervention "will assist the determination of a factual or legal issue related to the proceeding."

[10] Accepting that PSAC has acquired an expertise in the area of pay equity, the record reveals that:

1. PSAC represents no one employed by either of the appellant airlines;

2. the Tribunal's decision makes no reference to any litigation in which PSAC was or is engaged;

3. the grounds on which PSAC has been granted leave to intervene are precisely those which both the Commission and CUPE intend to address;

4. nothing in the materials filed by PSAC indicates that it will put or place before the Court any case law, authorities or viewpoint which the Commission or CUPE are unable or unwilling to present.

[11] It seems clear that at its highest PSAC's interest is "jurisprudential" in nature; it is concerned that the decision of the Tribunal, if allowed to stand, may have repercussions on litigation involving pay equity issues in the future. It is well established that this kind of interest alone cannot justify an application to intervene.[2]

[12] Beyond asserting its expertise in the area of pay equity, it was incumbent upon PSAC to show in its application for leave what it would bring to the debate over and beyond what was already available to the Court through the parties. Specifically, it had to demonstrate how its expertise would be of assistance in the determination of the issues placed before the Court by the parties. This has not been done. Without the benefit of the motion Judge's reasoning, we can see no basis on which she could have granted the intervention without falling into error.

[13] The appeal will be allowed, the order of the motions Judge granting leave to intervene will be set aside, PSAC's application for leave to intervene will be dismissed and its memorandum of fact and law filed on June 14, 1999, will be removed from the record. The appellants will be entitled to their costs on this appeal.

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[1] *Rothmans, Benson & Hedges Inc. v. Canada (Attorney General)*, [1990] 1 F.C. 74 (T.D.), at pp. 79–83; *Rothmans, Benson & Hedges Inc. v. Canada (Attorney General)*, [1990] 1 F.C. 84 (T.D.), at p. 88; *Rothmans, Benson & Hedges Inc. v. Canada (Attorney General)*, [1990] 1 F.C. 90 (C.A.).

[2] See *R. v. Bolton*, [1976] 1 F.C. 252 (C.A.) (*per* Jackett C.J.); *Tioxide Canada Inc. v. Canada*, [1995] 1 C.T.C. 285 (F.C.A.) (*per* Hugessen J.A.).

TAB 6.

Date: 20061222

Docket: A-116-06

Citation: 2006 FCA 426

Present: **NADON J.A.**

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY

Appellant

and

BOUTIQUE JACOB INC.

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on December 22, 2006.

REASONS FOR ORDER BY: NADON J.A.

Date: 20061222

Docket: A-116-06

Citation: 2006 FCA 426

Present: **NADON J.A.**

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY

Appellant

and

BOUTIQUE JACOB INC.

Respondent

REASONS FOR ORDER

NADON J.A.

[1] Before me are four motions to intervene in the present appeal of a decision of de Montigny J. of the Federal Court, 2006 FC 217, February 20, 2006.

[2] By his decision, the learned Judge maintained, in part, an action for damages commenced by Boutique Jacob Inc. (the "respondent") against a number of defendants, namely, Pantainer Ltd., Panalpina Inc., Orient Overseas Container Line Ltd. ("OOCL") and Canadian Pacific Railway ("CPR"). Specifically, the Judge granted judgment in favour of the respondent against the defendant

CPR and awarded it the sum of $35,116.56 with interest, and he dismissed the action insofar as it was directed against the other defendants.

[3] A brief examination of the facts and issues leading to the judgement of de Montigny J. will be helpful in understanding the basis upon which the motions to intervene are being made.

[4] At issue before the Judge was the carriage by various modes of transport from Hong Kong to Montreal of a container of goods, namely, pieces of textile in cartons, destined for the respondent. As is usual in the transport of containerized cargo, a number of entities were involved in the carriage of the container, namely, an ocean carrier, OOCL, which carried it from Hong Kong to Vancouver, and a railway carrier, CPR, which carried it from Vancouver to Montreal.

[5] On April 27, 2003, as a result of a train derailment which occurred near Sudbury, Ontario, part of the respondent's cargo was damaged and part of it was lost.

[6] It should be pointed out that at no time whatsoever did the respondent contract with either OOCL or CPR. Rather, the respondent retained the services of Panalpina Inc. which, in turn, retained the services of Pantainer Ltd. to carry the respondent's cargo from Hong Kong to Montreal. Pantainer then proceeded to engage OOCL to carry the container from Hong Kong to Montreal. In turn, OOCL entered into a contract of carriage with CPR with respect to the carriage of the container from Vancouver to Montreal.

[7] The issues before the Judge were, *inter alia*, whether the defendants, individually or collectively, were liable for the damages suffered by the respondent and, in the event of liability, whether the defendants could limit their liability either by law or by contract.

[8] As I have already indicated, the Judge dismissed the respondent's action against all of the defendants, except CPR. In so concluding, the Judge held that CPR was not entitled to limit its liability because it had not complied with the terms of section 137 of the *Canada Transportation Act*, S.C. 1996, c. C-10 (the "Act"), which provides as follows:

137. (1) **A railway company shall not limit or restrict its liability to a shipper for the movement of traffic except by means of a written agreement signed by the shipper or by an association or other body representing shippers.** (2) If there is no agreement, the railway company's liability is limited or restricted to the extent provided in any terms and conditions that the Agency may *(a)* on the application of the company, specify for the traffic; or *(b)* prescribe by regulation, if none are specified for the traffic. [Emphasis added]	137. (1) **La compagnie de chemin de fer ne peut limiter sa responsabilité envers un expéditeur pour le transport des marchandises de celui-ci, sauf par accord écrit signé soit par l'expéditeur, soit par une association ou un groupe représentant les expéditeurs.** (2) En l'absence d'un tel accord, la mesure dans laquelle la responsabilité de la compagnie de chemin de fer peut être limitée en ce qui concerne un transport de marchandises est prévue par les conditions de cette limitation soit fixées par l'Office pour le transport, sur demande de la compagnie, soit, si aucune condition n'est fixée, établies par règlement de l'Office. [Le souligné est le mien]

[9] More particularly, the Judge held that CPR could not limit its liability because it had not entered into a "... written agreement signed by the shipper or by an association or other body representing shippers" to that effect.

[10] It will be recalled that the services of CPR were retained by the ocean carrier, OOCL, and not by the owner of the goods, the respondent Boutique Jacob. In the Judge's view, the written agreement between CPR and OOCL did not meet the requirements of sub-section 137(1), as "the shipper" was not OOCL, but the respondent.

[11] CPR also argued that it was entitled to benefit from the limitations and exemptions of liability found in the bills of lading issued both by OOCL and by Pantainer, and more particularly, that it could benefit from the so-called Himalaya clause found in these bills of lading. De Montigny J. concluded that by reason of section 137 of the Act, neither the Himalaya clause nor the principles of sub-bailment could be successfully invoked by CPR. At paragraph 50 of his Reasons, he explained his conclusion in the following terms:

> 50. Alternatively, counsel for CPR has argued that her client could take advantage of the limitations and exemptions found in OOCL and Paintainer terms and conditions. It is true that clause 1 of the OOCL waybill and clause 3 of the Pantainer bill of lading explicitly provide that participating carriers shall be entitled to the same rights, exemptions from liability, defences and immunities to which each of these two carriers are entitled. But the application of these clauses to a railway carrier would defeat the purpose of s. 137 of the *Canada Transportation Act*. It would make no sense to protect the shipper by prescribing that a railway company cannot limit its liability except by written agreement signed by that shipper, if the railway company could nevertheless achieve the same result through the means of a Himalaya clause found upstream in the contract of another carrier. I recognize that such reasoning results in a less advantageous position for railway companies as opposed to other carriers. But this is true not only for the purpose of liability but also in many other respects, since other modes of transportation are not as heavily regulated as are railway companies.

[12] On March 20, 2006, CPR filed a Notice of Appeal in this Court and on March 30, 2006, the respondent filed a cross-appeal. On June 15, 2006, Zim Integrated Shipping Services Ltd., A.P. Moller-Maersk A/S and Hapag-Lloyd Container Line GmbH filed a motion for leave to intervene in the appeal. On July 13, 2006, August 23, 2006 and September 11, 2006, similar motions were filed

respectively by 13 protection and indemnity clubs ("P&I Clubs"), by Canadian National Railway Company ("CN") and by Safmarine Container Line Ltd.

[13] The proposed interveners seek to intervene in this appeal on the following questions:

1. The interpretation of section 137 of the Act, including, *inter alia*, the definition of "shipper", "association of" or "body representing shippers".
2. The right of a railway to invoke the Himalaya clause found in the ocean carrier's bill of lading.
3. The right of a railway to enforce the terms of confidential contracts that it has with an ocean carrier when sued by the owner of the damaged or lost cargo.

[14] The motions to intervene are all made pursuant to Rule 109 of the *Federal Courts Rules*, which reads as follows:

109. (1) **the Court may, on motion, grant leave to any person to intervene in a proceeding.**	**109.** (1) **La Cour peut, sur requête, autoriser toute personne à intervenir dans une instance.**
(2) Notice of a motion under subsection (1) shall	(2) L'avis d'une requête présentée pour obtenir l'autorisation d'intervenir
(a) set out the full name and address of the proposed intervener and of any solicitor acting for the proposed intervener; and	*a)* précise les nom et adresse de la personne qui désire intervenir et ceux de son avocat, le cas échéant;
(b) **describe how the proposed intervener wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding.**	*b)* **explique de quelle manière la personne désire participer à l'instance et en quoi sa participation aidera à la prise d'une décision sur toute question de fait et de droit se rapportant à l'instance.**
(3) In granting a motion under subsection (1), the Court shall give directions regarding	(3) La Cour assortit l'autorisation d'intervenir de directives concernant :
(a) the service of documents; and	*a)* la signification de documents;
(b) the role of the intervener, including costs, rights of appeal and any other	*b)* le rôle de l'intervenant, notamment en ce qui concerne les dépens, les droits d'appel et toute autre question relative à la procédure à suivre.

matters relating to the procedure to be followed by the intervener.

[Le souligné est le mien]

[Emphasis added]

[15] Three of the motions are brought by a number of companies, all represented by the same attorneys, which I will hereinafter refer to as the ocean carriers. These proposed interveners, with the exception of the P&I Clubs, are, like the defendant OOCL in the proceedings below, engaged in the transportation of containerized cargo to Canada from various points around the world and from Canada to various points around the world. The other proposed interveners in this group, the P&I Clubs, are insurance mutuals which protect their member shipowners and operators against, *inter alia*, third-party liability for cargo damage. For the present purposes, it is sufficient to note that they insure about 90% of the world's oceangoing tonnage and represent most, if not all, of the international ocean carriers of containerized cargo operating in Canada.

[16] The other motion is brought by CN, a federally-regulated railway which operates a continuous railway system in Canada and in the United States.

[17] The ocean carriers say that they meet the requirements for intervention and further say that their participation in the appeal will assist this Court in determining the factual and legal issues of the appeal for the following reasons:

- The ocean carrier involved in the trial of this action, OOCL, is not a party to the appeal and hence the Court of Appeal will not have the benefit of the point of view of one of the vital links to multimodal transportation, i.e., the ocean carrier which issued a multimodal bill of lading;

- An ocean carrier, such as OOCL, can be a shipper in the context of the rail movement of cargo as that term is understood in Section 137 of the Act, a point that CPR may not need to make or cannot make in its arguments on appeal;
- An ocean carrier could, alternatively, be a "body representing shippers" as that term is understood in Section 137 of the Act, an argument that CPR may not need to make or cannot make in its arguments on appeal;
- Himalaya clauses similar to the one contained in the OOCL bill of lading at issue are provisions which were developed by ocean carriers and are regularly found in all bills of lading of ocean carriers of containerized cargo. They have been developed to allow the ocean carrier's sub-contractors such as railways to benefit from, *inter alia*, the same liability regime and limits of liability to which the ocean carriers benefit under the terms of their contracts of carriage with cargo owners. Ocean carriers are therefore in the best position to speak to the intent and application of such clauses.
- Ocean carriers are in the best position to make the argument regarding the application of the rules on sub-bailment because CPR, in the present case, does not have to reply on this argument as it is arguably protected by the indemnity provisions found in its tariff. In any event, it is likely that the limits of liability incorporated in the rail contract between OOCL and CPR may have exceeded the value of the Plaintiff's claim, hence CPR's lack of interest to press the issue of the application of the principles of sub-bailment.

[18] With respect to its proposed intervention, CN says that its presence in the appeal will be of assistance to this Court in that:

- CN proposes to argue that the definition of shipper involves the control and not necessarily the ownership of goods;
- CN is the only Canadian railway with a full North American network and proposes to demonstrate the legal impact of the Trial decision on goods moving through Canada en route from and to international points;
- CN proposes to argue that Himalaya clauses should receive an interpretation harmonized with the interpretation given by the United States Supreme Court considering that a significant portion of containerized traffic destined to the United States enters that country through CN's network;
- CN is in the best position to assist the Federal Court of Appeal with respect to the issues raised in this appeal and in the appeal before the Quebec Court of Appeal of the Quebec Superior Court's decision in *Sumitomo Marine and Fire Insurance Co. Ltd. v. CN*, [2004] J.Q. 11243 in connection with the interpretation of section 137.

[19] In *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.*, 2000 F.C.J. No. 220, this Court, at paragraph 8 of the Reasons of Noël J.A., enumerated the following factors as those which ought to be considered in deciding whether a motion to intervene should be allowed:

> 8 It is fair to assume that in order to grant the intervention the motions Judge would have considered the following factors which were advanced by both the appellants and PSAC as being relevant to her decision:
> 1) Is the proposed intervener directly affected by the outcome?
> 2) Does there exist a justiciable issue and a veritable public interest?
> 3) Is there an apparent lack of any other reasonable or efficient means to submit the question of the Court?
> 4) Is the position of the proposed intervener adequately defended by one of the parties to the case?
> 5) Are the interests of justice better served by the intervention of the proposed third party?

6) Can the Court hear and decide the cause on its merits without the proposed intervener?

[20] In addition, Noël J.A. indicated that the Court had to have regard to Rule 109(2), which required a proposed intervener to indicate how its participation would assist the Court in determining the factual or legal issues raised by the proceedings.

[21] It must also be said that for leave to intervene to be granted, it is not necessary that all of the factors be met by a proposed intervener (see: *Rothmans Benson and Hedges Inc. v. Canada*, [1990] 1 F.C. 84 (TD); affirmed [1990] 1 F.C. 90 (CA)) and that, in the end, the Court has the inherent authority to allow intervention on terms and conditions which are appropriate in the circumstances (see: *Canada (Director of Investigations and Research) v. Air Canada*, [1989] 2 F.C. 88 (CA); affirmed [1989] 1 S.C.R. 236; also *Fishing Vessel Owners Association of B.C. v. Canada*, [1985] 57 N.R. 376 (CA) at 381).

[22] I now turn to the ocean carriers' motions to intervene.

[23] The ocean carriers say that the decision to be rendered by this Court in the appeal will have a significant impact on the multi-modal transportation industry, as the factual matrix represents a typical multi-modal transportation case and that the contractual documents in evidence are common across the industry. They say that de Montigny J.'s decision and that of the Quebec Superior Court in *Sumitomo Marine and Fire Insurance Co. Ltd. v. Canadian National Railway Co.*, [2004] J.Q. 11243, are the only two interpretations of section 137 of the Act. They further say that most ocean carriers of containerized cargo offer to their clients multi-modal transportation services in Canada,

that they have contracts with either CN or CPR with respect to the inland portion of the transportation services which they provide, and that such contracts consistently incorporate tariffs which provide for, *inter alia*, limitations of liability in favour of the railway for damage to cargo as well as an obligation of the part of the ocean carrier to indemnify the railway in the event that the latter is held liable to third parties in excess of such limits of liability.

[24] Hence, the ocean carriers point out that the direct consequence of de Montigny J.'s interpretation of section 137 of the Act is that failing written agreements between railways and cargo owners, the railways will be facing unlimited liability and, consequently, will seek to pursue indemnity rights against the ocean carriers in order to recover any amount paid in excess of the limits stipulated in the contracts between them and the ocean carriers.

[25] The ocean carriers therefore submit that they will ultimately be paying the amount of damages to which the railways have been condemned, to the extent that these amounts exceed the railways' limits of liability.

[26] In my view, leave ought to be granted to the ocean carriers. I am satisfied that the position which the ocean carriers seek to assert will not be adequately defended by CPR and that their participation will undoubtedly assist this Court in determining the legal issues raised by the appeal. An important, if not crucial, consideration in my decision to grant leave to the ocean carriers is that OOCL, the ocean carrier which carried the respondents' container from Hong Kong to Vancouver and which sub-contracted the Vancouver to Montreal portion of the carriage to CPR, is not a party in the appeal.

[27] As a result, it is my view that the interests of justice will be better served by allowing the ocean carriers to intervene.

[28] For these reasons, I will grant leave to the ocean carriers to intervene in the appeal and costs shall be spoken to. In so concluding, I am obviously not casting any aspersions on CPR and its attorneys. My point is simply that the ocean carriers will be bringing a different perspective to the issues which are before the Court.

[29] I now turn to CN's motion.

[30] I have not been convinced that leave to intervene ought to be granted to CN. In my view, CN's position and the arguments which it seeks to make in the appeal are identical to the position and the arguments that will be put forward by CPR. I have no reason to believe, and CN has offered none, that CPR will not adequately defend the position which it seeks to advance. As a result, this Court can hear and decide the appeal on its merits without the participation of CN. In the end, I do not believe that the interests of justice will be better served by allowing CN to intervene in this appeal.

[31] As a result, CN's motion will be dismissed. Costs shall be spoken to.

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-116-06
STYLE OF CAUSE:	CPR v. BOUTIQUE JACOB INC.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	NADON J.A.
DATED:	December 22, 2006

WRITTEN REPRESENTATIONS BY:

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