

**COURT OF APPEAL OF ALBERTA**



COURT OF APPEAL FILE NUMBER: 1703 0239AC

COURT FILE NUMBER: 1103 14112

REGISTRY OFFICE: EDMONTON

**Fast Track**

IN THE MATTER OF THE TRUSTEE ACT, RSA 2000, c T-8, AS AMENDED, and

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19 now known as SAWRIDGE FIRST NATION, ON APRIL 15, 1985 (the "1985 Sawridge Trust")

APPLICANTS: MAURICE FELIX STONEY AND HIS BROTHERS AND SISTERS

STATUS ON APPEAL: Interested Party

RESPONDENTS (ORIGINAL APPLICANTS): ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Sawridge Trustees")

STATUS ON APPEAL: Respondents

RESPONDENT PUBLIC TRUSTEE OF ALBERTA (the "OPGT")

STATUS ON APPEAL: Not a Party to the Appeal

INTERVENOR: SAWRIDGE FIRST NATION

STATUS ON APPEAL: Respondent

INTERESTED PARTY: PRISCILLA KENNEDY, Counsel for Maurice Felix Stoney and His Brothers and Sisters

STATUS ON APPEAL: Appellant

DOCUMENT: **EXTRACTS OF KEY EVIDENCE OF THE RESPONDENT, SAWRIDGE FIRST NATION**

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Appeal from the Case Management Order of  
The Honourable Mr. Justice D.R.G. Thomas  
Dated the 31<sup>st</sup> day of August, 2017  
Filed the 6<sup>th</sup> day of October, 2017

---

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INTER VIVOS SETTLEMENT CREATED BY  
CHIEF WALTER PATRICK TWINN, OF THE  
SAWRIDGE INDIAN BAND, NO. 19 now known as  
SAWRIDGE FIRST NATION, ON APRIL 15, 1985  
(the "1985 Sawridge Trust")

APPLICANTS: MAURICE FELIX STONEY AND HIS BROTHERS  
AND SISTERS

STATUS ON APPEAL: Interested Party

RESPONDENTS (ORIGINAL APPLICANTS): ROLAND TWINN, CATHERINE TWINN,  
WALTER FELIX TWIN, BERTHA  
L'HIRONDELLE and CLARA MIDBO, as Trustees  
for the 1985 Sawridge Trust (the "Sawridge Trustees")

STATUS ON APPEAL: Respondents

RESPONDENT PUBLIC TRUSTEE OF ALBERTA (the "OPGT")

STATUS ON APPEAL: Not a Party to the Appeal

INTERVENOR: SAWRIDGE FIRST NATION

STATUS ON APPEAL: Respondent

INTERESTED PARTY: PRISCILLA KENNEDY, Counsel for Maurice Felix  
Stoney and His Brothers and Sisters

STATUS ON APPEAL: Appellant

DOCUMENT: **EXTRACTS OF KEY EVIDENCE OF THE  
RESPONDENT, SAWRIDGE FIRST NATION**

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Appeal from the Case Management Order of  
The Honourable Mr. Justice D.R.G. Thomas  
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Filed the 6<sup>th</sup> day of October, 2017

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## EXTRACTS OF KEY EVIDENCE OF THE RESPONDENTS

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**FOR THE APPELLANT,  
Priscilla Kennedy**

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**FOR THE RESPONDENT,  
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**FOR THE RESPONDENTS,  
Sawridge Trustees**

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### INTERESTED PARTY

Maurice Felix Stoney  
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Slave Lake, AB T0G 2A1  
Phone: (780) 516-1143

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Form 27

[Rules 6.3 and 10.52(1)]

COURT FILE NUMBER 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

Clerk's Stamp

JUDICIAL CENTRE: EDMONTON

IN THE MATTER OF THE *TRUSTEE ACT*,  
RSA 2000, c T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE  
BAND INTER VIVOS SETTLEMENT  
CREATED BY CHIEF WALTER PATRICK  
TWINN, OF THE SAWRIDGE INDIAN  
BAND, NO 19 now known as SAWRIDGE  
FIRST NATION ON APRIL 15, 1985

APPLICANTS: ROLAND TWINN, CATHERINE TWINN,  
WALTER FELIX TWIN, BERTHA  
L'HIRONDELLE and CLARA MIDBO, as  
Trustees for the 1985 Sawridge Trust

DOCUMENT **APPLICATION FOR INTERVENOR  
STATUS BY THE SAWRIDGE FIRST  
NATION**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT Parlee McLaws LLP  
Barristers and Solicitors  
Patent & Trademark Agents  
1500 Manulife Place  
10180-101 Street  
Edmonton, AB T5J 4K1  
Attention: **Edward H. Molstad, Q.C.**  
Telephone: 780-423-8503  
Facsimile: 780-423-2870  
File No.: 64203-7/EHM

**NOTICE TO THE RESPONDENTS: MAURICE FELIX STONEY and HIS BROTHERS  
AND SISTERS**

This application is made against you. You are the Respondents.

You have the right to state your side in this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	September 30, 2016
Time:	N/A
Where:	The Law Courts, Edmonton, Alberta
Before Whom:	Justice D.R.G. Thomas via desktop application

Go to the end of this document to see what else you can do and when you must do it.

#### **Remedy Claimed or Sought:**

1. An Order pursuant to Rule 2.10 of the *Rules of Court*, Alta Reg 124/2010, granting the Sawridge First Nation ("**Sawridge**") status to intervene in the application filed in this action on August 12, 2016 by Maurice Stoney and His Brothers And Sisters (the "**Stoney Applicants**") to become parties (the "**Stoney Application**"), on terms which include the following:
  - a. Sawridge shall have the right to question the Stoney Applicants on any Affidavits filed as part of the Stoney Application;
  - b. Sawridge shall have the right to apply to strike the Stoney Application and/or to have the Stoney Application dismissed;
  - c. Sawridge shall have the right to make submissions in response to the Stoney Application; and
  - d. Sawridge shall have the right to seek costs as against Maurice Stoney with respect to the Stoney Application.
2. If the relief sought pursuant to Paragraph 1 of this Application is granted, then an Order striking some or all of the Stoney Application pursuant to Rule 3.68 of the *Rules of Court*, Alta Reg 124/2010, on the basis that the Stoney Application is frivolous, and constitutes an abuse of process.
3. Costs of this Application on a solicitor and his own client basis, or, in the alternative, on an enhanced basis.
4. Such further and other relief as this Honourable Court deems just.

#### **Grounds for Making this Application:**

5. The Stoney Application and the materials sworn in support of same contain requests for relief and statements that concern the Stoney Applicants' entitlements to membership in Sawridge.
6. Certain of the Stoney Applicants have been involved in litigation, administrative and other proceedings with Sawridge regarding their entitlement to membership in Sawridge. All of those proceedings involved allegations that are similar or identical to the allegations raised in the Stoney Application regarding their entitlement to membership.
7. The issue of the Stoney Applicants' entitlement to membership has been adjudicated and decided by the Federal Court of Appeal, the Federal Court Trial Division, and the Canadian Human Rights Commission, and is accordingly *res judicata*.

8. Sawridge would be specially affected by a decision in the Stoney Application, as that decision would address the Stoney Applicants' right to membership in Sawridge.
9. Sawridge has special expertise and insight to bring to bear concerning the Stoney Applicants' allegations regarding their membership in Sawridge.
10. The Stoney Application discloses no valid claim, as the Stoney Applicants are attempting to litigate matters as part of the Stoney Application that are *res judicata*.
11. Furthermore, or in the alternative, the Stoney Applicants' attempt to litigate matters as part of the Stoney Application that are *res judicata* constitutes an abuse of process.
12. Sawridge has received orders for costs against the Applicant Maurice Stoney as a result of proceedings in the Federal Court and the Court of Appeal of Alberta, which Maurice Stoney has refused to pay.
13. Such further and other grounds as counsel may advise.

**Material or Evidence to be Relied Upon:**

14. The Affidavit of Chief Roland Twinn, sworn September 21, 2016; and
15. Such further and other material as counsel may advise and this Honourable Court may allow.

**Applicable Rules and Legislation:**

16. Rules 2.10 and 3.68 of the *Rules of Court*, Alta Reg 124/2010.
17. Part 10, Division 2 of the *Rules of Court*, Alta Reg 124/2010.

**Applicable Acts and regulations:**

18. None

**Any irregularity complained of or objection relied on:**

19. None

**How the application is proposed to be heard or considered:**

20. Via desktop application by Justice D.R.G. Thomas pursuant to Justice D.R.G. Thomas' order during a case management meeting held August 24, 2016.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

COURT FILE NUMBER 1103 14112

Clerk's Stamp

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, RSA 2000, c T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO 19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985 (the "1985 Sawridge Trust")



APPLICANTS: ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Sawridge Trustees")

**DOCUMENT**

**AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**Parlee McLaws LLP**  
Barristers & Solicitors  
1500 Manulife Place  
10180 - 101 Street NW  
Edmonton, Alberta T5J 4K1  
Attention: **Edward H. Molstad, Q.C.**  
Telephone: (780) 423-8500  
Facsimile: (780) 423-2870  
File Number: **64203.7/EHM**

**AFFIDAVIT OF ROLAND TWINN**

Sworn on September 21, 2016

I, ROLAND TWINN, of the Sawridge Indian Reserve 150G, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I have been a member of the Sawridge First Nation ("Sawridge") since my birth in 1965, I was a Councillor of Sawridge from 1997 to 2003, and I have been the Chief of Sawridge since 2003, as such I have personal knowledge of the matters set out in this affidavit except where stated to be based upon information and belief, in which case I do verily believe the same to be true.

#### **Purpose of this Affidavit**

2. I swear this affidavit in support of an application for Order granting Sawridge status to intervene in the application filed in this action on August 12, 2016 by Maurice Stoney and his living brothers and sisters (the "Stoney Application"), pursuant to Rule 2.10 of the *Alberta Rules of Court*, Alta Reg 124/2010;
3. I further swear this affidavit in support of an application for the following Orders, if Sawridge is granted status to intervene in the Stoney Application:
  - a. an Order striking some or all of the Stoney Application, pursuant to Rule 3.68 of the *Alberta Rules of Court*, Alta Reg 124/2010;
  - b. an Order dismissing the Stoney Application; and
  - c. an Order that the Stoney Applicants pay Sawridge costs on a solicitor and his own client basis or, alternatively, enhanced costs, forthwith upon dismissal of the Stoney Application, pursuant to Rules 10.29, 10.30, 10.31 and 10.33 of the *Alberta Rules of Court*, Alta Reg 124/2010.

#### **History of Membership Disputes Between Maurice Stoney and Sawridge**

4. Maurice Stoney is the son of William Stoney, who is Johnny Stoney's son. Johnny Stoney is a former member of Sawridge who is deceased.
5. William Stoney voluntarily gave up his Indian status and was enfranchised by Order in Council P.C. 40/6000 on August 1, 1944 under section 114 of the *Indian Act* (Canada). As a result, his wife and two sons (Maurice Stoney, born September 24, 1941 and Alvin Stoney, born May 7, 1943) were also enfranchised and ceased to be members of Sawridge, on August 1, 1944.
6. On April 17, 1985, the Federal Government enacted Bill C-31, which gave Maurice Stoney the right to have his Indian status restored, but did not give him anything more than the right to apply for membership in Sawridge pursuant to Sawridge's membership rules. Bill C-31 only provided for an automatic right to membership in select situations, none of which applied to Maurice Stoney, as determined by the Federal Court of Appeal and discussed at paragraph 13, below.
7. On July 8, 1985, Sawridge assumed control of membership in Sawridge in accordance with its membership rules, pursuant to section 10 of the *Indian Act*, RSC, 1985, C I-5.

8. In 1995, Maurice Stoney, along with his cousins, Aline Huzar and June Kolosky, and others, commenced an action in Federal Court against Sawridge (Action No. T-1529-95) seeking damages for lost benefits, economic losses, and the "arrogant and high-handed manner in which [Sawridge Chief and Council] has deliberately, and without cause, denied [them] reinstatement as Band Members".
9. Within that action, Maurice Stoney and the others also sought a court order that their names be added to the Sawridge membership list on the basis that they each had an automatic right of membership in Sawridge.
10. Maurice Stoney was represented by legal counsel during those court proceedings.
11. During those proceedings, Maurice Stoney and the others brought an application seeking to amend their Statement of Claim to add a claim for the following relief: "a declaration that the Band rules are discriminatory and exclusionary, and hence invalid."
12. The Motions Judge allowed the amendment, but Sawridge appealed the matter to the Federal Court of Appeal.
13. On June 13, 2000, the Federal Court of Appeal overturned the Motions Judge and concluded that the declaratory relief could only be sought against Sawridge on an application for judicial review. The Federal Court of Appeal also commented that these individuals, including Maurice Stoney, did not have an automatic right to membership but had only, at most, a right to apply to Sawridge for membership in accordance with the membership rules. Attached hereto and marked as **Exhibit "1"** to this my affidavit is a copy of the Federal Court of Appeal's June 13, 2000 decision.
14. The Federal Court of Appeal ordered that these individuals, including Maurice Stoney, pay costs to Sawridge.
15. Sawridge did not then receive a completed membership application form from Maurice Stoney until August 30, 2011.
16. On or about December 7, 2011, Sawridge Chief and Council denied Maurice Stoney's membership application. Maurice Stoney subsequently appealed that decision.
17. On April 21, 2012, the Appeal Committee of Sawridge convened to hear Maurice Stoney's appeal, and he was represented by legal counsel. The Appeal Committee dismissed his appeal.
18. On May 11, 2012, represented by legal counsel, Maurice Stoney filed an application for judicial review of the Appeal Committee's decision in Federal Court, being Action T-923-12.
19. On June 26, 2012, I swore an affidavit in opposition to Maurice Stoney's judicial review application, being Federal Court No. T-923-12. Attached hereto and marked as **Exhibit**

"2" to this my affidavit, is a true copy of my June 26, 2012 affidavit with exhibits, the contents of which I confirm remain true.

20. On March 5, 2013 Justice Barnes heard Maurice Stoney's judicial review application.
21. On May 15, 2013, Justice Barnes issued his Reasons for Judgment and Judgment. He dismissed Maurice Stoney's applications for judicial review and upheld the decision of the Sawridge Appeal Committee denying him membership in Sawridge. A copy of Justice Barnes' Reasons for Judgment is attached hereto and marked as **Exhibit "3"** to this my affidavit.
22. Justice Barnes ordered that Maurice Stoney pay costs to Sawridge for the judicial review application. This cost award, which was subsequently assessed at \$2,995.65 by the Federal Court Assessment Officer on October 24 2014, remains unpaid despite requests for payment of same by our counsel, Parlee McLaws LLP. Attached hereto and marked as **Exhibit "4"** to this my affidavit are a true copies of our counsel's correspondence and the Certificate of Assessment.
23. Maurice Stoney did not appeal the Reasons for Judgment and Judgment of Justice Barnes to the Federal Court of Appeal.
24. Subsequently, on January 31, 2014, Mr. Stoney filed a complaint with the Canadian Human Right Commission relating to Sawridge's denial of his membership and alleging that Sawridge's membership rules and application process were discriminatory. Sawridge responded to the complaint.
25. On April 15, 2015, the Deputy Chief Commissioner, on behalf of the Canadian Human Rights Commission, issued a decision refusing to deal with Maurice Stoney's complaint, because the matters at issue, namely the denial of Maurice Stoney's membership in Sawridge, had already been addressed as part of the aforementioned Federal Court proceedings. Attached hereto and marked as **Exhibit "5"** to this my affidavit is a true copy of the Deputy Chief Commissioner's decision.
26. Maurice Stoney is not a member of Sawridge, and this fact has been adjudicated and confirmed by the Federal Court.

#### Unpaid Costs Awards of Maurice Stoney

27. As indicated, costs awards in favour of Sawridge were made against Maurice Stoney in the two previous Federal Court Actions.
28. In addition, on February 26, 2016, the Court of Appeal dismissed Mr. Stoney's application seeking an extension of time to file an appeal of Justice Thomas' Order of December 17, 2015. Sawridge, as a respondent to that particular application was awarded costs by the Court of Appeal. The Assessment Officer subsequently approved Sawridge's Bill of Costs in the amount \$898.70 on June 14, 2016. Attached hereto and marked as

**Exhibit "6"** to this my affidavit is at true copy of the Bill of Costs as accepted by the Assessment Officer.

29. As at the date of my swearing of this affidavit, Maurice Stoney has not paid any of the aforementioned costs awards made in favour of Sawridge.

**The Other Stoney Applicants**

30. Maurice Stoney's siblings also are not members of Sawridge as asserted in the Stoney Application.
31. To the best of my knowledge, William Stoney had only two children at the date of his enfranchisement on August 1, 1944, as listed on his application for enfranchisement: Alvin Stoney, and Maurice Stoney.
32. To the best of my knowledge, all of William Stoney's subsequent children were born after his enfranchisement and have therefore never been members of Sawridge.
33. A William C. Stoney applied for membership in Sawridge, on December 6, 2004. Sawridge denied his membership on January 14, 2009, and he did not appeal. William C. Stoney subsequently reapplied for membership in Sawridge on January 25, 2011. On November 22, 2011, Sawridge sent him a letter advising that he had already applied and been denied membership.
34. Sawridge provided Bernie Stoney with a membership application form on November 17, 2004. Sawridge has never received a completed membership application form from Bernie Stoney.
35. Sawridge provided Gail Stoney with a membership application forms on April 3, 2012 and July 19, 2012. Sawridge has never received a completed membership application form from Gail Stoney.
36. Sawridge has no records of any requests for a membership application form from Linda Stoney, Angeline Stoney, Betty Jean Stoney, Alma Stoney, Alva Stoney, or Bryan Stoney. Sawridge has never received a completed membership application form from any of these six persons.

SWORN BEFORE ME at the Town of Slave )  
Lake, in the Province of Alberta, this 21<sup>st</sup> )  
day of September, 2016. )

  
\_\_\_\_\_  
A Commissioner for Oaths in and for the )  
Province of Alberta )

**MICHAEL R. MCKINNEY Q.C.**  
**BARRISTER & SOLICITOR**

  
\_\_\_\_\_  
ROLAND TWINN

# EXHIBIT 1

Federal Court  
of Appeal      Cour d'appel  
fédérale

Federal Court of Appeal

[Home](#) > [Decisions](#) > [Federal Court of Appeal Decisions](#) > Huzar v. Canada[Help](#)

## Federal Court of Appeal Decisions

Huzar v. Canada

Court (s) Database: Federal Court of Appeal Decisions

Date: 2000-06-13

File numbers: A-326-98

Date: 20000613

Docket: A-326-98

CORAM: DÉCARY, J.A.

SEXTON, J.A.

EVANS, J.A.

BETWEEN:

This is Exhibit "1" referred to in the  
Affidavit ofRoland Twinn  
Sworn before me this 21<sup>st</sup> day  
of September A.D. 2016A Notary Public, A Commissioner for Oaths  
in and for the Province of AlbertaMICHAEL R. MCKAY Q.C.  
BARRISTER & SOLICITORHER MAJESTY THE QUEEN, IN RIGHT OF CANADA, DEPARTMENT OF INDIAN AND  
NORTHERN AFFAIRS CANADA and WALTER PATRICK TWINN, as Chief of the  
Sawridge Indian Band and the SAWRIDGE INDIAN BAND

Defendants

(Appellants)

- and -

**ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY, WILLIAM BARTHOLOMEW  
McGILLIVRAY, MARGARET HAZEL ANNE BLAIR, CLARA HEBERT, JOHN EDWARD  
JOSEPH McGILLIVRAY, MAURICE STONEY, ALLEN AUSTIN McDONALD, LORNA  
JEAN ELIZABETH McREE, FRANCES MARY TEES, BARBARA VIOLET MILLER (nee  
McDONALD)**

Plaintiffs

(Respondents)

Heard at Toronto, Ontario, Tuesday, June 13, 2000

Judgment delivered from the Bench at Toronto, Ontario  
on Tuesday, June 13, 2000

REASONS FOR JUDGMENT OF THE COURT BY: EVANS, J.A.

**Date:** 20000613

**Docket:** A-326-98

**CORAM:** DÉCARY J.A.

SEXTON J.A.

EVANS J.A.

**BETWEEN:**

**HER MAJESTY THE QUEEN, IN RIGHT OF CANADA, DEPARTMENT OF INDIAN AND  
NORTHERN AFFAIRS CANADA and WALTER PATRICK TWINN, as Chief of the  
Sawridge Indian Band and the SAWRIDGE INDIAN BAND**

Defendants

(Appellants)

- and -

**ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY, WILLIAM BARTHOLOMEW  
McGILLIVRAY, MARGARET HAZEL ANNE BLAIR, CLARA HEBERT, JOHN EDWARD  
JOSEPH McGILLIVRAY, MAURICE STONEY, ALLEN AUSTIN McDONALD, LORNA  
JEAN ELIZABETH McREE, FRANCES MARY TEES, BARBARA VIOLET MILLER (nee  
McDONALD)**

Plaintiffs

(Respondents)

**REASONS FOR JUDGMENT**

*(Delivered from the Bench at Toronto, Ontario*

*on Tuesday, June 13, 2000)*

**EVANS J.A.**

[1] This is an appeal against an order of the Trial Division, dated May 6<sup>th</sup>, 1998, in which the learned Motions Judge granted the respondents' motion to amend their statement of claim by adding paragraphs 38 and 39, and dismissed the motion of the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, to strike the statement of claim as disclosing no reasonable cause of action.

[2] In our respectful opinion, the Motions Judge erred in law in permitting the respondents to amend and in not striking out the unamended statement of claim. The paragraphs amending the statement of claim allege that the Sawridge Indian Band rejected the respondents' membership applications by misapplying the Band membership rules (paragraph 38), and claim a declaration that the Band rules are discriminatory and exclusionary, and hence invalid (paragraph 39).

[3] These paragraphs amount to a claim for declaratory or prerogative relief against the Band, which is a federal board, commission or other tribunal within the definition provided by section 2 of the *Federal Court Act*. By virtue of subsection 18(3) of that Act, declaratory or prerogative relief may only be sought against a federal board, commission or other tribunal on an application for judicial review under section 18.1. The claims contained in paragraphs 38 and 39 cannot therefore be included in a statement of claim.

[4] It was conceded by counsel for the respondents that, without the proposed amending paragraphs, the unamended statement of claim discloses no reasonable cause of action in so far as it asserts or assumes that the respondents are entitled to Band membership without the consent of the Band.

[5] It is clear that, until the Band's membership rules are found to be invalid, they govern membership of the Band and that the respondents have, at best, a right to apply to the Band for membership. Accordingly, the statement of claim against the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, will be struck as disclosing no reasonable cause of action.

[6] For these reasons, the appeal will be allowed with costs in this Court and in the Trial Division.

"John M. Evans"

J.A.

**FEDERAL COURT OF CANADA**

**Names of Counsel and Solicitors of Record**

**DOCKET: A-326-98**

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN, IN RIGHT OF CANADA,  
DEPARTMENT

OF INDIAN AND NORTHERN AFFAIRS CANADA and WALTER  
PATRICK TWINN, as Chief of the Sawridge Indian Band and the  
SAWRIDGE INDIAN BAND  
- and -

ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY, WILLIAM  
BARTHOLOMEW MCGILLIVRAY, MARGARET HAZEL ANNE BLAIR, CLARA HEBERT, JOHN  
EDWARD JOSEPH MCGILLIVRAY, MAURICE STONEY, ALLEN AUSTIN McDONALD, LORNA  
JEAN ELIZABETH MCREE, FRANCES MARY TEES, BARBARA VIOLET MILLER (nee  
McDONALD)

**DATE OF HEARING: TUESDAY, JUNE 13, 2000**

**PLACE OF HEARING: TORONTO, ONTARIO**

**REASONS FOR JUDGMENT BY: EVANS J.A.**

**Delivered at Toronto, Ontario on**

**Tuesday, June 13, 2000**

**APPEARANCES BY: Mr. Philip P. Healey**

**For the Defendants**

**(Appellants)**

**Mr. Peter V. Abrametz**

**For the Plaintiffs**

**(Respondents)**

**SOLICITORS OF RECORD: Aird & Berlis  
Barristers & Solicitors  
BCE Place, Suite 1800, Box 754  
181 Bay Street  
Toronto, Ontario  
M5J 2T9**

**For the Defendants**

**(Appellants)**

**Eggum, Abrametz & Eggum**

**Barristers & Solicitors**

**101-88-13th Street East**

**Prince Albert, Saskatchewan**

**S6V 1C6**

***For the Plaintiffs***

***(Respondents)***

**FEDERAL COURT OF APPEAL**

***Date: 20000613***

***Docket: A-326-98***

***BETWEEN:***

**HER MAJESTY THE QUEEN, IN RIGHT OF  
CANADA, DEPARTMENT OF INDIAN AND  
NORTHERN AFFAIRS CANADA and WALTER  
PATRICK TWINN, as Chief of the Sawridge Indian  
Band and the SAWRIDGE INDIAN BAND**

Defendants

(Appellants)

- and -

**ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY, WILLIAM  
BARTHOLOMEW MCGILLIVRAY, MARGARET HAZEL ANNE BLAIR, CLARA HEBERT,  
JOHN EDWARD JOSEPH MCGILLIVRAY, MAURICE STONEY, ALLEN AUSTIN  
McDONALD, LORNA JEAN ELIZABETH McREE, FRANCES MARY TEES, BARBARA  
VIOLET MILLER (nee McDONALD)**

Plaintiffs

(Respondents)

***REASONS FOR JUDGMENT***

Recent additions    Mailing List

Decided by Lexum

Date Modified: 2016-09-09

EXHIBIT 2

Federal Court No. T-923-12

**FEDERAL COURT****BETWEEN:**

This is Exhibit "2" referred to in the  
Affidavit of

Roland Twinn

Sworn before me this 21 day  
of September A.D., 2016

A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

**MICHAEL R. McKINNEY Q.C.**  
**BARRISTER & SOLICITOR**

**Maurice Felix Stoney**

**Applicant**

- and -

**Sawridge First Nation**

**Respondent**

**AFFIDAVIT**

I, ROLAND TWINN of the Sawridge Indian Reserve 150G, in the Province of Alberta, businessman, MAKE OATH AND SAY:

1. I have been a member of the Sawridge First Nation since my birth in 1965 and the Chief of the Sawridge First Nation since 2003, as such I have personal knowledge of the matters set out in this affidavit except where stated to be on information and belief.
2. Sawridge First Nation assumed control over its own membership under section 10 of the *Indian Act* on July 8, 1985, the day its membership rules, supporting documentation and by-laws No. 103, 104, 105 and 106 were handed to the Deputy Minister of Indian and Northern Affairs who accepted them on behalf of the Minister. Attached and marked as **Exhibit "A"** to this my affidavit is a copy of a letter dated July 9, 1985 from Gowling & Henderson to the Deputy Minister confirming delivery of the Sawridge First Nation membership rules to the Minister on July 8, 1985 along with notice that Sawridge First Nation was assuming control of its own membership.
3. Sawridge First Nation did not receive a completed membership application form from Maurice Stoney until it received Maurice Stoney's membership application dated August 30, 2011.

4. When Chief and Council considered Maurice Stoney's membership application it had before it:

- A copy of Maurice Stoney's Application Form dated August 30, 2011 attached and marked as **Exhibit "B"** to this my affidavit;
- A copy of the Amended Statement of Claim in Federal Court No. T-1529-95 attached and marked as **Exhibit "C"** to this my affidavit;
- The June 13, 2000 Reasons for Judgment of the Federal Court of Appeal in Appeal No. A-326-98, a copy of which Reasons for Judgment is attached as **Exhibit "D"** to this my affidavit;
- A copy of a May 12, 1944 letter from P. Demers attached and marked as **Exhibit "E"** to this my affidavit;
- A copy of a 1910 payroll attached and marked as **Exhibit "F"** to this my affidavit;
- A copy of a Fifth Estate Transcript attached and marked as **Exhibit "G"** to this my affidavit;
- A copy of a June 1, 1993 letter from Maurice Stoney attached and marked as **Exhibit "H"** to this my affidavit;
- A copy of a June 16, 1993 Lakeside Leader Article attached and marked as **Exhibit "I"** to this my affidavit;
- A copy of a June 21, 1993 Scope Article attached and marked as **Exhibit "j"** to this my affidavit;
- A copy of a June 13, 1993 Edmonton Journal Article attached and marked as **Exhibit "K"** to this my affidavit;
- A copy of a June 21, 1993 Alberta Report Article attached and marked as **Exhibit "L"** to this my affidavit;
- A copy of an August 18, 1993 Lakeside Leader Article attached and marked as **Exhibit "M"** to this my affidavit;
- A copy of an August 12, 1993 Protest Handout attached and marked as **Exhibit "N"** to this my affidavit;

- A copy of a February 29, 2000 letter from Maurice Stoney attached and marked as **Exhibit "O"** to this my affidavit;
  - A copy of an October 18, 2000 KCFN Declaration attached and marked as **Exhibit "P"** to this my affidavit;
  - A copy of an April 4, 2001 letter from Maurice Stoney attached and marked as **Exhibit "Q"** to this my affidavit; and
  - A copy of a March 21, 2001 letter from Maurice Stoney attached and marked as **Exhibit "R"** to this my affidavit.
5. After considering the membership application of Maurice Stoney, Chief and Council decided that he did not have a specific right to have his name entered on the membership list of the Sawridge First Nation and decided not to exercise its discretion under the Sawridge First Nation membership rules to enter his name on the membership list of the Sawridge First Nation. Attached and marked as **Exhibit "S"** to this my affidavit is a Membership Processing Form for Maurice Felix Stoney prepared after Chief and Council made its decision on his membership application that sets out a "Summary of First Nation Councils Judgment" that was approved by Chief and Council. Chief and Council's decision on his membership application was then communicated to Maurice Stoney on or about December 7, 2011 by registered letter.
6. In a letter dated December 22, 2011 from lawyers in Peace River, Alberta, received by fax by Sawridge First Nation on December 22, 2011 Sawridge was told that three unsuccessful applicants for membership were appealing the Chief and Council's decisions. Attached and marked as **Exhibit "T"** to this my affidavit is a copy of that December 22, 2011 letter with attached letter from Maurice Stoney dated December 19, 2011, attached letter from June Kolosy dated December 20, 2011 and with attached letter from Aline Huzar dated December 19, 2011.
7. The hearing of the applicant's appeal was originally scheduled for February 25, 2012 but, at the request of the applicant was rescheduled for April 21, 2012. In advance, by letter dated March 23, 2012 from Sawridge First Nation's lawyer to the Edmonton lawyer for


the applicant, the applicant's lawyer was provided with a copy of the Record in relation to each applicant, in particular Exhibits "B" through "T" and also a copy of the Appeal Procedure. Attached and marked as **Exhibits "U" and "V"** to this my affidavit are copies of the March 23, 2012 letter and the Appeal Procedure.

8. On April 21, 2012 the Appeal Committee of the Sawridge First Nation convened to hear the applicant's appeal.
9. The Appeal Committee is, under sections 12 and 13 of the membership rules (see Exhibit I to the Stoney Affidavit), the electors of the Sawridge First Nation who attend the meeting convened to hear an appeal. Twenty-two electors attended the April 21, 2012 meeting. I was one of them.
10. A motion was made to accept proxy votes from electors of the Sawridge First Nation who were not in attendance. That motion was rejected by the Chair of the Appeal Committee as being contrary to the intent of section 13 of the membership rules and section 7 of the Appeal Procedure.
11. After accepting written submissions and hearing oral submissions from the applicants' lawyer and after questioning the applicants' lawyer the Appeal Committee met in camera. Sawridge First Nation's lawyers were not included in the in camera meeting.
12. Attached and marked as **Exhibit "W"** to this my affidavit is copy of the written submissions of the applicant before the Appeal Committee.
13. The Appeal Committee met in camera for approximately 3 hours, from about 2:00 P.M. to about 5:00 P.M.
14. Along with Exhibits "B" – "T" the Appeal Committee also had before it in its in camera meeting a legible copy of Exhibit "I". Attached and marked as **Exhibit "X"** to this my affidavit is a copy of that legible copy..

15. On or about 5:00 P.M. on April 21, 2012 the Appeal Committee came out of its in camera meeting and dismissed the appeals. Attached and marked as **Exhibit "Y"** to this my affidavit is a copy of the Appeal Committee's decision.
16. To my knowledge, from discussions with Elders and review of historical documents over the years, I believe that there has never been a "Lesser Slave Lake Band". There were, instead, several bands located at various points along the shores of the Lesser Slave Lake and that, in 1899, the headmen of those bands appointed Kinosayoo as a spokesman to speak on their behalf as he had the best grasp of the English language. The headman of the Sawridge band was Charles Neesotasis. Charles Neesotasis signed Treaty #8 in 1899 on behalf of the ancestors of the Sawridge First Nation.
17. As set out in the applicant's documents and paragraph 4 of the Stoney Affidavit, Johnny Stoney was a member of the Alexander Band, a band near Edmonton, until his transfer to the Sawridge First Nation on September 14, 1910.
18. Johnny Stoney's son William Stoney was, according to the applicant's documents, born in 1921 when his father was a member of the Sawridge First Nation but, in 1944 William was voluntarily enfranchised along with his wife and his two minor sons, Melvin and Maurice and, effective August 1, 1944, the family voluntarily gave up their Indian status and their membership in Sawridge First Nation.
19. Contrary to paragraph 7 of the Stoney Affidavit, Sawridge has no knowledge of any involvement of Maurice Stoney in the Sawridge First Nation at any time.

20. I make this affidavit in opposition to the judicial review application brought by Maurice Stoney.

SWORN BEFORE ME at the TOWN OF )  
Stony Lake, in the Province of Alberta, )  
this 26 day of June, 2012. )

  
A COMMISSIONER FOR OATHS IN AND )  
FOR THE PROVINCE OF ALBERTA ) **ROLAND TWINN**

**DONNA BROWN**  
A Commissioner for Oaths  
In and for The Province of Alberta  
My Appointment Expires December 30, 2012

# TAB A

# Gowling & Henderson

BARRISTERS & SOLICITORS  
PATENT & TRADE MARK AGENTS

160 ELGIN STREET  
OTTAWA, CANADA  
K1N 8S3

TELEPHONE (613) 232-1781  
TELECOPIER (613) 583-9869  
TELEX 053-4114 "HERSON-OTT"

HENRY S. BROWN

2 FIRST CANADIAN PLACE  
TORONTO, CANADA  
M5X 1A4

102 BLOOR STREET WEST  
TORONTO, CANADA  
M5S 1M6

9 July 1985

BY COURIER

Mr. Bruce Rawson  
Deputy Minister of the  
Department of Indian and  
Northern Affairs Canada  
Les Terrasses de la Chaudière  
Room 2101  
10 Wellington Street  
Hull, Quebec  
K1A 0H4

Dear Mr. Rawson:

Re: Sawridge Indian Band

This is Exhibit "A" referred to in the  
Affidavit of

*ROLAND TWINN*

Sworn before me this 26 day  
of JUNE A.D. 20 12

*H. Brown*

A Commissioner for the Province of Alberta  
A Commissioner for the Province of Alberta

In and for the Province of Alberta

My Appointment Expires December 30, 2012

This will confirm that I met with you and the Executive Director of the Sawridge Indian Band, Bruce Thom, at your offices at Hull, Quebec on July 8, 1985, at which time Mr. Thom provided to you and you accepted on behalf of the Minister of Indian and Northern Affairs the membership code of the Sawridge Indian Band and supporting documentation, together with copies of the Residency By-law (No. 103), and By-laws 104, 105, and 106 of the Sawridge Indian Band.

This will confirm as well our request at that time that the Sawridge Indian Band be advised as expeditiously as possible whether the membership code, Residency by-law or the other three by-laws are acceptable to the Minister.

This will also confirm our conversation with Mr. Smith, the Registrar under the Indian Act to the effect that no names had been added to the Band List of the Sawridge Indian Band as a consequence of the enactment of Bill C-31 as of the time of that meeting and delivery of the membership codes to you as the Minister's authorized representative in that connection.

.../2

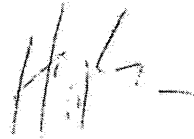
*Gowling & Henderson*

Mr. Bruce Rawson  
9 July 1985

Page 2

Thank you for receiving us. I look forward to having  
your response.

Yours very truly,



Henry S. Brown

HSB:dm

c.c. Chief Walter Twinn ✓

# TAB B

## SAWRIDGE INDIAN BAND MEMBERSHIP APPLICATION FORM

The answers in this membership questionnaire will be kept confidential and shall be disclosed only to those persons involved in the membership determination process as well as appropriate Band employees and advisors unless otherwise necessary in respect of a membership matter before the courts.

This questionnaire has been created to assist the Band Council in assessing applicants who are seeking or surrendering membership in the Band. The data provided will also assist the Band in the planning, including programs and services, required to accommodate members.

### INSTRUCTIONS

1. Please print or type.
2. Please answer all questions, or indicate why no answer is provided.
3. If more space is required to fully answer a question, please attach additional sheets and indicate which question it applies to.
4. Please attach a current colour passport photo of yourself.
5. Please attach supporting documents as indicated.
6. Please attach a copy of your treaty "status" card.
7. This application may be followed by an interview. Additional questions may be asked at the interview.

<b>1. APPLICATION FOR (CHECK ONE)</b>									
APPLICATION FOR MEMBERSHIP IN THE BAND BY NON-MEMBER									<input checked="" type="checkbox"/>
APPLICATION BY MEMBER TO SURRENDER MEMBERSHIP IN THE BAND									<input type="checkbox"/>
<b>2. IDENTIFICATION</b>									
<b>A. NAME</b>		FIRST <u>MAURICE</u>		MIDDLE <u>E</u>		LAST <u>STONLEY</u>			
Other Names You Have Used (Maiden/Nicknames/Alias):									
<b>B. ADDRESS</b>									
MAILING ADDRESS (if different): <u>500-4th NW SLAVE LAKE AB T0G2A1</u>									
<b>C. PHONE NUMBERS</b>		HOME <u>780 849 5193</u>		WORK					
<b>D. Sex</b>	MALE <input checked="" type="checkbox"/>	FEMALE <input type="checkbox"/>	<b>E. BIRTHDATE</b>		Month <u>Sept.</u>	Day <u>24</u>	Year <u>1941</u>	Attach Certificate <input checked="" type="checkbox"/>	Birth
<b>F. PLACE OF BIRTH</b>		<u>SLAVE LAKE</u>		<b>G. MARITAL STATUS</b>		<u>Married</u>			
<b>H. YOUR SOCIAL INSURANCE NUMBER</b>									
<u>603 802 620</u>									
<b>I. YOUR DRIVERS LICENSE NUMBER</b>									
<u>47580-147</u>									
<b>J. WHAT IS YOUR HEIGHT</b>				<u>5'11"</u>		<b>K. WHAT IS YOUR WEIGHT</b>			
				<u>190 lbs</u>					
<b>L. IF THIS IS AN APPLICATION FOR MEMBERSHIP PLEASE EXPLAIN THE BASIS OF YOUR APPLICATION</b>									
<u>Reapply</u>									
<b>M. HAVE YOU EVER BEEN A MEMBER OF THE SAWRIDGE BAND?</b>									
YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>									
If yes,	<b>HOW DID YOU BECOME A MEMBER?</b>		<u>Born a Band Member</u>						
	<b>WHEN DID YOU BECOME A MEMBER?</b>		<u>1941</u>						
	<b>HOW DID YOU CEASE TO BE A MEMBER?</b>		<u>Forced Out</u>						
	<b>WHEN DID YOU CEASE TO BE A MEMBER?</b>		<u>approx: 1946</u>						
	<b>HOW MUCH OF THE BAND'S MONEY DID YOU RECEIVE?</b>		<u>none</u>						
	<b>WHEN DID YOU RECEIVE IT?</b>								
			<b>HOW MUCH IS LEFT?</b>						

This is Exhibit B referred to in the Affidavit of

ROLAND TWINN

Sworn before me this 26 day of JUNE A.D. 2012

A Commissioner for Oaths in and for the Province of Alberta

**DONNA BROWN**  
A Commissioner for Oaths  
In and for the Province of Alberta  
My Appointment Expires December 30, 2012

ARE YOU WILLING TO REPAY PRINCIPLE AMOUNT WITH INTEREST OF MONIES RECEIVED WHEN YOU ENFRANCHISED?			
IF YOU DID NOT RECEIVE ANY MONEY PLEASE EXPLAIN		not id enough	
N. HAVE YOU EVER BEEN ADOPTED?		YES	NO <input checked="" type="checkbox"/>
IF YES, PLEASE PROVIDE FULL DETAILS.			
<b>3. RESIDENCE AND STATUS</b>			
A. HAVE YOU EVER RESIDED ON THE SAWRIDGE INDIAN RESERVE?		YES <input checked="" type="checkbox"/>	NO
IF YES, PROVIDE DETAILS			
DATES FROM	1941	TO	approx 1946 +
WHO WITH	Parent & Grand Parents		
LOCATION	150 E East of Town		
B. WHERE HAVE YOU RESIDED SINCE BIRTH?			
SHAW LAKE			
DATES FROM	1941	TO	present
ADDRESS	SHAW LAKE		
ON A RESERVE			
LANGUAGE(S) SPOKEN	CREE		
WITH WHOM (parents, grand siblings, others)	parents, grand siblings, others		
BIRTH		YES	NO
		YES	NO
		YES	NO
		YES	NO
C. HAVE YOU EVER BEEN OR ARE YOU NOW A MEMBER OF ANY INDIAN BAND OTHER THAN SAWRIDGE?		YES	NO <input checked="" type="checkbox"/>
IF YES PROVIDE DETAILS OF EACH BAND INCLUDING NAME			
DATE OF BEGINNING AND ENDING MEMBERSHIP			
HOW YOU BECAME A MEMBER?			
WHY YOU CEASED TO BE A MEMBER			
D. ARE YOU A STATUS INDIAN?		YES <input checked="" type="checkbox"/>	NO
E. HAVE YOU ALWAYS BEEN A STATUS INDIAN?		YES <input checked="" type="checkbox"/>	NO
F. INDICATE DURING WHAT PERIOD OR PERIODS YOU WERE A STATUS INDIAN		From Birth to Present..	
G. DATE AND REASON FOR THE CHANGE IN STATUS		NO change	
<b>4. SPOUSES</b>			
A. LIST ALL SPOUSES' NAMES ATTACH MARRIAGE CERTIFICATE OR IF COMMON-LAW PROVIDE DETAILS OF COHABITATION		#1 ELIZA STOKY	#2
NAME PRIOR TO MARRIAGE		ELIZA MUSKWA	
B. MARRIED OR COMMON-LAW (PRESENT STATUS)		MARRIED <input checked="" type="checkbox"/> COMMON-LAW	MARRIED <input type="checkbox"/> COMMON-LAW
C. DATE OF MARRIAGE		June 1995	
D. PLACE OF MARRIAGE		SHAW LAKE	
E. SPOUSES' STATUS PRIOR		INDIAN <input checked="" type="checkbox"/> NON-STATUS	INDIAN <input type="checkbox"/> NON-STATUS

TO MARRIAGE		BAND MEMBER NAME OF BAND		BAND MEMBER NAME OF BAND		BAND MEMBER NAME OF BAND	
F. NUMBER OF CHILDREN							
G. DATE AND PLACE OF DIVORCE/SEPARATION (PLEASE ATTACH DIVORCE JUDGEMENTS)							
H. CURRENT STATUS OF SPOUSE		INDIAN		INDIAN		INDIAN	
		NON STATUS		NON STATUS		NON STATUS	
		BAND MEMBER		BAND MEMBER		BAND MEMBER	
		NAME OF BAND	<i>Pigeon</i>	NAME OF BAND		NAME OF BAND	
		DECEASED		DECEASED		DECEASED	
		DATE OF DEATH		DATE OF DEATH		DATE OF DEATH	

**5. CHILDREN**

LIST NAMES OF ALL YOUR CHILDREN (USE ADDITIONAL SHEETS IF NECESSARY)

A. NAME								
B. SEX	MALE		FEMALE		MALE		FEMALE	
C. BIRTHPLACE								
D. OTHER PARENT'S NAME								
E. BIRTHDATE								
F. YOUR STATUS AT BIRTH OF CHILD	INDIAN		INDIAN		INDIAN			
	NON STATUS		NON STATUS		NON STATUS			
	BAND MEMBER		BAND MEMBER		BAND MEMBER			
	NAME OF BAND		NAME OF BAND		NAME OF BAND			
G. CHILD'S STATUS AT BIRTH	INDIAN		INDIAN		INDIAN			
	NON STATUS		NON STATUS		NON STATUS			
	BAND MEMBER		BAND MEMBER		BAND MEMBER			
	NAME OF BAND		NAME OF BAND		NAME OF BAND			
H. CHILD'S CURRENT STATUS	INDIAN		INDIAN		INDIAN			
	NON STATUS		NON STATUS		NON STATUS			
	BAND MEMBER		BAND MEMBER		BAND MEMBER			
	NAME OF BAND		NAME OF BAND		NAME OF BAND			
	DECEASED		DECEASED		DECEASED			
	DATE OF DEATH		DATE OF DEATH		DATE OF DEATH			
I. REASON FOR CHANGE IN STATUS								
J. RELATIONSHIP TO CHILD	BIOLOGICAL		BIOLOGICAL		BIOLOGICAL			
	ADOPTED		ADOPTED		ADOPTED			
	NON-ADOPTED STEP CHILD		NON-ADOPTED STEP CHILD		NON-ADOPTED STEP CHILD			
K. HAVE EACH OF YOUR CHILDREN RESIDED WITH YOU SINCE BIRTH, AND HAVE YOU PROVIDED FOR THE CHILD SINCE BIRTH?						YES	NO	
IF NO, PLEASE PROVIDE DETAILS:								
L. HAVE ANY OF YOUR CHILDREN EVER BEEN APPHREHENDED OR PLACED IN CARE?						YES	NO	
IF YES, PROVIDE DETAILS								
M. HAVE ANY OF YOUR CHILDREN EVER BEEN THE SUBJECT OF A GUARDIANSHIP ORDER?						YES	NO	
IF YES, PROVIDE DETAILS:								

N. HAVE ANY OF YOUR CHILDREN EVERY BEEN ADOPTED OR PUT UP FOR ADOPTION?					YES	NO
IF YES,	NAME OF CHILD(REN)					
	BIRTHDATE(S)					
	REASONS FOR ADOPTION					
	DATE OF ADOPTION(S)					
ADOPTING PARENT A RELATIVE					YES	NO
O. NAME OF ADOPTING PARENT(S) (IF KNOWN)						
<b>6. GENEALOGY</b>						
FOR EACH OF YOUR PARENTS AND GRANDPARENTS, PLEASE PROVIDE THE INFORMATION SET OUT BELOW OR, IF YOU HAVE A GENIOLOGY WHICH CONTAINS THIS INFORMATION, PLEASE PROVIDE A COPY:						
<ul style="list-style-type: none"> <li>• FULL NAME <u>William + Margaret Stanley #59</u></li> <li>• ANY ALIASES (INCLUDING MAIDEN NAME)</li> <li>• RELATIONSHIP INCLUDING WHETHER BIOLOGICAL, ADOPTED OR STEP <u>Father + Mother</u></li> <li>✓ BIRTHDATE (COPY OF BIRTH CERTIFICATE) <u>Attached -</u></li> <li>• STATUS AT BIRTH (NON STATUS, INDIAN, BAND MEMBER (NAME OF BAND) OTHER)</li> <li>• HOW STATUS ATTAINED (NON-STATUS, INDIAN, BAND MEMBER, ETC.) <u>Father Band Member</u></li> <li>• MARITAL STATUS AT TIME OF YOUR BIRTH <u>married</u></li> <li>• CURRENT STATUS (NON-STATUS, INDIAN, BAND MEMBER, ETC.) <u>Indian</u></li> <li>• IF STATUS CHANGED, EXPLAIN</li> <li>• LANGUAGE SPOKEN <u>CREE</u></li> <li>• LEVEL OF EDUCATION ACHIEVED <u>Parents - 4 level + 4. Parents - no records</u></li> <li>• CONNECTION OR POSITION HELD IN THE BAND OR COMMUNITY.</li> <li>• IF DECEASED, DATE OF DEATH</li> </ul>						
<b>7. SIBLINGS (USE ADDITIONAL SHEETS FOR ADDITIONAL BROTHERS AND SISTERS)</b> <span style="float: right;"><i>Each sibling will fill out B.M. Form</i></span>						
A. HOW MANY BROTHERS DO YOU HAVE?						
B. NAME OF EACH BROTHER		#1	#2	#3		
C. BIRTHDATE						
D. BIRTHPLACE						
E. FULL, HALF BROTHER, OR STEP		FULL	FULL	FULL		
		HALF	HALF	HALF		
		STEP	STEP	STEP		
F. IF HALF OR STEP, WHICH PARENT IS COMMON		FATHER	FATHER	FATHER		
		MOTHER	MOTHER	MOTHER		
G. HOW MANY SISTERS DO YOU HAVE?						
H. NAME OF EACH SISTER		#1	#2	#3		
I. BIRTHDATE						
J. BIRTHPLACE						
K. FULL, HALF SISTER, OR STEP		FULL	FULL	FULL		
		HALF	HALF	HALF		
		STEP	STEP	STEP		
L. IF HALF OR STEP, WHICH PARENT IS COMMON		FATHER	FATHER	FATHER		
		MOTHER	MOTHER	MOTHER		

<b>8. FINANCIAL</b>	
A. WHAT RESOURCES ARE AVAILABLE TO YOU?	
B. WHAT ARE YOUR MEANS AND RESOURCES?	
C. ARE YOU LIVING WITHIN YOUR MEANS?	
D. ARE YOU SELF-SUFFICIENT? (IF NO, PLEASE EXPLAIN)	Pension
E. DO YOU HAVE ANY DEPENDANTS? IF SO, HOW MANY?	no
F. DO YOU OR ANY DEPENDANTS HAVE SPECIAL NEEDS? IF SO, PLEASE EXPLAIN.	
<b>9. CRIMINAL AND DRIVERS RECORD</b>	
A. LIST THE OFFENCE(S), OFFENCE DATE(S), CONVICTION DATE(S), AND SENTENCE(S).	USE ADDITIONAL SHEET IF NECESSARY N/A
B. HAS YOUR DRIVER'S LICENSE EVEN BEEN SUSPENDED?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
IF YES, PLEASE PROVIDE DETAILS INCLUDING DURATION, REASON(S), AND DETAIL(S) OF REINSTATEMENT	USE ADDITIONAL SHEET IF NECESSARY N/A
<b>10. EMPLOYMENT HISTORY</b>	
STARTING WITH YOUR MOST RECENT JOB, LIST EVERY JOB (FULL TIME/YEAR ROUND) WHICH YOU HAVE HAD. (USE ADDITIONAL SHEET IF NECESSARY). HAVE YOU BEEN REGULARLY EMPLOYED? <input checked="" type="checkbox"/>	
A. LIST YOUR SIGNIFICANT EMPLOYMENT RELATIONSHIPS, DATES AND REASON FOR LEAVING	N/A
B. LIST ANY EXPERTISE AND INTEREST AND ANY EXPERIENCE AND TRAINING IN THESE AREAS	Labour
C. WHAT AGE DID YOU ENTER THE WORKPLACE?	15
<b>11. BACKGROUND &amp; PERSONAL INTERESTS</b> (CAN BE DONE IN WRITING ON SEPARATE SHEET OR ORALLY THROUGH RECORDING DEVICE) <i>Lived in SLAVE for 20 yrs</i>	
A. WHAT DO YOU KNOW ABOUT THE HISTORY OF THE SAWRIDGE INDIAN BAND (PRE-TREATY AND POST-TREATY)? WHAT ARE THE SOURCES OF YOUR KNOWLEDGE? <i>my Grand Father had a Role in The Creation of Sawridge Reserve 1896</i>	
B. WHAT ARE YOUR UNDERSTANDINGS OF THE TREATY AND TREATY LAW? <i>Read the Sawridge Bill of 1896</i>	
C. WHAT DO YOU KNOW ABOUT THE CUSTOMS, THE LAWS, THE CULTURE, TRADITIONS AND PRACTICES VALUES AND PRINCIPLES OF THE SAWRIDGE INDIAN BAND <i>Read The Sawridge Codes</i>	
D. WHO DO YOU HAVE A MEANINGFUL RELATIONSHIP WITH SOMEONE WHO IS A MEMBER OF THE SAWRIDGE INDIAN BAND? (PROVIDE NAMES, HOW LONG YOU HAVE KNOWN, AND DESCRIBE YOUR ACTIVITIES AND RELATIONSHIPS WITH EACH PERSON AS WELL AS THE HISTORY OF THAT RELATIONSHIP. ALSO INDICATE IF THAT PERSON IS A RELATIVE AND WHAT RELATION THEY ARE TO YOU). <i>Grand Father was a mem.</i>	
E. DO ANY CURRENT BAND MEMBERS SUPPORT YOUR BID FOR MEMBERSHIP? (FOR APPLICATIONS FOR MEMBERSHIP ONLY). IF YES, PLEASE PROVIDE THE NAME OR NAMES OF SUPPORTERS AND A LETTER SETTING OUT THEIR SUPPORT.	
YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> <i>Chief + Council</i>	

F. HOW WOULD YOU DESCRIBE YOUR LIFESTYLE?		<i>Mood</i>
G. WHAT IS YOUR CURRENT INVOLVEMENT WITH THE BAND?		<i>E-31</i>
H. WHAT ARE YOUR HOBBIES?		<i>Hunting + Fishing</i>
I. WHAT ARE YOUR OTHER RECREATIONAL ACTIVITIES?		<i>Outdoors</i>
J. WHAT DO YOU HOLD AS MOST IMPORTANT AND VALUABLE? WHY?		<i>Life in General</i>
K. DESCRIBE YOUR ATTITUDE TOWARDS THE BAND, ITS MEMBERS AND THE COUNCIL.		<i>To get along</i>
L. WHAT DO YOU SEE AS YOUR ROLE AND RESPONSIBILITY AS A BAND MEMBER?		<i>undecided?</i>
<b>12. FUTURE PLANS</b> (CAN BE DONE IN WRITING ON SEPARATE SHEETS OR ORALLY THROUGH A RECORDING DEVICE).		
A. WHY DO YOU WISH TO BECOME A MEMBER OF THE SAWRIDGE INDIAN BAND? <i>This is my right</i>		
B. WHAT ARE YOUR PLANS FOR THE FUTURE? (INCLUDING PLANS FOR RESIDENCY, EMPLOYMENT, OCCUPATION, EDUCATION, RETIREMENT, TRAVEL, MARRIAGE, FAMILY, RECREATION, ETC.). <i>Will decide when I am member</i>		
<b>13. EDUCATION</b>		
A. PROVIDE A DETAILED HISTORY OF YOUR EDUCATION BOTH FORMAL AND TRADITIONAL	<i>High School Jr. 9</i>	
B. ARE YOU WILLING UPON REQUEST TO PROVIDE A TRANSCRIPT OF ALL OF YOUR SECONDARY AND POST-SECONDARY EDUCATION, IF ANY. <i>N/A</i>		
C. HONOURS, AWARDS, DISTINCTIONS, SCHOLARSHIPS, MERITS	<i>N/A</i>	
D. IF YOUR LEARNING WAS INTERRUPTED OR YOU WERE UNABLE TO COMPLETE	EXPLAIN <i>N/A</i>	
E. PLEASE PROVIDE A DETAILED HISTORY OF ALL OF YOUR EXTRA CURRICULAR ACTIVITIES	<i>N/A</i>	
F. WHAT ARE YOUR PLANS FOR FUTURE EDUCATION, IF ANY?	<i>N/A</i>	
<b>14. HEALTH AND WELLNESS</b> (PLEASE NOTE THAT YOUR HEALTH IS IMPORTANT TO THE BAND, BUT IT IS NOT A SINGLY DETERMINATIVE FACTOR IN MAKING A DECISION ON MEMBERSHIP). THESE QUESTIONS CAN HELP DETERMINE WHETHER THE BAND NEEDS TO APPLY FOR FUTURE GRANTS, FUNDING, ETC.		
A. WHAT IS THE CONDITION OF YOUR HEALTH?	<i>Good</i>	
B. DO YOU HAVE ANY PROBLEMS?	LIST <i>NO</i>	
C. DO YOU HAVE ANY PHYSICAL OR MENTAL DISABILITIES (INCLUDING EMOTIONAL)?		
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
IF YES, EXPLAIN		
D. HAVE YOU EVER HAD ANY ALCOHOL OR DRUG RELATED ADDICTIONS OR ILLNESS? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
IF YES	PLEASE EXPLAIN <i>Not For approx, 30 years</i>	
E. HAVE YOU EVER SUFFERED FROM MENTAL ILLNESS? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
IF YES (PLEASE EXPLAIN)		

F. HOW DO YOU DEFINE YOUR PERSONAL WELLNESS AND HOW CAN YOU CONTRIBUTE TO THE WELLNESS OF THE SAWRIDGE INDIAN BAND?	
Good	
G. WHAT IS YOUR PRESENT CODE OF CONDUCT?	
Good	
<b>15. CONTRIBUTIONS</b>	
PLEASE WRITE A BRIEF STATEMENT OR ORALLY RECORD YOUR ANSWER ON A RECORDING DEVICE ABOUT:	
A. YOUR ROLE, PLACE AND RESPONSIBILITIES IN THE LIFE AND HEALTH OF THE COMMUNITY. Pensioner	
B. WHERE YOU CAN BEST CONTRIBUTE, INCLUDING CONTRIBUTIONS TO THE BAND. Small Bus	
C. THE SPIRITUAL VALUES AND PRINCIPLES THAT YOU LIVE BY AND ASPIRE TO IN ALL YOUR RELATIONSHIPS.	
D. WHAT SUPPORT YOU HOPE FOR FROM THE BAND. membership	
E. DESCRIBE THE RELATIONSHIP AND SUPPORT SYSTEM YOU HAVE WITH OUR FAMILY MEMBERS.	
<b>16. REFERENCES (FOR THOSE SEEKING MEMBERSHIP ONLY)</b>	
PLEASE PROVIDE FOUR LETTERS OF REFERENCE. I am intitled to membership	
<b>17. PROBATIONARY PERIOD (FOR THOSE SEEKING MEMBERSHIP ONLY)</b>	
A. ARE YOU PREPARED TO COME TO THE COMMUNITY TO PARTICIPATE AND/OR ASSIST THE BAND? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
B. WHAT DO YOU FEEL DURING THE PERIOD THIS APPLICATION IS BEING ASSESSED YOU COULD DO TO CONTRIBUTE TO THE BAND AND TO SHOW YOUR COMMITMENT?	Assisting in Band Operations,
C. ARE YOU WILLING TO PARTICIPATE IN A COMMUNITY WELLNESS BUILDING PROCESS AS A CONDITION TO THIS APPLICATION AND/OR THE GRANTING OF MEMBERSHIP? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
D. WHAT IS YOUR UNDERSTANDING OF THE RIGHT, OBLIGATIONS AND RESPONSIBILITIES OF MEMBERSHIP? Understand Rules,	
<b>18. FAMILY</b>	
A. HOW OFTEN DO YOU VISIT OR TALK TO FAMILY MEMBERS AND WHAT ACTIVITIES DO YOU SHARE WITH THEM?	N/A ?
<b>19. GENERAL</b>	
A. HOW DO YOU IDENTIFY YOURSELF?	Canadian Citizen
B. DID YOU HAVE ANY ASSISTANCE IN COMPLETING THIS APPLICATION?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
IF YES, WHO ASSISTED YOU?	
20. DO YOU HAVE ANY QUESTIONS, CONCERNS, OR COMMENTS? N/A	

## CERTIFICATION

I certify that all of the information provided in this application is complete and true. I understand that if any of the information provided is found to be false or misleading then this shall be sufficient grounds for the denial of my application, or if the application has been approved then it shall be sufficient grounds for the reversal of my application at the option of the Band at any time in the future. Such denial or reversal shall be final; there shall be no right of appeal and no right to reapply after any such denial or reversal. I hereby authorize Sawridge Indian Band to obtain any and all factual information regarding me from other persons, organizations, institutions, or government agencies. I hereby authorize any person, organization, institution, or government agency who has any information regarding me to release that information regarding me in confidence to the Sawridge Indian Band.

Dated at Red Lake, this 30 day of Aug., 2011.

Maurice Stoney  
Applicant Name

Maurice Stoney  
Applicant Signature

I was present and did see \_\_\_\_\_, the applicant herein sign above.  
(PLEASE PRINT)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

Treaty # 4540011401  
Sawridge Band

m/A

PARISH :

Anglican, Methodist's Pastors  
11301, Midland, Alberta Canada  
Tel: 324-3002 1011 210

*[Signature]*  
ang 2/11/2011

# Baptism Certificate

According to the Acts of the Canadian Catholic Church

*[Signature]*  
Margaret

Born on the 25th day of September 1944

at *[Signature]* Place

Child of William Strong and Margaret Parsons

was Baptized

in the name of the Father, Son and Holy Spirit

By Rev. Fr. Leonard Henderson, S.M.

St. Peter's Catholic Church

St. John's, Alberta

Witness

Wm. J. H. H.

On the 25th day of September 1944

at *[Signature]*

Witness

St. John's, Alberta

I have a true faith and hope in the Christian Church and believe in all its teachings

DATED : Sept. 25, 1944

SIGNED BY :

*[Signature]*  
Secretary

# Marriage Certificate

Minister  
of  
the  
Registrar



The  
Anglican Church  
of Canada

In the 30th day of June 1995

At St. Peter's Ecumenical Church, Slave Lake, Alberta

Here Married Eliza Maria Loyie

of the Town of Slave Lake

And Maurice Stoney

of the Town of Slave Lake

By the Pastor Allen Jorgensen

Rector of St. Peter's Ecumenical Church

Slave Lake, Alberta

Town Province

This Marriage was solemnized between us

Minister

*[Signature]*  
*[Signature]*

*[Signature]*  
Bridegroom  
*[Signature]*  
Bride

I Certify that the above particulars are duly recorded in the Register  
of Marriages kept in St. Peter's Ecumenical Church,

Slave Lake, Alberta, this 30 day of June 1995

*[Signature]*



*1090 Hill Rd  
Stoney  
Alta*

*1/2000  
11/85 Envo*

310407114764

Registry Group Group d'Inscription  
454 Sawridge

2017-09-24  
2010-01-20

*Handwritten signature*

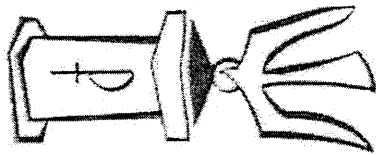
# CERTIFICATE of BIRTH and BAPTISM

Church of ..... St. Peter Celestin .....

..... Slave Lake, Alberta .....

This is to Certify that ..... Jimmy Willy Stony .....

Child of ..... Johnny Stony ..... and ..... Henriette Sinclair .....

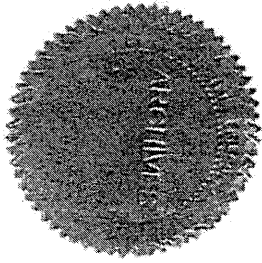


born in ..... on the ..... 13th ..... day of ..... April .....  
was Baptized on the ..... 12th ..... day of ..... May, 1921 ..... according to  
the Rite of the ..... Roman Catholic Church by the Rev. .... E. J. Bour, O.M.I. ....  
the Sponsors being: ..... Emilie Sinclair, & Emilie Missette, .....

Confirmed on the ..... day of ..... at .....  
as appears from the Baptismal Register of this Church

Dated ..... October 31st, 2008 ..... Pastor

Secretary



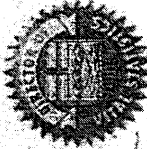
*Father's Birth Cert:*

0043-11

11/1

page 34  
mt 8

VITAL STATISTICS		CANADA		CERTIFICATE OF DEATH		LD362753	
Name of Deceased	Stoney, William						
Sex	Male						
Age	62 Years						
Date of Death	Dec 18 1983						
Place of Death	Stony Lake						
Marital Status	Married						
Usual Residence	Alberta						
Registration Date	Dec 22 1983	Registration Number	1983-08-012118				
Date Issued	Dec 08 2005						

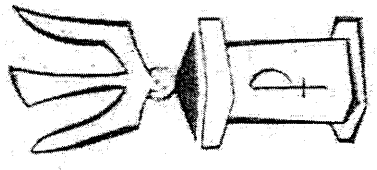
  
 Certified extract from REGISTRATION OF DEATH  
 filed at Edmonton, Alberta, Canada  
 Director

REG 3151 (2001/09)

Father's Death Conf:  
 Bond to sq Bowridge Bond,

over 30  
m/s

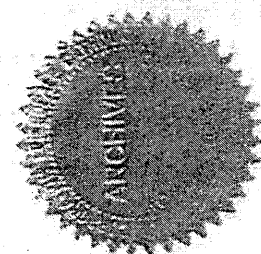
# CERTIFICATE of BIRTH and BAPTISM



Church of ..... St. Charles  
..... Pinxegan, Alberta .....

This is to Certify that ..... Jean-Baptiste Assiniboillie  
Child of ..... Assiniboillie ..... and .....  
(Baptized at the age of six months)

born in ..... on the ..... day of .....  
was Baptized on the 2nd ..... day of June 1872 ..... according to  
the Rite of the Roman Catholic Church by the Rev. C. Tisser, p.m.i.  
the Sponsors being ..... Christine Connel'oreille  
Confirmed on the ..... day of ..... at .....



as appears from the Baptismal Register of this Church

Dated ..... January 6th, 2003 .....  
Secretary: J. Beland

This is my Grandfather's name at  
Birth, his Treaty #18 sawridge band,

FILE NO. 8131-38 DORMANT

VOLUME

## INDIAN AFFAIRS BRANCH

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

SUBJECT ENFRANCHISEMENT

WM. J. STONEY

(NAME)

Treaty # 59

DORMANT

(BAND NUMBER)

LESSER SLAVE LAKE

(AGENCY)

(BAND) SAW Ridge

REFERENCE

DISPOSAL

REFERRED TO	BY	REMARKS	DATE	PA OR EF	BY	DATE	For Record
SA2	f	046129	29/6/60	PA	SA2	29/6/60	
T1	SA2	046129	29/6/60	PA	T-1	21-9-60	
SA2	f	001539	22/9/60	PA	SA2	22/9/60	
T1	f	1 PER BF 21/9	22/9/60	PA	T-1	22-9-60	

7796

② Marriage Certificate ?  
in file

PUBLIC ARCHIVES  
RECORDS CENTRE

2189

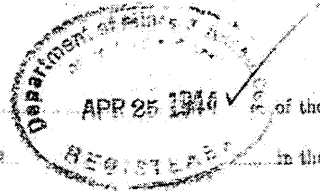
DO NOT WRITE BELOW THIS LINE

*W. J. Stony* 8/31-08

# APPLICATION FOR ENFRANCHISEMENT

UNDER THE PROVISIONS OF SECTION 114 OF THE INDIAN ACT BEING CHAPTER  
98, R.S.C., 1927

I, William J. Stony,  
of Slave Lake  
Province of Alberta,



hereby make application to the Superintendent General of Indian Affairs for enfranchisement under the provisions of section 114, Chap. 98, R.S.C., 1927, and I hereby declare as follows:

1. That I am a member of the Sagoyew Band of  
Indians situate in the County of \_\_\_\_\_ in the Province  
of Alberta;

2. That I hold no land on any Indian Reserve, do not reside on any Indian Reserve and do not follow the Indian mode of life;

3. That I am at present employed at Mitose  
Northern Alberta Railways

and that I am self supporting and consider that I am fit to be enfranchised and to exercise all the rights and privileges of citizenship: — ?

4. That I am prepared to comply with all the requirements for enfranchisement as provided by said Section 114; ③

5. That attached hereto is a certificate under oath as to my fitness for enfranchisement;

6. That my wife and unmarried minor children consist of the following persons, namely:

My wife

Margaret Stony

(Name in full)

(over)

My sons

(Names in full)

Dates of birth

Alvin Joseph Stoney May 7th 1943

Maurice Felix Stoney Sept 24th 1941

My daughters

(Names in full)

Dates of birth

DATED at Slave Lake Alberta this nineteenth day  
of April 1944.

WITNESS:


  
SIGNATURE OF APPLICANT

## APPROVAL OF APPLICANT'S WIFE

I, Margaret Stoney do certify that I am the wife  
of William J. Stoney the above named applicant and that  
I approve of this application for enfranchisement.

WITNESS:


  
SIGNATURE OF WIFE

## CERTIFICATE OF INDIAN AGENT

I certify that I know William J. Stoney  
the above applicant and that his statement of facts is true, to the best of my knowledge and belief,  
and that I consider him a fit and proper person to become enfranchised, and hereby recommend that  
the application be granted.



INDIAN AGENT


Ottawa, April 29, 1944.

EX'D.  
A

P. J. Demers, Esq., Indian Agent, Driftpile, Alberta.

The enfranchisement documents completed by William J. Stoney of the Slave Lake Band have been received.

In order that we may reach a decision on his application, we must have a further report from you indicating if Stoney is the owner of any land or improvements on the Reserve and also if he has resided off the Reserve for a period of at least one year and demonstrated during that time that he is capable of supporting his family in a white community. ?

  
J. J. Allan,  
Superintendent,  
Reserves and Trusts.

# CERTIFICATE AS TO FITNESS FOR ENFRANCHISEMENT

(Note.—This Certificate must be given by a Clergyman, Justice of the Peace or other well known and responsible person.)

County of { I, Bertram Watkine of the  
 Hamlet of Slave Lake in the  
 County of in the  
 Province of Alberta  
 To wit: Make oath and say

1. That I am a British Subject, Merchant. residing in the  
 Hamlet of Slave Lake in the County of  
 in the Province of Alberta

2. That I have known William Stoney  
 an Indian of the Sawridge Reserve in the Province of  
 Alberta for at least five years;

3. That during the said time I have personally known him, or her, to be a person of good moral character, temperate in habits and of sufficient intelligence to be qualified to exercise all the rights and privileges of citizenship, and to the best of my knowledge and belief, self-supporting;

4. That my opportunities for knowing the said William Stoney  
 have been as follows: *(State what business, social or other relations you have had with the said person to enable you to give this certificate.)*

I have done business with William Stoney for the last  
 eight years

SWORN before me at the Hamlet

of Slave Lake

the County of Alberta

18th day of April

in  
this  
1924

*Bertram Watkine*

*W. H. Patrick J.P.*

A Commissioner for taking Affidavits, or  
 other person authorized to take the Affidavit.

# RELEASE AND SURRENDER

By an Indian belonging to a Band  
having funds at its credit

(FOR ENFRANCHISEMENT UNDER SECTION 114 OF THE INDIAN ACT BEING CHAPTER 98, R.S.C., 1927)

Know all men by these presents that I, William J. Stoney, 59

Band # ?  
←

a member of the Sauridge Band

of Indians, whose reserve is located in the County of

in the Province of Alberta, for and in consideration of the sum of

Ninety-four dollars and twenty-seven cents (\$94.27)

each for self, wife and two minor unmarried children, being my share of the funds at the credit of the said band, including the principal of the annuities of the said band, which I hereby accept and in pursuance of my application for enfranchisement under the provisions of section 114, Chapter 98, R.S.C., 1927, do hereby surrender all claims whatsoever to any interest in the lands or property of the said band, and do hereby remise, release and forever discharge the said band and His Majesty, as represented by the Superintendent General of Indian Affairs, and his successors of and from all and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, claims and demands whatsoever which I ever had or now have or can, shall or may have by reason of any matter, cause or thing whatsoever in respect to the said band.

My wife and unmarried minor children consist of the following persons, namely:

My WIFE

Margaret Stoney  
(Name in full)

(OTHER SIDE)

Mr Sons

(Names in full)

Dates of birth

Alvin Joseph Stoney

May 7th 1943

Maurice Felix Stoney

Sept 24th 1941

Mr Daughters

(Names in full)

Dates of birth

Slave Lake Alta.

DATED at ~~Slave Lake Alta.~~ this 19th day of April 1944.

SIGNED, SEALED AND DELIVERED after  
 having been read over and interpreted  
 to the Releasor who appeared to fully  
 understand the contents and effects  
 of the Instruments in the presence of

*William J. Stoney*

*Boatman*

Comm. for Oaths for Prov. Alberta

6131-38

*Miss Russell*

Ottawa, August 24, 1944.

P. J. Demers, Esq., Indian Agent, Driftpile, Alberta.

With reference to the application of William J. Stoney of the Sawridge Band of Indians for enfranchisement, I wish to inform you that by Order in Council dated August 1, 1944, this man was declared enfranchised in pursuance of the provisions of Section 114 of the Indian Act. ← ← (7)

Under separate cover you will receive cheque for the sum of \$777.08, payable to William J. Stoney, being his share of the band funds which you will be good enough to forward to him together with certified copy of the Order in Council above referred to and enfranchisement card, which are herewith enclosed. You should advise Stoney to sign the card.

Please remove the names of this man and his wife and minor children from the membership and pay lists of the Band. (7)

*DA*  
D. J. Allan,  
Superintendent,  
Reserves and Trusts.

Encls.

\* *response to letter*  
*[Signature]*  
*[Signature]* (7)

S131-38

Ottawa, August 10, 1943.

EXD.

N. P. L'Heureux, Esq., Indian Agent, Driftpile, Alberta.

An application for enfranchisement has been received from William J. Stoney, No. 59 of the Sawridge Band of Indians, presently residing in Slave Lake, Alberta.

? → If you consider this man possesses the necessary qualifications for release from band membership, please have the enclosed documents completed and return them to this Branch with your report and recommendation.



D. J. Allen,  
Superintendent,  
Reserves and Trusts.



Encls.

DEPARTMENT OF  
MINES AND RESOURCES



FILE NO. 8131-38

INDIAN AFFAIRS BRANCH

TREASURY OFFICE

Ottawa, August 4th, 1945.

*Mr. H. H. H.*

MEMORANDUM: SUPT. OF RESERVES AND TRUSTS

William J. Stoney

The per capita share payable from Band Funds to a member of the Sawridge Band on enfranchisement is \$94.27. This is composed of capital funds \$78.35 and interest funds \$15.93.

*L. M. Curthorn*

Chief Treasury Officer.

*pr*

Ottawa, July 7, 1944.

P25015.

# 59

Enfranchisement of William J. Stoney, a member of  
the Sawridge Band of Indians in the Lesser Slave Lake Agency,  
Province of Alberta.

The applicant is married and has two minor, unmarried  
children.

C.T. 17A  
5013-4-42

## REQUISITION FOR CHEQUE

TO BE USED FOR ADVANCES OR AUTHORIZED PAYMENTS FOR  
WHICH THERE ARE NO ACCOUNTS

DEPT. NO. ....

FILE NO. 8131-38

TRCAS NO. ....

DEPARTMENT. Mines and Resources

BRANCH. Indian Affairs

DATE. August 12, 1944

APPLICATION IS HEREBY MADE FOR THE ISSUE OF THE FOLLOWING CHEQUE OR CHEQUES:-

CHEQUE NO.	IN FAVOUR OF	AMOUNT
	William J. Stoney	\$777 08
Cheque to be forwarded to:		
P. J. Demers, Esq., Indian Agent, Driftpile, Alberta.		

STATE BELOW WITH DETAILS IN EVERY CASE, WHETHER (a) STANDING ADVANCE, (b) ADVANCE FOR SPECIFIC JOURNEY—  
ESTIMATING NUMBER OF DAYS, (c) OTHER ACCOUNTABLE ADVANCE, OR (d) AUTHORIZED PAYMENT.

Share of bond funds (Sawridge) payable to William J. Stoney on  
 enfranchisement authorized by Order in Council P.C.40/6000, dated  
 August 1, 1944.

CHARGE TO { VOTE Trust Acct No. 413 Capital - \$313.40  
 ALLOTMENT Interest - 63.68  
 SUB-ALLOTMENT Vote 88-910 - \$400.00

I CERTIFY THAT THIS APPLICATION IS MADE UNDER THE REQUISITE AUTHORITY, AND THAT THE EXPENDITURE IS  
NECESSARY IN THE INTERESTS OF THE PUBLIC SERVICE.

HEAD OF BRANCH

TREASURY OFFICE APPROVAL

DEPUTY HEAD



CANADA

 DEPARTMENT  
OF  
MINES AND RESOURCES

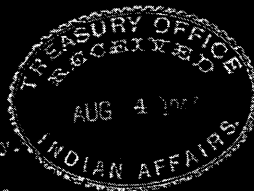
8151-58

INDIAN AFFAIRS  
BRANCH

Ottawa, July 26, 1943.

## MEMORANDUM:

1. Trusts.
2. Treasury.
3. Reserves.


 What amount of band funds would William J. Stoney,
No. 59 of the Sawridge Band of Indians in the Lesser Slave

Lake Agency, Province of Alberta, be entitled to receive

in the event of enfranchisement?

 D. J. Allen,  
Superintendent,  
Reserves and Trusts.

$$\begin{array}{r}
 62 \text{ } 14858.07 \\
 \underline{78.35} \\
 31314.0
 \end{array}
 +
 \begin{array}{r}
 1980.54 \\
 \underline{15.93} \\
 1372
 \end{array}
 =
 \$ 94.29$$

JWS

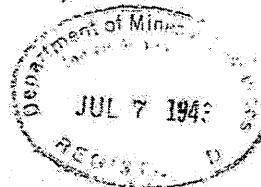
Pop. 62 (1942 pl.)

T.S.

1/2

Slave Lake, Alberta  
July 2nd 1943

Department of Indian Affairs,  
Ottawa, Canada.



Dear Sir:

For the last six months I have applied to Mr. L. Heureux  
the Agent at Driftoile for permission to become a full citizen  
and stop taking treaty altogether.

I have working steadily and have a job on the Northern  
Alberta Railway as section man, so that I am fully able to support  
my wife and two children as I have proved during the last two  
years since I have been married. Indeed for a long time before  
that I supported myself.

I don't intend to ask the Department for anything at any  
time in the way of help, and I do not see any reason why I should  
not have full citizen rights.

If you will send me an application form I should be glad  
to fill it out immediately and return it to you. The sooner I  
can complete all arrangements and get out of treaty the better  
it would please me.

William J. Stoney

William J. Stoney  
No. 59  
Sawridge Band

Notes

There was never any  
mention of Residential school,  
the reason he gave up his  
treaty rights, was that he  
did not want to send his  
children there. This is  
the way his family was  
forced off of the Sawridge  
Reserve.

mjs

NO. 8131-33

INDIAN AFFAIRS BRANCH

DEPARTMENT OF MINES AND RESOURCES

LESSER SLAVE LAKE

ENFRANCHISEMENT

WM. J. STONEY

# TAB C

IN THE FEDERAL COURT OF CANADA  
TRIAL DIVISION.

BETWEEN:

ALINE ELIZABETH HUZAR,  
JUNE MARTHA KOLOSKY,  
WILLIAM BARTHOLOMEW MCGILLIVRAY  
MARGARET HAZEL ANNE BLAIR,  
CLARA HEBERT,  
JOHN EDWARD JOSEPH MCGILLIVRAY  
MAURICE STONEY ,  
ALLAN AUSTIN McDONALD ,  
LORNA JEAN ELIZABETH MCREE,  
FRANCES MARY TEES,,  
BARBARA VIOLET MILLER (NEE McDONALD)

Plaintiffs

- and -

HER MAJESTY THE QUEEN, IN RIGHT OF CANADA,  
DEPARTMENT OF INDIAN AND NORTHERN AFFAIRS  
CANADA, and WALTER PATRICK THINN, as Chief  
of the Sawridge Indian Band and the SAWRIDGE  
INDIAN BAND,

Defendants

AMENDED STATEMENT OF CLAIM

This is Exhibit "C" referred to in the  
 Affidavit of ROLAND BROWN  
 Sworn before me this 26 day  
 of JUNE A.D., 2012  
Donna Brown  
 A Commissioner for Oaths in and for  
 the Province of Alberta

**DONNA BROWN**  
 A Commissioner for Oaths  
 In and for The Province of Alberta  
 My Appointment Expires December 30, 2012

AMENDED NOVEMBER 28TH, 1997

STATEMENT OF CLAIM

FILED on the 28<sup>th</sup> day of July, 1995.  
TO THE HONOURABLE THE FEDERAL COURT OF CANADA:

1. The Plaintiffs, ALINE ELIZABETH HUZAR, WILLIAM BARTHOLOMEW MCGILLIVRAY, JOHN EDWARD JOSEPH MCGILLIVRAY and MARGARET HAZEL ANNE BLAIR are ALL residents of Prince George, in the Province of British Columbia.
2. The Plaintiff, JUNE MARTHA KOLOSKY is a resident of Chetwynd, in the Province of British Columbia.
3. The Plaintiff, CLARA HEBERT is a resident of Leduc, in the Province of Alberta.
4. The Plaintiff, ALLAN AUSTIN McDONALD is a resident of Slave Lake, in the Province of Alberta.
5. The Plaintiffs, MAURICE STONEY, LORNA JEAN ELIZABETH McREE and FRANCES MARY TEES are residents of Slave Lake, in the Province of Alberta, and the Plaintiff, BARBARA VIOLET MILLER (NEE McDONALD) is a resident of Slave Lake, in the Province of Alberta.
6. The Defendant, HER MAJESTY THE QUEEN, IN THE RIGHT OF CANADA, by way of the Department of Indian and Northern Affairs Canada is duly constituted to administer aboriginal affairs in Canada.
7. The Defendant, WALTER PATRICK TWINN is the Chief of the Sawridge Indian Band and the Defendant, the SAWRIDGE INDIAN BAND is a part of the group of Indian Bands known as Treaty 8 Group of Indians whose reserve lands are located in the Province of Alberta. At various dates commencing on June 21st, 1899 representatives of the Sawridge Indian Band or their predecessors signed or executed instruments of adhesion to Treaty No. 8 made with Her Majesty The Queen.

8. At the time of the signing of adhesion to Treaty No. 8 the predecessors and forebearers of the Plaintiffs named herein were members of the Sawridge Indian Band, or alternatively, were duly constituted Band members after the adhesion to Treaty No. 8..

9. The Plaintiffs are all Treaty Indians by virtue of the operations of Sections 8 to 14.3, both inclusive of The Indian Act as amended by Section 4 of the Act entitled, "an Act to amend The Indian Act, Statutes of Canada, 1985, Chapter 27.

10. The Plaintiffs are aboriginal peoples of Canada within the meaning of Section 35 of the Constitution of Canada.

11. Section 35(1) of The Constitution Act, 1982 constitutionally entrenched the aboriginal rights and treaty rights of the aboriginal peoples of Canada as they existed on April 17th, 1982, the date on which The Constitution Act, 1982 was proclaimed in force. When used herein, The Constitution Act, 1867 to 1982 will be referred to collectively as the "Constitution".

12. The aboriginal rights of the Plaintiffs, including their property rights, customary laws and governmental institutions which were possessed by the aboriginal people at the time of adhesion to Treaty No. 8 on June 21st, 1899 are still retained and possessed by the Plaintiffs herein notwithstanding such adhesion.

13. Treaty rights are the rights conferred or obtained by Indian Tribes or Bands pursuant to Treaties entered into with Her Majesty The Queen. These rights flow to the members of the Band. At no time were the rights of the Plaintiffs, their ancestors and forebearers, to membership in the Sawridge Indian Band affected by the signing of the Treaty.

14. Membership to the Sawridge Indian Band was ascertained by a physical presence within the Band and at all material times, the ancestors and predecessors to the Plaintiffs were historically

members of the Sawridge Indian Band. These membership rights of the predecessors and ancestors of the Plaintiffs have not been abrogated, neither by the signing of the Treaty nor by The Constitution Act, 1982.

15. The predecessors and ancestors of the Plaintiffs herein were historically members of the Sawridge Indian Band when Treaty No. 8 was signed, and as a result of such membership, the Sawridge Indian Band obtained such rights and benefits as would normally accrue to the Band from Canada as a result of its membership, which membership included the predecessors and ancestors of the Plaintiffs herein, inter alia as follows:

- (i) The right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered.
- (ii) One square mile for each family of five for such number of families as may elect to reside on Reserves.
- (iii) Land in severality to the extent of 160 acres to each Indian for those Indians who may prefer to live apart from the Band Reserves.
- (iv) A treaty payment of \$5.00 annually to each and every Indian.
- (v) The salaries of teachers to instruct children.
- (vi) Agricultural and economic incentives.
- (vii) The bounty and benevolence of Her Majesty The Queen.

16. The Sawridge Band, at no time possessed the right to strip members of its Band, to take away Band membership, though from time to time, Band members formally lost their membership in the Band by way of operation of The Indian Act until the discrimination

inherent in such loss was legislatively abolished pursuant to "An Act to amend The Indian Act", Statutes of Canada, 1985, Chapter 27.

17. Statutes of the Parliament of Canada enforced from time to time prior to the entrenchment of the existing aboriginal and treaty rights of the aboriginal peoples of Canada in The Constitution Act governed and controlled who would be members of Indian Bands, in that all members were entitled to membership unless their membership rights were lost through operation of law.

18. The enactment of an Act entitled "An Act to amend The Indian Act", Statutes of Canada, 1985, Chapter 27 (The 1985 amendment), removed those discriminatory sections of The Indian Act which had unilaterally caused Band members to formally lose their membership rights and Indian status in a discriminatory fashion and thus nunc pro tunc, re-establishes existing Bands as they should have been had it not been for the indiscriminate and wanton intervention of the provisions of The Indian Act, terminating membership of Band members who were truly entitled to the same, in general, and to the Plaintiffs in particular.

19. Section 4 of the 1985 amendment adds new Sections 8, 9, 10, 11 and 12 to The Indian Act, which may be summarized as follows:

- (a) A Band List must be maintained for each band in which shall be entered the name of every person who is a member of that Band. (Section 8)
- (b) Commencing on April 17, 1985, certain persons who were not prior to that date members of a band became entitled to have their names entered in a Band List for that Band maintained in the Department. These include persons whose names were omitted or deleted from the Indian Register, or from a Band List prior to September 4th, 1951, under certain prescribed provisions of The Indian Act as they read immediately prior to April

17th, 1985, or under any former provision of The Indian Act relating to the same subject matter as any of those provisions. The disqualifying provisions included the marriage by an Indian woman to a man who was not registered as an Indian and included any children of that woman born prior to that marriage and illegitimate children of Indian women whose membership in the band was protested under Section 12(2) of the 1951 Act. (Subsection 11(1) )

- (c) Commencing on June 28th, 1987 large numbers of additional persons who were not prior to April 17th, 1985 members of a band will become entitled to have their names entered in a Band List for that Band maintained in the Department. These include Indian men and their families who voluntarily gave up their Indian status; first generation descendants of persons whose names were omitted or deleted from the Indian Register or from a Band List by virtue of the disqualifying provisions referred to in paragraph(b); first generation descendants of Indian men who voluntarily gave up their Indian status; and first generation descendants of the members of the families of such men who were alive at the time that the men voluntarily gave up their Indian status. (Subsection 11(2) )
- (d) A Band may assume control of its own membership if a majority of the electors of the Band consent to its so doing and consent to the establishment by the Band of membership rules. (Section 10)
- (e) Membership rules established by the Band may not disqualify from membership in the Band any of the persons described in paragraphs (b) and (c) above by reason only of a situation that existed or an action that was taken before the rules came into force. (Subsections 10(4) and (5) )

20. Pursuant to the Sections hereinbefore set forth, the Plaintiffs are entitled to membership in the Sawridge Indian Band, and in pursuance thereof, the Department of Indian Affairs and Northern Development has caused to be issued to the Plaintiffs, status cards, identifying them as members of the said, Sawridge Indian Band.

21. The Plaintiffs hereinbefore set forth, have, inter alia, applied for, petitioned or requested their reinstatement as members of the Sawridge Indian Band, however, the Defendants, Walter Patrick Twinn and the Sawridge Indian Band, has neglected and failed to reinstate the Plaintiffs as members of the Sawridge Indian Band in accordance with the legislation hereinbefore set forth.

22. The Plaintiffs, ALINE ELIZABETH HUZAR (DOB August 7th, 1941), JUNE MARTHA KOLOSKY (DOB June 6th, 1937), WILLIAM BARTHOLOMEW MCGILLIVRAY (DOB October 28th, 1932), MARGARET HAZEL ANNE BLAIR (DOB November 5th, 1928), JOHN EDWARD JOSEPH MCGILLIVRAY (DOB September 7th, 1923) and CLARA HEBERT (DOB February 24th, 1927) are all entitled to be reinstated as members of the Sawridge Indian Band by virtue of the following facts:

(a) Each of the above mentioned Plaintiffs are the children of Caroline Mary McGillivray (nee Assiniboine) (Stoney) Treaty #29, the child of Johnny Assiniboine (Stoney) and Henriette Calder (Sinclair) Treaty #18, all of whom were treaty Indians and members of the Sawridge Indian Band.

(b) Caroline Mary McGillivray married Simon Mountrose McGillivray the 21st day of June, A.D. 1921, a man of Metis ancestry.

(c) As a result of not having married a treaty Indian and as a result of the discriminatory provisions of The Indian Act, she lost her status as a band member of the Sawridge Indian Band.

(d) Consequential to the discriminatory provisions of The Indian Act, the Plaintiffs hereinbefore set forth, being the children of Caroline Mary McGillivray, lost their entitlement to band membership, as did their children.

(e) Pursuant to the 1985 amendments to The Indian Act, the Plaintiffs hereinbefore set forth, have applied for their treaty status and have regained their entitlement to be registered as members of the Sawridge Indian Band.

(f) The Plaintiffs hereinbefore set forth have applied for reinstatement in the Sawridge Band of Indians, but their application has been neglected and denied by the Defendants, Walter Patrick Twinn and the Sawridge Indian Band.

23. The Plaintiff, MAURICE STONEY is entitled to membership in the Sawridge Band of Indians by virtue of the following facts:

(a) Maurice Stoney was born September 24th, 1941 at Slave Lake, Alberta. He was the son of William J. Stoney, Treaty Number 59 and Margaret M. Stoney, Treaty Number 59 and is the grandson of Johnny Stoney, founder of the Sawridge Reserve, Treaty #18 .

(b) The Defendants, Walter Patrick Twinn and the Sawridge Indian Band have discriminated against Maurice Stoney by failing to recognize his Band membership or entitlement to Band membership, arising out of his progenitory.

(c) That pursuant to the 1985 amendments to The Indian Act, Maurice Stoney has regained his Indian status, and his entitlement to membership in the Sawridge Band of Indians.

(d) The Plaintiff, Maurice Stoney has applied for re-instatement in the Sawridge Band of Indians, but his application has been denied by the Defendants, Walter Patrick Twinn and the Sawridge Band of Indians.

24. The Plaintiffs, ALLAN AUSTIN McDONALD (date of birth January 13th, 1938), LORNA JEAN ELIZABETH McREE (date of birth October 6th, 1935), FRANCES MARY TEES (date of birth August 20th, 1948) and BARBARA VIOLET MILLER (date of birth August 22nd, 1950) are all entitled to membership in the Sawridge Band of Indians by virtue of the following facts:

(a) Each of the preceding Plaintiffs are the children of Annie McDonald (nee Stoney) Treaty #53, the child of Henrietta and Johnny Stoney Treaty #18, Treaty Indians and members of the Sawridge Indian Band.

(b) Annie Stoney married William McDonald, a non-treaty Indian, March 4th, 1935 and due to the discriminatory provisions of The Indian Act, was stripped of her status, and lost her membership in the Sawridge Indian Band December 3rd, 1936 and consequently, her children were born without membership in the Sawridge Band of Indians.

(c) That pursuant to the 1985 amendments to The Indian Act, the Plaintiffs hereinbefore set forth have regained their Indian status, and their entitlement to membership in the Sawridge Band of Indians.

(d) The Plaintiffs herein have applied for re-instatement in the Sawridge Band of Indians, but their applications for re-instatement has been refused by Walter Patrick Twinn and the Sawridge Band of Indians.

25. The Plaintiffs claim that as a result of their loss of membership in the Sawridge Band, due to the discriminatory operation of The Indian Act, and that as a result of the operation of the 1985 amendments to The Indian Act, the Plaintiffs are entitled to membership in the Sawridge Band of Indians, along with all rights and benefits accruing thereto and therewith, along with damages for the economic loss arising out of the lost benefits and entitlements consistent with membership in the Sawridge Band of Indians, inter alia as follows:

- (i) Education costs.
- (ii) Medical Care Benefits.
- (iii) On reserve housing.
- (iv) Tax exemption.

26. The Plaintiffs are entitled to reinstatement of Band membership in the Sawridge Indian Band, and each claims damages against the Defendants in excess of \$1,000,000.00 , and in totality, damages in excess of \$11,000,000.00 for lost benefits and entitlements as more fully set forth in paragraph 25..

27. In the alternative, as a result of the failure of the Sawridge Band of Indians to grant unto the Plaintiffs herein membership in the Band as required by Law, each of the Plaintiffs are entitled to damages as against the Defendants herein for their:

- (i) pro rata share of the economic value of the reserve, in excess of \$1,000,000.00 or in totality, damages in excess of \$11,000,000.00, plus
- (ii) the value of lost economic benefits consequential to the loss of membership status as is more fully hereinbefore set forth in paragraph 25, in an amount in excess of \$1,000,000.00 per Plaintiff, or in totality, a sum in excess of \$11,000,000.00.

28. The Plaintiffs further claim as a result of the discriminatory provisions of The Indian Act hereinbefore set forth and as a result of the failure of the Sawridge Band of Indians to allow the Plaintiffs to be reinstated as members of the Band, the progeny and the next-of-kin of the Plaintiffs has suffered economic loss and each of the Plaintiffs hereto claim damages in excess of \$1,000,000.00 for economic loss for and on behalf of their progeny, and in totality, general damages for all Plaintiffs in excess of \$11,000,000.00.

29. The Plaintiffs claim as against the Defendants punitive damages and exemplary damages in excess of \$11,000,000.00 as a result of the arrogant and high-handed manner in which Walter Patrick Twinn and Sawridge Band of Indians has deliberately, and without cause, denied the Plaintiffs reinstatement as Band Members of the Sawridge Band, which denial is unwarranted and unjustified, and has been only out of malice, spite and the selfish desire of Walter Patrick Twinn and the Sawridge Band of Indians to deprive the Plaintiffs of their just rights and dues, so that the Band and the Chief may be enriched, at the expense of the Plaintiffs.

30. The effect of the legislation prior to 1985 was to discriminate against aboriginal people in general and the Plaintiffs, their forefathers and forebearers in particular, thereby depriving the Plaintiffs of their Indian Heritage, ancestry, entitlements and benefits, all of which was as a consequence of discriminatory legislation passed by the Parliament of Canada, and administered by the Department of Indian Affairs, Northern Development, all of which resulted in a loss to the Plaintiffs as hereinbefore set forth in paragraphs 26, 27, 28 and 29.

31. In the alternative, the Plaintiffs claim that loss of their membership in the Sawridge Band of Indians was due to the operation of Law and the administration of that Law by Her Majesty The Queen, In the Right of Canada, through the Department of Indian Affairs and Northern Development and as a result of the discriminatory legislation so passed, the Plaintiffs are entitled to damages as against Her Majesty The Queen, In the Right of Canada, and the Department of Indian Affairs, Northern Development, as hereinbefore set forth more fully in paragraphs 26, 27, 28 and 29..

32. The Plaintiffs further claim as against the Sawridge band of Indians and Walter Twinn, a pro rata share of the assets of the Sawridge Band, including a pro rata share of the value of the holdings, savings, and any other entitlements or benefits which may accrue to the Plaintiffs as a result of their Indian status and Band membership.

33. The ancestors and forebearers of the Plaintiffs, either signed or were a party to Treaty No. 8, wherein Her Majesty The Queen, In The Right of Canada, inter alia, undertook certain obligations toward the aboriginal people of Canada in general and the Plaintiffs in particular. The Government of Canada breached its fiduciary duty to the Plaintiffs in particular by being a party to and originator of inherently discriminatory legislation by which the Plaintiffs were deprived by Law of their membership status in the Sawridge Indian Band. Her Majesty The Queen, In The Right of Canada is a guardian and trustee of the Plaintiffs and holds a portion of the goods, assets and chattels of the Sawridge Band for and on behalf of the Plaintiffs hereinbefore set forth, as a resulting trust, or alternatively, as a constructive trust, against which the Plaintiffs hereinbefore set forth, claim in accordance with paragraphs 26, 27, 28 and 29.

Amended  
Nov. 28th  
1997

34. "The Plaintiffs plead Sections 1 and 2 of the Canadian Bill of Rights 8-9 Elizabeth The Second, Chapter 44 (Canada) R.S.C. 1970, Appendix III and state as the fact is that they have suffered discrimination, by reason of race, national origin and sex and as a consequence of such discrimination, have been deprived of their fundamental human rights and fundamental freedoms, namely:

(a) life, liberty and security of the person and enjoyment of property on a reserve which they have been deprived of due to discrimination.

(b) due to discrimination, have been deprived of the right to equality before the law, and protection of the law,

the said discrimination being the automatic loss of Indian Status by female treaty Indian and her progeny, when she married a non-treaty Indian, while a treaty male, who married a non-treaty woman, did not lose his Indian Status.

35. The Plaintiffs are owed a fiduciary duty by the Defendants, Walter Patrick Twinn and the Sawridge Indian Band, wherein they are charged with a trustee pursuant to the provisions of The Indian Act and who hold the assets of the Sawridge Indian Band for and on behalf of the Plaintiffs. The said Defendants hold those goods, assets and chattels of the Sawridge Band for and on behalf of the Plaintiffs as a resulting trust, or alternatively, as a constructive trust against which the Plaintiffs claim in accordance with paragraphs 26, 27, 28 and 29.

36. The Plaintiffs plead the Doctrine of Unjust Enrichment and state as the fact is that as a result of the discrimination against the Plaintiffs by the Defendant, Walter Patrick Twinn and the Sawridge Band of Indians that Walter Patrick Twinn and the Sawridge Band is enriched, all of which is at the expense and detriment of the Plaintiffs.

37. The Plaintiffs further claim that the Defendants, Walter Patrick Twinn and the Sawridge Indian Band are committing waste upon the Sawridge Reserve and are in the process of dissipating and squandering the assets of the Reserve to which the Plaintiffs herein have a vested interest. The Plaintiffs pray to this Court for an Order by way of injunction, restraining and prohibiting the said named Defendants from dissipating and wasting the assets of the Sawridge Band.

#### CLAIM

The Plaintiffs therefore claim as follows:

- (a) For a declaration pursuant to Section 8 to 14.3 of The Indian Act as amended by Section 4 of the Act entitled "an Act to amend The Indian Act", Statutes of Canada, 1985, Chapter 27, the Plaintiffs herein are entitled to membership in their historical Band, the Sawridge Band.

- (b) For a declaration in the nature of a mandamus, that pursuant to the 1985 amendments of The Indian Act, that an Order be given directing the Department of Indian Affairs and the Sawridge Band include the names of the Plaintiffs on the Band List for the Sawridge Band.
- (c) For a declaration that the Plaintiffs herein are members of the Sawridge Band and entitled to all rights and benefits of such members.
- (d) Alternatively, the Plaintiffs claim damages as against the Sawridge Band of Indians, Walter Twinn and Her Majesty the Queen, In The Right of Canada for the value of their membership benefits, which may be proven at trial.
- (e) For a declaration that the Defendants hold on behalf of the Plaintiffs, the assets of the Sawridge Band as a resulting trust or alternately, a constructive trust.
- (f) The Plaintiffs claim damages as against the Defendants, each in excess of \$11,000,000.00.
- (g) The Plaintiffs further claim exemplary and punitive damages as the said Defendants, in excess of \$11,000,000.00.
- (h) An Order in the nature of an injunction, restraining the Defendants from wasting and dissipating the assets of the Sawridge Band.
- (i) The Plaintiffs further claim costs on a solicitor-client basis.

DATED at Prince Albert, in the Province of  
Saskatchewan this 30th day of June, A.D. 1995.

EGGUM, ABRAMETZ & EGGUM  
Per: "Peter V. Abrametz"  
Solicitors for the Plaintiffs

ADDRESS FOR SERVICE OF THE PLAINTIFF IS THE OFFICE OF:

EGGUM, ABRAMETZ & EGGUM  
Barristers and Solicitors  
101 - 88 - 13th Street East  
PRINCE ALBERT, Saskatchewa  
S6V 1C6  
Solicitor in charge of file: Peter V. Abrametz  
Telephone: (306) 763-7441

## TRIAL DIVISION

BETWEEN:

ALINE ELIZABETH HUZAR ET AL,

Plaintiffs

- and -

HER MAJESTY THE QUEEN, IN RIGHT OF  
CANADA, DEPARTMENT OF INDIAN AND  
NORTHERN AFFAIRS CANADA, and WALTER  
PATRICK TWINN, as Chief of the  
Sawridge Indian Band and the SAWRIDGE  
INDIAN BAND,

Defendants

---

STATEMENT OF CLAIM

---

## Notice to the Defendants

You are required to file in the Registry of the Federal Court of Canada, at the City of Ottawa or at a local office of the Court, your defence to the enclosed Statement of Claim or declaration within 30 days after the day of service hereof in accordance with the Federal Court Rules, if you are served within Canada.

If you are served in the United States of America, the period for filing the statement of defence is 40 days.

If you are served outside Canada and the United States of America, the period for filing the statement of defence is 60 days.

Instead of filing a statement of defence, you may apply to the Court for leave to file a conditional appearance pursuant to Rule 401 of the Federal Court Rules.

If you fail to defend this proceeding, you will be subject to have such judgment given against you as the Court thinks just upon the plaintiff's own showing.

- NOTE:
- (1) Copies of the Federal Court Rules, information concerning the local office of the Court, and other necessary information may be obtained upon application to the Registry of the Court at Ottawa - telephone - (613)992-4238 - or at any local office thereof.
  - (2) The Statement of Claim is filed by  
EGGUM, ABRAMETZ & EGGUM  
Solicitors for the Plaintiffs

\*\*\*\*\*  
\*\*\* ACTIVITY REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO. 3607

CONNECTION TEL 14038493446

CONNECTION ID

START TIME 11/28 16:52

USAGE TIME 06'55

PAGES 17

RESULT OK

# TAB D

Source: [http://decisions.fca-caf.gc.ca/en/2000/a-326-98\\_5195/a-326-98.html](http://decisions.fca-caf.gc.ca/en/2000/a-326-98_5195/a-326-98.html)

Date: 20000613

Docket: A-326-98

CORAM: DÉCARY, J.A.

SEXTON, J.A.

EVANS, J.A.

This is Exhibit \* 0 \* referred to in the  
Affidavit of

ROLAND TWINN

Sworn before me this ..... day

of JUNE 12, 2000

A Commissioner for Oaths in and for  
the Province of Alberta

DONNA BROWN

A Commissioner for Oaths

In and for The Province of Alberta

My Appointment Expires December 30, 2012

BETWEEN:

HER MAJESTY THE QUEEN, IN RIGHT OF CANADA, DEPARTMENT OF INDIAN AND  
NORTHERN AFFAIRS CANADA and WALTER PATRICK TWINN, as Chief of the Sawridge  
Indian Band and the SAWRIDGE INDIAN BAND

Defendants

(Appellants)

- and -

ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY, WILLIAM BARTHOLOMEW  
McGILLIVRAY, MARGARET HAZEL ANNE BLAIR, CLARA HEBERT, JOHN EDWARD  
JOSEPH McGILLIVRAY, MAURICE STONEY, ALLEN AUSTIN McDONALD, LORNA JEAN  
ELIZABETH McREE, FRANCES MARY TEES, BARBARA VIOLET MILLER (nee  
McDONALD)

Plaintiffs

(Respondents)

Heard at Toronto, Ontario, Tuesday, June 13, 2000

Judgment delivered from the Bench at Toronto, Ontario

on Tuesday, June 13, 2000

REASONS FOR JUDGMENT OF THE COURT BY: EVANS, J.A.

Date: 20000613

Docket: A-326-98

CORAM: DÉCARY J.A.

SEXTON J.A.

EVANS J.A.

BETWEEN:

HER MAJESTY THE QUEEN, IN RIGHT OF CANADA, DEPARTMENT OF INDIAN AND  
NORTHERN AFFAIRS CANADA and WALTER PATRICK TWINN, as Chief of the Sawridge  
Indian Band and the SAWRIDGE INDIAN BAND

Defendants

(Appellants)

- and -

ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY, WILLIAM BARTHOLOMEW  
McGILLIVRAY, MARGARET HAZEL ANNE BLAIR, CLARA HEBERT, JOHN EDWARD  
JOSEPH McGILLIVRAY, MAURICE STONEY, ALLEN AUSTIN McDONALD, LORNA JEAN  
ELIZABETH McREE, FRANCES MARY TEES, BARBARA VIOLET MILLER (nee  
McDONALD)

Plaintiffs

(Respondents)

**REASONS FOR JUDGMENT**

*(Delivered from the Bench at Toronto, Ontario*

*on Tuesday, June 13, 2000)*

**EVANS J.A.**

[1] This is an appeal against an order of the Trial Division, dated May 6<sup>th</sup>, 1998, in which the learned Motions Judge granted the respondents' motion to amend their statement of claim by adding paragraphs 38 and 39, and dismissed the motion of the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, to strike the statement of claim as disclosing no reasonable cause of action.

[2] In our respectful opinion, the Motions Judge erred in law in permitting the respondents to amend and in not striking out the unamended statement of claim. The paragraphs amending the statement of claim allege that the Sawridge Indian Band rejected the respondents' membership applications by misapplying the Band membership rules (paragraph 38), and claim a declaration that the Band rules are discriminatory and exclusionary, and hence invalid (paragraph 39).

[3] These paragraphs amount to a claim for declaratory or prerogative relief against the Band, which is a federal board, commission or other tribunal within the definition provided by section 2 of the *Federal Court Act*. By virtue of subsection 18(3) of that Act, declaratory or prerogative relief may only be sought against a federal board, commission or other tribunal on an application for judicial review under section 18.1. The claims contained in paragraphs 38 and 39 cannot therefore be included in a statement of claim.

[4] It was conceded by counsel for the respondents that, without the proposed amending paragraphs, the unamended statement of claim discloses no reasonable cause of action in so far as it asserts or assumes that the respondents are entitled to Band membership without the consent of the Band.

[5] It is clear that, until the Band's membership rules are found to be invalid, they govern membership of the Band and that the respondents have, at best, a right to apply to the Band for membership. Accordingly, the statement of claim against the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, will be struck as disclosing no reasonable cause of action.

[6] For these reasons, the appeal will be allowed with costs in this Court and in the Trial Division.

"John M. Evans"

J.A.

**FEDERAL COURT OF CANADA**

**Names of Counsel and Solicitors of Record**

**DOCKET:** A-326-98

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN, IN RIGHT OF CANADA,  
DEPARTMENT

OF INDIAN AND NORTHERN AFFAIRS CANADA and WALTER

PATRICK TWINN, as Chief of the Sawridge Indian Band and the

SAWRIDGE INDIAN BAND

- and -

ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY, WILLIAM  
BARTHOLOMEW MCGILLIVRAY, MARGARET HAZEL ANNE BLAIR, CLARA HEBERT,  
JOHN EDWARD JOSEPH MCGILLIVRAY, MAURICE STONEY, ALLEN AUSTIN McDONALD,  
LORNA JEAN ELIZABETH McREE, FRANCES MARY TEES, BARBARA VIOLET MILLER (nee  
McDONALD)

**DATE OF HEARING:** TUESDAY, JUNE 13, 2000

**PLACE OF HEARING:** TORONTO, ONTARIO

**REASONS FOR JUDGMENT BY:** EVANS J.A.

*Delivered at Toronto, Ontario on*

*Tuesday, June 13, 2000*

**APPEARANCES BY:** Mr. Philip P. Healey

*For the Defendants*

*(Appellants)*

*Mr. Peter V. Abrametz*

*For the Plaintiffs*

*(Respondents)*

**SOLICITORS OF RECORD:** Aird & Berlis

*Barristers & Solicitors*

*BCE Place, Suite 1800, Box 754*

*181 Bay Street*

*Toronto, Ontario*

*M5J 2T9*

*For the Defendants*

*(Appellants)*

*Eggum, Abrametz & Eggum*

*Barristers & Solicitors*

*101-88-13th Street East*

*Prince Albert, Saskatchewan*

*S6V 1C6*

*For the Plaintiffs*

*(Respondents)*

**FEDERAL COURT OF APPEAL**

*Date: 20000613*

*Docket: A-326-98*

***BETWEEN:***

**HER MAJESTY THE QUEEN, IN RIGHT OF  
CANADA, DEPARTMENT OF INDIAN AND  
NORTHERN AFFAIRS CANADA and WALTER  
PATRICK TWINN, as Chief of the Sawridge Indian  
Band and the SAWRIDGE INDIAN BAND**

Defendants

(Appellants)

- and -

ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY, WILLIAM  
BARTHOLOMEW MCGILLIVRAY, MARGARET HAZEL ANNE BLAIR, CLARA HEBERT,  
JOHN EDWARD JOSEPH MCGILLIVRAY, MAURICE STONEY, ALLEN AUSTIN  
McDONALD, LORNA JEAN ELIZABETH McREE, FRANCES MARY TEES, BARBARA  
VIOLET MILLER (nee McDONALD)

Plaintiffs

(Respondents)

***REASONS FOR JUDGMENT***

# TAB E

114-44-4

114-44-4

Driftpile Alberta  
May 12th. 1944.

Dept. of Mines & Resources, Indian Affairs Branch, Ottawa, Canada.

I refer to your letter of 29-4-44, your File 8131-38, re application for Enfranchisement of William J. Stoney, and wish to state the following facts in this case.

This Indian has been living off the Reserve for quite a number of years, and has been employed by the Northern Alberta Railways Section Worker, and has kept a very good standard of living. From what information I can gather, he is not indebted to anyone, and is generally well spoken of. I feel certain that he can well look after himself and family.

P. J. Demers  
Indian Agent.

This is Exhibit "E" referred to in the

Affidavit of

ROLAND TWINN

Sworn before me this 26 day

of JUN 8 A.D. 2012

[Signature]  
A Commissioner for Oaths in and for  
the Province of Alberta

**DONNA BROWN**  
A Commissioner for Oaths  
In and for The Province of Alberta  
My Appointment Expires December 30, 2012

# TAB F



This is Exhibit "F" referred to in the Affidavit of

ROLAND WINN

sworn before me this 26 day

of JUNE A.D., 20 12

Donna Brown  
A Commissioner for Oaths in and for  
the Province of Alberta

**DONNA BROWN**

A Commissioner for Oaths

In and for The Province of Alberta

My Appointment Expires December 30, 2012

# TAB G

OCTOBER 7, 1997

CBC - FIFTH ESTATE "THE GATE KEEPER"  
of Walter P. Twinn

MAURICE STONEY If you are trying to paint a picture of him you would say that .... if you know the definition of a dictator then you would have your picture.

ANNOUNCER -----  
Maurice Stoney owns a successful taxi business in Slave Lake. He was born and raised on Sawridge but his parents left the reserve to avoid having to send their kids to residential school. They all lost Indian status but Bill C-31 gave it back and Maurice Stoney now believes he is now entitled to return to Sawridge.

MAURICE STONEY We have every right to be on that Reserve. We were born Band members. He has no business saying to us we don't belong. If we don't belong he doesn't belong

MAURICE STONEY -----  
This questionnaire doesn't even make good ass wipe.  
He told me sure you go ahead and fill it out but we won't pass it any way.

ANNOUNCER You're wasting your time Maurice Stoney, you're wasting your time

This is Exhibit \* 6 \* referred to in the  
Affidavit of

ROLAND TWINN  
Sworn before me this 26 day  
of JUNE A.D., 2012

W. Brown  
A Commissioner for Oaths in and for  
the Province of Alberta

DONNA BROWN  
A Commissioner for Oaths  
In and for The Province of Alberta  
My Appointment Expires December 30, 2012

on Tuesday, June 13, 2000

REASONS FOR JUDGMENT OF THE COURT BY: EVANS, J.A.

Date: 20000613

Docket: A-326-98

CORAM: DÉCARY J.A.

SEXTON J.A.

EVANS J.A.

BETWEEN:

HER MAJESTY THE QUEEN, IN RIGHT OF CANADA, DEPARTMENT OF INDIAN AND  
NORTHERN AFFAIRS CANADA and WALTER PATRICK TWINN, as Chief of the Sawridge  
Indian Band and the SAWRIDGE INDIAN BAND

Defendants

(Appellants)

- and -

ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY, WILLIAM BARTHOLOMEW  
McGILLIVRAY, MARGARET HAZEL ANNE BLAIR, CLARA HEBERT, JOHN EDWARD  
JOSEPH McGILLIVRAY, MAURICE STONEY, ALLEN AUSTIN McDONALD, LORNA JEAN  
ELIZABETH McREE, FRANCES MARY TEES, BARBARA VIOLET MILLER (nee  
McDONALD)

Plaintiffs

(Respondents)

**REASONS FOR JUDGMENT**

*(Delivered from the Bench at Toronto, Ontario*

*on Tuesday, June 13, 2000)*

**EVANS J.A.**

[1] This is an appeal against an order of the Trial Division, dated May 6<sup>th</sup>, 1998, in which the learned Motions Judge granted the respondents' motion to amend their statement of claim by adding paragraphs 38 and 39, and dismissed the motion of the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, to strike the statement of claim as disclosing no reasonable cause of action.

[2] In our respectful opinion, the Motions Judge erred in law in permitting the respondents to amend and in not striking out the unamended statement of claim. The paragraphs amending the statement of claim allege that the Sawridge Indian Band rejected the respondents' membership applications by misapplying the Band membership rules (paragraph 38), and claim a declaration that the Band rules are discriminatory and exclusionary, and hence invalid (paragraph 39).

[3] These paragraphs amount to a claim for declaratory or prerogative relief against the Band, which is a federal board, commission or other tribunal within the definition provided by section 2 of the *Federal Court Act*. By virtue of subsection 18(3) of that Act, declaratory or prerogative relief may only be sought against a federal board, commission or other tribunal on an application for judicial review under section 18.1. The claims contained in paragraphs 38 and 39 cannot therefore be included in a statement of claim.

[4] It was conceded by counsel for the respondents that, without the proposed amending paragraphs, the unamended statement of claim discloses no reasonable cause of action in so far as it asserts or assumes that the respondents are entitled to Band membership without the consent of the Band.

[5] It is clear that, until the Band's membership rules are found to be invalid, they govern membership of the Band and that the respondents have, at best, a right to apply to the Band for membership. Accordingly, the statement of claim against the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, will be struck as disclosing no reasonable cause of action.

[6] For these reasons, the appeal will be allowed with costs in this Court and in the Trial Division.

"John M. Evans"

J.A.

**FEDERAL COURT OF CANADA**

**Names of Counsel and Solicitors of Record**

**DOCKET:** A-326-98

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN, IN RIGHT OF CANADA,  
DEPARTMENT

OF INDIAN AND NORTHERN AFFAIRS CANADA and WALTER

PATRICK TWINN, as Chief of the Sawridge Indian Band and the

SAWRIDGE INDIAN BAND

- and -

ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY, WILLIAM  
BARTHOLOMEW MCGILLIVRAY, MARGARET HAZEL ANNE BLAIR, CLARA HEBERT,  
JOHN EDWARD JOSEPH MCGILLIVRAY, MAURICE STONEY, ALLEN AUSTIN McDONALD,  
LORNA JEAN ELIZABETH McREE, FRANCES MARY TEES, BARBARA VIOLET MILLER (nec  
McDONALD)

**DATE OF HEARING:** TUESDAY, JUNE 13, 2000

**PLACE OF HEARING:** TORONTO, ONTARIO

**REASONS FOR JUDGMENT BY:** EVANS J.A.

*Delivered at Toronto, Ontario on*

*Tuesday, June 13, 2000*

**APPEARANCES BY:** Mr. Philip P. Healey

*For the Defendants*

*(Appellants)*

*Mr. Peter V. Abrametz*

*For the Plaintiffs*

*(Respondents)*

**SOLICITORS OF RECORD:** Aird & Berlis

*Barristers & Solicitors*

*BCE Place, Suite 1800, Box 754*

*181 Bay Street*

*Toronto, Ontario*

*M5J 2T9*

*For the Defendants*

*(Appellants)*

*Eggum, Abrametz & Eggum*

*Barristers & Solicitors*

*101-88-13th Street East*

*Prince Albert, Saskatchewan*

*S6V 1C6*

*For the Plaintiffs*

*(Respondents)*

**FEDERAL COURT OF APPEAL**

*Date: 20000613*

*Docket: A-326-98*

***BETWEEN:***

**HER MAJESTY THE QUEEN, IN RIGHT OF  
CANADA, DEPARTMENT OF INDIAN AND  
NORTHERN AFFAIRS CANADA and WALTER  
PATRICK TWINN, as Chief of the Sawridge Indian  
Band and the SAWRIDGE INDIAN BAND**

Defendants

(Appellants)

- and -

**ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY, WILLIAM  
BARTHOLOMEW MCGILLIVRAY, MARGARET HAZEL ANNE BLAIR, CLARA HEBERT,  
JOHN EDWARD JOSEPH MCGILLIVRAY, MAURICE STONEY, ALLEN AUSTIN  
McDONALD, LORNA JEAN ELIZABETH McREE, FRANCES MARY TEES, BARBARA  
VIOLET MILLER (nee McDONALD)**

Plaintiffs

(Respondents)

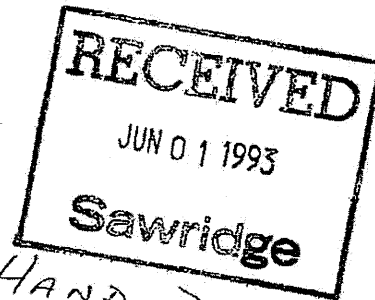
***REASONS FOR JUDGMENT***

# TAB H

---

June 1-93

copy

attn: Chief Walter Twinn,

Dear Sir,

The purpose of this letter is to inform you of our intended protest rally, we the band members of (C21) the ~~Nez Percé~~ <sup>SLAVE</sup> band of the Lesser ~~Slave~~ Lake area, are going to organize and hold a protest rally on the Sawridge Reserve.

We will set up a tent and teepee camp to protest housing and land issues. Being ex bandmembers of the Sawridge Band, we feel that we have every right to hold a protest rally. We've tried every possible negotiable route and avenue to get said issues settled. To no avail did anyone try or say that they would help with these matters. Our patience has worn out. We will invite the media and anyone else who wishes to support our cause.

This is Exhibit "H" referred to in the  
Affidavit of

ROLAND TWINN

Sworn before me this 26 day

of JUNE A.D. 2012

H. Brown  
A Commissioner for Oaths in and for  
the Province of Alberta

DONNA BROWN  
A Commissioner for Oaths  
In and for The Province of Alberta  
My Appointment Expires December 30, 2012

# TAB I

# C-31 Indians stage protest as reminder

By M. Partington-Richer

About two dozen demonstrators who say they have every right to be on the Sawridge band's membership list defied an order keeping them off the Sawridge Indian reserve Saturday. Marching just beyond markers designating reserve land, they posed for photographs. Then they left.

One of the demonstrators was 82-year-old Ned Gladue. Protesters chose the first homestead set up by Gladue and his brother to make their peaceful protest Saturday.

"The Indian agent at Sucker Creek brought us out here and told us to move in," said Gladue, pointing through the trees to what used to be known as the Ward reserve. "He gave us logs to build a house not even 100 yards from here. We skidded the logs through here and built our house," he said, standing on the old Hwy. 2, about 4 km west of Slave Lake.

Shortly after the brothers built

their home, however, the Indian agent told Ned he and his brother had no status. Their father, the agent told them, was not a treaty Indian.

"The agent told us our dad was a half-breed. We didn't know about the law, so we left." That was 1943. Gladue says he's since been told he was illegally removed, adding he's still waiting to get back onto the band list.

"That money. That money," he says, shaking his head. (Chief Walter Twinn) must be scared we are going to take it away.

"I just want some land and a house. I'm not after his money."

Another protester was Charles Twinn, the chief's cousin. He said there are upwards of 300 C-31 Indians waiting to be accepted back into the band's fold. Via an order by the federal government

— Bill C-31 — six years ago, several Indians were given back their status. Those Natives began to refer to themselves as C-31s.

A court battle over the membership lists has raged for years, and still waiting.

and is not expected to be completed before sometime next year. At the centre of the debate is Chief Twinn's argument that the federal government has no right to dictate membership lists to the bands. Two other Alberta chiefs feel the same way. That case will go before the Federal Court of Canada in September.

In response to word of the protest planned for Saturday, the Sawridge chief issued a statement to the group's lawyer, saying those caught trespassing on Sawridge lands could be charged under the Indian Act. Members of the RCMP detachment in Slave Lake were at the rally, video-taping the proceedings. They did not, however, make any arrests at the time.

S/Sgt. Lance Stewart said police would only issue tickets at the band's request.

The threat of charges didn't faze demonstration organizer Maurice Stoney. After all these years, he says he's still here — and still waiting.

"We're just saying we are band members and he doesn't have the right to kick us (off the land). If we're to be arrested, we just want to set up a

ment for the C-31s. In an earlier interview, Stoney said his group is willing to start a new band.

"We just want to set up a



Elder Ned Gladue tells S/Sgt. Lance Stewart that more than 50 years ago, he built his first home less than a kilometre from the point where demonstrators held their rally Saturday. Gladue insists he's only interested in a home and a piece of land. Money, he insists is not on his list of priorities.

then we'll have to accept it in order to get our point across." Stoney called on federal and provincial governments to meet with Chief Walter Twinn. "We're even saying 'Please', for heaven's sake."

This is Exhibit "I" referred to in the Affidavit of

ROLAND TWINN

Sworn before me this 26 day of JUNE A.D. 2012

A Commissioner for Oaths in and for the Province of Alberta

DONNA BROWN  
A Commissioner for Oaths  
in and for the Province of Alberta  
My Commission Expires December 30, 2012

**TAB J**

# Protesters claim right to Sawridge reserve land

By Walt Rieth

Approximately 20 protesters stepped on land which they claim is rightfully theirs.

The recent demonstration was called to draw attention to the plight of a few hundred disenfranchised members of the Sawridge Indian Band.

The protest was over a band membership dispute which will be heard by Canada's Supreme Court in September.

The group met four kilometers west of Slave Lake on a road in front of reserve land where one of the demonstrators settled many years ago.

Ned Gladue, the old-

est member of the protest group (he says he has been told he was born around 1912), told the gathering that when he and his brother arrived from Sucker Creek, an Indian agent gave them a \$50 voucher for food.

"We were told to move into this place, and the Indian agent gave us the right to use the logs for a cabin," he said.

At that time, he said, there was a chief and band council in Driftpile, and only a councillor in Sucker Creek.

Gladue said he lost his Indian status in 1943 when an agent disputed the fact that the brothers'

father was an Indian.

"We didn't know anything about the law then," he said, "and were kicked out."

✦ Maurice Stoney, one of the demonstration organizers, said the group is not making a grab for the band's money.

"We're not after the money but we need land and a place to live," he said.

"We want help from three levels: the federal government, the province, and the Sawridge band."

✦ Stoney, born and raised in Slave Lake, said his grandfather John Stoney was an original band member.

Another member of the protest group was ✦ Charles Twinn, the cousin of current Sawridge Band Chief Walter Twinn.

Charles said he sold his Indian status in 1955 for \$700.

"We made mistakes, but he could say we made mistakes and try to help us," he said.

Charles' father, St. Pierre Twinn, was the chief before Paul Twinn, Walter's father.

✦ Frank Ward, currently a Slave Lake resident, said he used to live on the Ward family reserve, what is now the western section of the Sawridge reserve, and was originally in the band.

He was sent to a mission when he was 12 because his parents both had tuberculosis.

✦ June Kolosky, currently living in Chetwynn, British Columbia, said she married a non-treaty Indian, but was reinstated by federal legislation in 1985.

"My sister attempted to meet with the Chief

then but wasn't able to speak with him," she said. ✦ Kolosky had lived on the reserve until she was 15 years old.

The protest organizers say they are now waiting for a ruling by the Su-

preme Court over who has jurisdiction over band membership requirements.

The Sawridge band maintains band membership should be decided by the band councils and not by federal legislation.

This is Exhibit "J" referred to in the Affidavit of

ROLAND TWINN

Sworn before me this 26 day

of JUNE 1993 A.D., 2012

A Commissioner for Oaths in and for the Province of Alberta



DONNA BROWN

A Commissioner for Oaths

In and for The Province of Alberta

My Appointment Expires December 30, 2012

# TAB K

06/14/93

14:39

4248614

GRAND COUNCIL

001

→ TO: Chief Twinn  
849-3446

## Protesters dare to step on to Sawridge land

JACK DANYLCHUK June 13 '93  
Journal Staff Writer

### Slave Lake

In defiance of one of Canada's wealthiest and most powerful Indian leaders, Ned Gladue set foot on land that he lost to the whim of an Indian agent 50 years ago.

"We skidded the logs for the houses with horses right through here," Gladue said, pointing the barely visible trail out to Lance Stewart, an RCMP officer from Slave Lake.

Stewart was there to videotape the peaceful demonstration at the edge of the Sawridge reserve by Gladue and 20 other members of the wealthy band.

The small group represents more than 300

persons who regained their Indian status and membership in the Sawridge band through a federal law passed in 1985.

Instead of being welcomed home, the reinstated members have become the centre of a legal dispute between Ottawa and Sawridge Chief Walter Twinn, a Conservative senator.

In the case which goes before the Federal Court of Canada in September, Twinn is arguing that only band councils — not Ottawa — can decide who is a band member.

The membership dispute has stalled Twinn's plans to take Sawridge out of the Indian Act and

make it one of the few self-governing Indian bands in Canada.

On learning plans of the demonstration, Twinn wrote organizers they might face criminal trespass charges if they set foot on the reserve.

The Sawridge band acknowledges about 100 members, most of whom work for the various business ventures Twinn has developed with the band's oil and gas royalties.

"We don't want the band's money," said Gladue.

"We don't want a fight. We just want the land that's ours."

Gladue was forced to leave the reserve, located four km west of Slave Lake, in 1943 when an Indian agent decided that his father had not been an Indian.

Charles Twinn, one of the chief's cousins, is also seeking readmission to the band he left when he sold his Indian status for \$700.

"I was young then," said Twinn, whose father St. Pierre Twinn was chief before Walter's father Paul.

"When a guy is young do you blame him for the way everything goes? You think he (Walter) would try and help, or overlook mistakes?"

Maurice Stoney, one of the demonstration's organizers and a member of a council named by the exiled Sawridge members, said the group is determined.

"These people are not going to slide away," he said.

The demonstrators were prepared to be arrested for trespass. But when they stepped on the reserve to have their pictures taken, the RCMP were not there to witness the act.



DOMNA BROWN

A Commissioner for Oaths

in and for the Province of Alberta

My Appointment Expires December 30, 2012

This is Exhibit "K" referred to in the Affidavit of

ROLAND TWINN

Sworn before me this 26 day

of JUNE A.D. 2012

A Commissioner for Oaths in and for the Province of Alberta

# TAB L

## CITIES &amp; TOWNS

# Who is a real Indian, anyway?

*Sawridge Chief Walter Twinn is fighting off an invasion of Bill C-31 natives*

Indian activists these days are quick to cry racism over their treatment by non-natives, but intolerance seems to be thriving in the native community as well. A group of Cree Indians claim they are unfairly being denied their ancestral right to live on the Sawridge Indian Reserve by Chief Walter Twinn. But Chief Twinn, who counters that they can't prove they belong to the band, has taken his fight for the right to determine who is a legitimate band member to the courts.

The 300 Indians lobbying for the right to live on the Sawridge reserve, located on the eastern tip

of Lesser Slave Lake, are using the eviction of medicine man Billy Hamelin as a symbol of their struggle. Mr. Hamelin says he was "personally invited" by Chief Twinn last year to live on the reserve and "oversee native spiritual ceremonies." However, he says the chief subsequently became annoyed at his practices and on June 1 gave him eight days to leave the reserve.

Not surprisingly, Chief Twinn, who is a member of the Senate, has a much different version of the events surrounding the eviction. Mr. Hamelin was "destitute," he says, so he offered to let him and his

wife, Cathy, live in a vacant band employee house. The band even paid their bills. "But after a while, band members protested this because he had no legal grounds to be here," says Chief Twinn. He adds that Mr. Hamelin has "dishonoured" the band by organizing other displaced Crees to protest his eviction.

Indeed, Mr. Hamelin is not alone in feeling mistreated by Chief Twinn. Cree Indian Maurice Stoney estimates that the chief has prevented at least 12 families, including some Twinn, from living on the reserve. Most of them live in nearby Slave Lake, and almost all are C-31 Indians. Enacted in 1985, Bill C-31 loosened the restrictions on who could claim native status, creating about 90,000 new Indians. Mr. Stoney maintains that since the bill passed, local C-31 Indians enjoy the same treaty rights as other status natives, and many have ancestors on the original band list. Therefore, they should be welcomed on the reserve.

However, Chief Twinn refuses even to meet with them. The federal Department of



Evicted Indian Hamelin:  
Pack your bags, Chief Twinn ordered.

## The neighbourhood fights back

*Police and residents collaborate to drive out hookers and pushers*

On a warm summer evening last week a woman loitered outside the ethnic cafes and grocery stores on Edmonton's 107 Avenue looking dishevelled, stoned and about 20 years older than her age. A late-model gold compact darted out of the busy traffic, angled against the curb and two men, whose fashionably baggy T-shirts concealed bullet-proof vests and automatic pistols, leapt out. In the blink of an eye the woman was handcuffed and on her way to the downtown Edmonton police station where she was held under a liquor control act provision that allows an intoxicated person to be detained without charge.

The arrest was part of a continuing effort by the Edmonton Police Service and community groups to chase the hookers and drug dealers out of the Central McDougall and Queen Mary boroughs of the city. And while no one is willing to declare the war won, after dozens of arrests and at least as many drug house closures, a degree of normalcy has been restored to the neighbourhood.

The problems associated with the sex trade have plagued the area north of the city's downtown since the turn of the century. In recent years the business has become bigger and rougher, as the twin perils of drugs and prostitution feed off each other. According to police, nearly every hooker on 107 Avenue is addicted to some drug, most often cocaine. They turn a \$50 trick, use the money to get "cranked," then repeat the cycle non-stop for up to 48 hours without food or sleep.

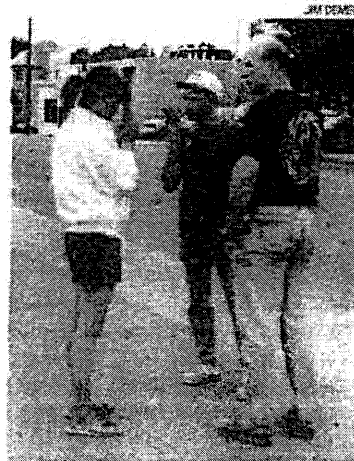
John Belanger is vice-president of the Queen Mary Community League, which encompasses the hooker district. Fed up

with being propositioned and tired of seeing his neighbourhood littered with condoms and syringes, he and his fellow community league members met with police late last February to chart a strategy for reclaiming their streets.

Constables Trent Forsberg and Jim Anderson are two of the four officers on the Queen Mary-McDougall beat. Gregarious and outgoing, the two have established a rapport with the ethnically diverse residents on their beat. Const. Anderson even learned to speak and write Cantonese.

They agree that the neighbourhood had reached its nadir last January when as many as 40 prostitutes were working a 10-block strip of 107 Avenue. Police were

arresting only those who had made themselves a persistent nuisance. After their



Constables Forsberg and Anderson:  
A 'zero-tolerance' approach.

This is Exhibit "L" referred to in the

Affidavit of

ROLAND BROWN

Sworn before me this 26 day,

of JUNE A.D., 2012

[Signature]  
A Commissioner for Oaths in and for  
the Province of Alberta

**DONNA BROWN**

A Commissioner for Oaths

In and for The Province of Alberta 2012

My Appointment Expires December 30, 2012

## RESOURCES

Indian and Northern Affairs has also refused to intervene. The ministry's Alberta office refuses even to comment on the dispute, citing Chief Twinn's court challenge against Bill C-31. In 1986, along with Chief Wayne Roan of the Ermineskin band and Chief Bruce Starlight of the Sarcee band, the Sawridge chief launched a court challenge to Bill C-31's constitutionality. The case continues in Edmonton in September.

One Slave Lake resident thinks Chief Twinn's actions are motivated by profit, not principle. "He doesn't say it in so many words," she says, "but he just doesn't want to split the pie." Chief Twinn retorts that many of the Indians claiming to be Sawridge band members can't prove they belong to his band. He also contends that "it's open to question" whether some of them should even have native status. And he believes that a first step towards self-government is a band's ability to determine membership.

Mr. Stoncy says many of the disputed Sawridge natives feel powerless to combat Mr. Twinn's legal and political savvy. He also wonders what has happened to co-operation among his people. "It's a sad thing for natives to be fighting amongst themselves in this day and age."

—Patty Fuller

meetings with the community, however, they adopted a different approach: zero tolerance. They arrested hookers for any infraction, however minor—jaywalking, hitchhiking, public drunkenness—in an effort to squeeze the hookers back to their traditional zone known as the "drag" on 96th Street.

It was during one of those petty arrests that one of the girls complained bitterly that police were picking on the prostitutes and ignoring the pushers who were feeding off the skin trade. Deciding she had a point, the constables began following the hookers to the doorsteps of the local drug pusher, who would get a visit from a SWAT team an hour or so later. For a while in March, police were "whacking" one coke house a day.

By last month, the problems had all but dried up. Business people in the area report that in wake of the clean-up, sales have climbed dramatically. But Constables Forsberg and Anderson warn that their work is never over. "It's like weeding a garden," says Const. Forsberg, "you can go in and take out every weed, but if you don't stay on it, first thing you know—you're back where you started."

—Jim Demers

## Good news for natural gas

*A geological survey says there's lots yet to be found*

Surging natural gas prices and improved access to new U.S. markets are sparking an oil patch resurgence, but one other vital factor must be addressed if western Canadian producers are to enjoy lasting prosperity: substantial new reserves must be found. Only time—and significant expenditures on exploration—will tell just how much potential remains within the western Canadian sedimentary basin, but a report released last month by the Geological Survey of Canada suggests abundant reason for optimism. According to the GSC, more than half of the regions' natural gas is likely still undiscovered.

The report, entitled *Devonian Gas Resources of the Western Canada Sedimentary Basin*, is the first in a series analyzing all the major hydrocarbon-bearing formations in the basin. Co-author Jim Barclay says the Devonian stratum, which harbours about 27% of all natural gas reserves discovered in the basin, were assessed first partly because they are the oldest and deepest formations (geologists prefer to work from the bottom up). But another reason for starting there is that Devonian rocks are regarded as having the greatest potential for major new discoveries. Indeed, most of the bigger recent finds, such as the Alberta's Caroline field and the Slave Point reefs of northeastern B.C., have occurred in Devonian formations.

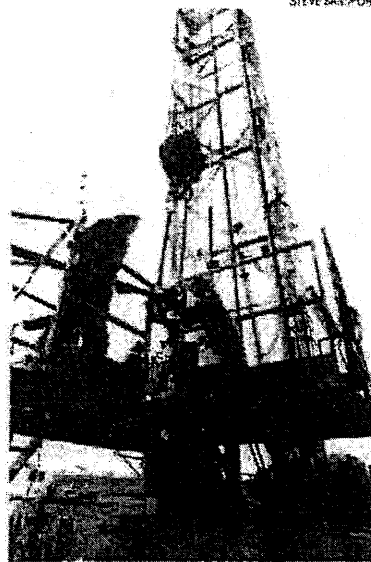
The GSC estimates total Devonian gas reserves at 126 trillion cubic feet (tcf), of which about 40% has so far been discovered. Of the remainder, 16% is estimated to lie in pools associated with known "plays," or large fields, while 44% is thought to be contained in undiscovered plays.

Mr. Barclay figures that about 60% of the gas in the entire sedimentary basin remains undiscovered. While relatively fewer new reserves remain to be discovered in the

shallower and more intensively developed Cretaceous formations, many of the deeper foothills plays, which are believed to hold significant deposits, are still entirely unexplored.

All this means the western Canadian basin retains considerably more exploration promise than most other North American

STEVE SANFORD



Drilling rig: The rebound has already begun.

gas basins. According to U.S. Department of the Interior estimates, only about 28% of recoverable U.S. natural gas reserves are undiscovered. The GSC's research also suggests that natural gas, rather than oil, will increasingly be the focus of exploratory activity in western Canada. The organization estimates that only a little more than 20% of the area's oil is still to be found.

Canadian Hunter Exploration Ltd. president Jim Gray agrees that western

Canada should be an attractive area for gas exploration in the foreseeable future. "In the U.S., there's been very few big discoveries in recent years," he notes. "Our potential is considerably better. We are just a less mature basin."

But how much of that potential is realized largely depends on price. The GSC calculates that only about 16% of remaining Devonian gas reserves would be worth producing at a price of \$1.25 per thousand cubic feet (mcf), while 43% would be economic at a price of \$2.50. After falling as low as 80¢ per mcf last year, prices on the natural gas spot market have risen this year to the \$2 range.

Higher gas prices are already credited as one of the factors fuelling a recent rebound from last year's drilling doldrums. The *Nickle Daily Oil Bulletin* reported last week that 2,462 wells were drilled in western Canada in the first quarter of 1993, the highest total in four years. Last year, only 1,181 were drilled in the same period.

—Tom McFeely

# TAB M

# The Lakeside LEADER

Slave Lake, Alberta Volume 22, Number 53 Reg. #4819 Wednesday, August 18, 1983 31 CENTS

## Protesters demand entry into band

By David Zuberbier

Armed with placards carrying messages like "All we want is acceptance" and "Time for justice, time for action," a group of 25 protesters marched from the Sawridge administration office to the Sawridge Truck Stop Thursday demanding to meet Chief Walter Twinn to discuss reinstatement within the Sawridge Band.

The group got to meet Twinn but only briefly when he drove by them as they stood at the entrance to the Truck Stop.

The 25 protesters represent a group of more than 300 trying to regain full band membership and the privileges that go with it.

They became legal band members after an amendment to the Indian Act became law in 1985. Bill C-31 returned Indian status and band membership to thou-

sands, including women who married non-Indians. Eventually some 90,000 new names were added to the list of who is deemed an Indian, including 9,500 in Alberta.

Chief Twinn, along with Ermineskin band chief Wayne Ross and Sarcee band chief Bruce Starlight, launched a court challenge to the bill in 1986. They say only bands, not the federal government, should decide who's admitted as members and who isn't.

In documents filed with Federal Court Twinn says admitting a large number of reinstated C-31 band members to his band might have "a significant impact on the equilibrium of band social, economic and political structures."

The protesters say they've called, faxed or mailed messages

to Twinn for at least two years, trying to get him to meet with them. No response, they say.

Last week the group got their

one of the wealthiest bands in Canada. In the 1960s oil was found on one of the band's reserves. Royalties have been used

"We're either forcing the federal government or Walter to start looking at terms and looking at genealogy and showing which



Protesters march for inclusion

Twenty-five protesters marched from the Sawridge Band administration office to the Sawridge Truck Stop Thursday, demanding a meeting with Chief Walter Twinn on being reinstated into the band and gaining full band privileges. Twinn drove by the protesters, accepted a one page piece of paper outlining the reason for the protest, then left. Group spokesperson Maurice Stoney says more protests will take place if Twinn continues to refuse to meet with them.

## "Way out" salary scale forces staff cut in BDC, Futures

By David Zuberbier

The number of staff positions at the Community Future-Business Development office is being cut from six to four because former staff were costing \$170,000 annually, a figure re-organization committee member June Conrad termed as being "way out" of a proper salary scale.

Conrad made the comment Wednesday in Smith when she briefed fellow Improvement District 17(E) South councillors on the state of re-organization of Community Futures and BDC.

ID 17(E) South manager Jack Rennie told councillors that the new Community Futures board will consist of four members. There will be one appointed representative each from the Town of Slave Lake, Town of High Prairie, Improvement District 17 and the aboriginal community. The new BDC board will consist of seven members, four of which are also Community Futures board members. The three other BDC board members will be positions from the public at large.

Conrad explained that the number of staff with both offices is being cut from six to four positions. Rosemary Beggs with the Town of High Prairie, Ken Jardine representing the Town of Slave Lake and Conrad serve as the re-organization committee members. It's their responsibility to write the job descriptions for new staff and also advertise for those positions.

The new staff will consist of an executive director, loans officer/business analyst, executive assistant to the executive director and another position not named at this point. Advertisements for the new positions appear in this week's edition of *The Lakeside Leader*.

Another change in the works for both organizations is the dates when board meetings will take place. Before the re-organization went into effect meetings had been held separately. The Community Futures meeting was held one day of each month, while the Business Development Centre meeting was held "one or two evenings of a month," said Conrad.

Under the new changes the meetings will be amalgamated on one day of each month. Conrad said the Community Futures board meeting will begin at 3:00 or 4:00 p.m. and continue until 7:30 to 8:00. The Business Development Centre board will then meet immediately after, with the length of the meeting set at two hours.

Conrad said changing the meeting dates was necessary to reduce travel expenses incurred by members of both previous boards.

Minutes from the Business Development Centre meetings will still not be released to the public. Conrad said they can't because of the private nature of the loans handed out.

Minutes of the Community Futures meetings will be mailed out each month.

Conrad concluded by saying that all the recommendations the re-organization committee is coming up with will come up for approval at a Sept. 14 meeting.

opportunity. As they stood at the entrance to the Sawridge Truck Stop, Twinn drove past them, with his window rolled down. Protester, Aline McOllivray, handed him a single sheet of paper explaining the purpose of the demonstration. Twinn took it and drove away.

Margaret Blair, who drove in front of Twinn's truck for the protest, says it was the first time she had ever seen the chief. She says it's frustrating he won't meet them.

"It's good. He does not want to share," replies Pauline Johnson, standing beside her.

The Sawridge Band, which has fewer than 100 members, is

to invest in hotels, a truck stop, and water bottling plant. Ten years ago the band's holdings were estimated at between \$30 to \$40 million.

Twinn's reluctance to share this wealth is understandable. But the protesters say all they want is what's legally theirs, and that it's long overdue.

"We have every right to band membership," says Maurice Stoney. "That gives us a right to land and all the things that go with it."

Gordon Sinclair says Twinn and the federal government must investigate what rights the members have and what they're entitled to.

families belong here. What we're asking for is justice."

Rocky Sinclair says the demonstration is symbolic of the larger struggle natives across Canada are having with the "politics of exclusion" created by Bill C-31.

"It just so happens that Walter is the one leading the fight and it's our place to put up the fight for our kids because it may be the last time."

Protester Billy Hamelin says  
Please see Page A2

## Man dies after falling off truck

By David Zuberbier

An Alberta Transportation employee was rushed to an Edmonton hospital Thursday after he fell out of the back of a pick-up 20 km. south of Giff Lake.

High Prairie RCMP say Al-Jon LeeRoy Cooper, 49 yrs., of Vermilion was sitting on the tailgate of a pickup truck when he fell off and struck his head

on the pavement.

He was flown immediately to U of A hospital where he died of head injuries Friday at 10:30 p.m.

The accident occurred south of Giff Lake at a road construction site.

Police say the accident is being investigated by Occupational Health and Safety and RCMP.

PLEASE  
READ  
AND  
RECYCLE  
THIS  
NEWSPAPER



This is Exhibit "M" referred to in the  
Affidavit of

ROLAND TWINN

Sworn before me this 21 day

of JUNE A.D., 2012

Donna Brown  
A Commissioner for Oaths in and for  
the Province of Alberta

**DONNA BROWN**

A Commissioner for Oaths

In and for The Province of Alberta

My Appointment Expires December 30, 2012

## Protesters say they've got proof of membership

Continued from Page A1  
without housing and land the  
healing of the young people, and  
the growth of native spirituality  
will continue to suffer.

"Our younger generation is

moving to the cities. They have  
nothing. Glue bags in their mouth  
by the time they're 12 years old.  
We want an established home  
base where we can have a healing  
centre, like Poundmakers.

"Our native spirituality is

starting to come out now. That's  
not the time to kick us out like  
that - we can't grow. We have to  
use the Friendship Centre. We  
have to pay to rent. Once in  
awhile we have elders, we get to-  
gether with the elders, and feed  
them and have a round dance.  
But we have to pay the Friend-  
ship Centre. It's things like that  
that are sad. It's a vexation to  
what we're trying to start, and it's  
a complete shame for our spiritu-  
ality."

Sinclair says proof that he and  
his fellow protesters are band  
members exists now.

"We've got band lists, we've  
got genealogy. That's our see in  
the hole. We have it and I  
wouldn't be out here if I didn't  
feel we were justified."

Pauline Johnson says proof  
they're band members can be  
found on their C-31 cards.

Blair says it's wrong that his  
people are suffering while he  
keeps everything.

"It would be different if it's a  
poor band. But why should he  
benefit when his people aren't  
getting anything?"

Hamelin says tradition dictates  
Twinn is obligated to be kind to  
wards his own people.

"He's got a pipe, he's a pipe-  
holder. That means you're hold-  
ing your people in your arms, and  
you can't let anybody go. That's

the chief's job, that it's supposed  
to be in kindness, and he's not  
doing that."

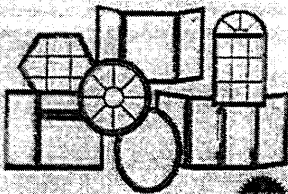
Stoney says if Twinn contin-  
ues to refuse to meet with them  
the group will hold more demon-  
strations. Sinclair says the group  
will also travel to Edmonton next  
month to observe and participate  
in the Twinn court case.

Aline McGillivray says the  
hearings on the case will begin  
Sept. 20 in Edmonton. It's ex-  
pected the case could continue  
for at least another two years  
given the likelihood of appeals.

Chief Walter Twinn was not  
available for comment on the  
protest Monday.

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## High Prairie School Division #48 Notes

By Mary Hewson  
for The Lakeside Leader

### Mandatory retirement for teachers unconstitutional

High Prairie School Division No. 48 trustees, at their Aug. 11 meeting in High Prairie decided not to develop a mandatory retirement policy for their teachers because such a policy might prove unconstitutional.

Superintendent Verne Evans told trustees that he had con-  
tacted lawyers at the Alberta School Board Association re-  
garding a policy of making retirement at age 65 mandatory,  
and was told "It would be very difficult to justify."

"In light of that, do we develop a policy," Evans asked  
board members.

Evans said years ago the board had a policy which was  
legal, but the Constitution and the Charter of Rights have now  
put mandatory retirement policies into question. Although a  
challenge by a professor at the University of Alberta was lost  
last year and universities can now require professors to retire  
at 65, lawyers at the ASBA told Evans it was unlikely the  
same would hold true for teachers.

Slave Lake trustee Nicole Gladu felt the board should have  
a mandatory retirement policy anyway, even if it were chal-  
lenged in court.

"That's a heck of a generation gap between a 65-year-old  
and a 15-year-old kid, the communication problems are  
there," said Gladu.

But other trustees felt the expense of taking a case to court,  
when in all likelihood the board would lose, did not justify  
having a policy. Few teachers that age are in the HPSD said  
board members, who also felt those that were were regarded  
as excellent teachers.

"I don't see putting a policy in place if we don't think it  
will stand up," said trustee Darlene Anderson.

### Trustee wants support for student council

Slave Lake trustee Nicole Gladu told trustees that students  
have told her they feel they have little input into school deci-  
sions and that student councils are not as active as they should  
be.

Gladu asked the board for suggestions as to how they  
could help the students form active councils.

"It doesn't seem to me they're (councils) active at all," said  
Gladu. "Maybe they (students) don't know what to do."

Superintendent Verne Evans told Gladu he needed to bring  
it up at the next administrators meeting with the suggestion  
principals and vice-principals take an active role in promoting  
student councils and ensuring students have enough informa-  
tion on the various duties of council officers.

### Trustees approve application for day labor scheme

Trustees approved requesting ministerial approval to use  
the day labor scheme for the construction of the \$464,400 ar-  
t drama addition to Roland Michener School in Slave Lake.

Government support for the project is \$271,418.  
Under the day labor scheme the board will act as its own  
contractor.

"We find we're able to control costs better under day la-  
bor," said Laurie Marston, secretary-treasurer of the HPSD.

In anticipation of board and ministerial approval, and to  
expedite construction, Marston said he has already let out ten-  
ders, with the closing date of Aug. 16. The board will make  
its final decision to proceed with the day labor scheme after  
seeing the results of the tenders, and receiving official ap-  
proval.

### School alarm systems reduce insurance costs

High Prairie School Division School will benefit from hav-  
ing installed intrusion alarm systems, says HPSD secretary-  
treasurer Laurie Marston.

Marston told trustees there has been a 36 per cent increase  
in insurance premiums to schools in general, plus an addi-  
tional surcharge to schools which don't have intrusion alarm  
systems. However, Marston said, all schools within the HPSD  
have had the systems installed.

"We think they've more than paid for themselves," he said.

**TAB N**

ALL SUPPORTERS ARE WELCOME TO THIS PEACEFUL DEMONSTRATION  
WE DO NOT WANT TO INCONVENIENCE ANYONE.

We were born and raised in Slave Lake, Alberta, regained  
our status in 1985, now we are band members of the  
Sawridge Band; however, this is not being recognized.  
Our grandparents and parents lived on the Sawridge  
Reserve and we have inherited the right to belong.

We have written letters to our Chief Walter Twinn, phoned  
him, visited his office and his home, and faxed him. All  
to no avail. It has all fallen on deaf ears. He has  
completely ignored us.

It is time for justice. It is time for action. We want  
acceptance as band members.

This is Exhibit \* N \* referred to in the  
Affidavit of

ROLAND TWINN

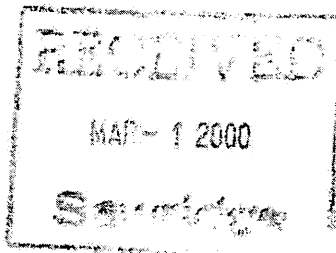
Sworn before me this 24 day  
of JUNE A.D., 20 12

[Signature]  
A Commissioner for Oaths in and for  
the Province of Alberta

*Aug. 10/93  
12 samples  
banded and Co  
donated*

**DONNA BROWN**  
A Commissioner for Oaths  
In and for The Province of Alberta  
My Appointment Expires December 30, 2012

# TAB 0



Ki-See-Pey-Ga-Mahk (K.C.F.N.)

Cree First Nation,

609-12th Street, S.E.,

Slave Lake, Ab.

TOG 2A3

Feb. 29, 2000

Re: Band Status and New Reserve.

Mr. Bob Nault,

Minister of Indian Affairs.

This is Exhibit "D" referred to in the  
Affidavit of

*ROLAND TWINN*  
Sworn before me this 26 day  
of JUNE A.D. 20 12

A Commissioner for Oaths in and for  
the Province of Alberta

**DONNA BITOWN**

A Commissioner for Oaths  
in and for The Province of Alberta

My Appointment Expires December 30 2012

Dear Sir:

I am the spokesperson and elected President for the Ki-See-Pey-Ga-Mahk, Cree First Nation- K.C.F.N.

This follow up states that the members of K.C.F.N. are all former Sawridge Band members. Despite our reinstatement to Indian Status, K.C.F.N. members have been unable to regain membership in our band of origin. K.C.F.N. was established for our people, whose heritage can be located in the Sawridge.

K.C.F.N. members wish to form a new band and reserve pursuant to S.17 of the Indian Act.

The K.C.F.N. members have waited over fifteen years for our membership privileges. To date we have been unsuccessful in obtaining our membership from the band of our ancestors.

K.C.F.N. members believe and respect that the Crown would be prepared to create a new band and reserve on the north-east side of Lesser Slave Lake, in the Province of Alberta.

We are willing to negotiate a settlement leading to Band Status and the creation of a new reserve.

2

Yours Truly,

*Maurice Stoney*

(Maurice Stoney)

c.c. - Indian Affairs- Ottawa, Ontario.	Bob Nault
c.c. - Indian Affairs- Edmonton, Alberta.	Jim Sison
c.c. - Sawridge Band- Slave Lake, Alberta.	Chief + Council

**TAB P**

Ki-Se'e-Pey-Ga-Mahk Cree First Nations  
#609 - 12 Street S.E.  
Slave Lake, Alberta T0G 2A3

Jan 5/01

Delivered to  
Cmy  
Jan 5/01

October 18/2000

Attn: Catherine Twinn, Sawridge Band First Nations

Dear: Chief and Council

I am the elected spokesperson for the K.C.F.N. Band Council, that we formed. This Band Council is made up of our parents children and former Sawridge Band Members, who also lost their Band Membership. We formed a Band Council to try and get the Indian Affairs Government to recognize our plight.

The Feds maintain that they don't recognize us as a First Nations People. We are asking the Sawridge Band for help with our proposal to create a new Band and Reserve. We are willing to join forces with the Sawridge Band, to sue the Indian Act. We believe it's time for a new approach to be put in place to conquer Indian Affairs. We established a list of names of the people who make up our K.C.F.N. Band Council.

In conclusion, we are willing to participate and do what is necessary to achieve the challenge put forth to the Feds.

Band Council Members Signatures/Names - K.C.F.N

1. Maurice Stoney -

2. Dicky Twin<sup>2</sup>

3. Frank Ward -

4. Paul Potskin -

5. Henry Sawan -

6. Wilfred Cardinal -

7. Others Pending -

Yours truly,

Maurice Stoney

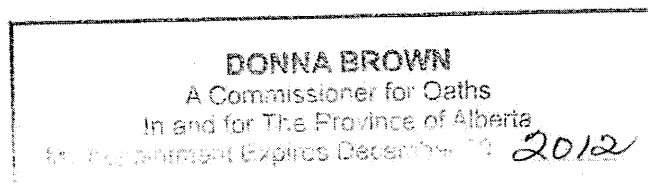
*Maurice Stoney*  
*Dickie (Ronald) Twinn*  
*Frank Ward*  
← FOR *Karen Potskin*  
*Henry Sawan*

This is Exhibit "P" referred to in the Affidavit of

*ROLAND TWINN*

Sworn before me this 26 day  
of JUNE A.D., 2000

*H. Brown*  
A Commissioner for Oaths in and for  
the Province of Alberta



# TAB Q

RECEIVED

APR - 5 2001

Sawridge

Ki-see-pey-ga-mahk Cree First Nation  
609 - 12 Street S.E.  
Slave Lake, AB  
T0G 2A3

Delivered Personally  
By M. STONEY

April 4, 2001

This is Exhibit "a" referred to in the  
Affidavit of

Sworn before me this 26 day  
of JUNE A.D., 20 12

A Commissioner for Oaths in and for  
the Province of Alberta

(For)

Sawridge Band  
Chief & Council

m/s.

Indian Affairs  
Ottawa, ON

Fax: (819) 953-4941

Attention: Daniel Charbonneau

Dear Daniel:

DONNA BROWN  
A Commissioner for Oaths  
In and for The Province of Alberta  
My Appointment Expires December 30 2012

This letter is to confirm our telephone discussion this morning.

I would like to know if it is possible for your department to assist us in our plight to establish a new reserve for our members. This new band would consist of off-reserve, Bill C-31 Sawridge band members.

A tentative date for a meeting is being scheduled for April 27, 2001, in Slave Lake. I am requesting your attendance to help us through the process. Please let me know if it is possible for you to attend this meeting. I may be reached at (780) 849-5173. If an alternate date is desired, please let me know what is more convenient for you.

I look forward to hearing from you soon.

Yours truly,

Maurice Stoney

Maurice Stoney  
(Spokesperson)

**TAB R**

March 21, 2001

Ki-See-Pey-Ga-Mahk  
Cree First Nations  
609-12 Street SE  
Slave Lake, AB  
T0G-2A3  
ATTN: Cheryl L. Goodswimmer &  
Executive Board of Directors - Treaty 8

*For* *Apr 5/01*  
*Sawridge Band*  
*Chief + Council*  
*M.L.*

Dear Cheryl:

I am writing in regards to our conversation we had on the phone. I would like to know if it is possible for Treaty 8 to assist in our plight to establish a new reserve for our members. These Bill C-31 members are from the Sawridge Band First Nations in Slave Lake. The Federal Government says that they don't recognize us as First Nations People. We understand that the Sawridge Band would participate if a meeting was to be put forth in Slave Lake.

Thanks for taking the time to read this request, and I look forward to hearing from you.

Sincerely,

Maurice stoney

This is Exhibit "R" referred to in the  
Affidavit of  
*ROLAND TWINN*  
Sworn before me this *21* day  
of *JUNE* A.D. *2001*  
*[Signature]*  
A Commissioner for Oaths in and for  
the Province of Alberta

DONNA BROWN  
A Commissioner for Oaths  
in and for the Province of Alberta  
My Appointment Expires December 30, *2002*

*Maurice Stoney*

# TAB S

**MEMBERSHIP PROCESSING FORM**

APPLICANT: MAURICE FELIX STONEY

ADDRESS: 500 – 4<sup>TH</sup> Street N.W., Slave Lake, AB T0G 2A1

PHONE: 780-849-5193

APPLICABLE MEMBERSHIP SECTION #2

APPLICATION REQUIRED? Yes

SPECIFIC RIGHT? No

BECAUSE: Applicant was enfranchised with his Father when applicant was 2 years old. Applicant would have regained status under subsection 6(2) of the Indian Act.

This is Exhibit 'S' referred to in the  
Affidavit of

ROLAND TWINN

Sworn before me this 21 day

of JUNE A.D., 2012

W. Stowe  
A Commissioner for Oaths in and for  
the Province of Alberta

**APPLICATION**

Application satisfactorily completed? Yes

Applicant interviewed by both Councilors? No

Applicant interviewed by Chief? No

**DONNA BROWN**  
A Commissioner for Oaths  
In and for The Province of Alberta  
My Appointment Expires December 30, 2012

**SUMMARY OF FIRST NATION COUNCILS JUDGMENTS****CONNECTION TO FIRST NATION**

- No family in the First Nation for generations. As of 1956 none of the Stoney Family were part of the First Nation.
- Applicant claims that he was forced out, while documents indicate that Father voluntarily enfranchised with his family (including applicant) for the benefit of all. Claims he did not receive any money upon enfranchisement, but father would have been given his share.
- Claims to have resided on reserve with parent and grandparents until enfranchisement, while enfranchisement documents indicate that father had lived off of reserve for quite a number of years (in May 1944). Application also indicates that he lived in Slave Lake since birth (1941).
- Claims Johnny Stony had a role in the creation of the Sawridge Reserve in 1896. Records indicate that Grandfather was part of Alexander Band and could not be counted for land at Sawridge. Grandfather was transferred without land or money from Alexander Band in 1910.
- Applicant claims connection through relationship with Grandfather who was a member until Applicant was 15 years old.
- Claims Chief and Council support his bid for Membership.
- Does not show any relationship with any members

**SIGNIFICANT COMMITMENT TO FIRST NATION** (and its History, Customs, Traditions, Culture and Communal Life).

- Applicant participated in action commenced in 1995 against the First Nation seeking:
  - Firstly in excess of \$1M for damages in lost benefits for Education Costs, Medical Care Benefits, Housing and Tax Exemption, or alternatively, in excess of \$1M as a pro rata share of the economic value of the reserve plus the lost benefits in excess of \$1M; and
  - Secondly in excess of \$1M for economic loss for and on behalf of her progeny; and

- Thirdly, in excess of \$1M in punitive damages for "the arrogant and high-handed manner in which Walter Patrick Twinn and the Sawridge Band of Indians has deliberately, and without cause, denied the Plaintiffs reinstatement as Band Members of the Sawridge Band, which denial is unwarranted and unjustified, and has been only out of malice, spite and the selfish desire of Walter Patrick Twinn and the Sawridge Band of Indians to deprive the Plaintiffs of their just rights and dues, so that the Band and the Chief may be enriched, at the expense of the Plaintiffs."
- Fourthly, a pro rata share of the value of the holdings, savings, and any other entitlements or benefits which may accrue to the Plaintiffs as a result of their Indian status and Band Membership.
- Applicant was ordered to pay costs to the First Nation and did not do so.
- Applicant sees his role and responsibility as a Member as undecided.
- Applicant states desire to become a member because this is his right.
- Applicant claims to have always been a Status Indian (3F & 3G) but indicates that he is a C31 (11G). Records indicate that Applicant was enfranchised with his Father in 1944.
- Applicant states that he can best contribute to the band through small business and assisting in Band Operations.
- Applicant states, in relation to references, that 'I am intitled to membership'. No references are attached.
- In 1996 Applicant appeared on television show "The Fifth Estate" in a segment called "the Gatekeeper" and made disparaging remarks about the First Nation and the Chief. In that appearance the Applicant made a remark that the application form of the First Nation was good for toilet paper.
- Applicant was involved with others in petitioning to start another First Nation.
- Applicant led a protest against the First Nation.

#### **SIGNIFICANT KNOWLEDGE OF FIRST NATION**

(History, Customs, Traditions, Culture and Communal Life)

- Applicant claims to have read the Sawridge bylaws and codes.

#### **CHARACTER AND LIFESTYLE**

(Not a Detriment)

- Applicant advises that he entered the work force at age 15.
- Applicant states that he is Self Sufficient, living off of Pension.
- Has no Reference Letters

#### **OTHER CONSIDERATIONS**

Children                      No.

If yes, how many and ages.

---

Spouse                      Yes - Bigstone. No Dependents.

If yes, what is current situation. - Married.

---

**Physical Condition**

Good.

**Decision**

Membership Denied based on

- 1) Did not have any specific "right" to have name entered in the Membership List of the Sawridge First Nation.
- 2) The Council was not compelled to exercise its discretion to add name to the Membership List as it did not feel, in its judgment, that admission into Membership of the First Nation would be in the best interests and welfare of the First Nation.

**Attachments**

- Application
- Statement of Claim
- Federal Court of Appeal Decision
- May 12, 1944 Letter from P.J. Demers
- 1910 Pay List
- Fifth Estate Transcript
- June 1, 1993 Letter from Maurice Stoney
- June 16, 1993 Lakeside Leader Article
- June 21, 1993 Scope Article
- June 13, 1993 Edmonton Journal Article
- June 21, 1993 Alberta Report Article
- August 18, 1993 Lakeside Leader Article
- August 12, 1993 Protest Handout
- February 29, 2000 Letter from Maurice Stoney
- October 18, 2000 KCFN Declaration
- April 4, 2001 Letter from Maurice Stoney
- March 21, 2001 Letter from Maurice Stoney

**TAB T**

12-22-11 16:46 FROM- mann robinson

7806244135

T-095 P0001/0006 F-217

# MANN & ROBINSON

Barristers • Solicitors • Notary Publics • Mediator • Collaborative Law

LORNE G. MANN, B.A., LL.B.

MONICA A. ROBINSON, B.A., LL.B.\*

December 22, 2011

SAWRIDGE FIRST NATION  
806 Caribou Trail NE  
Box 326  
Slave Lake, AB  
T0G 2A0

VIA FAX - 780-849-3446 and  
REGISTERED MAIL

Dear Sir/Madam:

RE: Sawridge First Nation Applications  
Our File: 27484

Thank you for your correspondence dated December 7, 2011 wherein you advise that three of our clients have been denied membership into the Sawridge First Nation. Enclosed herewith please find a signed document from each of June Kolosky, Maurice Stoney and Aline Huzar wherein they exercise their rights under Section 12 of the Membership Rules to have the refusal decision reviewed.

I trust the above and enclosed to be in order and look forward to receipt of information concerning when each of the appeals shall take place.

Yours truly,

MANN &amp; ROBINSON

Per:



MONICA A. ROBINSON  
MAR/pm  
Encs.

This is Exhibit "T" referred to in the  
Affidavit of

ROLAND TWINN

Sworn before me this 26 day  
of JUNE A.D., 2012

  
A Commissioner for Oaths in and for  
the Province of Alberta

DONNA BROWN

A Commissioner for Oaths

9902 - 97 Avenue, Peace River, Alberta T8S 2A5 for The Province of Alberta  
Phone: 780-624-4860 Fax: 780-624-4135 Toll Free: 1-888-624-4860  
email: law@mannrobinson.ca

\*Denotes Professional Corporation

2012

12-22-'11 16:46 FROM- mann robinson

7806244135

T-095 P0002/0006 F-217

12-19-'11 13:00 FROM- mann robinson

7806244135

T-055 P0002/0002 F-144

December 19, 2011

SAWRIDGE FIRST NATION  
806 Cariboo Trail NE  
Box 326  
SLAVE LAKE, AB  
T0G 2A0

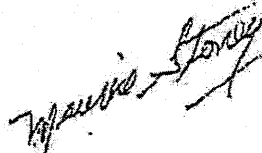
Dear Chief and Council Members:

RE: Appeal of Decision

Further to the correspondence recently received from you wherein you advise that my application for membership in the Sawridge First Nation has been declined, this is notice of my request to have that decision appealed pursuant to Section 12 of the Membership Rules.

Yours truly,

MAURICE STONEY  
500-4 St.  
SLAVE LAKE, AB  
T0G 2A1



12-22-'11 16:46 FROM- mann robinson

7806244135

T-095 P0003/0006 F-217

June Kolosky  
Box 25  
Chetwynd, BC T0C 1J0

December 20, 2011

SAWRIDGE FIRST NATION  
806 Cariboo Trail NE - Sawridge I.R. 150G  
Box 326  
Slave Lake, Alberta T0G 2A0

Dear Chief Roland Twinn and Council:

I am writing to you regarding your December 07, 2011 letter in which you denied my application for membership in the Sawridge First Nation. The grounds on which I wish to appeal are:

- (1) I do have "specific" rights to have my name entered in the Membership List of the Sawridge First Nation, and
- (2) I believe it would be in the best interests and welfare of the Sawridge First Nation to include me as a member.

My Grandfather, Johnny Stoney, band member #18, was a contributing member of the Sawridge First Nation for 60 years. My Grandfather was a hardworking and industrious man. He ran a business at his home along the Slave River. It was a stopping place for travelers and freight haulers.

My mother, Mary McGillivray (nee) Stoney, band member #29, was born into the Sawridge First Nation on September 01, 1902. She was a residential school survivor. I believe I do have "specific" rights to have my name entered in the Membership List of the Sawridge First Nation. It is my roots and my heritage.

I am involved with my Aboriginal community as the president of our local Friendship Centre. I am a member and an elder of the Chetwynd Community Committee who work with Nenan Dane Zaa Zonia. I am an active member of our local community association where my husband and I work towards building and maintaining a strong community spirit. I was bookkeeper/payroll for Kolosky Farming and Logging for 30 years. I owned and operated a flower shop and I have excellent organizational and

12-22-'11 16:46 FROM- wann robinson

7806244135

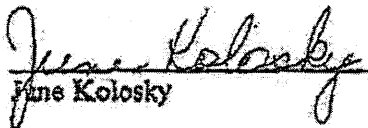
T-095 P0004/0006 F-217

...page two

leadership skills. I am actively involved with my church and I am president of The Two Leaved Gates Ministries. I believe I would be a contributing member of the Sawridge First Nation and that it would be in their best interests and welfare to include me as a member.

Therefore, I am requesting your reconsideration of this issue. You may contact me at (250) 788-2673. Thank you for your time and consideration of this important matter.

Sincerely,

  
Jane Kolosky

12-22-'11 16:46 FROM- mann robinson

7806244135

T-095 P0005/0006 F-217

Aline Huzar  
3953 Weisbrod Road  
Prince George, BC V2K 2S4

December 19, 2011

SAWRIDGE FIRST NATION  
806 Cariboo Trail NE - Sawridge I.R. 150G  
Box 326  
Slave Lake, Alberta T0G 2A0

Dear Chief Roland Twinn and Council:

I am writing to you regarding your December 07, 2011 letter in which you denied my application for membership in the Sawridge First Nation. The grounds on which I wish to appeal are:

- (1) I do have "specific" rights to have my name entered in the Membership List of the Sawridge First Nation, and
- (2) I believe it would be in the best interests and welfare of the Sawridge First Nation to include me as a member.

My Grandfather, Johnny Stoney, band member #18, was a contributing member of the Sawridge First Nation for 60 years. My Grandfather was a hardworking and industrious man. He ran a business at his home along the Slave River. It was a stopping place for travelers and freight haulers.

My mother, Mary McGillivray (nee) Stoney, band member #29, was born into the Sawridge First Nation on September 01, 1902. She was a residential school survivor. I believe I do indeed have "specific" rights to have my name entered in the Membership List of the Sawridge First Nation. My roots are here. It is my heritage.

I worked hard for my diploma in Business Administration and I took numerous management courses. During my working years I served as a cashier, retail clerk, customer service person and I was the program coordinator for the Prince George Metis Elders Society. I gained valuable experience in working with the elders. I thoroughly enjoyed my position as we were all of the Cree Nation.

12-22-'11 16:47 FROM- mann robinson

7806244135

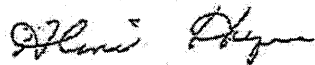
T-095 P0006/0006 F-217

...page two

At the present time I am focusing on writing a book about my oldest son Michael. My son passed away on June 24, 2009. He was a very brave and courageous person. I also have twin sons who are very successful in their career choices. I believe I would be a contributing member of the Sawridge First Nation and that it would be in their best interests and welfare to include me as a member.

Therefore, I am requesting your reconsideration of this issue. Please feel free to contact me at (250) 962-2161. Thank you for your time and consideration of this important matter.

Sincerely,



---

Aline Huzar

**TAB U**



**PARLEE McLAWS** <sup>LLP</sup>  
BARRISTERS & SOLICITORS | PATENT & TRADE-MARK AGENTS

March 23, 2012

EDWARD H. MOLSTAD, Q.C.  
DIRECT DIAL: 780.423.8506  
DIRECT FAX: 780.423.2870  
EMAIL: emolstad@parlee.com  
OUR FILE #: 64203-1/EHM

Davis LLP  
1201 Scotia Tower 2, Scotia Place  
10060 - Jasper Avenue  
Edmonton, Alberta  
T5J 4E5

**VIA E-MAIL ONLY**

**Attention: Ms Priscilla Kennedy**

Dear Madam:

**Re: Appeals of Maurice Felix Stoney, June Martha Kolosky and  
Aline Elizabeth Huzar**

We would advise that we will be representing the Sawridge First Nation in relation to the above described appeals which are scheduled to be heard on April 21, 2012.

We have been advised that your offices will be representing the Appellants.

We are enclosing a copy of the Record in relation to each of the above matters which includes the Application for Membership and the Decision of the First Nation Council.

We are also enclosing copies of the Notices of Appeal enclosed with the letter from Mann & Robinson dated December 22, 2011 in relation to each one of the above individuals.

The appeal procedure which will be followed is enclosed.

Should you have any questions, please do not hesitate to contact our offices.

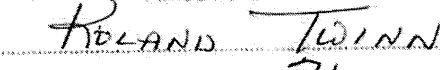
Yours truly,

**PARLEE McLAWS LLP**

  
**EDWARD H. MOLSTAD, Q.C.**

EHM/tlk  
Encl.

This is Exhibit "4" referred to in the  
Affidavit of

  
Sworn before me this 26 day  
of JUNE A.D. 2012

  
A Commissioner for Oaths in and for  
the Province of Alberta

**DONNA BROWN**  
A Commissioner for Oaths  
In and for The Province of Alberta  
My Appointment Expires December 30, 2012

# TAB V

### APPEAL PROCEDURE

This procedure shall apply to the appeal of any person (herein called the "Appellant"), whose application for membership in the Sawridge First Nation (herein called the "First Nation") has been denied pursuant to Sawridge Membership Rules.

#### COMMENCEMENT OF APPEAL

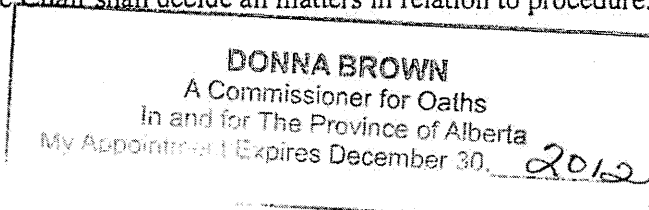
1. The Appeal shall be commenced by the Appellant serving a Notice of Appeal in writing to the First Nation Council at the Office of the First Nation within 15 days after the First Nation has communicated to the Appellant the Decision of the First Nation Council.
2. The Appeal shall be heard by the Electors of the First Nation in attendance (herein called the "Appeal Committee") at a meeting convened by First Nation Council for the purposes of hearing the Appeal.
3. The Appellant shall be given notice of the date, time and place of the hearing before the Appeal Committee.

#### APPEAL COMMITTEE

4. The Appeal Committee shall consist of the Electors of the First Nation in attendance at the Meeting convened by the First Nation Council for the purpose of hearing the Appeal.
5. The Appeal hearing shall be scheduled to be heard within 60 days of receipt of a Notice of Appeal subject to the right of the Appeal Committee to adjourn the hearing from time to time. Prior to the Appeal hearing commencing, the Appeal hearing may be postponed to a later date, that is more than 60 days after receipt of the Notice of Appeal, at the request of the Appellant.
6. The Chair of the Appeal Committee shall be the Speaker of the Assembly or if the Speaker is unable or unwilling to chair, a Member of the Appeal Committee elected by the Members of the Appeal Committee in attendance.
7. There shall be no quorum requirement for the Appeal Committee however, if the Appeal Committee is of the view that the number of Electors of the First Nation in attendance are not sufficient to conduct business, they may adjourn the hearing to such time as they decide in order to allow more Electors to attend.

#### HEARING PROCEDURE

8. The Appeal Hearing shall be conducted by the Chair.
9. The Chair shall decide all matters in relation to procedure.



This is Exhibit " V " referred to in the  
Affidavit of  
ROLAND TWINN  
Sworn before me this 26 day  
of JUNE A.D., 2012  
[Signature]  
A Commissioner for Oaths in and for  
the Province of Alberta

(E6161322.DOCX; 1)

10. The Appellant may be represented by Legal Counsel.
11. The Appeal Committee may retain Legal Counsel to assist in the conduct of the Appeal.
12. If the Appellant or the Appellant's representative does not attend at the commencement of the Appeal, the Appeal Committee may adjourn the Hearing for a reasonable period of time in order to allow the attendance of the Appellant or the Appellant's representative and after the expiration of a reasonable period of time, the Appeal Committee may proceed to hear the Appeal in the absence of the Appellant or the Appellant's representative.
13. The Chair of the Appeal Committee shall provide the Appellant and the Appeal Committee with a copy of the Application for Membership, the Decision of First Nation Council and the Notice of Appeal.
14. The Appeal Hearing procedure shall be as follows:
  - (a) The Chair shall introduce himself or herself;
  - (b) The Chair shall request the Appellant, and if represented, his/her Legal Counsel to introduce themselves;
  - (c) The Chair shall request that the Appeal Committee, and if represented, its Legal Counsel to introduce themselves;
  - (d) The Chair shall confirm that the Appellant has received a copy of the Application for Membership and the Decision of First Nation Council.
  - (e) The Chair shall confirm that the Appeal Committee has received a copy of the Application for Membership, the decision of First Nation Council and the Notice of Appeal;
  - (f) The Chair shall confirm that the Appellant, and if represented, his/her Legal Counsel have received a copy of the Appeal Procedure.
  - (g) The Chair shall ask the Appellant to make their submissions with respect to the Appeal;
  - (h) Following the submissions of the Appellant, the Chair shall ask if any Member of the Appeal Committee wishes to make submissions. If any Member of the Appeal Committee wishes to make submissions, they will be allowed an opportunity.
  - (i) The Appellant, and if represented, his/her Legal Counsel will then be asked if they have any submissions they wish to make in response to the submissions made by any Members of the Appeal Committee. If they wish to make submissions in response, they will be allowed an opportunity.
  - (j) When these submissions are concluded, the Appellant will be advised that the submissions shall be considered by the Appeal Committee and a Decision will be made and communicated to him/her within thirty (30) days of the date of the Hearing.
15. All persons shall be given a reasonable amount of time to make submissions, however, the Chair may, in his or her discretion set reasonable time limits in relation to any submissions.

16. The Chair may adjourn the Appeal Committee Hearing at any time he or she deems it necessary.
17. There shall be no transcript or other record of the Appeal Committee Hearing except for the Application for Membership, the Decision of First Nation Council, the Notice of Appeal and any written submissions or other documentation presented to the Appeal Committee.

#### DELIBERATIONS

18. Immediately following the conclusion of the submissions to the Appeal Committee, the Appeal Committee shall meet in camera to make a decision.
19. The Appellant, and if represented, his/her Legal Counsel, shall be advised that the Appeal Committee may reconvene if they require further submissions and the Appellant and Legal Counsel shall be requested to wait outside of the meeting room of the Appeal Committee for up to a maximum of one hour while the Appeal Committee deliberates in camera to determine if any further submissions are required.
20. If during deliberations it is determined that no further submissions shall be required, the Appellant and if represented, his/her Legal Counsel shall be advised and shall be excused.
21. If during deliberations it is determined that further submissions are required, the Appeal Committee may reconvene and open the meeting for that purpose however the Appellant and if represented, his/her Legal Counsel shall be provided notice and an opportunity to attend.
22. During the deliberations in camera, the only persons who may be present are the Appeal Committee, the Chair and Legal Counsel if retained by the Appeal Committee and any other person the Appeal Committee permits.
23. There shall be no recording or notes taken with respect to the in camera deliberations of the Appeal Committee.

#### DECISION BASED ON CONSENSUS

24. During the deliberations, any Member of the Appeal Committee may make a proposal either to allow the Appeal and grant Membership to the Appellant or to dismiss the Appeal and uphold the decision to deny the Appellant Membership. Any such proposal shall include reasons for the proposed decision. Once the proposal is made, it shall be discussed by the Appeal Committee and any member of the Appeal Committee may propose amendments or changes. The Appeal Committee will endeavor to reach a consensus decision on the disposition of the Appeal. A consensus will be reached if all of the Members of the Appeal Committee present agree that the decision and the reasons for the decision are acceptable. A consensus may only be considered to be reached if the decision and reasons are written out and every person who is in attendance at the deliberations of the Appeal Committee has indicated their acceptance of the decision. If

a consensus decision is reached, the written decision with the reasons shall be provided to the Appellant and if represented, his/her Legal Counsel.

25. If the deliberations continue for more than two hours and the Appeal Committee has failed to reach a consensus, the Appeal Committee may continue to deliberate however, after this time has expired, the deliberation shall end if any Member of the Appeal Committee makes a motion to end the deliberations and that Motion is passed by a majority of the Appeal Committee in attendance. If the deliberations are ended in this fashion, then the Members of the Appeal Committee in attendance shall vote by way of secret ballot to either allow the Appeal or to dismiss the Appeal. If a vote by secret ballot is held, the decision of the majority shall be the decision of the Appeal Committee however, in the case of a tie, the Appeal shall be dismissed. When a decision is made as a result of a secret ballot, a Notice of Decision shall be provided to the Appellant indicating only that the Appeal Committee allowed or denied the Appeal.

#### DECISIONS

26. The Appellant shall be provided with Notice of Decision of the Appeal Committee within 30 days of the Appeal Hearing. The Notice of Decision shall be mailed to the mailing address provided by the Appellant on the Application for Membership Form.
27. If the decision of the Appeal Committee is to allow the Appeal in relation to the Application for Membership, the name of the Appellant shall be entered on the First Nation Membership List.
28. If the decision of the Appeal Committee is to dismiss the Appeal, the Appellant shall have no further right to apply for Membership in the First Nation.
29. The decision of the Appeal Committee is final and binding and not subject to review.

**TAB W**

**IN THE MATTER OF THE APPEAL OF THE MEMBERSHIP APPLICATION OF  
MAURICE FELIX STONEY TO THE SAWRIDGE FIRST NATION**

BETWEEN:

**MAURICE FELIX STONEY**

This is Exhibit "W" referred to in the  
Affidavit of

*ROLAND TWINN*

- and -

Sworn before me this 26 day

of JUNE A.D. 2012

A Commissioner for Oaths in and for  
the Province of Alberta

**SAWRIDGE FIRST NATION**

Appellant

**DONNA BROWN**

A Commissioner for Oaths  
In and for The Province of Alberta

My Appointment Expires December 30, 2012

Respondent

**Appeal to the Appeal Committee Composed of the Electors of the Sawridge First Nation**

**DAVIS LLP.**

1201 Scotia 2 Tower  
10060 Jasper Avenue  
Edmonton, AB, T5J 4E5  
Attn : Priscilla Kennedy  
Tel: (780) 426-5300  
Fax: (780) 702-4383  
Solicitor for Maurice Felix Stoney

**PARLEE McLAWS LLP**

1500 Manulife Place  
10180 - 101 Street  
Edmonton, AB, T5J 4K1  
Attn : Edward Molstad, Q.C.  
Tel: (780) 423-8500  
Fax: (780) 423-2870  
Solicitor for Sawridge First Nation

## 1. FACTS

1. Maurice Felix Stoney has been denied membership in the Sawridge First Nation since Bill C-31 recognized changes to the *Indian Act* effective April 17, 1985. His father died in December, 1983 just prior to section 15 of the *Constitution Act, 1982*, taking effect. There was no resolution for his father, William Stoney before his death. Maurice is 71 years of age.
2. The Federal Court of Appeal has noted that "aging" individuals referred to in its judgments, who have been denied membership, are unlikely to receive the benefit of Band membership before their death: *Sawridge Band v. Canada*, 2004 FCA 16, para. 51. [Tab 1]
3. Johnny Stoney (also known as Johnny Stephens), grandfather of Maurice, was born into the Alexander Band at Riverre Qui Barre in 1872. Like many others in *Treaty No. 6*, following the events of the Northwest Rebellion in 1885, they moved north into the territory where *Treaty No. 8* was signed in 1899. In or about 1895, Johnny Stoney moved to Lesser Slave Lake and married an Indian woman, Henriette Sinclair from Lesser Slave Lake, settling on the Lesser Slave River and becoming a member of the Lesser Slave Lake Band with Chief Kinosayoo.
4. Negotiations of *Treaty No. 8* occurred at Lesser Slave Lake with Chief Kinosayoo signing in 1899 as Chief of the Indians at Lesser Slave Lake, including those who became the Sawridge Band with a Reserve given in 1912/3: Dennis Madill "Treaty Research Report Treaty Eight (1899)" excerpts. [Tab 2]
5. A discussion ensued with Indian Affairs from 1903 until 1910 when Johnny Stoney, along with many other members of Alexander's Band were recognized as having transferred to Kinosayoo's Band: Public Archives [Tab 3] These families that transferred were the Potskin's, Thomasis, Bellerose, Hamelin, Moss Bag, Oskinigue, and Wendigoo's widow.
6. From 1903 until 1920, the issue of Johnny Stoney possessing his lands along the Lesser Slave River in severalty was discussed by Indian Affairs. Lands in severalty is set out in *Treaty No. 8* which provides:

...individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian, ...

Correspondence in Indian Affairs regarding Johnny Stoney lands. [Tab 4]

7. Johnny Stoney was advised in 1920 that he could occupy his lands as part of the Sawridge Indian Reserve: [Tab 5]

8. Maurice Stoney, son of William Stoney, grandson of Johnny Stoney, has lived in Slave Lake as have many other members of Sawridge, adjacent to the Sawridge First Nation all of his life. Maurice has a knowledge of Cree culture and history and knows the Sawridge First Nation. He is married to a member of the Bigstone Cree Nation.

9. William Stoney was enfranchised, as was his family, in 1944. Enfranchisement removed him and his family from the payroll of the Sawridge First Nation. Enfranchised Indians were restored to their Bands on April 17, 1985.

## II. RIGHT TO MEMBERSHIP

10. On April 17, 1982, the *Constitution* was repatriated and the *Constitution Act, 1982* was passed effective April 17, 1982. [Tab 6]

11. The *Canadian Charter of Rights and Freedoms* was Part I of the *Constitution Act, 1982*. Section 15, came into force on April 17, 1985 (see s. 32(2)) and it prohibits discrimination for every individual in Canada including aboriginals. This has resulted in required amendments to correct discrimination in the *Indian Act* effective April 17, 1985 (Bill C-31) and again in Bill C-3 (January 31, 2011): *Indian Act*, R.S.C. 1985, c. I-5 as am. 2010, c. 18 [Tab 7]

12. On February 8, 2012, the Federal Court of Appeal held in *Poitras v. Sawridge Band*, 2012 FCA 47 [Tab 8], that these amendments to the *Indian Act*, contained in Bill C-31, were constitutional and binding on Sawridge entitling individuals to membership as stated by the case manager to be "automatic membership in the Indian Band with which they were connected": see *Sawridge Band v. Canada*, 2004 FCA 16 [Tab 1].

13. Sawridge is not permitted to determine membership related to persons whose membership was restored by Section 15 of the *Charter* through Bill C-31 (and Bill C-3) since these provisions are constitutional, occurred effective April 15, 1985, and Sawridge is bound by

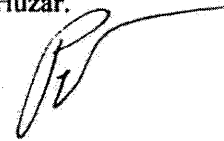
the Constitution: *Sawridge First Nation v. Canada*, 2009 FCA 123 [Tab 9]. Enfranchisement and its removal effective April 17, 1985 entitles Maurice Stoney to membership under section 6(1)(c.1). The Sawridge Membership Rules only apply to the Band List after July 4, 1985.

14. However as noted by the Federal Court of Appeal at paragraph 51 of *Poitras* [Tab 8] Sawridge has delayed taking the steps legally and constitutionally required:

... the individuals who have been denied membership in the appellant Band are aging and, at the present rate of progress, some are unlikely to ever benefit from amendments that were adopted to redress their discriminatory exclusion from Band membership. ...

15. It is submitted that after 30 years, Maurice is entitled to membership in Sawridge.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21<sup>st</sup> day of April, 2012 by Priscilla Kennedy, DAVIS LLP., solicitor for June Martha Kolosky and Aline Elizabeth Huzar.



**Priscilla E.S.J. Kennedy**  
**Barrister & Solicitor**

# TAB 1



## Sawridge Band v. Canada, 2004 FCA 16, [2004] 3 FCR 274

Date	2004-01-19
Caselet	A-170-03
Paralled citations	2004 FCA 16 (CanLII); [2004] 2 CNLR 316
URL	<a href="http://canlii.ca/t/1g8b9">http://canlii.ca/t/1g8b9</a>
Citation	Sawridge Band v. Canada, 2004 FCA 16 (CanLII), [2004] 3 FCR 274, < <a href="http://canlii.ca/t/1g8b9">http://canlii.ca/t/1g8b9</a> > retrieved on 2012-02-02
Tools	<a href="#">▼ Tweet</a> <a href="#">Share</a>
Findings	Search for decisions citing this decision
CiteX Record	Related decisions, legislation cited and decisions cited

A-170-03

2004 FCA 16

**Bertha L'Hirondelle, suing on her own behalf and on behalf of all other members of the Sawridge Band (Plaintiffs) (Appellants)**

v.

**Her Majesty the Queen (Defendant) (Respondent)**

and

**Native Council of Canada, Native Council of Canada (Alberta), Native Women's Association of Canada and Non-Status Indian Association of Alberta (Interveners) (Respondents)**

Indexed as: Sawridge Band v. Canada (F.C.A.)

Federal Court of Appeal, Rothstein, Noël and Malone JJ.A.--Calgary, December 15 and 16, 2003; Ottawa, January 19, 2004.

*Native Peoples -- Registration -- Appellants opposing requirement to enter on Sawridge Band List names of 11 individuals, to accord them rights, privileges attaching to Band membership -- Bill C-31 granting certain persons whose names omitted, deleted from Indian Register prior to April 17, 1985 entitlement to status under Indian Act -- Indian Act, s. 10(4), (5) must be interpreted in accordance with modern approach -- Act, s. 11(1)(c) granting appellants automatic entitlement to*

*membership in Sawridge Band -- Requiring such acquired rights individuals to comply with Sawridge Band membership code in contravention of Act.*

*Administrative Law -- Judicial Review -- Injunctions -- Trial Judge granting mandatory interlocutory injunction sought by Crown, requiring appellants to register names of 11 individuals on Sawridge Band List -- Making determination of law as condition precedent to granting of interlocutory injunction -- Such determination appropriate -- Where substantive question of law at issue, applicable standard of review correctness -- Three-part test for granting interlocutory injunction met -- First part, serious issue to be tried, applies to interlocutory injunction applications whether mandatory or prohibitory.*

*Constitutional Law -- Aboriginal and Treaty Rights -- Appellants submitting provisions of Bill C-31 conferring entitlement to Band membership inconsistent with Constitution Act, 1982, s. 35, therefore of no force, effect -- Legislation must be complied with until found to be unconstitutional -- Clear public interest in seeing legislation obeyed until application stayed by Court order, legislation set aside on final judgment.*

*Construction of Statutes -- Interpretation of Indian Act, s. 10(4), (5) -- All legislation must be read in context -- Trial Judge correctly interpreted s. 10(4), (5) in accordance with modern approach -- Act creating automatic entitlement to membership unless acquired rights individuals subsequently lose entitlement.*

*Practice -- Parties -- Standing -- Whether Crown lacked standing, has not met test for seeking interlocutory injunctive relief -- Crown having standing to seek injunctions to ensure public bodies, such as Indian band council, follow law.*

This was an appeal from a Trial Judge's order granting a mandatory interlocutory injunction sought by the Crown, requiring the appellants to register the names of 11 individuals on the Sawridge Band List and to accord them all the rights and privileges attaching to Band membership. In an action commenced on January 15, 1986, the appellants sought a declaration that the provisions of Bill C-31 (*An Act to amend the Indian Act*) that confer an entitlement to Band membership are inconsistent with section 35 of the *Constitution Act, 1982*, and are therefore of no force and effect. Bill C-31 granted certain persons whose names were omitted or deleted from the Indian Register by the Minister of Indian and Northern Affairs prior to April 17, 1985, entitlement to status under the *Indian Act*. By notice of motion, the Crown applied for an interlocutory mandatory injunction requiring the Sawridge Band to comply with the provisions of the Act unless and until they are determined to be unconstitutional. By order dated March 27, 2003, Hugessen J. granted the requested injunction. In appealing the order of Hugessen J., the appellants raised two issues: (1) whether the Band's membership application process complied with the requirements of the Act,

and (2) whether the Crown had standing and had met the test for granting interlocutory injunctive relief.

*Held*, the appeal should be dismissed.

(1) The Crown's notice of motion for a mandatory interlocutory injunction was based on the appellants' refusal to comply with the legislation pending determination of whether the legislation was constitutional. It was agreed that the interpretation of the legislation and whether or not the appellants were in compliance with it was relevant to this litigation. Courts do not normally make determinations of law as a condition precedent to the granting of an interlocutory injunction, but that is what occurred here. It was appropriate for Hugessen J. to have made a preliminary determination of law that was final and conclusive for purposes of the action, subject to being varied on appeal.

Where a substantive question of law is at issue, even if it is decided by a case management judge, the applicable standard of review will be correctness. Hugessen J. was not satisfied that subsections 10(4) and (5) of the *Indian Act* are as clear and unambiguous as the appellants suggested. He correctly interpreted these provisions in accordance with the modern approach to statutory construction which states that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. The term "acquired rights" which appears as a marginal note beside subsection 10(4) is a convenient "shorthand" to identify those individuals who, by reason of paragraph 11(1)(c) of the Act, became entitled to automatic membership in the Indian Band with which they were connected. The instant paragraph 11(1)(c) came into force, i.e. April 17, 1985, these individuals were entitled to have their names entered on the membership list of their Band. The words "by reason only of" in subsection 10(4) could allow a band to create restrictions on continued membership for situations that arose or actions taken after the membership code came into effect. However, the code cannot operate to deny membership to those individuals who come within paragraph 11(1)(c). There is no automatic membership in a band, but there is an automatic entitlement to membership. The words "commencing on April 17, 1985" only indicate that subsection 11(1) was not retroactive to before April 17, 1985. As of that date, the individuals in question acquired an automatic entitlement to membership in the Sawridge Band. For these persons entitled to membership, a simple request to be included in the Band's membership list is all that is required. The fact that the individuals in question did not complete a Sawridge Band membership application is irrelevant. Requiring acquired rights individuals to comply with the Sawridge Band membership code, in which preconditions had been created to membership, was in contravention of the Act.

(2) The Crown was seeking an injunction, not only on behalf of the individuals denied the benefits of a validly enacted legislation, but on behalf of the public interest in

having the laws of Canada obeyed. It has traditionally had standing to seek injunctions to ensure that public bodies, such as an Indian band council, follow the law. Having regard to the Crown's standing at common law, statutory authority is unnecessary. Hugessen J. correctly found that the Crown had standing to seek the injunction. Moreover, the Crown was seeking essentially the same relief on the injunction application as in the main action. Further, section 44 of the *Federal Courts Act* confers a very broad jurisdiction on the Federal Court, even to granting an injunction where it is not being asked to grant final relief. That being so, the Court surely has jurisdiction to grant an injunction where it will itself make a final determination on an interconnected issue. The requested injunction was therefore sufficiently connected to the final relief claimed by the Crown.

The test for granting an interlocutory injunction, as adopted by the Supreme Court of Canada in *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*; and *RJR--MacDonald Inc. v. Canada (Attorney General)*, is threefold. First, there must be a serious question to be tried. Such test should be applied to an interlocutory injunction application, whether it is prohibitory or mandatory. The Crown's argument that Bill C-31 is constitutional was neither frivolous nor vexatious. There was, therefore, a serious question to be tried. Second, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Ordinarily the public interest would only be considered in the third branch of the test, but since the government was the applicant in this motion for interlocutory relief, the public interest had to be considered in the second stage as well. Allowing the appellants to ignore the requirements of the Act would irreparably harm the public interest in seeing that the law is obeyed. Until a law is struck down as unconstitutional or an interim constitutional exemption is granted by a court of competent jurisdiction, citizens and organizations must obey it. Further the individuals who have been denied Band membership are aging and may never benefit from amendments adopted to redress their discriminatory exclusion. The public interest in preventing discrimination by public bodies will be irreparably harmed if the requested injunction is denied and the appellants are able to continue to ignore their obligations under Bill C-31, pending a determination of its constitutionality. The appellants argued that there could not be irreparable harm because the Crown would not have waited 16 years after the commencement of the action to seek an injunction. The question of whether delay in bringing an injunction application is fatal is a matter of discretion for the motions judge. There was no suggestion that Hugessen J. did not act judicially in the exercise of his discretion. The third branch of the test is the balance of convenience. In the *Metropolitan Stores* case, it was held that interlocutory injunctions should not be granted in public law cases, "unless, in the balance of convenience, the public interest is taken into consideration and given the weight it should carry". In this case, the public interest in seeing that laws are obeyed and that prior discrimination is remedied weighs in favour of granting the injunction requested by the Crown. There is a clear public interest in seeing that legislation is obeyed until its application is stayed by court order or the legislation is set aside on final judgment. On the other hand, the Sawridge Band will suffer little or

no damage by admitting nine elderly ladies and one gentleman to membership.  
Therefore, the balance of convenience favoured granting the injunction.

statutes and regulations judicially

considered

*An Act to amend the Indian Act*, R.S.C., 1985 (1st Supp.), c. 32.

*Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], s. 15.

*Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], s. 35.

*Federal Courts Act*, R.S.C., 1985, c. F-7, ss. 1 (as am. by S.C. 2002, c. 8, s. 14), 44 (as am. *idem*, s. 41).

*Federal Court Rules, 1998*, SOR/98-106, rr. 220, 369.

*Indian Act*, R.S.C., 1985, c. I-5, ss. 6 (as am. by R.S.C., 1985 (1st Supp.), c. 32, s. 4), 10(4) (as am. *idem*), (5) (as am. *idem*), 11(1)(c) (as am. *idem*), 12.

*Interpretation Act*, R.S.C., 1985, c. I-21, s. 14.

cases judicially considered

applied:

*Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 S.C.R. 110; (1987), 38 D.L.R. (4th) 321; [1987] 3 W.W.R. 1; 46 Man. R. (2d) 241; 25 Admin. L.R. 20; 87 CLLC 14,015; 18 C.P.C. (2d) 273; 73 N.R. 341; *RJR -- MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311; (1994), 111 D.L.R. (4th) 385; 54 C.P.R. (3d) 114; 164 N.R. 1; 60 Q.A.C. 241.

considered:

*Canada (Human Rights Commission) v. Canadian Liberty Net*, 1998 CanLII 818 (SCC), [1998] 1 S.C.R. 626; (1998), 157 D.L.R. (4th) 385; 6 Admin. L.R. (3d) 1; 22 C.P.C. (4th) 1; 50 C.R.R. (2d) 189; 224 N.R. 241; *Relais Nordik Inc. v. Secunda Marine Services Ltd.* reflex, (1988), 24 F.T.R. 256 (F.C.T.D.); *Ansa International Rent-a-Car (Canada) Ltd. v. American International Rent-a-Car Corp.* reflex, (1990), 32 C.P.R. (3d) 340; 36 F.T.R. 98 (F.C.T.D.); *Patriquen v. Canada (Correctional Services)* 2003 FC 927 (CanLII), (2003), 238 F.T.R. 153 (F.C.).

referred to:

*Sawridge Band v. Canada*, 2001 FCA 338 (CanLII), [2002] 2 F.C. 346; (2001), 213 F.T.R. 57; 283 N.R. 107 (C.A.); *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27; (1998), 36 O.R. (3d) 418; 154 D.L.R. (4th) 193; 50 C.B.R. (3d) 163; 33 C.C.E.L. (2d) 173; 221 N.R. 241; 106 O.A.C. 1; *Ontario (Attorney General) v. Ontario Teachers' Federation* 1997 CanLII 12182 (ON SC), (1997), 36 O.R. (3d) 367; 44 O.T.C. 274 (Gen. Div.); *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.); *Breen v. Farlow*, [1995] O.J. No. 2971 (Gen. Div.) (QL); *493680 Ontario Ltd. v. Morgan*, [1996] O.J. No. 4776 (Gen. Div.) (QL); *Samoila v. Prudential of America General Insurance Co. (Canada)*, [1999] O.J. No. 2317 (Sup. Ct.) (QL); *Morgentaler et al. v. Ackroyd et al. rellex*, (1983), 42 O.R. (2d) 659; 150 D.L.R. (3d) 59 (H.C.); *Consorzio del Prosciutto di Parma v. Maple Leaf Meats Inc.*, 2002 FCA 417 (CanLII), [2003] 2 F.C. 451; (2002), 22 C.P.R. (4th) 177; 297 N.R. 135 (C.A.).

authors cited

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Sharpe, Robert J. *Injunctions and Specific Performance*, looseleaf ed., Aurora, Ont.: Canada Law Book, 1998.

APPEAL from a Trial Division decision (*Sawridge Band v. Canada*, 2003 FCT 347 (CanLII), [2003] 4 F.C. 748; [2003] 3 C.N.L.R. 344; (2003), 232 F.T.R. 54) granting a mandatory interlocutory injunction sought by the Crown, requiring the appellants to enter on the Sawridge Band List the names of 11 individuals and to accord them all the rights and privileges attaching to Band membership. Appeal dismissed.

appearances:

*Martin J. Henderson* and *Catherine M. Twinn* for plaintiffs (appellants).

*E. James Kindrake* and *Kathleen Kohlman* for defendant (respondent).

*Kenneth S. Purchase* for intervener Native Council of Canada.

*P. Jonathan Faulds, Q.C.* for intervener Native Council of Canada (Alberta).

*Mary Eberts* for intervener Native Women's Association of Canada.

*Michael J. Donaldson* for intervener Non-Status Indian Association of Alberta.

solicitors of record:

*Aird & Berlis LLP*, Toronto and *Twinn Barristers and Solicitors*, Slave Lake, Alberta, for plaintiffs (appellants).

*Deputy Attorney General of Canada* for defendant (respondent).

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*Field LLP*, Edmonton, for intervener Native Council of Canada (Alberta).

*Eberts Symes Street Pinto & Jull*, Toronto, for intervener Native Women's Association of Canada.

*Burnet, Duckworth & Palmer LLP*, Calgary, for intervener Non-Status Indian Association of Alberta.

The following are the reasons for judgment rendered in English by

[1] Rothstein J.A.: By order dated March 27, 2003 [2003 FCT 347 (CanLII), [2003] 4 F.C. 748], Hugessen J. of the Trial Division (as it then was) granted a mandatory interlocutory injunction sought by the Crown, requiring the appellants to enter or register on the Sawridge Band List the names of 11 individuals who, he found, had acquired the right to be members of the Sawridge Band before it took control of its Band List on July 8, 1985, and to accord the 11 individuals all the rights and privileges attaching to Band membership. The appellants now appeal that order.

## HISTORY

[2] The background to this appeal may be briefly stated. *An Act to amend the Indian Act*, R.S.C., 1985, (1st Supp.), c. 32 (Bill C-31), was given Royal Assent on June 28, 1985. However, the relevant provisions of Bill C-31 were made retroactive to April 17, 1985, the date on which section 15, the equality guarantee, of the *Canadian Charter of Rights and Freedoms* [being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]] (the Charter) came into force.

[3] Among other things, Bill C-31 granted certain persons an entitlement to status under the *Indian Act*, R.S.C., 1985, c. 1-5 (the Act), and, arguably, entitlement to membership in an Indian Band. These persons included those whose names were omitted or deleted from the Indian Register by the Minister of Indian and Northern Affairs prior to April 17, 1985, in accordance with certain provisions of the Act as they read prior to that date. The disqualified persons included an Indian woman who married a man who was not registered as an Indian as well as certain other persons disqualified by provisions that Parliament considered to be discriminatory on account of gender. The former provisions read [section 12]:

an interlocutory stage (*RJR--MacDonald*, at page 337), I think he was correct to do so. However, the fact that the Crown is asking the Court to require the appellants' to take positive action will have to be considered in assessing the balance of convenience.

[47] In this case, the Crown's argument that Bill C-31 is constitutional is neither frivolous nor vexatious. There is, therefore, a serious question to be tried.

#### Irreparable Harm

[48] Ordinarily, the public interest is considered only in the third branch of the test. However, where, as here, the government is the applicant in a motion for interlocutory relief, the public interest must also be considered in the second stage (*RJR--MacDonald*, *supra*, at page 349).

[49] Validly enacted legislation is assumed to be in the public interest. Courts are not to investigate whether the legislation actually has such an effect (*RJR--MacDonald*, at pages 348-349).

[50] Allowing the appellants to ignore the requirements of the Act would irreparably harm the public interest in seeing that the law is obeyed. Until a law is struck down as unconstitutional or an interim constitutional exemption is granted by a court of competent jurisdiction, citizens and organizations must obey it (*Metropolitan Stores*, *supra*, at page 143, quoting *Morgentaler et al. v. Ackroyd et al.* (1983), 42 O.R. (2d) 659 (H.C.), at pages 666-668).

[51] Further, the individuals who have been denied membership in the appellant Band are aging and, at the present rate of progress, some are unlikely ever to benefit from amendments that were adopted to redress their discriminatory exclusion from Band membership. The public interest in preventing discrimination by public bodies will be irreparably harmed if the requested injunction is denied and the appellants are able to continue to ignore their obligations under Bill C-31, pending a determination of its constitutionality.

[52] The appellants argue that there cannot be irreparable harm because, if there was, the Crown would not have waited 16 years after the commencement of the action to seek an injunction. The Crown submits that it explained to Hugessen J. the reasons for the delay and stated that the very length of the proceedings had in fact contributed to the irreparable harm as the individuals in question were growing older and, in some cases, falling ill.

[53] The question of whether delay in bringing an injunction application is fatal is a matter of discretion for the motions judge. There is no indication that Hugessen J. did not act judicially in exercising his discretion to grant the injunction despite the timing of the motion.

# TAB 2

**TREATY RESEARCH REPORT  
TREATY EIGHT  
(1899)**

**by  
Dennis F.K. Madill  
Treaties and Historical Research Centre  
Indian and Northern Affairs Canada  
1986**

The opinions expressed by the author in this report are not necessarily those of the Department of Indian and Northern Affairs Canada.

Les opinions présentées par l'auteur de ce rapport ne sont pas forcément ceux du Ministère des Affaires indiennes et du Nord Canada.

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## PREFACE

With the advent of prospectors and settlers to the Lake Athabasca, Great Slave Lake, and parts of the Peace River region during the Klondike gold rush of 1897-98, the federal government prepared to extend the Indian treaty system to the unceded area north of Treaty Six and south of Great Slave Lake. The negotiations for Treaty Eight were conducted during the summer of 1899 with Cree, Beaver and Chipewyan bands and subsequent adhesions were signed between 1900 and 1914. It was estimated that Treaty Eight negotiations would encompass 2700 Indians and 1700 mixed bloods or Métis, whose rights also had to be considered. Hence, two commissions were established: a treaty commission to draft the treaty and secure adhesion of the various tribes and a separate half-breed commission to deal with Métis claims concurrently and in close consultation with the treaty commissioner.

When Treaty Eight was negotiated in 1899, the federal government found Indians of two major language groups residing in the treaty area. They were Crees and Athapaskans (or Dené), including Chipewyan, Beavers, Slaveys, Dogribs and Yellowknives. Cree-speaking people lived in various locations throughout what is now northern Alberta. Chipewyans inhabited the eastern section of the treaty area, mainly in the vicinity of Lake Athabasca. Beaver Indians occupied the western part of the treaty area in what is now British Columbia and along the Peace River in Alberta. Slaveys, Dogribs and Yellowknives lived in the northern parts.

The federal government's desire for substantially uniform treaties, with variations dependent upon local conditions or Indian demands, was evident during the Treaty Eight negotiations. The treaty commissioners were ultimately given considerable latitude in determining the precise terms of the treaty and the region to be encompassed and did consider altering treaty provisions. But, in the final analysis, despite the fact that the Indian Affairs Department had received advice that the Prairie treaties could not be applied to the north, the written terms of the treaty were based essentially on Treaty Seven, with some changes reflecting local conditions. In the aftermath of the negotiations, the terms of Treaty Eight were subject to different interpretations regarding the nature and fulfilment of the obligations incurred by the federal government.

council P.C. 2749, dated 6 December 1898, represented a dramatic change from the province's previous policy of thwarting treaties.<sup>32</sup> After entering Confederation in 1871, B.C. made no real effort to secure a surrender of Indian title and, in contrast to Dominion policy, seldom granted Indians more than 20 acres per family rather than the 640 acres standard instituted in the Northwest Territories under the "numbered" treaties.<sup>33</sup> Before the terms and conditions of Treaty Eight could be extended in B.C., however, the commissioners had to request that the province "formally acquiesce in the action." In 1876, an agreement between the federal government and the province of B.C. established the Joint Allotment Commission and stipulated that the province would be responsible for negotiating with the Indians for title to their land and allocating reserves.<sup>34</sup> Hence, the province's participation in fulfilling the land provisions of Treaty Eight would be limited. Nevertheless, Sifton reported on 30 November 1898 the importance of B.C. being included in the treaty:

As it is in the interest of the Province of British Columbia, as well as that of the Dominion, that the country to be treated for should be thrown open to development and the lives and property of those who may enter therein safeguarded by the making of provision which will remove all hostile feeling from the minds of the Indians and lead them to peacefully acquiesce in the changing conditions, the undersigned would suggest that the Government of British Columbia be apprised of the intention to negotiate the proposed treaty; and as it is of utmost importance that the Commissioner should have full power to give such guarantees as may be found necessary in regard to the setting apart of land for reserves, the undersigned would further recommend that the Government of British Columbia be asked to formally acquiesce in the action taken by Your Excellency's Government in the matter and to intimate its readiness to confirm any reserves which it may be found necessary to set apart.<sup>35</sup>

A month later, Commissioner McKenna indicated that a dispatch had been forwarded to the government of British Columbia asking it to confirm any reserves in that section of the province which would be included in the treaty.<sup>36</sup>

### Treaty Negotiations

The first treaty negotiations were scheduled for 8 June 1899 near the present site of

Grouard on Lesser Slave Lake, but because of poor weather and transportation problems the first meeting was not arranged until 20 June. However, Commissioner Ross arrived on 6 June and in the interim explained the purpose of the treaty and requested the assembled Indians to elect a chief and headmen to represent them.<sup>37</sup> Kinodayoo was chosen chief, and the four headmen were Moostoos, Felix Giroux, Weecheewayis and Charles Neesuetasis. The negotiations with the Lesser Slave Lake Indians have been documented extensively. Charles Mair published his notes of the discussions as part of a book on the treaty expeditions, an *Edmonton Bulletin* correspondent reported on the meetings, and Bishop Grouard included a chapter of the proceedings in a book on his life in the north.<sup>38</sup> Also there are several reports by the commissioners which provide summaries of the agreements from a government perspective.

Generally, the negotiations at Lesser Slave Lake reflect the commissioners' lack of knowledge of the northern Indians and the Indians' concern for their hunting, fishing and trapping rights and their confinement on reserves. James K. Cornwall ("Peace River Jim"), active in several northern developments, was present at the negotiations and in 1937 signed affidavits concerning Treaty Eight.<sup>39</sup> He reported that "the Commissioners had unfavourably impressed the Indians, due to lack of knowledge of the bush Indians' mode of life, by quoting Indian conditions on the Prairies."<sup>40</sup> Furthermore, he suggested that during the negotiations the Indians emphasized that they would not sign treaty unless there were assurances that their hunting, fishing and trapping rights were guaranteed.<sup>41</sup> Kinodayoo and Moostoos finally agreed to the terms, but there were several concerns. The report of the commissioners indicated the promises made to persuade the Indians to accept treaty:

Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. The provision in the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. But over and above the provision, we had to solemnly assure them that

only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it ... the Indians were generally averse to being placed on reserves. It would have been impossible to have made a treaty if we had not assured them that there was no intention of confining them to reserves. We had to very clearly explain to them that the provisions for reserves and allotments of land were made for their protection, and to secure to them in perpetuity a fair portion of the land ceded, in the event of settlement advancing.<sup>42</sup>

The Half-breed Scrip Commission, whose mandate it was to work in close relationship with the treaty commission and to investigate the Métis claims and determine their acceptability, also encountered serious problems. The large Métis population at Lesser Slave Lake objected to the type of scrip offered. Rather than being made payable to the bearer on demand, it was to be non-transferable and non-negotiable except by a proper legal assignment. To protect the Métis against speculators, the federal government had issued this type of script for the 1899 negotiations. Father Lacombe urged the Métis to protect their interests by accepting the scrip, but they refused. Members of both commissions met and agreed that they would have to comply with Métis demands for transferable scrip, lest the continuation of the treaty negotiations be affected.<sup>43</sup> Thus, scrip was issued for either \$240 or 240 acres of land to half-breed heads of families and their children. Sifton was attacked by the opposition for consenting to Métis demands and conceded that the commissioners had "really exceeded their instructions" but the pacification of the half-breeds was critical in his decision:

It must be remembered that the financial benefit to the half-breeds is not the primary object the Government had in view in making this arrangement. I say that is not the primary object. It is desirable that the provision which we make for this scrip being given to the half-breeds should be as great a benefit to the half-breeds as possible. That would commend itself to the common sense of any member of this committee. But the main reason for making this arrangement is to pacify and keep pacified the North-West Territories, to settle a claim which must be settled before the people of Canada can make a treaty with the Indians of that district – and the Indians of that district must have a treaty made with them, otherwise we should be in danger of having an Indian trouble on our hands, the very slightest of which would cost us two or three times the amount of scrip we issue.<sup>44</sup>

The report of the Half-breed Commission for 30 September 1899 indicated that 1,195 scrip certificates for money, representing a value of \$286,800, and 48 land scrip certificates, covering an area of 11,520 acres, were issued. About half of the scrips issued in 1899 were at Lesser Slave Lake, but there were also several scrips distributed at Fort Vermilion, Fort Chipewyan, Peace River Landing and other points.<sup>45</sup> Moreover, the commissioners stated that, excepting the small population of half-breeds in the vicinity of White Fish and Sturgeon Lakes, who refused to meet the commissioners at Lesser Slave Lake, the entire Métis population in the Treaty Eight area had been dealt with satisfactorily.<sup>46</sup> The report, however, failed to point out which Métis had actually joined treaty.

#### Treaty Adhesions and Admissions

The written terms and conditions of Treaty Eight were finalized during the negotiations at Lesser Slave Lake, and the treaty commissioners decided to make adhesions at all of the other trading posts rather than negotiate several treaties.<sup>47</sup> The commissioners expected that once the Lesser Slave Lake Indians signed treaty there would be less difficulty in obtaining adhesions of the others. Therefore, there is little documentation available regarding the nine meetings in 1899, the four meetings in 1900 that occurred from Fort St. John to Fond du Lac and from Fort Resolution to Wabasca, and the meetings at Fort Nelson in 1910. In 1914, the Saulteaux and Hudson's Hope Bands were merely admitted to treaty. Moreover, several Indians were admitted to treaty in the isolated communities during the period following treaty negotiations.

There were some interesting developments during the 1899 meetings that should be noted. Since the commissioners were behind schedule after the Lesser Slave Lake negotiations, they divided the treaty party in two so that all the designated points could be reached before the end of the summer. Four of the locations, however, had to be left until the following summer: Fort St. John, Sturgeon Lake, Upper Hay River (Slavey Band) and Fort Resolution. David Laird led one of the treaty parties to Peace River Landing, where a Cree band led by Duncan Tustawits indicated some concern that if

- <sup>1</sup> D.J. Hall, "Clifford Sifton and Canadian Indian Administration 1869-1905" in *As Long as the Sun Shines and Water Flows*, edited by Ian A.L. Getty and A.S. Lussier (Vancouver, 1983), p. 123.
- <sup>2</sup> D.J. Hall, *Clifford Sifton: Volume 1: The Young Napoleon, 1861-1900* (Vancouver, 1981), p. 271.
- <sup>3</sup> PAC, RG10, vol. 3848, file 75, 236-1, Herchmer to Comptroller NWMP, 2 December 1897.
- <sup>4</sup> *Ibid.*, Forget to McKenna, 16 April 1898..
- <sup>5</sup> *Ibid.*, Sifton to Governor General in Council, 18 June 1898; Order-in-Council P.C. 1703, 27 June 1898.
- <sup>6</sup> *Ibid.*
- <sup>7</sup> *Ibid.*
- <sup>8</sup> *Ibid.*, Forget to Secretary, Indian Affairs, 12 January 1898.
- <sup>9</sup> *Ibid.*, 25 April 1898.
- <sup>10</sup> *Ibid.*, Laird, Memorandum Respecting Proposed Treaty No. 8 and Half-breed Claims, 7 January 1899.
- <sup>11</sup> *Ibid.*, Sifton to Laird, McKenna, and Ross, 12 May 1899.
- <sup>12</sup> PAC, RG10, vol. 4006, file 241, 209-1, Laird to Secretary Indian Affairs, 29 April 1904.
- <sup>13</sup> PAC, RG10, vol. 3848, file 75, 236-1, Sifton to His Excellency the Governor General in Council, 30 November 1898.
- <sup>14</sup> René Fumoleau, *As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939* (Toronto, 1975), p. 59.
- <sup>15</sup> Canada, Privy Council, O.C. No. 2749, 6 December 1898; Department of Indian Affairs and Northern Development (DIAND), *Treaty No. 8, Made June 21, 1899 and Adhesions, Reports, Etc.* (Ottawa, 1966).
- <sup>16</sup> PAC, RG10, file 366, 877, W.E. Ditchburn to Duncan Scott, 19 November 1920; *Ibid.*, Scott to Ditchburn, 4 December 1920; *ibid.*, file 1/11-5, Vol 4, George Brown to D.F. Pearson, 17 May 1974; Wilson Duff, *The Indian History of British Columbia*, Anthropology in B.C. memoir No. 5 (Victoria, 1964), p. 70; J. Bruce Melville, *Report: Indian Reserves and Indian Treaty Problems in Northeastern B.C.*, Prepared for B.C. Hydro and Power Authority (Vancouver, 1981), pp. 13-21.
- <sup>17</sup> K.S. Coates, "Best Left as Indians: The Federal Government and the Indians of the Yukon, 1894-1950." Unpublished paper presented to the Canadian Historical Association, Vancouver, June 1983, p. 3; H. Reed to Charles Constantine, RG10, Vol. 1115, Deputy Superintendent's Letter-book, 29 May 1894.
- <sup>18</sup> William R. Morrison, "A Survey of the History and Claims of the Native Peoples of Northern Canada" (Ottawa: INAC, 1983), p.33.
- <sup>19</sup> William R. Morrison, "Under the Flag: Canadian Sovereignty and the Native People in Northern Canada" (Ottawa: INAC, 1984), p. 52; Coates, "Best Left as Indians," p. 13.
- <sup>20</sup> Fumoleau, *As Long As This Land Shall Last*, p. 60.
- <sup>21</sup> PAC, RG10, Vol. 3848, file 75, 236-1, Sifton to Governor General in Council, 17 February 1899; Canada Privy Council, O.C. 330, 2 March 1899.

- <sup>22</sup> PAC, RG10, Vol. 3848, file 75, 236-1, Macrae to McKenna, 3 December 1898.
- <sup>23</sup> *Ibid.*, McKenna to Sifton, 17 April 1899.
- <sup>24</sup> *Ibid.*, Sifton to Laird, McKenna, and Ross, 12 May 1899.
- <sup>25</sup> *Ibid.*
- <sup>26</sup> Fumoleau, *As Long As This Land Shall Last*, pp. 65-66.
- <sup>27</sup> James G.E. Smith, "Western Woods Cree," in *Handbook of North America Indians*, vol. 6, *Subartic*, edited by June Helm (Washington, 1981), pp. 258-259.
- <sup>28</sup> PAC, RG10, vol. 3848, File 75, 236-1, McKenna to Sifton, 17 April 1899.
- <sup>29</sup> Canada, Privy Council, O.C. No. 1703, 27 June 1898.
- <sup>30</sup> PAC, RG10, vol. 3848, file 75, 236-1, McKenna to Sifton, 17 April 1899.
- <sup>31</sup> PAC, RG 10, Sifton to Laird, McKenna and Ross, 12 May 1899.
- <sup>32</sup> For a discussion of treaty policy in British Columbia, see Dennis Madill, "British Columbia Indian Treaties in Historical Perspective" (Ottawa: INAC, 1981).
- <sup>33</sup> *Ibid.*
- <sup>34</sup> Canada, Privy Council, O.C. No. 2749, 6 December 1898.
- <sup>35</sup> PAC, RG10, Vol. 3848, file 75, 236-1, Sifton to His Excellency the Governor General in Council, 30 November 1898.
- <sup>36</sup> *Ibid.*, McKenna to David Laird, 5 December 1898.
- <sup>37</sup> Canada, *Treaty No. 8*, p. 5; PAC, RG10, Vol. 3848, file 75, 236-1, *Edmonton Bulletin*, 10 July 1899; Emile Jean-Baptiste Marie Grouard, *Souvenirs de mes soixante ans d'apostolat dans l'Athabasca-Mackenzie* (Lyons-Paris, 1923), p. 368.
- <sup>38</sup> Charles Mair, *Through the Mackenzie Basin: A Narrative of the Athabasca and Peace River Expedition of 1899* (Toronto, 1908); Grouard, *Souvenirs de mes soixante ans d'apostolat dans l'Athabasca-Mackenzie* (Lyons-Paris, 1923).
- <sup>39</sup> Fumoleau, *As Long As This Land Shall Last*, pp. 74-75.
- <sup>40</sup> *Ibid.*, p. 74.
- <sup>41</sup> *Ibid.*, p. 75.
- <sup>42</sup> Canada, *Treaty No. 8*, pp. 6-7.
- <sup>43</sup> Canada, Parliament, Department of Interior, *Sessional Papers*, No. 13, 1900, Part 8, "Report of the Half-Breed Commissioners," 30 September 1899, p. 3.
- <sup>44</sup> Canada, Parliament, House of Commons *Debates*, 14 July 1899, p. 7513.

<sup>45</sup> Canada, Parliament, Department of the Interior, *Sessional Papers*, No. 13, 1900, Part 8, "Report of the Half-Breed Commissioners," 30 September 1899, p. 3.

<sup>46</sup> *Ibid.* The inadequacy of the government scrip program under Treaty 8 left many of the half-breeds without land. Since most scrip was taken as cash to finance immediate needs, there were no recurring benefits to support them during the depression of the thirties. Moreover, with the transfer of lands from the federal government to the Prairie provinces and B.C. in 1930, the Métis of Alberta anticipated that settlers would move into those areas in which they had been residing as homesteaders. After conveying their concerns to the Alberta government, the Ewing Commission was established in 1934 to enquire into the condition of the Métis of Alberta regarding health, education and general welfare. Its recommendations led to the enactment of the Métis Population Betterment Act five years later. The Act provided a land base for Métis people to become self-sufficient through agriculture by the creation of ten settlements or colonies.

<sup>47</sup> Canada, *Treaty No. 8*, pp. 6-7.

<sup>48</sup> *Ibid.*, p. 5.

<sup>49</sup> *Ibid.*, pp. 7-8.

<sup>50</sup> G. Breynat, *Cinquante Ans au Pays des Neiges*, Vol. 1 (Montreal, 1945), pp. 186-187.

<sup>51</sup> Canada, Privy Council, O.C. No. 460, 2 March 1900.

<sup>52</sup> Canada, *Treaty No. 8*, p. 20.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*, p. 21.

<sup>55</sup> *Ibid.*

<sup>56</sup> PAC, RG15, vol. 771, file 518158, McKenna to Sifton, 16 March 1901.

<sup>57</sup> PAC, RG15, Vol. 782, file 555680, McKenna to Sifton, 19 January 1901.

<sup>58</sup> See Joe Sawchuk, Patricia Sawchuk, and Theresa Ferguson, *Métis Land Rights in Alberta: A Political History* (Edmonton, 1981), pp. 125-127.

<sup>59</sup> Canada, *Treaty No. 8*, pp. 20-21.

<sup>60</sup> Richard Daniel, "Land Rights of the Isolated Communities of Northern Alberta." Unpublished paper prepared for the Isolated Communities Advisory Board and Lubicon Lake Band, January 1975, p. 22; Joe Sawchuk et al., *Métis Land Rights in Alberta*, p. 127.

<sup>61</sup> See PAC, RG10, vol. 4006, file 241,109-1; William R. Morrison and K.S. Coates, "Treaty Research Report: Treaty Ten" (Ottawa: INAC, 1985).

<sup>62</sup> DIAND, *Annual Report*, 1915; p. 83, "Report of Henry A. Conroy, Inspector for Treaty No. 8"; William R. Morrison and K.S. Coates, "Treaty Research Report: Treaty Eleven" (Ottawa: INAC, forthcoming).

<sup>63</sup> Treaties 10 and 11 were signed in 1905-1906 and 1921, respectively.

<sup>64</sup> See Wilson Duff, *The Indian History of British Columbia* (Victoria, 1964), p. 71.

- <sup>69</sup> DIAND, *Annual Report*, 1903, p. 235, H.A. Conroy to Superintendent General of Indian Affairs, 5 October 1903.
- <sup>70</sup> DIAND, *Annual Report*, 1907, p. 183, Conroy to Frank Pedley, 5 February 1907.
- <sup>71</sup> DIAND, *Annual Report*, 1909, p. 202, Conroy to Frank Pedley, 19 February 1909. [Note: the editor could not find references to the Indian Act and the role of priests in this reference.]
- <sup>72</sup> PAC, RG10, file 1/1-11-5-1, Vol. 1, "Certified Extract from the Minutes of a Meeting of the Treasury Board," 18 December 1909; *Ibid.*, Conroy to Superintendent General of Indian Affairs, 20 October 1910.
- <sup>73</sup> PAC, RG 10, Privy Council, O.C. 8/2534, 18 December 1909.
- <sup>74</sup> *Ibid.*, Conroy to Superintendent General of Indian Affairs, 29 October 1910.
- <sup>75</sup> PAC, RG10, Vol. 1852, Copy of Fort Nelson Adhesion, 15 August 1910; DIAND, *Annual Report*, 1911, p. 191, Conroy to Pedley, 14 November 1910.
- <sup>76</sup> DIAND, *Annual Report*, 1911, p. 191, Conroy to Pedley, 14 November 1910.
- <sup>77</sup> Canada, Parliament, *Sessional Papers*, No. 28 (Appendix Q), Annual Report of the Royal Northwest Mounted Police for 1912, Sergeant R. Field's Patrol, Fort Chipewyan to Fort Nelson, B.C., and Return, 10 October 1910, p. 172.
- <sup>78</sup> *Ibid.*
- <sup>79</sup> *Ibid.*
- <sup>80</sup> PAC, RG10, vol. 3979, file 156, 710-31, J.D. McLean to Harold Laird, 10 May 1911.
- <sup>81</sup> PAC, RG 10, vol. 8598, file 1/1-11-5-1, vol. 1, David Laird, "Memorandum for the Deputy Minister," 11 January 1910; PAC, RG 10, file 355,726, Vol. 1, "Fort Nelson Adhesion to Treaty 8," n.d.
- <sup>82</sup> *Ibid.*, Conroy to Duncan Scott, 29 December 1913.
- <sup>83</sup> DIAND, *Annual Report*, 1915, p. 84, "Report of Henry A. Conroy, Inspector for Treaty No. 8."
- <sup>84</sup> Originally, some Cree and Saulteaux Indians entered the Northwest in the early 1800s with the westward expansion of the fur trade. There is evidence that some families of the Saulteau Band were involved in the Frog Lake Massacre during the North-West rebellion in 1885. After the rebellion they drifted further west for fear of reprisals from the North West Mounted Police and the federal government. Eventually, the families split into two groups with one settling near Moberly Lake.
- <sup>85</sup> DIAND, *Annual Report*, 1915, p. 84, "Report of Henry A. Conroy, Inspector for Treaty No. 8."
- <sup>86</sup> Daniel, "Land Rights of the Isolated Communities of Northern Alberta," p. 6.
- <sup>87</sup> *Ibid.*, p. 7.
- <sup>88</sup> *Ibid.*, p.8.
- <sup>89</sup> David M. Smith, *Moose-Deer Island House People: A History of the Native People of Fort Resolution* (Ottawa, 1982), p. 114; Fumoleau, *As Long As This Land Shall Last*, p. 273.
- <sup>90</sup> Smith, *Moose-Deer Island House People*, p. 114.

<sup>97</sup> *Ibid.*

<sup>98</sup> Fumoleau, *As Long As This Land Shall Last*, p. 273.

<sup>99</sup> PAC, RG10, vol. 4092, file 567,205, C.W. Jackson to R.A. Hoey, 12 August 1943. In 1936, the Department of Indian Affairs was made a branch of the Department of Mines and Resources. In 1949, the Indian Affairs Branch was transferred to the Department of Citizenship and Immigration and in 1965, it was transferred to the Department of Northern Affairs and Natural Resources. A year later, the Department of Indian Affairs and Northern Development was established.

<sup>100</sup> PAC, RG 10, file 1/1-11-5, Vol. 1, W.C. Bethune to Indian Commissioner for B.C., 14 April 1960.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*, C.I. Fairholm to I.F. Kirby, 10 May 1972.

<sup>103</sup> *Ibid.*

<sup>104</sup> In 1982, the McLeod Lake Band expressed some interest in adhering to Treaty 8. See letter of 13 October 1982 from Clovis Demers, Assistant Deputy Minister, Office of Native Claims, to J.C. Tair, Assistant Deputy Minister, Corporate Policy.

<sup>105</sup> Canada, *Treaty No. 8*, p. 5.

<sup>106</sup> R. Daniel, "The Spirit and Terms of Treaty Eight." In *The Spirit of the Alberta Indian Treaties*, edited by Richard Price (Montreal, 1979), p. 69.

<sup>107</sup> PAC, RG10, Vol. 3848, file 75, 236-1, Sifton to Governor-General, 18 June 1898.

<sup>108</sup> R. Daniel, "Treaties to the Northwest, 1871-1930." In *A History of Native Claims Processes in Canada, 1867-1979*. (Ottawa, 1980), p. 9.

<sup>109</sup> Daniel, "The Spirit and Terms of Treaty Eight," p. 80.

<sup>110</sup> Canada, *Treaty No. 8*, p. 12.

<sup>111</sup> *Ibid.*, pp. 12-13.

<sup>112</sup> *Ibid.*, p. 6.

<sup>113</sup> *Ibid.*, pp. 13-14.

<sup>114</sup> *Ibid.*, pp. 5-6.

various treaty functions such as paying annuities, admitting Indians to treaty, instructing them in the art of farming, providing medical assistance and aiding Indians generally in the transition from a nomadic to a more settled life style. These duties were all accomplished in one yearly visit at each post.

The annual visits by the Indian agents to the various posts are well documented. Early Indian Affairs correspondence for the Lesser Slave Lake agency, for example, has revealed that the Indian agents did not always fulfill their responsibilities regarding treaty obligations. There were complaints from the Indians that they were not being taught how to farm, and it was not until 1929 that a farm instructor was appointed for the Lesser Slave Lake agency. Furthermore, there were reports, particularly from bands located in the more isolated areas of the agency, that they were not receiving medical assistance.<sup>26</sup> The Fort Smith agency was successful in increasing the government's presence in the north and performing several public services, but the farming experiments failed. The bands of the Fort McKay, Fort Chipewyan and Fond du Lac areas were not interested in agriculture because of the scarcity of arable farm land in the region.<sup>27</sup>

To improve the level of assistance and to provide more contact with the more distant bands, the Great Slave Lake agency was established in 1923 and included the Fort Resolution, Snowdrift and Hay River Bands. Also, in 1924, an agency was opened at Fort McMurray to replace the Fort Smith agency and was responsible for the Treaty Eight bands in northern Alberta, the Fond du Lac Band in Saskatchewan, and the Fort Smith Band in the Northwest Territories.<sup>28</sup> Finally, the Fort St. John agency was inaugurated in 1934 and comprised those bands located in the Peace River block.

#### Reserve Land Entitlement

The allotment of reserves in the Alberta portion of the Treaty Eight area occurred as early as 1900, when Chief Kinosayoo of the Lesser Slave Lake Band requested reserve surveys and farming provisions. Moostoos, a band councillor, indicated the reason that

treaty was accepted in 1899 was "that we saw we had to change our way of living, that furs were getting scarce and also moose, and that if we had cattle... we would better off."<sup>29</sup> Although the federal government did not wish Indians to give up hunting immediately, the possibility of conflicting claims between settlers and Indians prompted the early reserve allocations.<sup>30</sup> It became apparent with the first surveys that the treaty clauses regarding reserve land had been misunderstood. Kinodayoo and Moostoos asked for " ... all the land lying for many miles back of the whole southern shore of Lesser Slave Lake" – an area greater than their treaty entitlement.<sup>31</sup> Treaty Commissioner J.A. Macrae explained to them that they could not receive any more land than they were entitled to under Treaty. The Indians complied and selected two reserves at Driftpile and Sucker Creek and several parcels of land in severalty.<sup>32</sup> (See chart for reference to reserves for Kinodayoo's band).

There is further evidence that the selection of reserves conflicted with settler interests. When the Sawridge Band requested a reserve in 1911, area settlers protested the allocation of good agricultural land because further settlement might be inhibited.<sup>33</sup> They argued, moreover, that the Indians should be allotted a single block of land outside the area already surveyed, leaving the good agricultural land open for settlement.<sup>34</sup> Similar conflicts with settlers' rights at Fort McKay and Swan River resulted in the Indians losing sections of reserve land.<sup>35</sup>

Generally, the Indian Affairs agents and administrators supported Indian rights, while those of the settlers were represented by the Department of the Interior. In some cases, however, the main concern of the Indian Affairs administrators was to reduce survey expenses, and this led to a policy of discouraging Indians from choosing land in severalty.<sup>36</sup> Several families, nevertheless, took advantage of the provision for lands in severalty, and several bands split their land entitlement into many smaller reserves, with the result that the reserves of Treaty Eight are larger in number but smaller in size than the reserves in the rest of Alberta.<sup>37</sup>

The Treaty Eight commissioners expected that the Indians of the Athabasca District

would select reserves only for agricultural purposes.<sup>38</sup> In the immediate post-treaty period, however, hunting, fishing and trapping were more reliable and the level of assistance to Indian farmers was inadequate. Most bands in the Athabasca region, therefore, did not select reserve land because of its agricultural potential but because it was adjacent to good fishing or trapping areas. Those bands which attempted farming generally failed due to lack of assistance from the Indian Affairs Department; in some cases, there was pressure to surrender their lands to settlers who might put it to better use.

<b>Treaty 8 Bands, Reserves and Settlements, Northern Alberta</b>		
<b>Name of Band</b>	<b>Date of First Survey of Reserve</b>	<b>Reserves / Settlements Held, 1985</b>
Driftpile (originally part of Kinosayoo's Band)	1901	#150
Sucker Creek (originally part of Kinosayoo's Band)	1901	#150A
Grouard (originally part of Kinosayoo's Band)	1901	#150B; #150C; #150D
Swan River (originally part of Kinosayoo's Band)	1902	#150E; #150F
Sawridge (originally part of Kinosayoo's Band)	1912	#150G; #150H
Duncan's	1905	#151A; #151K
Beavers of Horse Lake and Clear Hills	1905	#152B; #152C
Sturgeon Lake	1908	#154; #154A; #154B
Utikuma (Whitefish Lake)	1908	#155; #155A; #155B
Little Red River	1912	#162; #215
Tall Cree	1912	#163; #173; #173A
Boyer River (Ambrose Tete Noire)	1912	#164; #164A
Wabasca (Bigstone)	1913	#166; #166A; #166B; #166C; #166D; # 183

would select reserves only for agricultural purposes.<sup>18</sup> In the immediate post-treaty period, however, hunting, fishing and trapping were more reliable and the level of assistance to Indian farmers was inadequate. Most bands in the Athabasca region, therefore, did not select reserve land because of its agricultural potential but because it was adjacent to good fishing or trapping areas. Those bands which attempted farming generally failed due to lack of assistance from the Indian Affairs Department; in some cases, there was pressure to surrender their lands to settlers who might put it to better use.

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Sucker Creek (originally part of Kinosayoo's Band)	1901	#150A
Grouard (originally part of Kinosayoo's Band)	1901	#150B; #150C; #150D
Swan River (originally part of Kinosayoo's Band)	1902	#150E; #150F
Sawridge (originally part of Kinosayoo's Band)	1912	#150G; #150H
Duncan's	1905	#151A; #151K
Beavers of Horse Lake and Clear Hills	1905	#152B; #152C
Sturgeon Lake	1908	#154; #154A; #154B
Utikuma (Whitefish Lake)	1908	#155; #155A; #155B
Little Red River	1912	#162; #215
Tall Cree	1912	#163; #173; #173A
Boyer River (Ambrose Tete Noire)	1912	#164; #164A
Wabasca (Bigstone)	1913	#166; #166A; #166B; #166C; #166D; # 183

development of the northern hinterland.<sup>10</sup> During these developments, the rights of settlers and industrialists received more attention. In B.C., for example, provincial involvement in northeastern B.C. has resulted in the establishment of major economic development programs, including the construction of an oil pipeline from the Peace River to supply interior B.C., hydroelectric development, and proposals for the building of the Alaska Highway natural gas pipeline. The Indians have expressed their fears concerning the scale and pace of industrial development in their hunting and trapping lands and have viewed recent developments as a further abrogation of their treaty rights.

### Notes

<sup>1</sup> Hugh Brody, *Maps and Dreams: Indians and the British Columbia Frontier* (Vancouver, 1981), p. 68; Michael Jackson, Presentations to the Northern Pipeline Agency Public Hearings, for St. John, Transcript Vol. 17, 13-14 December 1979, pp. 1935-1936; René Fumoleau, *As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939* (Toronto: 1975).

<sup>2</sup> Brody, *Maps and Dreams*, p. 68.

<sup>3</sup> When B.C. entered Confederation in 1871, it conveyed to the federal government certain public lands, in trust, to further the completion of a railway from the Pacific to the Atlantic Oceans. This arrangement was modified and extended in 1884 by the B.C. Legislature, which granted to the federal government "three and a half million acres of land in that portion of the Peace River district of British Columbia lying east of the Rocky Mountains and adjoining the Northwest Territory of Canada, to be located by the Dominion in one rectangular block."

<sup>4</sup> See Richard Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," M.A. Thesis, University of Alberta, 1977, Chapter 5.

<sup>5</sup> William R. Morrison, *A Survey of the History and Claims of the Native Peoples of Northern Canada* (Ottawa, 1983), pp. 64-65; Richard Daniel, "The Spirit and Terms of Treaty Eight." In *The Spirit of the Alberta Indian Treaties*, edited by Richard Price (Montreal, 1979), p. 94.

<sup>6</sup> Fumoleau, *As Long As This Land Shall Last*, p. 211.

<sup>7</sup> Daniel, "The Spirit and Terms of Treaty Eight," p. 94; Lynn Hickey, Richard L. Lightning and Gordon Lee, "T.A.R.R. Interview with Elders Program" in Richard Price, ed. *The Spirit of the Alberta Indian Treaties* (Montreal, 1979), pp. 145-160.

<sup>8</sup> *Ibid.*, p. 95.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Paulette et al.*, Supreme Court of Northwest Territories (1973), testimony of June Helm, pp. 33-34; Daniel, "The Spirit and Terms of Treaty Eight," p. 95.

<sup>11</sup> Walter H. Nelson *et al.*, "Report of the Commission Appointed to Investigate the Unfulfilled Provisions of Treaties 8 and 11 as They Apply to the Indians of the Mackenzie District 1959" (Toronto, 1970), pp. 4-5; Daniel, "The Spirit and Terms of Treaty Eight," pp. 95-96.

<sup>12</sup> Jackson, Presentations to the Northern Pipeline Agency Public Hearings, p. 1936.

<sup>13</sup> *Ibid.*, p. 1937.

<sup>14</sup> *Ibid.*, pp. 1936-1937; Martin O'Malley, *The Past and Future Land: An account of the Berger Inquiry into the Mackenzie Valley pipeline* (Toronto, 1976), pp. 123-124.

<sup>15</sup> Jackson, Presentations to the Northern Pipeline Agency Public Hearings, pp. 19-38.

<sup>16</sup> *Ibid.*; see also Hickey, Lightning and Lee, "T.A.R.R. Interview with Elders Program," pp. 145-160.

<sup>17</sup> Daniel, "The Spirit and Terms of Treaty Eight," p. 96.

<sup>18</sup> Canada, *Treaty No. 8*, p. 6.

<sup>19</sup> *Ibid.*, p. 5.

<sup>20</sup> Keith J. Crowe, *A History of the Original Peoples of Northern Canada* (Montreal, 1974), p. 157.

<sup>21</sup> Canada, *Sessional Paper*, 1915, No. 27, "Report of H.A. Conroy, Inspector for Treaty No. 8," pp. 82-83.

<sup>22</sup> Daniel, "The Spirit and Terms of Treaty Eight," p. 97.

<sup>23</sup> *Ibid.*

<sup>24</sup> See Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," Chapter 5.

<sup>25</sup> Canada, *Sessional Paper*, 1912, No. 27, Report of the Deputy Superintendent General of Indian Affairs, p. xx.

<sup>26</sup> See Fumoleau, *As Long As This Land Shall Last*, p. 235.

<sup>27</sup> Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," pp. 141-144.

<sup>28</sup> PAC, RG10, File 191/28-3, Vol 1, McLean to the Commissioner of the RCMP, 20 April 1923, and to C. Bourget, 4 May 1923; *Ibid.*, file 779/28/3, Vol 2, Agent's Diary, Annuity Payments, 13 August 1924.

<sup>29</sup> *Ibid.*, vol. 7777, file 27131-1, Chief and Councillors of Lesser Slave Lake Band to Superintendent General of Indian Affairs, January 1900.

<sup>30</sup> *Ibid.*, J.A.J. McKenna to Deputy Superintendent General of Indian Affairs, 20 February 1900; David Laird to Secretary of Indian Affairs, 5 February 1900; J. Macrae to Secretary of Indian Affairs, 10 November 1900.

<sup>31</sup> *Ibid.*, J. Macrae to Secretary of Indians Affairs, 10 November 1900.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*, vol. 7778, file 27131-6, petition of 5 December 1911.

<sup>34</sup> *Ibid.*

- <sup>15</sup> DIAND, file 779/30-10-174, vols. 1 and 2; DIAND, file 779/30-10-174A.
- <sup>16</sup> Daniel, "Indians Rights and Hinterland Resources: The Case of Northern Alberta", p. 137.
- <sup>17</sup> Richard Daniel, "Land Rights of the Isolated Communities of Northern Alberta." Paper prepared for the Isolated Communities Advisory Board and the Lubicon Lake Band, January 1975, p. 11.
- <sup>18</sup> Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," p. 149.
- <sup>19</sup> PAC, RG 10, vol. 7535, file 26131-1, Arthur Meighen to Brigadier-General, W.A. Greisack, M.P., 7 May 1919.
- <sup>20</sup> PAC, RG 10, Vol. 1-6.
- <sup>21</sup> Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," p. 149.
- <sup>22</sup> *Ibid.*, p. 150.
- <sup>23</sup> *Ibid.*
- <sup>24</sup> *British North America Act*, 1930.
- <sup>25</sup> PAC, RG10, Vol. 7748, file 27001, W.W. Cory, Solicitor, Indian Affairs Branch, to H.W. McGill, Director, Indian Affairs Branch, 25 February 1938.
- <sup>26</sup> See Daniel, "Land Rights of the Isolated Communities of Northern Alberta", and "Indian Rights and Hinterland Resources: The Case of Northern Alberta," pp. 153-158.
- <sup>27</sup> See Canada, Department of Indian Affairs and Northern Development, "Treaty Annuity Paylists."
- <sup>28</sup> PAC, RG10, vol. 7778, file 27131-17, T.R.L. MacInnes, Secretary of Indian Affairs, to H.F. Peters, Surveyor-General of Mines and Resources.
- <sup>29</sup> See J. Sissons, *Judge of the Far North* (Toronto, 1968), pp. 50-51.
- <sup>30</sup> PAC, RG10, Vol. 6811, file 470-3-6, part 2, Report of 7 August 1944 to Hon. T.A. Crerar, Minister of Mines and Resources.
- <sup>31</sup> Peter A. Cumming and Neil H. Mickenberg, eds., *Native Rights in Canada* (Toronto, 1972), pp. 202-204; DIAND, file 777/28-3, vol. 9, A.G. Leslie to T.R.L. MacInnes, 11 January 1951.
- <sup>32</sup> Daniel, "Land Rights of the Isolated Communities of Northern Alberta," p. 16.
- <sup>33</sup> See Indian and Northern Affairs Canada, Office of Native Claims, *Specific Claims in Canada: Status Report*, August 1984, p. 16.
- <sup>34</sup> Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," pp. 159-160.
- <sup>35</sup> Richard T. Price, "Indian Land and Claims Alberta: Politics and Policy-Making (1968-77)," M.A. Thesis, University of Alberta, 1977, pp. 16-17; 217-218.
- <sup>36</sup> Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," p. 159.
- <sup>37</sup> PAC, RG10, file 1/1-11-5-1, vol. 1, Laird to Deputy Minister, 11 January 1910; *ibid.*, D.C. Scott to Deputy Superintendent General, 19 January 1910.

- <sup>58</sup> The Peace River block extended west from the Alberta boundary on either side of the Peace River. See report on Peace River block for 1905-06 by J.A. Macdonell in Gordon E. Bowes, ed., *Peace River Chronicles* (Vancouver, 1963), pp. 221-223. In 1930, the Dominion government returned the unalienated portions of the Peace River block to the province (The Railway Belt and Peace River Block Act, Canada, *Statutes*, 1930, 20-21, Geo. 5, C. 37).
- <sup>59</sup> DIAND, *Annual Report*, 1915, p. 86, "Survey Report of Donald F. Robertson"; PAC, RG10, Vol. 4065, file 412,786-3, McLean to Robertson, 27 May 1914.
- <sup>60</sup> Canada, Privy Council, O.C. NO. 819, 11 April 1916.
- <sup>61</sup> Canada, Privy Council, O.C. No. 6506, 16 October 1945.
- <sup>62</sup> DIAND, file 975/30-7-204, E.J. Galibois to G.H. Gooderham, 26 September 1951; Canada, Privy Council, O.C. No. 4092, 25 August 1950.
- <sup>63</sup> British Columbia, *Report of the Royal Commission on Indian Affairs* (Victoria, 1916), Vol. 1, p. 126 (Interim Report No. 91, 1 February 1916).
- <sup>64</sup> *Ibid.*
- <sup>65</sup> Canada, Privy Council, O.C. No. 2995, 28 November 1961.
- <sup>66</sup> Cumming and Mickenberg, *Native Rights in Canada*, p. 126.
- <sup>67</sup> Walter H. Nelson *et al.* "Report of the Commission Appointed to Investigate the Unfulfilled Provisions of Treaties 8 and 11 as they Apply to the Indians of the Mackenzie District." 1959 (Minutes of a meeting of the Committee of the Privy Council, P.C. 799, 25 June 1959).
- <sup>68</sup> *Ibid.*, p. 3.
- <sup>69</sup> *Ibid.*, p. 2.
- <sup>70</sup> *Ibid.*, p. 8.
- <sup>71</sup> See Department of Indian Affairs and Northern Development, Report of the Indian Act Consultation Meeting, Yellowknife, Northwest Territories, 25, 26 and 27 July 1968 (Ottawa, 1968).
- <sup>72</sup> Ronald Maguire and George Brown, "Indian Treaties in Historical Perspective" (Ottawa, 1979), p. 47.
- <sup>73</sup> Canada, *Sessional Paper*, 1915, No. 28, Report of Sergeant A.H.L. Mellor attending treaty payments, p. 197.
- <sup>74</sup> Canada, *House of Commons Debates*, 8 June 1920, p. 3280.
- <sup>75</sup> See Fumoleau, *As Long as This Land Shall Last*, pp. 124-130; 293-296; David M. Smith, *Moose-Deer Island House People: A History of the Native People of Fort Resolution* (Ottawa, 1982), p. 116.
- <sup>76</sup> DIAND, *Annual Report*, 31 March 1929, pp. 7-8.
- <sup>77</sup> Brody, *Maps and Dreams*, p. 95.
- <sup>78</sup> *Ibid.*, pp. 88-89.
- <sup>79</sup> *Ibid.*, p. 92.

<sup>10</sup> See, for example, PAC, RG10, vols. 6735 and 6736.

<sup>11</sup> *Ibid.*, vol. 7779, file 27143-4, J. Allison Glen, Minister of Mines and Resources, to George T. Kenney, Minister of Lands, B.C., 13 August 1945; Kenney to Glen, 21 February 1946; PABC (Public Archives of British Columbia), GR 1085, T. Van Dyk, Inspector, "D" Game Division, to "D" Divisional Office, Prince George, B.C., 9 February 1946.

<sup>12</sup> PAC, RG10, vol. 6732, file 420-2B, Gerald Card, Indian Agent, to D.C. Scott, Superintendent General, 22 May 1924.

<sup>13</sup> *Ibid.*, vol. 6731, file 420-1-2.

<sup>14</sup> *Alberta Natural Resources Act*, 1930.

<sup>15</sup> PAC, RG10, vol. 6733, file 420-2, Vol. 5, C.P. Schmidt to Secretary of Indian Affairs, 9 March 1940.

<sup>16</sup> See Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," Chapter 5.

# TAB 3

401510

Lesser Slave Lake Agency -

## - Kinnouay's Band, Sawridge -

Band No.	Name	Men	Women	Boys	Girls	Total
1	Francois Nescotasta	1	1	5	3	10
2	Isabelle Nescotasta		1		1	2
3	Laframboise Ward	1	1	5		7
4	Jean Baptiste Ward	1	1	4	2	8
5	John Ward	1	1			2
6	Benjamin Courtoiselle	1	1	2	3	7
7	Lion Ward	1	1	1		3
8	Louis Ward	1	1	1	1	4
9	Susan		1			1
10	Albert Nescotaste	1				1
11	Jean Baptiste Hamlin		1		2	3
12	Peggy Ward Powder		1			1
13	Mary Ward Potts		1			1
14	Edward Nescotaste	1	1	3	2	7
15	St. Germain Nescotaste		1			1
16	St. Pierre Nescotaste	1				1
17	St. Paul Nescotaste	1				1
18	Johnny Stony	1	1	1	4	7
19	Benjamin Potekin	1	1		2	4
20	Joe. Wendigo's widow		1		1	2
21	Rustace Ward	1	1	1		3
22	Pierre Giroux	1	1	1		3
						79

Lesser Slave Lake Agency -

Grand, April 22nd, 1913

Indians from Alexander's Band, Edmonton Agency,  
transferred to Lesser Slave Lake Agency

Name	Band No.	No. in family	Date of transfer
✓ Paul Potekin	55	4	7 104.24 August 8th, 1910
✓ Thomasie	51	6	1140.36 " " "
✓ Michell Bellerose	49	2	382.12 " " "
✓ Marie Hamelin	31	2	382.12 " " "
✓ Johnny Stony		5	1140.36 Sept. 14th, "
✓ Baptiste Zoss Bag	77	5	958.30 Dec. 13th, "
✓ Mistahay Oskiniguc	39	1	191.06 " " "
✓ Benjamin Potekin	130	4	764.27 " " "
✓ Jos. Wendigoo's widow	110	2	382.12 " " "
			8 6113.92

- The above all transferred to Kinnasayoc's Band, Lesser Slave Lake. -

✓ Alexander 7 1337.47 Jan'y 10th, 1910  
Transferred to Ambrose Tete Noiz's Band, Fort Vermillion

393,506

Ottawa, July 7th, 1913.

Sir,-

Referring to your letter of the 22nd April last, I beg to state that the share of the Indians, formerly members of Alexander's Band, who were transferred some years ago to Treaty 8, has been deducted from the Capital funds of Alexander's Band and placed to the credit of the Bands into membership in which they have been admitted, as per Sub-Section 2 of Section 17 of the Indian Act.

The amounts transferred are as follows:-

Credit of Kinnoosay's Band ---

32 Indians @ \$191.06 per Capital share .....\$6113.92

Credit of Ambrose Jeta Hair's Band, Fort Vermilion ---

7 Indians @ \$191.06 per Capital share .....\$1337.42

The former members of Alexander's Band who have been transferred as above stated have now equal rights in the Reserves the now belong to the original Treaty 8 Indians.

Your obedient servant,

Asst. Deputy Indian Secretary.

W. B. L. Donald, Esq., M.P.,

Indian Agent,

Grainland, Alta.

# TAB 4

No. 104027/31.

Mem.

Ottawa, 15th April, 1905.

The Deputy Supt. General,-

With reference to Mr. Ponton's memorandum hereunder of the 8th inst., I beg to state that John Stephens being a member of Chief Alexander's band is already provided with land in the reserve of that band, No. 134, at Riviere qui Barre, and holds his land in common with the other members of the band.

It is shown, however, that he has located himself at Lesser Slave Lake, where he has shown considerable energy, is entirely self-supporting, and is filling a necessary public need by providing a good winter stopping place between Athabasca Landing and Lesser Slave Lake. It would appear desirable that he should be encouraged.

If the land on which he <sup>is</sup> now located is not secured to him as an Indian Reserve it will run continual risk of being taken possession of by white men. There appears to be no objection why the said land should not be surveyed and confirmed as an Indian Reserve with the view of allowing John Stephens to continue in possession of it, or to give him eventually a location ticket covering the said land.

I think, however, that an equal area (100 acres) should be surrendered from the said reserve No. 134 and relinquished to the Crown in exchange for the proposed reserve at Lesser Slave Lake for John Stephens, and would recommend that the Indian Agent be instructed to lay the matter before the Indians of the said reserve, in order to obtain from them their consent to give a surrender of the portion for the purpose mentioned.

*Sam. Gray*  
Chief Superintendent

104,037/51



Ottawa, 18th April, 1903.

Memorandum:

Mr. Pedley,--

I spoke to Mr. Conroy  
 about the matter referred to in Mr. Bray's  
 memo. of the 15th instant. He does not  
 know anything about the location occupied  
 by Stephens, but says that he cannot of  
 course be disturbed in his holding so long  
 as he is in occupation,

[REDACTED]  
 [REDACTED] in Treaty [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED]

[Handwritten signature]  
 [REDACTED]

Secretary.

Ottawa, 17th April, 1903.

Sir :-

I am directed to inform you that John Stephens, who is a member of Chief Alexander's Band, No. 154, at Riviere aux Barres, and who holds land in common with other members of that Band, has located himself at Lesser Slave Lake and is desirous of securing the land he is located upon. Under the terms of Treaty 8 covering this territory land may be provided in [redacted] to the extent of 160 acres to each Indian to be conveyed with the proviso as to non-alienation without the consent of the Governor in Council.

I am to request that you will be good enough to state whether there will be any objection to the land located to him to the extent of 160 acres being set aside for him under the terms of the Treaty.

Your obedient servant,

J. D. McLean

Secretary.

The Secretary,

Dept. of the Interior,

Ottawa.

Indian Affairs. (RG 10, Volume 4007, file 244,593)

PUBLIC ARCHIVE

373506-  
INDIAN AGENT'S OFFICE.

Lesser Slave Lake Agency -

Grouard, 9th December, 1911

401612

IN ANSWER TO LETTER NO.

No.

DATE

TO DATE OF THIS LETTER

\*

I beg to call your attention to the case of Johnny Stony, formerly of Alexander's Band, Edmonton Agency, and transferred to this Agency in 1910 and paid under No. 18, Sawridge Band.

Stony came to this district in the fall of 1898. In 1896 he married an Indian woman from the Lesser Slave Lake Band and settled on the Lesser Slave River, not far from Sawridge. He has built houses and stables and has been keeping a "stopping place" for freighters for a number of years. He is an industrious man and has been making a good living, without any assistance from the Government, chiefly from the stopping place referred to.

The land, on which he settled, has since been surveyed and, as he has no title of any kind, he is afraid that some one will locate on it and he will be forced to move, and thus lose his chief source of livelihood.

He requests therefore that the NE  $\frac{1}{4}$  of Section 6, Township No. 73, Range 4, on which he has been residing; and the NW  $\frac{1}{4}$  of Section 1, Township No. 73, Range 5, which he wishes for hay land, be given him for a Reserve for himself and family.

The Secretary,

Department of Indian Affairs,  
Ottawa

Indian Affairs. (C. 2, Volume 777, File 2710-2)

401612

family, which now consists of himself, wife, 1 boy and 4 girls.

If Section 11, Township No. 73, Range 6, west of the 5th Meridian, is granted to the Sawridge Band as part of their Reserve (as referred to in my letter of the 8th inst.) Stony could not buy there and it would be unnecessary to give him the latter quarter section as before.

Your obedient servant,

Asst. Indian Agt.

507-500

F. 21131-6

EXD.

Ottawa, April 18, 1913.

Sir:-

With further reference to letter from your Department dated May 9th last No. 226,4255 and to letter from this Department to the Secretary of the Department of the Interior dated September 27th last, I am sending you plans under separate cover showing the lands selected last season by Mr. J. E. McLean S. L. S. for the Sawridge Band of Indians on Lesser Slave Lake in Treaty No. 6.

The said lands are in two reserves:-

No. 1503 consists of Section 6 Tp. 73, R. 4, 7 of 5th N. E. 1/4 Sec. 1, East 1/2 Sec. 2, S. 1/2 Sec. 3, S. 1/2 Sec. 4, and the S. E. 1/4 Sec. 5, all in Tp. 73, R. 5 N. 4th N. and the N. 1/2 Sec. 22, East 1/2 of Sec. 23, S. W. 1/4 and N. W. 1/4 Sec. 24, all in Tp. 72, R. 5, 7. 5th N.

No. 1504 is in Tp. 73, R. 4, 7, 5th N. unsurveyed and consists of the N. 1/2 Sec. 3, S. 1/2 Sec. 3, N. 1/2 Sec. 5, Sec. 6, Prad. Sec. 9, Prad. Sec. 10, Prad. Sec. 15, Prad. Sec. 17.

\* The above were surveyed, and as these Indians are still 500 acres short, application is also made for the N. 1/2 of Sec. 13 and Prad. Sec. 19 in the same township.

I shall feel obliged if you will have the necessary

M. Davila, Esq.,

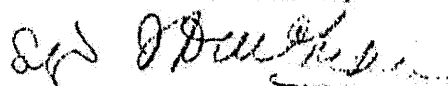
Surveyor General,

Indian Affairs. (RG 10, Volume 7775, File 27131-6)

-2-

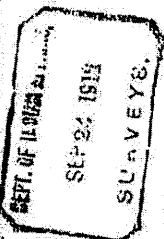
necessary action taken to have an Order-in-Council passed  
confirming these Reserves.

Your obedient servant,



Assistant Deputy and Secretary.

397. 206



To

373506  
 37131.0013034  
 Survey of the  
 7th Sept 1919

with reference to the lands reserved for  
 the Sawridge Band at the East end of Lac Seul  
 Lake I say to wit that out of the surveyed  
 townships the following 1/2 sections have been  
 selected, Twp 72 R 5 to of 5<sup>th</sup> M - (Sec 32 NW 1/4)  
 (Sec 33 East 1/2) (Sec 34, SW 1/4 and NE 1/4)  
 Twp 73 R 5 to of 5<sup>th</sup> M - (Sec one NW 1/4) (Sec 2 NE 1/2)  
 (Sec 3, SE 1/4) (Sec 4 SE 1/4) (Sec 6 SE 1/4)  
 Twp 73 R 4 to of 5<sup>th</sup> M, whole of Sec 6,

As some persons wish to locate and examine  
 these lands reserved for the Indians but not before  
 it might be well to notify the Department of the  
 Interior what particular sections have been selected  
 I enclose two plans showing the lands reserved  
 and those reserved as marsh with a cross  
 covering the 1/2 section. The other marked 1/2 sections  
 have been selected but after examination declined.

I am at present surveying the Sawridge  
 Block in Twp 73 R 5 to of 5<sup>th</sup> M. North of and including  
 the N 1/2 of Sec 3, 4, and 5. A plan will be sent when  
 completed as it is un-surveyed township.  
 This Band also want about 5 sections near  
 Swan River to be shown when I reach there  
 with my survey.

With reference to Sec 6 Twp 73 R 5 I may  
 say that Johnny Stony a member of the Sawridge  
 Band has lived on this section near the 1/2 section  
 on the East line for about 12 years and that  
 he keeps a stopping place which is very poor.

2

620254

He is a hard working industrious and energetic  
is spoken of as the best and most prosperous  
Indian in this section of the country.

Shortly after Henry located here a half breed  
named Michel Contrai also located near at  
hand in fact both are on legal subdivisions  
nine in the 6, the one being on the west half and  
the other on the East.

Contrai has 3 log houses and two stables with  
a small garden and hay field, both fenced.

He values his improvements at \$250<sup>00</sup> which  
I consider fair and reasonable.

If he can not be paid for his improvements  
I do not think he should get more land  
than the west 1/2 of the legal subdivision.

He has another house and stables situated  
on Martin River where he wishes to have

a fine gruel as soon as surveyed and  
has no intention of applying for a free grant  
on this 1/2 Sec. I do not think he is entitled to more  
than recompense for his improvements.

Regarding the North West 1/4 of Sec one Tp 73 R 5 N 2 W  
a white man <sup>named Serip Bonshack</sup> and who speaks no English  
located the half of Sec 12 immediately North  
by Serip and he brokes about 20 acres at  
the North West corner being part legal subdivision  
13, Sec one. The land is stripped and only fit for hay  
and this legal subdivision is higher and suitable  
for crop. It requires considerable work to break this  
20 acres as there must have been quite a lot of  
willow scrub on it. He states that it took him  
and 3 men five days, but I do not think they  
could have worked very hard for the money.

now I think \$7<sup>50</sup> an acre or \$150<sup>00</sup> would be a good price for this Breaking. It will not be of much benefit to the Indians unless Stony farms it. He objected to giving it up. The Joseph Bouchard has no legal claim as he did not file, but states that he went on and broke on being told by former land agent Tomkins, at Grouard that he would be allowed to purchase the fractional area north of the Green Slave River. However, he made no attempt to purchase or secure in any way, and now that the land is set apart for Indian Reserve purposes offers to purchase the breaking in the last legal subdivisions at \$100<sup>00</sup> per acre cash, including the 5<sup>00</sup> in L.S. 12. I did not get the date of the Breaking but it looks as though it was done during the past summer.

Yours obedient servant

Joseph Bouchard  
Secretary

Department of Indian Affairs

Ottawa  
Canada

# TAB 5

393506

Ottawa, 19th August 1920.

Sir, -

With reference to your letter of the 14th August No. 1735121, I have to say that Mr. John Stoney (Johannie Stoney) is a Treaty Indian, No. 12 of the Sawridge band. He can continue to occupy the land referred to in the N.E. 6-73-4-7.5.4., which is a part of the Sawridge Indian reserve.

Your obedient servant,

*J. Macdonald**J. Macdonald* Assistant Deputy and Secretary.

The Secretary,

Department of the Interior,

Ottawa, Ont.

*S.B.**W. B. [unclear]*

Indian Affairs, (41-20, Volume 7728, File 17131-5)

PUBLIC ARCHIVES  
ARCHIVES PUBLIQUES  
CANADA

# TAB 6

[illegible]

No.	NAME	DATE OF BIRTH					REMARKS	DATE OF DEATH				
		1	2	3	4	5		1	2	3	4	5
25	Baptist											
26	Mary M. Sney											
27	Jennie L. Himmels											
28	Oliver Ward											
29	Edith Ward											
30	Mary Ward											
31	Maria Martin											
32	Margaret Lewis											
33	Alfred P. Pich											
34	Edmund W. Wagon											
35	Frank Ward											
36	Mary B. W. W. W.											
37	Maria Ward											
38	Blenny Lange											
39	Charles Lewis											
40	Mary Lange											
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Baptist

17 20 25 4 6 107 557 117

# TAB 7



## Indian Act, RSC 1985, c I-5

Current version: In force since Jan 31, 2011.

Link to the latest version : <http://canlii.ca/t/7vhk>

Stable link to this version : <http://canlii.ca/t/10hh>

Citation to this version: Indian Act, RSC 1985, c I-5, retrieved on 2012-04-19

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### Indian Act

R.S.C., 1985, c. I-5

An Act respecting Indians

#### SHORT TITLE

Short title

1. This Act may be cited as the *Indian Act*.

R.S., c. I-5, s. 1.

#### INTERPRETATION

Definitions

2. (1) In this Act,

"band"  
« bande »

"band" means a body of Indians

(a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951,

(b) for whose use and benefit in common, moneys are held by Her Majesty, or

(c) declared by the Governor in Council to be a band for the purposes of this Act;

"Band List"  
« liste de bande »

"Band List" means a list of persons that is maintained under section 8 by a band or in the Department;

"child"  
« enfant »

"child" includes a legally adopted child and a child adopted in accordance with Indian custom;

"common-law partner"  
« conjoint de fait »

"common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

"council of the band"  
« conseil de la bande »

"council of the band" means

(a) in the case of a band to which section 74 applies, the council established pursuant to that section,

(b) in the case of a band to which section 74 does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;

"Department"

## Persons entitled to be registered

6. (1) Subject to section 7, a person is entitled to be registered if

(a) that person was registered or entitled to be registered immediately prior to April 17, 1985;

(b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(c.1) that person

(i) is a person whose mother's name was, as a result of the mother's marriage, omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under paragraph 12(1)(b) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions,

(ii) is a person whose other parent is not entitled to be registered or, if no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred prior to September 4, 1951,

(iii) was born on or after the day on which the marriage referred to in subparagraph (i) occurred and, unless the person's parents married each other prior to April 17, 1985, was born prior to that date, and

(iv) had or adopted a child, on or after September 4, 1951, with a person who was not entitled to be registered on the day on which the child was born or adopted;

(d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or

(f) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section.

## Idem

(2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1).

## Deeming provision

(3) For the purposes of paragraph (1)(f) and subsection (2),

(a) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(a);

(b) a person described in paragraph (1)(c), (d), (e) or (f) or subsection (2) and who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that provision; and

(c) a person described in paragraph (1)(c.1) and who was no longer living on the day on which that paragraph comes into force is deemed to be entitled to be registered under that paragraph.

R.S., 1985, c. I-5, s. 6; R.S., 1985, c. 32 (1st Supp.), s. 4, c. 43 (4th Supp.), s. 1; 2010, c. 18, s. 2.

## Persons not entitled to be registered

7. (1) The following persons are not entitled to be registered.

**ENFRANCHISEMENT**

109. to 113. [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 20]

# TAB 8



Home > Canada (Federal) > Federal Court of Appeal >  
2012 FCA 47 (CanLII)

Canadian Legal Information Institute

Français | English

## Twinn v. Poltras, 2012 FCA 47 (CanLII)

Date: 2012-02-08  
Docket: A-280-10  
URL: <http://canlii.ca/t/fq3w2>  
Citation: Twinn v. Poltras, 2012 FCA 47 (CanLII), <<http://canlii.ca/t/fq3w2>> retrieved on 2012-04-19  
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Reflex Record: Related decisions, legislation cited and decisions cited

Federal Court of  
Appeal



Cour d'appel  
fédérale

Date: 20120208  
Docket: A-280-10  
Citation: 2012 FCA  
47

CORAM: EVANS  
J.A.

PELLETIER J.A.  
STRATAS J.A.

**BETWEEN:**

**WALTER PATRICK TWINN, THE COUNCIL OF THE  
SAWRIDGE BAND and THE SAWRIDGE BAND**

and

**ELIZABETH BERNADETTE POITRAS**

**Appellants**

and

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
as represented by THE MINISTER OF INDIAN AFFAIRS  
AND NORTHERN DEVELOPMENT**

**Respondent**

**Respondent**

Heard at Ottawa, Ontario, on February 8, 2012.  
Judgment delivered from the Bench at Ottawa, Ontario, on February 8, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of  
Appeal



Cour d'appel  
fédérale

Date: 20120208  
Docket: A-280-10  
Citation: 2012 FCA  
47

CORAM: EVANS  
J.A.

PELLETIER J.A.  
STRATAS J.A.

BETWEEN:

WALTER PATRICK TWINN, THE COUNCIL OF THE  
SAWRIDGE BAND and THE SAWRIDGE BAND

Appellants

and  
ELIZABETH BERNADETTE POITRAS

Respondent

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
as represented by THE MINISTER OF INDIAN AFFAIRS  
AND NORTHERN DEVELOPMENT

Respondent

**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Ottawa, Ontario, on February 8, 2012)

**STRATAS J.A.**

[1] This is an appeal against the Order dated July 27, 2010 made by a case management judge in the Federal Court (Justice Hugessen). The case management judge ordered that an issue central to an action (the "main action") has become moot.

[2] The circumstances giving rise to the Order are as follows.

[3] Some time ago, the respondent, Ms. Poitras, started the main action against the appellant Band, claiming membership in it. The Band defended, in part, on the basis that it had a right under section 35 of the *Constitution Act, 1982* to determine who was a member of the Band.

[4] The main action was stayed pending the outcome of another action that the Federal Court regarded as being closely related (the "closely related action"). In the closely related action, the Band was challenging amendments to the *Indian Act*, advancing the same argument, namely that it had a right under section 35 of the *Constitution Act, 1982* to determine who was a member of the Band. That action had a long history, including a retrial. In the end result, the closely related action was dismissed: *Sawridge Band v. The Queen*, 2008 FC 322 (CanLII), 2008 FC 322, aff'd 2009 FCA 123 (CanLII), 2009 FCA 123.

[5] With the dismissal of the closely related action, what was to become of the main action and the issue of Ms. Poitras' membership in the Band? To determine this, the Federal Court issued a notice of status review concerning the main action.

[6] As a result of the status review, a case management conference in the Federal Court was held. There, the issue of mootness was discussed, having been raised in the submissions filed.

[7] The case management judge's Order followed. The case management judge ordered that the issue of Ms. Poitras' membership in the Band was moot.

[8] In this Court, the appellants appeal that Order.

[9] The appellate standard of review applies. The appellants must show that the Order is vitiated either by legal error or by palpable and overriding error on some issue of fact or fact-based discretion. In reviewing the exercise of discretion in this case, it must also be borne in mind that this is an Order made by a case management judge who had managed the main action and the closely related action for many years and, as a result, possessed great familiarity with the factual issues and history of the matters: *Sawridge Band v. Canada*, 2001 FCA 338 (CanLII), 2001 FCA 338 at paragraph 11, 2001 FCA 338 (CanLII), [2002] 2 F.C. 346.

[10] In our view, the appellants have not shown any reversible error on the part of the case management judge that would warrant permitting the Band to relitigate the constitutional issues.

[11] There can be circumstances which can prompt the Court to exercise its discretion to allow relitigation, notwithstanding the doctrines of issue estoppel and abuse of process: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 (CanLII), 2001 SCC 44, [2001] 2 S.C.R. 460; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII), 2003 SCC 63, [2003] 3 S.C.R. 77.

[12] But there is nothing in the record of this case showing that the appellants offered to the case management judge any such circumstances. Indeed, the record shows that the appellants deliberately decided, for reasons known to them, to close their case in the closely related action knowing they could have called more evidence and made further submissions. They knew that a dismissal would result after they closed their case. See *Sawridge Band v. Canada*, 2008 FC 322 (CanLII), 2008 FC 322 at paragraphs 10-21 and 60.

[13] For the foregoing reasons, we shall dismiss the appeal and direct the parties to return to the current case management judge to bring the pleadings into line with the issues that remain in light of this Court's decision.

---

"David Stratas"

J.A.

**FEDERAL COURT OF APPEAL****NAMES OF COUNSEL AND SOLICITORS OF RECORD****DOCKET:**

A-280-10

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE HUGESSEN DATED JULY 22, 2010,  
DOCKET NO. T-2655-89****STYLE OF CAUSE:**Walter Patrick Twinn, The Council Of The Sawridge  
Band and The Sawridge Band v. Elizabeth Bernadette  
Poitras and Her Majesty the Queen in her Right of  
Canada as Represented by The Minister of Indian and  
Northern Development**PLACE OF HEARING:**

Ottawa, Ontario

**DATE OF HEARING:**

February 8, 2012

**REASONS FOR JUDGMENT OF THE COURT BY:**

Evans, Pelletier and Stratas J.J.A.

**DELIVERED FROM THE BENCH BY:**

Stratas J.A.

**APPEARANCES:**

Philip P. Healey

FOR THE APPELLANT

Kevin Kimmis





FOR THE RESPONDENT, Her  
Majesty the Queen in her Right of  
Canada as Represented by The Minister  
of Indian and Northern Development**SOLICITORS OF RECORD:**Aird & Berlis LLP  
Toronto, Ontario

FOR THE APPELLANT

Terrence P. Glancy  
Edmonton, AlbertaFOR THE RESPONDENT,  
Elizabeth Bernadette PoitrasMyles J. Kirvan  
Deputy Attorney General of CanadaFOR THE RESPONDENT, Her  
Majesty the Queen in her Right of  
Canada as Represented by The  
Minister of Indian and Northern  
Development

# TAB 9

**Sawridge First Nation v. Canada, 2009 FCA 123 (CanLII)**

Date: 2009-04-21  
Docket: A-154-08; A-112-08  
URL: <http://canlii.ca/t/237vj>  
Citation: Sawridge First Nation v. Canada, 2009 FCA 123 (CanLII), <<http://canlii.ca/t/237vj>> retrieved on 2012-02-02  
Share:      
Print: PDF Format  
Noteup: Search for decisions citing this decision  
Reflex Record: Related decisions, legislation cited and decisions cited

Date: 20090421

Docket: A-154-08

A-112-08

Citation: 2009 FCA 123

**CORAM: RICHARD C.J.  
EVANS J.A.  
SHARLOW J.A.**

Docket: A-154-08

**BETWEEN:****SAWRIDGE BAND****Appellant  
(Plaintiff)**

and

**HER MAJESTY THE QUEEN****Respondent  
(Defendant)**

and

**CONGRESS OF ABORIGINAL PEOPLES,  
NATIVE COUNCIL OF CANADA (ALBERTA),  
NON-STATUS INDIAN ASSOCIATION OF ALBERTA  
and NATIVE WOMEN'S ASSOCIATION OF CANADA**

**Respondents  
(Interveners)**

Docket: A-112-08

**AND BETWEEN:**

**TSUU T'INA FIRST NATION  
(formerly the Sarcee Indian Band)**

**Appellant  
(Plaintiff)**

and

**HER MAJESTY THE QUEEN**

**Respondent  
(Defendant)**

and

**CONGRESS OF ABORIGINAL PEOPLES,  
NATIVE COUNCIL OF CANADA (ALBERTA),  
NON-STATUS INDIAN ASSOCIATION OF ALBERTA  
and NATIVE WOMEN'S ASSOCIATION OF CANADA**

**Respondents  
(Interveners)**

Heard at Ottawa, Ontario, on April 20 and 21, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on April 21, 2009.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A.**

Date: 20090421  
Docket: A-154-08  
A-112-08

Citation: 2009 FCA 123

**CORAM: RICHARD C.J.  
EVANS J.A.  
SHARLOW J.A.**

**BETWEEN:**

**Docket: A-154-08**

**BETWEEN:**

**SAWRIDGE BAND**

**Appellant  
(Plaintiff)**

**and  
HER MAJESTY THE QUEEN**

**Respondent  
(Defendant)**

**and**

**CONGRESS OF ABORIGINAL PEOPLES,  
NATIVE COUNCIL OF CANADA (ALBERTA),  
NON-STATUS INDIAN ASSOCIATION OF ALBERTA  
and NATIVE WOMEN'S ASSOCIATION OF CANADA**

**Respondents  
(Interveners)**

**Docket: A-112-08**

**AND BETWEEN:**

**TSUU T'INA FIRST NATION  
(formerly the Sarcee Indian Band)**

**Appellant  
(Plaintiff)**

**and**

**HER MAJESTY THE QUEEN**

**Respondent  
(Defendant)**

**and**

**CONGRESS OF ABORIGINAL PEOPLES,  
NATIVE COUNCIL OF CANADA (ALBERTA),  
NON-STATUS INDIAN ASSOCIATION OF ALBERTA  
and NATIVE WOMEN'S ASSOCIATION OF CANADA**

**Respondents  
(Interveners)**

**REASONS FOR JUDGMENT OF THE COURT  
(Delivered from the Bench at Ottawa, Ontario, on April 21, 2009)**

**SHARLOW J.A.**

[1] These are appeals of the decision of Justice Russell to dismiss the appellants' action and to award costs totalling approximately \$1.7 million in favour of the Crown and the other respondents (Interveners at trial). That award includes a substantial amount as increased costs in excess of full indemnity. The reasons for dismissing the action are reported at 2008 FC 322 (CanLII), 2008 FC 322. The reasons for the costs award are reported at 2008 FC 267 (CanLII), 2008 FC 267. The appellants are seeking a retrial.

[2] Despite the thorough and lengthy written and oral submissions of counsel for the appellants, we can discern no error on the part of Justice Russell that warrants the intervention of this Court. We do not consider it necessary to discuss the grounds of appeal in detail. We will offer only the following comments.

[3] The dismissal of the action was the end of the retrial of an action commenced on January 15, 1986. The appellants were seeking an order declaring that certain amendments to the *Indian Act*, R.S.C. 1985, c. I-5, breached the appellants' rights under section 35 of the *Constitution Act, 1982*. The statutory amendments compelled the appellants, against their wishes, to add certain individuals to the list of band members. The appellants argue that the legislation is an invalid attempt to deprive them of their right to determine the membership of their own bands.

[4] The first trial began in September of 1993 and ended with a dismissal of the action on July 6, 1995 (*Sawridge Band v. Canada (T.D.)*, 1995 CanLII 3521 (FC), [1996] 1 F.C. 3). That decision was set aside by this Court on the basis of a reasonable apprehension of bias (*Sawridge Band v. Canada (C.A.)*, [1997] 3 F.C. 580, application for leave to appeal dismissed December 1, 1997). A new trial was ordered. It began in January of 2007, after almost 10 years of procedural disputes and delays.

[5] The action was dismissed again because, on January 7, 2008, the appellants informed Justice Russell that they would not be calling further evidence. This was in response to Justice Russell's oral ruling on September 11, 2007 striking all of the appellants' past and future lay witnesses because of non-compliant will-says. There being no case for the Crown to answer, the action necessarily failed. The action was formally dismissed on March 7, 2008.

[6] In deciding to call no further evidence on the retrial, the appellants were not abandoning the cause that led them to begin the action in 1986. Rather, they chose to end the action when they did in order to challenge a series of rulings made by Justice Russell precluding the appellants from eliciting any evidence from lay witnesses that had not been disclosed in the will-says for those witnesses, as well as the oral ruling on September 11, 2007. The appellants also argue that Justice Russell's conduct since his appointment as trial judge raises a reasonable apprehension of bias.

[7] It is not necessary to recount the lengthy procedural history of this matter, which is described in detail by Justice Russell. We note, however, that during the process of case management and after the discovery process had become hopeless, Justice Hugessen made an order requiring the appellants to produce will-say statements for all lay witnesses proposed to be called at trial. In June of 2004, Justice Russell found the appellants' first attempt at will-says to be inadequate and ordered new will-says 2004 FC 933 (CanLII), (2004 FC 933). He found the second attempt also to be inadequate 2004 FC 1436 (CanLII), (2004 FC 1436) and ordered a third attempt 2004 FC 1653 (CanLII), (2004 FC 1653). None of these orders was appealed.

[8] In November of 2005 Justice Russell made an order permitting the appellants to call 24 of their 57 potential lay witnesses, but prohibiting them from calling the other 33 because of various failures to comply with the will-say orders 2005 FC 1476 (CanLII), (2005 FC 1476). The appellants' appeal of that order was dismissed 2006 FCA 228 (CanLII), (2006 FCA 228, application for leave to appeal dismissed, February 8, 2007).

[9] The 2006 interlocutory appeal settled a number of issues. One was that the will-says were intended to provide a substitute for oral discovery, which "the parties had shown themselves incapable of conducting in a productive and focused manner" (see paragraph 9 of the reasons of Justice Evans, speaking for the Court). Another was that it was within the discretion of Justice Russell not to permit witnesses to be called because of the appellants' non-compliance with Court orders regarding the filing of will-says (see paragraph 13 of the reasons of Justice Evans).

[10] In oral argument, counsel for the appellants argued that, despite the long history of controversy about will-says and what would constitute a compliant will-say, they were not aware when they prepared the third set of will-says that the evidence they could elicit from a witness for whom a will-say had been served could not include anything not set out in the will-say. Our review of the record discloses that the appellants should have been aware by the commencement of the retrial that they could be precluded from adducing any evidence from a witness for whom no compliant will-say had been produced, and that they could also be limited to eliciting evidence disclosed in the will-

say. If they were confused on those points, however, they did little to clarify the situation when they indicated to Justice Russell that, although they considered their will-says to be compliant with the standard he had set, their ability to make their case would be compromised if they were barred from eliciting any evidence from a witness that did not appear in the will-say for that witness.

[11] The appellants' equivocation when asked if their will-says were compliant led Justice Russell to conclude that if the appellants could not adequately make their case based on what was stated in the will-says, the will-says must necessarily have been non-compliant. The appellants take issue with Justice Russell's interpretation of their submissions and his reasoning. However, based on our review of the record, Justice Russell's understanding of the appellants' position, as expressed many times in his reasons, was reasonably open to him.

[12] In our view, all of the orders and directions which the appellants now seek to challenge were discretionary decisions made by Justice Russell in furtherance of his obligation to control the trial process. He was required to discharge that obligation in circumstances that became increasingly difficult because of the appellants' apparent reluctance to accept that a trial judge may exclude relevant evidence on the basis that it was not properly disclosed in the discovery process or, as in this case, will-say statements that were intended to stand in the place of oral discoveries. A failure to make disclosures required by a court order may and occasionally does result in the exclusion of relevant evidence.

[13] Finally, without endorsing every statement made by Justice Russell in his voluminous reasons, we find no factual foundation in the record for the appellants' argument that there was a reasonable apprehension of bias on the part of Justice Russell. On the contrary, we agree with the other panel of this Court in the 2006 interlocutory appeal that, given the circumstances facing him, Justice Russell displayed an appropriate mix of "patience, flexibility, firmness, ingenuity, and an overall sense of fairness to all parties" (paragraph 22, per Justice Evans).

[14] We express no opinion on the comments of Justice Russell to the effect that he remains seized of matters relating to the possibility of proceedings against appellants' former counsel for contempt of court or professional disciplinary proceedings. No ground of appeal can arise in relation to those matters unless and until Justice Russell makes an order or renders judgment.

[14]

[15] The Crown and other respondents have argued that this appeal is based largely on debates that were decided against the appellants in prior proceedings, some going so far as to say that the appeal itself is abusive. While there is some force in this argument, on balance we have concluded that, after the action was dismissed, it was open to the appellants to appeal the decision of Justice Russell to strike the evidence of the witnesses. While we have concluded that there is no merit in that appeal, it does not follow that the appeal itself is an abuse of process.

[16] As to the appellants' appeal of the costs awarded at trial, we are not persuaded that Justice Russell erred in law or failed to exercise his discretion judicially when he awarded increased costs as he did. In particular, having considered the entire history of the retrial, we can detect no palpable and overriding error in Justice Russell's findings of misconduct on the part of the appellants.

[17] This appeal will be dismissed with costs to the Crown and each of the other respondents (interveners at trial) on the ordinary scale (that is, the mid-range of Column III of Tariff B of the *Federal Courts Rules*). These reasons will be placed in Court file A-154-08 and a copy will be placed in Court file A-112-08.

"K. Sharlow"

J.A.

**FEDERAL COURT OF APPEAL**  
**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-154-08 & A-112-08

**(APPEAL FROM A JUDGMENT OF THE FEDERAL COURT DATED MARCH 7, 2008, FEDERAL COURT DOCKET NUMBER T-66-86)**

**STYLE OF CAUSE:**

SAWRIDGE BAND v. HER MAJESTY THE QUEEN et al. (A-154-08)

TSUU T'INA FIRST NATION v. HER MAJESTY THE QUEEN et al. (A-112-08)

**PLACE OF HEARING:**

Ottawa, Ontario

**DATES OF HEARING:**

April 20 and 21, 2009

**REASONS FOR JUDGMENT OF THE COURT BY:** (RICHARD C.J., EVANS J.A. and SHARLOW J.A.)

**DELIVERED FROM THE BENCH BY:** Sharlow J.A.

**APPEARANCES:**

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Marco S. Poretti  
David L. Sharko

FOR THE APPELLANTS

Catherine M. Twinn

FOR THE APPELLANTS

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Kevin Kimmis  
Krista Epton

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FOR THE RESPONDENT  
(CONGRESS OF ABORIGINAL PEOPLES)

Janet L. Hutchison

FOR THE RESPONDENT  
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Michael J. Donaldson

FOR THE RESPONDENT (NON-STATUS INDIAN ASSOCIATION OF ALBERTA)

Mary Eberts

FOR THE RESPONDENT (NATIVE  
WOMEN'S ASSOCIATION OF  
CANADA)

**SOLICITORS OF RECORD:**

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Barrister & Solicitor  
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FOR THE APPELLANTS

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Toronto, ON

FOR THE RESPONDENT  
(NATIVE WOMEN'S  
ASSOCIATION OF CANADA)

---

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by **LEXUM**  for the  Federation of Law Societies of Canada

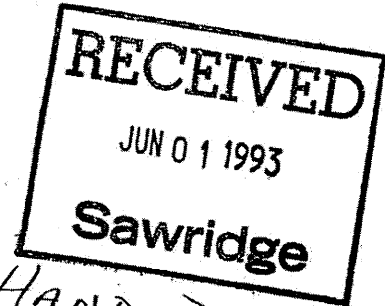
# TAB X

June 1-93

R215

copy

attention: Chief Walter Twinn,



Dear Sir,

The purpose of this letter is to inform you of our intended protest rally, we the band members of (C31) the Kee-sip-iamahk Band of the Lesser <sup>SLAVE</sup> Lake area, are going to organize and hold a protest rally on the Sawridge Reserve.

We will set up a tent and teepee camp to protest housing and land issues. Being ex-bandmembers of the Sawridge Band, we feel that we have every right to hold a protest rally. We've tried every possible negotiable route and avenue to get <sup>the</sup> said issues settled. To no avail did anyone try or say that they would help us with these matters. Our patience has worn out. We will invite the media and anyone else who wishes to support our rally.

This is Exhibit \* X \* referred to in the Affidavit of

ROLAND TWINN

Sworn before me this ..... day

of JUNE 10, 2012

A Commissioner for Oaths in and for the Province of Alberta

**DONNA BROWN**  
A Commissioner for Oaths  
In and for The Province of Alberta  
My Appointment Expires December 30, 2012

Our legal council will also be present. We are at all times, open for negotiations, with who ever is involved with these issues that we are going to protest. The rally at all times will be peaceful and orderly.

This protest rally is going to be held on June 13-93 at 1:p.m. We will also elect a Band Council, these councillors are to be elected from approximately twelve different families that make up the Kee-sip-igamahk Band.

One member is to be elected from each family, to establish a twelve member band council. The main leader or leaders are to be elected at a later date. Sitting in as acting leaders at present are Sam Sinclair, Gordon Sinclair, and Maurice Stoney.

As stated earlier we the Kee-sip-igamahk Band members are more than willing to negotiate these very important matters.

Yours truly,

Executive Councillor,

Maurice Stoney

Kee-sip-igamahk Band,

609-12st s.e.

Phone-849-5173

Slave Lake, AB. T0G2a3

*Maurice Stoney*

# TAB Y

**IN THE MATTER OF THE APPEAL OF THE MEMBERSHIP APPLICATION OF  
MAURICE FELIX STONEY TO THE SAWRIDGE FIRST NATION**

**BETWEEN:**

**MAURICE FELIX STONEY**

Appellant

- and -

**SAWRIDGE FIRST NATION**

Respondent

---

**DECISION**

---

**DAVIS LLP.**  
1201 Scotia 2 Tower  
10060 Jasper Avenue  
Edmonton, AB T5J 4K5  
Attn: Priscilla Kennedy  
Tel: (780) 426-5300  
Fax: (780) 702-4383  
Solicitor for Maurice Felix Stoney

**PARLEE McLAWS LLP**  
1500 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 4K1  
Attn: Edward H. Molstad, Q.C.  
Tel: (780) 423-8500  
Fax (780) 423-2870  
Solicitor for Sawridge First Nation

This is Exhibit "Y" referred to in the  
Affidavit of

*ROLAND TOWN*

Sworn before me this *26* day  
of *JUNE* A.D. 20 *12*

*[Signature]*  
A Commissioner for Oaths in and for  
the Province of Alberta

**DONNA BROWN**  
A Commissioner for Oaths  
In and for The Province of Alberta  
My Appointment Expires December 30, *2012*

{E6177671.DOCX; 1}

The Appeal of Maurice Felix Stoney (herein referred to as the "Appellant") in relation to his membership application was heard on the Sawridge Reserve in the Sawridge Boardroom on April 21, 2012, before Electors of the Sawridge First Nation (herein referred to as the "First Nation") in attendance at a meeting convened by the First Nation for the purposes of hearing the Appeal.

The Electors of the First Nation in attendance at the meeting who constituted the Appeal Committee were as follows:

Roland Twinn	Bertha L'Hirondelle	Frieda Draney
Vera McCoy	Margaret Claire Ward	Jaclyn Twin
Water F. Twin	Denise Midbo	Yvonne Twin
Justin Twin	Lillian Potskin	Arlene Twinn
Irene Twinn	Darcy Twin	Kristina Midbo
Winona Twin	Catherine Twinn	Sam Twinn
Clara Midbo	Paul Twinn	David Midbo


Rarihokwats chaired the Appeal Committee.

The Appellant appeared with Legal Counsel, Priscilla Kennedy of Davis LLP. The First Nation was represented by Legal Counsel, Edward H. Molstad, Q.C. of Parlee McLaws LLP and Michael McKinney, General Counsel for the First Nation.

Written submissions were presented on behalf of the Appellant and oral submissions were made on behalf of the Appellant.

Following the submissions of the Appellant and questions and comments of Members of the Appeal Committee, the Appeal Committee met in camera in order to make its decision.

The unanimous decision of the Appeal Committee is to uphold the decision of Chief and Council and to dismiss the appeal on the grounds that having heard the evidence and the submission of the Appellant and the Appellant's Legal Counsel, there are no grounds to set aside the decision of the Chief and Council.



---

RARIHOKWATS  
CHAIR, APPEAL COMMITTEE

# EXHIBIT 3

MAY-15-2013 14:20

FEDERAL COURT

P.02/14

Federal Court



Cour fédérale

Date: 20130515

Docket: T-923-12

Docket: T-922-12

Citation: 2013 FC 509

Ottawa, Ontario, May 15, 2013

PRESENT: The Honourable Mr. Justice Barnes

Docket: T-923-12

BETWEEN:

MAURICE FELIX STONEY

Applicant

and

SAWRIDGE FIRST NATION

Respondent

Docket: T-922-12

BETWEEN:

ALINE ELIZABETH (MCGILLIVRAY)  
 HUZAR AND JUNE MARTHA  
 (MCGILLIVRAY) KOLOSKY

Applicants

This is Exhibit "3" referred to in the  
 Affidavit of

and

Roland Twinn  
 Sworn before me this 21 day  
 of September A.D. 2016

SAWRIDGE FIRST NATION

Respondent

A Notary Public, A Commissioner for Oaths  
 in and for the Province of Alberta

MICHAEL R. MCKINNEY Q.C.  
 BARRISTER & SOLICITOR

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7. The Applicants are all descendants of individuals who were at one time members of the Sawridge First Nation, but who, either voluntarily or by operation of the law at the time, lost their band memberships. As a result the Applicants were excluded from membership in the Sawridge First Nation. They now ask this Court to review the Sawridge First Nation Appeal Committee's decision to uphold the Sawridge Chief and Council's decision which denied their applications for membership.

[2] The father of the Applicant Maurice Stoney was William J. Stoney. William Stoney was a member of the Sawridge First Nation but in April 1944 he applied to the Superintendent General of Indian Affairs to be enfranchised under section 114 of the *Indian Act*, c 98, RSC 1927. In consideration of payments totalling \$871.35, William Stoney surrendered his Indian status and his membership in the Sawridge First Nation. By operation of the legislation, William Stoney's wife, Margaret Stoney, and their two children, Alvin Stoney and Maurice Stoney, were similarly enfranchised thereby losing their Indian status and their membership in the Sawridge First Nation.

[3] The Applicants Aline Huzar and June Kolosky are sisters and, like Mr. Stoney, they are the grandchildren of Johnny Stoney. The mother of Ms. Huzar and Ms. Kolosky was Johnny Stoney's daughter, Mary Stoney. Mary Stoney married Simon McGillivray in 1921. Because of her marriage Mary Stoney lost both her Indian status and her membership in Sawridge by operation of law. When Ms. Huzar and Ms. Kolosky were born in 1941 and 1937 respectively Mary Stoney was

not a member of the Sawridge Band First Nation and she did not reacquire membership before her death in 1979.

[4] In 1985, with the passing of Bill C-31, *An Act to amend the Indian Act*, 33 – 34 Eliz II c 27, and pursuant to section 10 of the *Indian Act*, the Sawridge First Nation delivered its membership rules, supporting documentation and bylaws to the Deputy Minister of Indian and Northern Affairs, who accepted them on behalf of the Minister. The Minister subsequently informed Sawridge that notice would be given pursuant to subsection 10(7) of the *Indian Act* that the Sawridge First Nation had control of its membership. From that point on, membership in the Sawridge First Nation was determined based on the Sawridge Membership Rules.

[5] Ms. Kolosky submitted her application for membership with the Sawridge First Nation on February 26, 2010. Ms. Huzar submitted her application on June 21, 2010. Mr. Stoney submitted his application on August 30, 2011. In letters dated December 7, 2011, the Applicants were informed that their membership applications had been reviewed by the First Nation Council, and it had been determined that they did not have any specific "right" to have their names entered in the Sawridge Membership List. The Council further stated that it was not compelled to exercise its discretion to add the Applicants' names to the Membership list, as it did not feel that their admission would be in the best interests and welfare of Sawridge.

[6] After this determination, "Membership Processing Forms" were prepared that set out a "Summary of First Nation Councils Judgement". These forms were provided to the Applicants and outlined their connection and commitment to Sawridge, their knowledge of the First Nation, their

character and lifestyle, and other considerations. In particular, the forms noted that the Applicants had not had any family in the Sawridge First Nation for generations and did not have any current relationship with the Band. Reference was also made to their involvement in a legal action commenced against the Sawridge First Nation in 1995 in which they sought damages for lost benefits, economic losses, and the "arrogant and high-handed manner in which Walter Patrick Twinn and the Sawridge Band of Indians has deliberately, and without cause, denied the Plaintiffs reinstatement as Band Members...". The 1995 action was ultimately unsuccessful. Although the Applicants were ordered to pay costs to the First Nation, those costs remained unpaid.

[7] In accordance with section 12 of the Sawridge Membership Rules, the Applicants appealed the Council's decision arguing that they had an automatic right to membership as a result of the enactment of Bill C-31. On April 21, 2012 their appeals were heard before 21 Electors of the Sawridge First Nation, who made up the Appeal Committee. Following written and oral submissions by the Applicants and questions and comments from members of the Appeal Committee, it was unanimously decided that there were no grounds to set aside the decision of the Chief and Council. It is from the Appeal Committee's decision that this application for judicial review stems.

[8] The Applicants maintain that they each have an automatic right of membership in the Sawridge First Nation. Mr. Stoney states at para 8 of his affidavit of May 22, 2012 that this right arises from the provisions of Bill C-31. Ms. Huzar and Ms. Kolosky also argue that they "were persons with the right to have their names entered in the [Sawridge] Band List" by virtue of section 6 of the *Indian Act*.

[9] I accept that, if the Applicants had such an acquired right of membership by virtue of their ancestry, Sawridge had no right to refuse their membership applications: see *Sawridge v Canada*, 2004 FCA 16 at para 26, [2004] FCJ no 77.

[10] Ms. Huzar and Ms. Kolosky rely on the decisions in *Sawridge v Canada*, 2003 FCT 347, [2003] 4 FC 748, and *Sawridge v Canada*, 2004 FCA 16, [2004] FCJ no 77 in support of their claims to automatic Sawridge membership. Those decisions, however, apply to women who had lost their Indian status and their band membership by virtue of marriages to non-Indian men and whose rights to reinstatement were clearly expressed in the amendments to the *Indian Act*, including Bill C-31. The question that remains is whether the descendants of Indian women who were also deprived of their right to band membership because of the inter-marriage of their mothers were intended to be protected by those same legislative amendments.

[11] A plain reading of sections 6 and 7 of Bill C-31 indicates that Parliament intended only that persons who had their Indian status and band memberships directly removed by operation of law ought to have those memberships unconditionally restored. The only means by which the descendants of such persons could gain band membership (as distinct from regaining their Indian status) was to apply for it in accordance with a First Nation's approved membership rules. This distinction was, in fact, recognized by Justice James Hugessen in *Sawridge v Canada*, 2003 FCT 347 at paras 27 to 30, 4 FC 748, [2003] 4 FC 748:

27 Although it deals specifically with Band Lists maintained in the Department, section 11 clearly distinguishes between automatic, or unconditional, entitlement to membership and conditional entitlement to membership. Subsection 11(1) provides for automatic

entitlement to certain individuals as of the date the amendments came into force. Subsection 11(2), on the other hand, potentially leaves to the band's discretion the admission of the descendants of women who "married out."

28 The debate in the House of Commons, prior to the enactment of the amendments, reveals Parliament's intention to create an automatic entitlement to women who had lost their status because they married non-Indian men. Minister Crombic stated as follows (*House of Commons Debates*, Vol. II, March 1, 1985, page 2644):

... today, I am asking Hon. Members to consider legislation which will eliminate two historic wrongs in Canada's legislation regarding Indian people. These wrongs are discriminatory treatment based on sex and the control by Government of membership in Indian communities.

29 A little further, he spoke about the careful balancing between these rights in the Act. In this section, Minister Crombic referred to the difference between status and membership. He stated that, while those persons who lost their status and membership should have both restored, the descendants of those persons are only automatically entitled to status (*House of Commons Debates*, idem, at page 2645):

This legislation achieves balance and rests comfortably and fairly on the principle that those persons who lost status and membership should have their status and membership restored. [page 766]  
While there are some who would draw the line there, in my view fairness also demands that the first generation descendants of those who were wronged by discriminatory legislation should have status under the Indian Act so that they will be eligible for individual benefits provided by the federal Government. However, their relationship with respect to membership and residency should be determined by the relationship with the Indian communities to which they belong.

30 Still further on, the Minister stated the fundamental purposes of amendments, and explained that, while those purposes may conflict, the fairest balance had been achieved (*House of Commons Debates*, idem, at page 2646):

... I have to reassert what is unshakeable for this Government with respect to the Bill. First, it must include removal of discriminatory provisions in the Indian Act; second, it must include the restoration of status and membership to those who lost status and membership as a result of those discriminatory provisions; and third, it must ensure that the Indian First Nations who wish to do so can control their own membership. Those are the three principles which allow us to find balance and fairness and to proceed confidently in the face of any disappointment which may be expressed by persons or groups who were not able to accomplish 100 per cent of their own particular goals...

[Emphasis added]

This decision was upheld on appeal in *Sawridge v Canada*, 2004 FCA 16, [2004] FCJ no 77.

[12] The legislative balance referred to by Justice Hugessen is also reflected in the 2010

Legislative Summary of Bill C-3 titled the *Gender Equity in Indian Registration Act*, SC 2010, c 18.

There the intent of Bill C-31 is described as follows:

Bill C-31 severed status and band membership for the first time and authorized bands to control their own membership and enact their own membership codes (section 10). For those not exercising that option, the Department of Indian Affairs would maintain "Band Lists" (section 11). Under the legislation's complex scheme some registrants were granted automatic band membership, while others obtained only conditional membership. The former group included women who had lost status by marrying out and were reinstated under paragraph 6(1)(c). The latter group included their children, who acquired status under subsection 6(2).

[Emphasis added]

[13] While Mary Stoney would have an acquired right to Sawridge membership had she been alive when Bill C-31 was enacted, the same right did not accrue to her children. Simply put neither Ms. Huzar or Ms. Kolosky qualified under section 11 of Bill C-31 for automatic band membership. Their only option was to apply for membership in accordance with the membership rules promulgated by Sawridge.

[14] This second generation cut-off rule has continued to attract criticism as is reflected in the Legislative Summary at p 13, para 34:

34. The divisiveness has been exacerbated by the Act's provisions related to band membership, under which not all new or reinstated registrants have been entitled to automatic membership. As previously mentioned, under provisions in Bill C-31, women who had "married out" and were reinstated did automatically become band members, but their children registered under subsection 6(2) have been eligible for conditional membership only. In light of the high volume of new or returning "Bill C-31 Indians" and the scarcity of reserve land, automatic membership did not necessarily translate into a right to reside on-reserve, creating another source of internal conflict.

Notwithstanding the above-noted criticism, the legislation is clear in its intent and does not support a claim by Ms. Huzar and Ms. Kolosky to automatic band membership.

[15] I also cannot identify anything in Bill C-31 that would extend an automatic right of membership in the Sawridge First Nation to William Stoney. He lost his right to membership when his father sought and obtained enfranchisement for the family. The legislative amendments in Bill C-31 do not apply to that situation.

[16] Even if I am wrong in my interpretation of these legislative provisions, this application cannot be sustained at least in terms of the Applicants' claims to automatic band membership. All of the Applicants in this proceeding, among others, were named as Plaintiffs in an action filed in this Court on May 6, 1998 seeking mandatory relief requiring that their names be added to the Sawridge membership list. That action was struck out by the Federal Court of Appeal in a decision issued on June 13, 2000 for the following reasons:

[4] It was conceded by counsel for the respondents that, without the proposed amending paragraphs, the unamended statement of claim discloses no reasonable cause of action in so far as it asserts or assumes that the respondents are entitled to Band membership without the consent of the Band.

[5] It is clear that, until the Band's membership rules are found to be invalid, they govern membership of the Band and that the respondents have, at best, a right to apply to the Band for membership. Accordingly, the statement of claim against the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, will be struck as disclosing no reasonable cause of action.

See *Huzar v Canada*, [2000] FCJ no 873, 258 NR 246.

[17] It is not open to a party to relitigate the same issue that was conclusively determined in an earlier proceeding. The attempt by these Applicants to reargue the question of their automatic right of membership in Sawridge is barred by the principle of issue estoppel: see *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 SCR 460.

[18] The Applicants are, nevertheless, fully entitled to challenge the lawfulness of the appeal decision rejecting their membership applications.

[19] The Applicants did not challenge the reasonableness of the appeal decision but only the fairness of the process that was followed. Their argument is one of institutional bias and it is set out with considerable brevity at para 35 of the Huzar and Kolosky Memorandum of Fact and Law:

35. It is submitted that the total membership of Sawridge First Nation is small being in the range of 50 members. Only three applicants have been admitted to membership since 1985 and these three are (were) the sisters of deceased Chief, Walter Twinn. The Appeal Committee consisted of 21 of the members of Sawridge and three of these 21 were the Chief, Roland Twinn and Councillors, Justin Twinn and Winona Twin, who made the original decision appealed from.

[20] In the absence of any other relevant evidence, no inference can be drawn from the limited number of new memberships that have been granted by Sawridge since 1985. While the apparent involvement of the Chief and two members of the Band Council in the work of the Appeal Committee might give rise to an appearance of bias, there is no evidence in the record that would permit the Court to make a finding one way or the other or to ascertain whether this issue was waived by the Applicants' failure to raise a concern at the time.

[21] Indeed, it is surprising that this issue was not fully briefed by the Applicants in their affidavits or in their written and oral arguments. It is of equal concern that no cross-examinations were carried out to provide an evidentiary foundation for this allegation of institutional bias. The issue of institutional bias in the context of small First Nations with numerous family connections is nuanced and the issue cannot be resolved on the record before me: see *Sweetgrass First Nation v Favel*, 2007 FC 271 at para 19, [2007] FCJ no 347, and *Lavalee v Louison*, [1999] FCJ no 1350 at paras 34-35, 91 ACWS (3d) 337.

MAY-15-2013 14:22

FEDERAL COURT

P.12/14

Page: 11

[22] The same concern arises in connection with the allegation of a section 15 Charter breach. There is nothing in the evidence to support such a finding and it was not advanced in any serious way in the written or oral submissions. The record is completely inadequate to support such a claim to relief. There is also nothing in the record to establish that the Crown was provided with any notice of what constitutes a constitutional challenge to the *Indian Act*. Accordingly, this claim to relief cannot be sustained.

[23] For the foregoing reasons these applications are dismissed with costs payable to the Respondent.

MAY-15-2013 14:22

FEDERAL COURT

P.13/14

Page: 12

**JUDGMENT**

**THIS COURT'S JUDGMENT is that these applications are dismissed with costs payable to the Respondent.**

---

"R.L. Barnes"

Judge

MAY-15-2013 14:22

FEDERAL COURT

P.14/14

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-923-12  
T-922-12

**STYLE OF CAUSE:** STONEY v SAWRIDGE FIRST NATION  
and  
HUZAR ET AL v SAWRIDGE FIRST NATION

**PLACE OF HEARING:** Edmonton, Alberta

**DATE OF HEARING:** March 5, 2013

**REASONS FOR JUDGMENT:** BARNES J.

**DATED:** May 15, 2013

**APPEARANCES:**

Priscilla Kennedy FOR THE APPLICANTS

Edward H. Molstad FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Davis LLP FOR THE APPLICANTS  
Edmonton, Alberta

Parlee McLaws LLP FOR THE RESPONDENT  
Edmonton, Alberta

# EXHIBIT 4



Courts Administration Service  
Service administratif des  
tribunaux judiciaires

**Facsimile Transmittal Form / Formulaire d'acheminement par télécopieur**

**TO / DESTINATAIRE(S):**

1. Name / Nom : Ellery Jamison  
Facsimile / Télécopieur : 1-780-423-2870
2. Name / Nom: Priscilla Kennedy  
Facsimile / Télécopieur : 1-780-702-4383

FROM / EXPÉDITEUR : Heather Michaud	DATE : October 22, 2014
Telephone / Téléphone : 416-954-2528	TIME / HEURE : 2:44 PM
Facsimile / Télécopieur : 416-973-2154	Total number of pages (including this page) / Nombre de pages (incluant cette page) : 7

**SUBJECT / OBJET :**

T-922-12 and T-923-12 – Certificates of Assessment (1 for each file). Originals will be sent via registered mail to the attention of Ellery Jamison at Parlee McLaws LLP

This is Exhibit "4" referred to in the  
Affidavit of

Robert Twinn

Sworn before me this 21 day  
of September A.D. 2016

A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

**MICHAEL R. MCKINNEY Q.C.**  
**BARRISTER & SOLICITOR**

N.B.: If you do not receive all pages being transmitted, please call the sender at the above telephone number. / Si vous ne recevez pas toutes les pages transmises, prière de communiquer avec l'expéditeur au numéro de téléphone ci-haut.

Federal Court



Cour fédérale

Date: 20141022

Docket: T-923-12

**BETWEEN:****MAURICE FELIX STONEY****Applicant**

and

**SAWRIDGE FIRST NATION****Respondent****CERTIFICATE OF ASSESSMENT**

**UPON** the Reasons for Judgment and Judgment delivered by the Court on May 15, 2013,  
dismissing the Application for Judicial Review with costs payable to the Respondent;

**AND UPON** the filing of the Bill of Costs;

**AND UPON** the Directions issued and served upon the parties on July 29, 2014,  
informing the parties that the assessment of costs would proceed in writing and of the deadline to  
file representations;

**AND UPON CONSIDERING** the Affidavit of Disbursements of C. Candice  
Cherkowski sworn June 13, 2014;

**AND UPON CONSIDERING** that, no other representations were received by the Registry of the Court, nor were any request to extend the time to file submissions;

**AND UPON CONSIDERING** the decision in *Dahl v Canada*, 2007 FC 192, in which it is stated at paragraph 2:

Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff.

**AND UPON HAVING CONSIDERED** the above referenced comments and the lack of challenge by the opposing party, I have reviewed the file and the materials submitted to ensure that the assessable services are claimed within the authority of the Tariff B of the *Federal Courts Rules*;

**AND UPON HAVING CONCLUDED** that the assessable services claimed under Tariff B of the *Federal Courts Rules* are reasonable;

**AND UPON HAVING CONCLUDED** that the disbursements claimed were all necessary charges for the conduct of this matter and that the amounts claimed are reasonable and necessary;

Page: 3

**I HEREBY CERTIFY** that the Bill of Costs presented by the Respondent is assessed  
and allowed at \$2,995.65.

"Johanne Parent"  
Assessment Officer

CERTIFIED AT TORONTO, ONTARIO, this 22<sup>nd</sup> day of October, 2014.

I HEREBY CERTIFY that the above document is a true copy of  
the original issued out of / filed in the Court on the \_\_\_\_\_

day of OCT 22 2014 A.D. 20\_\_\_\_

Dated this \_\_\_\_\_ day of OCT 22 2014 20\_\_\_\_

HELENE MICHAUD  
REGISTRY OFFICER  
AGENT DU GREFFE

Doris McKenna

---

From: Doris M. McKenna  
Sent: Thursday, October 23, 2014 8:48 AM  
To: 'pkennedy@davis.ca'  
Subject: Aline Elizabeth (McGillivray) Huzar and June Martha (McGillivray) Kolosky v. Sawridge First Nation; Action Number: T-922-12; Maurice Felix Stoney v. Sawridge First Nation; Action Number: T-923-12; (Our File: 64203-8/EHM)  
Attachments: 0064203-000008\_5614\_20141023\_07524683071.PDF

***This message is sent on behalf of Ellery Jamison. Please direct any response you may have to Ms. Jamison directly at (780) 423-8536 or [ejamison@parlee.com](mailto:ejamison@parlee.com). Thank you.***

Please see attached correspondence from Ms. Jamison dated October 22, 2014. Should you have any difficulty with the attachment, please immediately advise.

Doris M. McKenna | Legal Assistant



PARLEE McLAWS LLP

1500 Manulife Place, 10180-101 Street Edmonton, AB T5J 4K1  
Direct: 780.423.8500 | Fax: 780.423.2870 | Email: [mckendo@parlee.com](mailto:mckendo@parlee.com)

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**PARLEE McLAWS** LLP  
BARRISTERS & SOLICITORS | PATENT & TRADE-MARK AGENTS

October 22, 2014

**ELLERY JAMISON**  
DIRECT DIAL: (780) 423-8536  
DIRECT FAX: (780) 423-2870  
EMAIL: [ejamison@parlee.com](mailto:ejamison@parlee.com)  
OUR FILE #: 64203-8/EHM

**SENT VIA EMAIL: [pkennedy@davis.ca](mailto:pkennedy@davis.ca)**

Davis LLP  
1201 Scotia Tower 2, Scotia Place  
10060 - Jasper Avenue  
Edmonton, AB T5J 4E5

**Attention: Ms. Priscilla Kennedy**

Dear Madam:

**Re: *Aline Elizabeth (McGillivray) Huzar and June Martha (McGillivray) Kolosky v. Sawridge First Nation***  
**Action Number: T-922-12**

***Maurice Felix Stoney v. Sawridge First Nation***  
**Action Number: T-923-12**

Further to the Assessment Officer's issuance of the Certificate of Costs in respect of the above noted matters, please advise as to when we can expect to receive payment of our Bills of Costs from your client. We note that the Assessment Officer allowed costs at \$2,995.65 for each action.

I look forward to hearing from you at your earliest convenience.

Yours truly,

**PARLEE McLAWS LLP**



**ELLERY JAMISON**

ELJ/dmm

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 <b>PARLEE MCLAWS LLP</b> <small>ALBERTA SOLICITORS/BARRISTERS</small>			
1500 Macleod Place 1818B-101 Street Edmonton, AB T6G 1G4 Tel: 780-423-8520 Fax: 780-423-8517 WWW.PARLEE.COM			
<b>Fax</b>			
<b>TO:</b>			
<b>NAME</b>	<b>COMPANY</b>	<b>FAX NUMBER</b>	<b>YOUR FILE</b>
Priscilla Kennedy	Davis LLP	780 702-4383	
<b>FROM:</b>			
<b>NAME</b>	<b>PHONE NUMBER</b>	<b>DATE</b>	<b>OUR FILE</b>
Elery Jamison	(780) 423-8536	January 8, 2015	64203-BEHM
If all page(s) are not received or transmission problems occur, call Karen at 780-423-8517			
<b>RE:</b> Hume et al v. Sawridge First Nations (File No. T-922-13) and Stoney v. Sawridge First Nations (File No. T-923-13)			
<b>COMMENTS:</b>			
Please see the attached. Original to remain on file. Thank you.			
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**PARLEE McLAWS** <sup>LLP</sup>  
BARRISTERS & SOLICITORS | PATENT & TRADE-MARK AGENTS

1500 Manulife Place  
10180-101 Street  
Edmonton, AB T5J 4K1  
Tel: 780.423.8500 Fax: 780.423.2870

WWW.PARLEE.COM

**Fax**

**TO:**

NAME	COMPANY	FAX NUMBER	YOUR FILE
Priscilla Kennedy	Davis LLP	780 702-4383	

**FROM:**

NAME	PHONE NUMBER	DATE	OUR FILE
Ellery Jamison	(780) 423-8536	January 8, 2015	64203-8/EHM

If all <sup>8</sup> page(s) are not received or transmission problems occur, call  
Karen at 780-423-8517

**RE:** Huzar et al v. Sawridge First Nation (File No. T-922-12) and Stoney v.  
Sawridge First Nation (File No. T-923-12)

**COMMENTS:**

Please see the attached. Original to remain on file.  
Thank you.

{E6772520.DOCX; 1} This message is intended only for the use of the individual or entity to which it is addressed and contains information that is privileged, confidential and exempt from disclosure. If the reader of this message is not the intended recipient or an employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail. Thank you.



**PARLEE McLAWS** LLP  
BARRISTERS & SOLICITORS | PATENT & TRADE-MARK AGENTS

January 8, 2015

**ELLERY JAMISON**  
DIRECT DIAL: (780) 423-8536  
DIRECT FAX: (780) 423-2870  
EMAIL: [ejamison@parlee.com](mailto:ejamison@parlee.com)  
OUR FILE #: 64203-8/EHM

**SENT VIA FACSIMILE**

Davis LLP  
1201 Scotia Tower 2, Scotia Place  
10060 - Jasper Avenue  
Edmonton, AB T5J 4E5

**Attention: Ms. Priscilla Kennedy**

Dear Madam:

**Re: *Aline Elizabeth (McGillivray) Huzar and June Martha (McGillivray) Kolosky v. Sawridge First Nation***  
**Action Number: T-922-12**  
  
***Maurice Felix Stoney v. Sawridge First Nation***  
**Action Number: T-923-12**

Further to our previous correspondence respecting costs payable by your client in respect of the above-noted matter, we note that the costs award given by the Assessment Officer remains outstanding.

We write to demand payment of the costs award in the amount of \$2,995.65 in Action No. T-922-12 and the amount of \$2,995.65 in Action No. T-923-12 within one month of the date of this letter, failing which we will seek instructions from our clients to pursue other judgment enforcement measures against your client. We have enclosed copies of the Assessment Officer's Certificate of Assessment for your reference.

We look forward to hearing from you at your earliest convenience.

Yours truly,

**PARLEE McLAWS LLP**

  
**ELLERY JAMISON**

ELJ/kp  
Enclosures

# EXHIBIT 5



Canadian  
human rights  
commission

Commission  
canadienne des  
droits de la personne

Deputy Chief Commissioner  
Vice-président

**PROTECTED B**

Chief Roland Twinn  
Chief of Sawridge First Nation  
PO Box 326  
Slave Lake Alberta T0G 2A0

APR 29 2015

Dear Chief Twinn:

I am writing to inform you of the decision taken by the Canadian Human Rights Commission in the complaint (20140008) of Maurice Stoney against Sawridge First Nation.

Before rendering the decision, the Commission reviewed the report disclosed to you previously and any submission(s) filed in response to the report. After examining this information, the Commission decided, pursuant to paragraph 41(1)(d) of the *Canadian Human Rights Act*, not to deal with the complaint.

The decision of the Commission is attached.

Accordingly, the file on this matter has now been closed.

If you have any questions please do not hesitate to contact Allan Carter, Commission Meeting Unit, at (613) 943-9530 or by email: [allan.carter@chrc-ccdp.gc.ca](mailto:allan.carter@chrc-ccdp.gc.ca).

.../2

This is Exhibit "5" referred to in the

Affidavit of

Roland Twinn

Sworn before me this 21 day

of September A.D. 2016

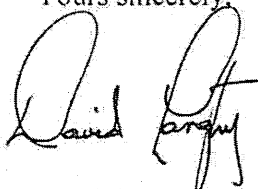
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

**MICHAEL R. McKINNEY Q.C.**  
**BARRISTER & SOLICITOR**

- 2 -

For your information, either party to a complaint can ask the Federal Court to review a Commission's decision under subsection 18.1(1) of the *Federal Courts Act*. The application to the Court must normally be filed within 30 days of receipt of the Commission's decision. Also, please note that the Court has found that the Commission cannot be a respondent in a judicial review of its own decision. Please refer to Rule 303(1) of the Federal Courts Rules, which indicates that an applicant shall name as a respondent every person directly affected by the order sought in the application, other than the tribunal whose decision is under review. To enquire about the procedures, please contact the Federal Court office in Ottawa at (613) 992-4238 or visit the website at [www.fct-cf.gc.ca](http://www.fct-cf.gc.ca).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Langtry', with a stylized flourish at the end.

David Langtry

Encl.

c.c.: Mr. Edward H. Molstad, Q.C.



Canadian  
human rights  
commission

Commission  
canadienne des  
droits de la personne

## Record of Decision under Sections 40/41

PROTECTED

### Complaint Information

**File Number(s):** 20140008  
**Date of Complaint(s):** January 31, 2014  
**Complainant(s):** Maurice Stoney  
**Respondent(s):** Sawridge First Nation

### Decision under section 41

The Commission decided, for the reasons identified below, not to deal with the complaint, under paragraph 41(1)(d) of the *Canadian Human Rights Act*.

The Commission further decided that a decision under paragraph 41(1)(e) of the *Canadian Human Rights Act* is therefore unnecessary.

### Material considered when decision made

The following documents were reviewed:

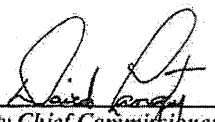
- Complaint form dated January 31, 2014
- Section 40/41 report dated January 21, 2015
- Complainant's submission dated February 6, 2015
- Respondent's submission dated March 23, 2015

### Reasons for decision

The Commission adopts the following conclusion set out in the Section 40/41 Report:

*The complainant has been a party to two different proceedings before the Federal Court with respect to the matters raised in this complaint: an action against the respondent which was struck by the Federal Court of Appeal in 2000 and an application for judicial review which was dismissed in May 2013. The essence of the complaint, i.e., the respondent's denial of the complainant's membership in the band, was central to both proceedings. The complainant clearly raised discrimination in his application for judicial review when he alleged that the decision violated the Charter; however, he did not provide adequate evidence for the Federal Court to overturn the decision of the respondent. The Supreme Court in Figliola held that human rights commissions must respect the finality of decisions made by other administrative decision-makers with concurrent jurisdiction to apply human rights legislation when the issues raised in both processes are the same. In this instance, the other decision-makers are judges of the Federal Court and the Federal Court of Appeal and could have clearly considered the human rights allegations raised. Therefore, it would not be unfair for the Commission to decide not to deal with this complaint.*

### Signature

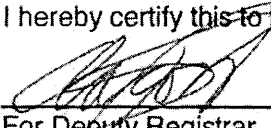
  
Deputy Chief Commissioner

April 15, 2015

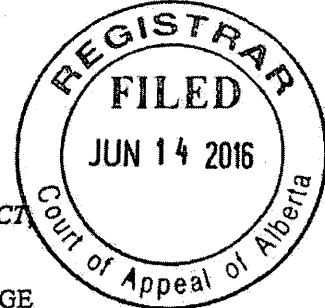
Date

# EXHIBIT 6

I hereby certify this to be a true copy.

  
 For Deputy Registrar  
 Court of Appeal of Alberta Form 44  
 [Rule 10.35(1)]

COURT OF APPEAL FILE NUMBER 1603-0033AC  
 TRIAL COURT FILE NUMBER 1103 14112  
 JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE TRUSTEE ACT,  
 RSA 2000, c T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE  
 BAND INTER VIVOS SETTLEMENT  
 CREATED BY CHIEF WALTER  
 PATRICK TWINN, OF THE SAWRIDGE  
 INDIAN BAND, NO 19 now known as  
 SAWRIDGE FIRST NATION ON APRIL  
 15, 1985 (the "1985 Sawridge Trust")

APPLICANT: MAURICE STONEY

STATUS ON APPEAL APPELLANT

RESPONDENTS: ROLAND TWINN, CATHERINE TWINN,  
 WALTER FELIX TWIN, BERTHA  
 L'HIRONDELLE, and CLARA MIDBO, as  
 Trustees for the 1985 Sawridge Trust

STATUS ON APPEAL RESPONDENTS

RESPONDENT: PUBLIC TRUSTEE OF ALBERTA

STATUS ON APPEAL RESPONDENT

INTERESTED PARTY/  
 RESPONDENT:

THE SAWRIDGE FIRST NATION

This is Exhibit " 6 " referred to in the  
 Affidavit of

Roland Twinn  
 Sworn before me this 21 day  
 of September A.D. 2016

STATUS ON APPEAL RESPONDENT

  
 A Notary Public, A Commissioner for Oaths  
 in and for the Province of Alberta

**MICHAEL R. McKINNEY Q.C.**  
 BARRISTER & SOLICITOR

DOCUMENT

BILL OF COSTS OF THE SAWRIDGE  
 FIRST NATION

ADDRESS FOR SERVICE AND  
 CONTACT INFORMATION OF  
 PARTY FILING THIS DOCUMENT

PARLEE McLAWS LLP  
 Barristers & Solicitors  
 Patent & Trademark Agents

1500, 10180-101 Street NW  
 Edmonton, AB T5J 4K1  
 Attention: Edward H. Molstad, Q.C.  
 Phone: (780) 423-8506  
 Fax: (780) 423-2870  
 File No: 64203.7/EHM

# **BILL OF COSTS OF THE SAWRIDGE FIRST NATION**

## **Fees claimed:**

ITEM NO.	ITEM	AMOUNT
22	Appearance on contested application before Appeal Court, including brief	\$750.00
<b>TOTAL</b>		<b>\$750.00</b>

## **DISBURSEMENTS & OTHER CHARGES:**

<b>DISBURSEMENT &amp; OTHER CHARGES SUMMARY</b>	
<b>DISBURSEMENTS, OTHER CHARGES &amp; GST</b>	
Disbursements:	
Other Charges:	
Copies (67 pages x 8 copies x 0.15/page)	\$80.40
Deliveries	\$25.50
Sub-total:	\$105.90
GST:	\$5.30
<b>TOTAL:</b>	<b>\$111.20</b>

**GST:**

- (a) Amount claimed on fees (5% GST): \$37.50  
 (b) Amount claimed on disbursements: \$ nil  
 (c) Amount claimed on other charges: \$ 5.30

**TOTAL GST:** \$42.80

By making the above claim for an additional amount on account of goods and services tax, the party entitled to the costs award warrants that it is not entitled under the *Excise Tax Act* (Canada) to a refund or rebate of any goods and services tax paid.

**Total amount claimed:**

Fees: \$750.00  
 Disbursements: nil  
 Other Charges: \$105.90  
  
**TOTAL GST:** \$42.80  
**TOTAL:** \$898.70

**APPROVED AS BEING THE COSTS  
AWARDED:**

DLA PYPER (CANADA) LLP

PER: 

Priscilla Kennedy  
 Solicitors for the Appellant, Maurice  
 Stoney

**APPROVED AS BEING THE COSTS  
AWARDED:**

PARLEE MCLAWS LLP

for:  
 PER: 

Edward H. Molstad, Q.C.  
 Solicitors for the Sawridge First  
 Nation

I, Robyn Cochran, certify the following amount that is to be paid

By Applicant \$898.70

To Sawridge First Nation.

Dated: June 14, 2016

Name of Assessment officer: Robyn Cochran

Signature: P. Cochran

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No. T-22-112

**FEDERAL COURT****BETWEEN:****Maurice Felix Stoney**

Applicant

- and -

**Sawridge First Nation**

Respondent

**NOTICE OF APPLICATION****TO THE RESPONDENT:** Sawridge First Nation

A PROCEEDING HAS BEEN COMMENCED by the Applicant, Maurice Felix Stoney. The relief claims by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this Application be heard at Edmonton, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the Application or to be served with any documents in the application, you or a solicitor acting for you, must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules*, and serve it on the Applicant's Solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this Notice of Application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 11, 2012.

**ORIGINAL SIGNED BY  
G. CHAMPAGNE  
A SIGNÉ L'ORIGINAL**

ISSUED BY: \_\_\_\_\_  
Registry Officer

Address of Local Office: Edmonton  
Scotia Place Tower 1  
Suite 530, 10060 Jasper Avenue  
Edmonton, AB, T5J 3R8

TO: Sawridge First Nation

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the \_\_\_\_\_

day of MAY 11 2012 A.D. 2012

Dated this \_\_\_\_\_ day of MAY 11 2012 2012

*G. Champagne*  
**G. CHAMPAGNE  
REGISTRY OFFICER  
AGENT DU GREFFE**

## APPLICATION

This is an Application for Judicial Review pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. 41 (1<sup>st</sup> Supp.) as am., for judicial review of the Decision dated May 7, 2012, of Appeal Committee of Sawridge First Nation of the appeal of Maurice Felix Stoney regarding his membership in Sawridge First Nation, heard together, and denied.

The Applicant, Maurice Felix Stoney makes application for the following relief:

1. An Order that the Appeal Committee acted beyond their jurisdiction;
2. An Order that the Appeal Committee erred in law in their application of the Membership Rules to the Applicant, in making their decision dated May 7, 2012;
3. An Order that the Appeal Committee acted with a reasonable apprehension of bias in making their decision dated May 7, 2012;
4. An Order quashing the decision of the Appeal Committee on the grounds that it is contrary to the *Charter of Rights and Freedoms*, section 15, and contrary to the *Indian Act*, as amended by Bill C-31 and Bill C-3, contrary to the *Constitution Act, 1982*, section 35 and contrary to *Treaty No. 8*;
5. An Order quashing the decision of the Appeal Committee on the grounds that the Membership Rules for the Sawridge First Nation were not approved by the Minister of Indian Affairs and Northern Development until September 26, 1985 which is their effective date and were approved only on the basis that the Membership Rules must respect and comply with acquired membership as set out in Bill C-31 amending the *Indian Act*;
6. An Order quashing the decision of the Appeal Committee on the grounds that it breaches procedural fairness and that it lacks reasons for its decision;
7. Costs of this proceeding to the Applicant on a solicitor-client basis;
8. Such further and other orders as this Honourable Court shall deem just and convenient in the circumstances.

The grounds for this application are:

1. Johnny Stoney, grandfather of the Applicant, was a member of the Alexander Band under *Treaty No. 6*, who married Henrietta Sinolair, and became a member of what was known as the Lesser Slave Lake Band with Chief Kinosayoo;
2. Chief Kinosayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band;
3. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These lands were initially considered to be held in severalty under *Treaty No. 8*.

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4. In or about 1912, Johnny Stoney and his family were recognized on the first payroll for the Sawridge Band. He was a member of Sawridge, on the payroll until his death in 1956. In 1920, Johnny Stoney was advised that his lands would be part of the Sawridge Reserve.
5. William Stoney, father of Maurice, was the son of Johnny Stoney, and a member of the Sawridge Band. William Stoney lived in Slave Lake. The Sawridge Indian Reserve is located on the northeast boundary of Slave Lake. In 1944, William Stoney and his family, along with other members of Sawridge Band, were enfranchised because he was working.
6. Maurice Stoney applied to Sawridge in 1985 for recognition of his membership which was automatic as a result of Bill C-31 on April 17, 1985 to correct the discrimination under the *Indian Act* membership provisions. The Sawridge Membership Rules did not become effective until September 26, 1985 and these Rules required recognition of all "acquired rights" members including Maurice;
7. Sawridge refused to review the membership application of Maurice submitted in 1985 until December 7, 2011 when Maurice was advised that the Council of Sawridge First Nation had denied his application for membership. On December 19, 2011, Maurice appealed this decision. The Appeal Committee heard this appeal for Maurice's membership on April 21, 2012 and provided their decision on May 7, 2012 upholding the decision of Chief and Council denying his membership.
8. Such further and other matters as this Honourable Court shall permit;

This application will be supported by the following materials:

- i. The Resolution Adopting Membership Rules dated July 4, 1985;
- ii. Notice from the Minister of Indian Affairs and Northern Development to Sawridge Indian Band dated September 26, 1985;
- iii. The Decision of the Sawridge First Nation for Maurice Felix Stoney;
- iv. The Membership Application Decision of the Sawridge First Nation for Maurice Stoney dated December 7, 2011;
- v. Appeal of Maurice Stoney dated December 19, 2011;
- vi. Such further and other materials as may be filed.

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Notice pursuant to Rule 317

The Applicant requests that the Appeal Committee provide all material relevant to his application on April 21, 2012 including:

- (a) All documents related to the membership application of Maurice Stoney and to the decision of Chief and Council and the Appeal Committee.

May 11, 2012.

DAVIS, LLP.

Per: 

Priscilla Kennedy

DAVIS, LLP.

Barristers and Solicitors

1201 Scotia Tower 2

10060 Jasper Avenue

Edmonton, AB, T5J 4E5

Tel: (780) 429-6830

Fax: (780) 702-4383

Federal Court No. I-923-12

## FEDERAL COURT

BETWEEN:

Maurice Felix Stoney

Applicant

- and -

Sawridge First Nation

Respondent

AFFIDAVIT OF MAURICE STONEY

I, MAURICE STONEY, of Slave Lake, Alberta, MAKE OATH AND SAY:

1. I was born a member of the Sawridge First Nation and as such I have knowledge of the matters deposed to in this Affidavit unless stated to be made on information and belief, in which case, I do verily believe them to be true.
2. My grandfather, Johnny Stoney (also known as John Stephens), was a member of the Alexander Band under *Treaty No. 6*, who married Henrietta Sinclair, and became a member of what was known as the Lesser Slave Lake Band with Chief Kinodayoo in or about 1895.
3. Chief Kinodayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band.
4. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These lands were initially considered to be held by him in severalty under *Treaty No. 8*. Attached as Exhibit "A" is the list of Kinodayoo's Band, Sawridge showing Johnny Stoney as number 18 and showing that Johnny Stoney transferred from Alexander's Band on September 14, 1910. Attached as Exhibit "B" is a letter dated April 15, 1903 to the Deputy Superintendent General; attached as Exhibit "C" is a letter dated April 16, 1903 from Indian Affairs; attached as Exhibit "D" is a letter dated April 17, 1903 from Indian Affairs; attached as Exhibit "E" is a letter dated December 9, 1911 from the Assistant Indian Agent; attached as Exhibit "F" is a copy of a letter dated April 18, 1913; attached as Exhibit "G" is a copy of a letter dated September 23, 1912(?); and as Exhibit "H" is a copy of a letter dated August 19, 1920.
5. In or about 1912, Johnny Stoney and his family were recognized on the first payroll for the Sawridge Band. He was a member of Sawridge, on the payroll until his death in 1956. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be part of the Sawridge Reserve.

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6. My father was William Stoney, the son of Johnny Stoney, and a member of the Sawridge Band. William Stoney lived in Slave Lake. The Sawridge Indian Reserve is located on the northeast boundary of Slave Lake.
7. In 1944, my father William Stoney and all of his family including me, along with other members of Sawridge Band, were enfranchised because he was working. This meant that I did not have to attend Residential School but I have been involved with the Sawridge First Nation all of my life.
8. I applied to Sawridge First Nation in 1985 for recognition of my membership which was automatic as a result of Bill C-31 on April 17, 1985 to correct the discrimination under the *Indian Act* membership provisions. The Sawridge Membership Rules did not become effective until September 26, 1985 and these Rules required recognition of all "acquired rights" members. Attached as Exhibit "I" is a copy of a letter dated September 26, 1985 from the Minister of Indian Affairs and Northern Development to Chief Walter Twinn.
7. Sawridge refused to review my membership application submitted in 1985 until December 7, 2011 when I was advised that the Council of Sawridge First Nation had denied my application for membership. On December 19, 2011, I appealed this decision. The Appeal Committee heard this appeal for my membership on April 21, 2012 and provided their decision on May 7, 2012 upholding the decision of Chief and Council denying my membership. I filed a judicial review of this appeal decision in the Federal Court on May 11, 2012.
8. I make this Affidavit in support of my application for judicial review.

SWORN BEFORE ME at the City )  
 of Slave Lake, in the Province of Alberta, )  
 this 22 day of May, 2012. )  
 \_\_\_\_\_ )  
 A COMMISSIONER FOR OATHS IN AND )  
 FOR THE PROVINCE OF ALBERTA )

COLLEEN G. GHOSTKEEPER  
 A COMMISSIONER FOR OATHS  
 IN AND FOR THE PROVINCE OF ALBERTA  
 MY COMMISSION EXPIRES JUNE 25, 20 14

\_\_\_\_\_  
 Maurice Stoney

Davis LLP  
 1201 Scotia Tower 2,  
 10060 Jasper Ave  
 Edmonton, Alberta T5J 4E5  
 Attention: Priscilla Kennedy  
 Phone: 780-429-6830  
 Fax: 780-702-4383  
 File No.: 84021-00001

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## MEMORANDUM OF FACT AND LAW

## I. FACTS

1. The Applicant, Maurice Stoney, was born a member of the Sawridge First Nation.

Affidavit of Maurice Stoney. [Tab B]

2. His grandfather, Johnny Stoney (also known as John Stephens), was a member of the Alexander Band under *Treaty No. 6*, who married Henrietta Sinclair, a member of what was then known as the Lesser Slave Lake Band, and became a member the Lesser Slave Lake Band with Chief Kinodayoo in or about 1895. The list of Kinodayoo's Band, Sawridge, showing Johnny Stony as number 18 shows that Johnny Stony formally transferred from Alexander's Band on September 14, 1910.

Affidavit of Maurice Stoney. [Tab B]

3. Chief Kinodayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band, recognized as a Band for that *Treaty* signing.

Affidavit of Maurice Stoney. [Tab B]

4. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These lands were initially considered to be held by him in severalty under *Treaty No. 8*.

Affidavit of Maurice Stoney. [Tab B]

5. In or about 1912, Johnny Stoney and his family were recognized on the first payroll for the Sawridge Band. He was a member of Sawridge, on the payroll of the Sawridge Band until his death in 1956.

Affidavit of Maurice Stoney. [Tab B]

6. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be part of the Sawridge Reserve.

Affidavit of Maurice Stoney. [Tab B]

7. Maurice's father was William Stoney, son of Johnny Stoney. William Stoney and his family lived in Slave Lake on the edge of the Sawridge Indian Reserve.

Affidavit of Maurice Stoney. [Tab B]

8. In 1944, William Stoney and his family were enfranchised.

Affidavit of Maurice Stoney. [Tab B]

9. Maurice Stoney applied to Sawridge for recognition of his membership which was automatic as a result of Bill C-31 on April 17, 1985.

Affidavit of Maurice Stoney. [Tab B]

10. The Sawridge Membership Rules did not become effective until September 26, 1985 and these Rules are stated to require recognition of all "acquired rights" members. On September 26, 1985 the Minister of Indian Affairs and Northern Development wrote to Chief Walter Twinn to advise him of this.

Affidavit of Maurice Stoney. [Tab B]

11. Sawridge refused to review the membership applications submitted in the years since 1985 until they 'concluded' that they had a 'completed membership form' from Maurice Stoney. Throughout the years since he first approached Sawridge until December 7, 2011, he was advised that Sawridge was not considering membership applications. On December 7, 2011, he was advised that the Council of Sawridge First Nation had denied his application for membership.

Affidavit of Maurice Stoney. [Tab B]

Completed Application of Maurice Stoney from Exhibit B to the Affidavit of Roland Twinn. [Tab C].

Exhibits C, D, G, H, I, J, K, L, M, N, O, P, Q, and R to the Affidavit of Roland Twinn. [Tab C]

12. On December 19, 2011, he appealed this decision denying his Membership in Sawridge.

Affidavit of Maurice Stoney. [Tab B]

Exhibit T to Affidavit of Roland Twinn. [Tab C]

13. The Appeal Committee heard the appeal regarding Maurice's membership on April 21, 2012 and provided their decision on May 7, 2012 upholding the decision of Chief and Council denying his membership. The wording used was the same as the wording for denying his cousins membership, Aline Huzar and June Kolosky T-922-12. A judicial review of this appeal decision was filed in the Federal Court on May 11, 2012.

Affidavit of Maurice Stoney. [Tab B]

Exhibits W and Y to the Affidavit of Roland Twinn. [Tab C]

II. **Beyond Jurisdiction: Requirements of Section 10(4) and 10(5) of the *Indian Act***

14. It is submitted that section 10, subsections 1, 4, 6, and 7 of the *Indian Act* provide the basis for determining membership in a band.

(1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership,

(4) **Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.**

(6) Where the conditions set out in subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of this membership rules for the band.

(7) On receipt of a notice from the council of a band under subsection (6), the Minister shall, if the conditions set out in subsection (1) have been complied with, forthwith

(a) give notice to the band that it has control of its own membership; and

(b) direct the Registrar to provide the band with a copy of the Band List maintained in the Department.

*Indian Act*, S.C. 1985, c. 27. [Tab 1]

15. On July 9, 1985, Sawridge First Nation submitted membership rules however this did not complete the process for acceptance and effectiveness of these membership rules. Two points are clear from the letter of the Minister of Indian Affairs to Chief Walter Twinn dated September 26, 1985: first, membership consent did not occur until August 29, 1985, at the earliest, with the decision of the Minister being made as stated in his letter of September 26, 1985; and second, that these membership rules must "respect acquired rights" as set out in that letter from the Minister.

Affidavit of Maurice Stoney, Exhibit I. [Tab B]

16. Accordingly, it is submitted that on April 15, 1985, pursuant to Bill C-31, Maurice was a person with the right to have his name entered in the Band List under section 6 of the *Indian Act*. The passage of time did not remove this right and did not permit Sawridge Band to refuse to accept this "acquired rights".

*Twinn et al. v. Poitras et al.*, 2012 FCA 47 [Tab 2]; Leave to Appeal to the Supreme Court of Canada dismissed July 19, 2012, Supreme Court of Canada Bulletin of Proceedings July 20, 2012, #34760. [Tab 3]

17. In 2003, Mr. Justice Hugessen granted a mandatory injunction to Bertha L'Hirondelle and 11 other women whose membership in Sawridge had been denied prior to passage of Bill C-31. He found that the Sawridge had refused membership to Bertha L'Hirondelle and the other 11, on the grounds that they were not resident on Reserve or had not demonstrated a significant commitment to the Band and submit to interviews by the Band. He found that these provisions violated the requirement for automatic membership provided by Bill C-31. Sawridge argued that these women had not applied for membership by completing the 43 page application form but Mr. Justice Hugessen held that this was a "red herring" because the issue was "whether those rules can lawfully be used to deprive them of rights to which Parliament has declared them to be entitled".

*L'Hirondelle v. Canada*, 2003 FCT 347, paras. 12, 18, 23-27, 32-34 and 39. [Tab 4]; appeal dismissed 2004 FCA 16 [Tab 5]

18. At that time, Sawridge had an action alleging that Bill C-31 was unconstitutional however that action has now been concluded and Bill C-31 is constitutional.

*Twinn et al. v. Poitras et al.*, 2012 FCA 47 [Tab 2]; Leave to Appeal to the Supreme Court of Canada dismissed July 19, 2012, Supreme Court of Canada Bulletin of Proceedings July 20, 2012, #34760. [Tab 3].

19. Here, Sawridge argues as it did before, that “completed” applications were not submitted until 2011 however it is clear that the Applicant had been seeking to have his name added throughout the period since 1985 just as Bertha L’Hirondelle and all others had done.

*Twinn et al. v. Poitras et al.*, *supra* 2012 FCA 47 [Tab 2]; SCC Proceedings July 20, 2012, #34760. [Tab 3]

*L’Hirondelle*, *supra*, paras. 1, 3-5, and 12. [Tab 4]; para. 35 [Tab 5]

Affidavit of Roland Twinn, paras. 3-5. [Tab C]

20. Finally, it is settled law that the provisions of Bill C-31 recognized membership effective April 17, 1985 of a number of classes of persons who had been excluded. Maurice was a member of Sawridge who was disentitled to Indian status from 1943 on because of the enfranchisement of his family. On April 17, 1985 all of these enfranchised persons were entitled to have their names added to the Band list. Sawridge had no ability to exclude their names from membership when they formulated their membership rules in July, August and September, 1985.

*Sawridge*, *supra*, para. 1. [Tab 4]

*Canada v. Sawridge Band*, 2009 FCA 245, paras. 7-10. [Tab 6]

*Attorney General of Canada v. Larkman*, 2012 FCA 204, paras. 2, 10-14. [Tab 7]

IV. Contrary to the Charter of Rights, Section 15 and to Section 35 of the Constitution Act, 1982.

21. Sawridge has disputed the ability of enfranchised members to be Band members since the passage of Bill C-31 based on the argument that it had a right under section 35 of the *Constitution Act, 1982*, to determine who was a member of the Band. The matter of Bill C-31 has been argued in the Courts for a very lengthy period of time and was conclusively dismissed. Constitutional arguments based on section 35 and treaty rights can no longer be argued.

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*Sawridge Band v. The Queen*, 2008 FC 322 [Tab 8]; aff'd 2009 FCA 123 [Tab 9]; leave to appeal to the Supreme Court of Canada dismissed December 10, 2009 [Tab 10].

22. In any event, it is clear that Johnny Stoney, the grandfather of Maurice, was accepted by Lesser Slave Lake Band based on the membership of his wife, Henrietta Sinclair, in or about 1895 and formally in 1910 by the Sawridge Band. His lands became part of the Reserve for Sawridge.

Affidavit of Maurice Stoney. [Tab B]

23. It is submitted that the actions of Sawridge in refusing to acknowledge the membership of Maurice is contrary to the aboriginal and *Treaty* rights recognized by section 35 of the *Constitution Act, 1982*.
24. The actions of Sawridge are without an aboriginal and treaty basis and are discriminatory under section 15 of the *Charter*.

*A.G. v. Larkman, supra.* para. 13. [Tab 7]

#### V. Procedural Fairness

25. The Appeal Committee held that there "are no grounds to set aside the decision of the Chief and Council". The decision of the Sawridge Chief and Council refused the applications of Maurice because he did not have "any specific "right" to have name entered in the Membership List" and the Council did not feel that it was "in the best interests and welfare of the First Nation".

Affidavit of Roland Twinn, Tabs S and Y. [Tab C]

26. As stated above, Maurice is entitled to membership as provided by Bill C-31 prior to the establishment and recognition of the Sawridge membership provisions and he is and has been entitled to be a member since April 17, 1985. There are no grounds to deny the membership of Maurice.

27. The Sawridge First Nation Appeal Committee has a duty of procedural fairness requiring an unbiased tribunal who must apply the law fairly. An institutional problem will violate the principles of the rule against bias.

*R. v. Lippe*, [1991] 2 S.C.R. 114, pp. 32-38 and 47-52. [Tab 11]

*Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3, paras. 61-85. [Tab 12]

28. It is submitted that the total membership of Sawridge First Nation is small being in the range of 50 members and noted by the Federal Court of Appeal as 44 members. Only three applicants have been admitted to membership since 1985 and these three are (were) the sisters of the deceased Chief, Walter Twinn. The Appeal Committee consisted of 21 of the members of Sawridge and three of these 21 were the Chief, Roland Twinn and Councillors, Justin Twin and Winona Twin, who made the original decision appealed from.

*Sawridge, supra.*, paras. 10. [Tab 6]

Affidavit of Roland Twinn, Tab Y. [Tab C]

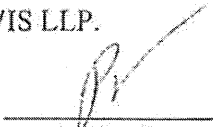
29. It is submitted that there was institutional bias and this decision must be set aside.

**VI. Order Requested.**

30. It is respectfully submitted that a Declaration should issue declaring that Maurice Stoney is a member of Sawridge, with solicitor-client costs.

ALL OF WHICH IS SUBMITTED this 1<sup>st</sup> day of August, 2012.

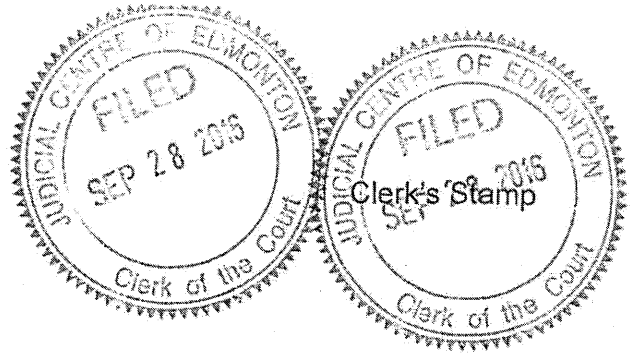
DAVIS LLP.

Per:   
Priscilla Kennedy  
Solicitor for Maurice Stoney

Time: 1.5 hours.

## TABLE OF AUTHORITIES

1. *Indian Act*, S.C. 1985, c. 27.
2. *Twinn et al. v. Poitras et al.*, 2012 FCA 47.
3. *Twinn et al. v. Poitras et al.*, Leave to Appeal to the Supreme Court of Canada dismissed July 19, 2012, Supreme Court of Canada Bulletin of Proceedings July 20, 2012, #34760.
4. *L'Hirondelle v. Canada*, 2003 FCT 347.
5. *Sawridge Band v. Canada*, 2004 FCA 16.
6. *Canada v. Sawridge Band*, 2009 FCA 245.
7. *Attorney General of Canada v. Larkman*, 2012 FCA 204.
8. *Sawridge Band v. The Queen*, 2008 FC 322.
9. *Sawridge Band v. The Queen*, 2009 FCA 123.
10. *Sawridge Band v. The Queen*, Leave to Appeal December 10, 2009.
11. *R. v. Lippe*, [1991] 2 S.C.R. 114.
12. *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3.



COURT FILE NO.:

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE:

EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, RSA  
2000, c. T-8, as am.

IN THE MATTER OF THE SAWRIDGE BAND INTER  
VIVOS SETTLEMENT CREATED BY CHIEF  
WALTER PATRICK TWINN, OF THE SAWRIDGE  
INDIAN BAND NO. 19 ON APRIL 15, 1985 (the "1985  
Sawridge Trust")

APPLICANT

MAURICE STONEY ON HIS OWN BEHALF AND  
THAT OF HIS LIVING SISTERS AND BROTHERS

DOCUMENT:

WRITTEN ARGUMENT ON THE APPLICATION TO  
BE ADDED as a Party or Intervener by Maurice Felix  
Stoney and his brothers and sisters  
VOLUME ONE

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT:

DLA Piper (Canada) LPP  
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Email: [priscilla.kennedy@dlapiper.com](mailto:priscilla.kennedy@dlapiper.com)  
File: 84021-00001

CONTACT INFORMATION OF  
ALL OTHER PARTIES:  
Sawridge Trustees

Reynolds Mirth Richards & Farmer LLP  
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Attn: Marco Poretti  
Tel: 780.425.9510  
Fax: 780.425.9510

And

Dentons Canada LLP  
2900 10180 - 101 Street NW  
Edmonton, AB, T5J 3W8  
Attn: Doris Bonora

- 2 -

Fax: 780.423.7276

And Catherine Twinn, Trustee

McLennan, Ross LLP  
600 12220 Stony Plain Road  
Edmonton, AB, T5N 3Y4  
Attn: Karen Platten, Q.C.  
Tel: 780.482.9200  
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Public Trustee

Hutchison Law  
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130 Broadway Boulevard  
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Attn: Janet Hutchison  
Tel: 780.417.7871  
Fax: 780.417.7872

Supreme Court Advocacy  
340 Gilmour Street #100  
Ottawa, ON, K2P 0R3  
Attn: Eugene Meehan, Q.C.  
Tel: 613.695.8855  
Fax: 613.695.8580

Justice Canada

Indigenous Affairs and Northern Development  
Attn: Linda Maj  
300, 10423 - 101 Street NW Epcor Tower  
Edmonton, AB, T5H 0E7

WRITTEN ARGUMENT ON APPLICATION TO BE ADDED AS A PARTY OR  
INTERVENER

I. OVERVIEW

1. Action 1103 14112 was commenced by the Trustees of the 1985 Sawridge Trust seeking Advice and Directions with respect to the definition of "Beneficiaries" contained in the 1985 Sawridge Trust in the Matter of the Sawridge Band Inter Vivos Settlement Created by Chief Walter Patrick Twinn, of the Sawridge Indian Band, No. 19, now known as Sawridge First Nation, on April 15, 1985.

*1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, paras. 2, 22. and 29 [Tab 1]

2. An appeal was brought by the Trustees of the 1985 Sawridge Trust to the Alberta Court of Appeal with, *inter alia*, Maurice Stoney named as an Interested Party.

*1985 Sawridge Trust Civil Notice of Appeal*, Appeal No. 1203 0230 AC. [Tab 2]

3. On August 12, 2016, Maurice Stoney brought an Application for himself and his living brothers and sisters, to be named as a Party or as an Intervenor on the ground of being beneficiaries to the 1985 Sawridge Trust, in this Action 1103 14112.

4. On August 24, 2016 an Order consented to by the Trustees and the Office of the Public Guardian and Trustee for Alberta, was granted. This Order permits the 1982 Trust to be moved into the 1985 Sawridge Trust however this consent Order cannot be used as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust. Direction was issued for the filing of argument on the issue of whether or not Maurice Stoney et al. should be granted status as parties or interveners in this Action.

*1985 Sawridge Trust Consent Order*, August 24, 2016. [Tab 3]

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**I. FACTS**

5. Maurice Stoney and all of his brothers and sisters were born to parents William and Margaret Stoney who were both members of the Sawridge Band.

Affidavit of Maurice Stoney. [Tab 4]

6. Their grandfather, Johnny Stoney was born in January 1872 (aka John Stephens and Johnny Assiniboitis), and was a member of the Alexander Band under *Treaty No. 6*. He married Henrietta (aka Harriett Calder) Sinclair born January 1882 who was a member of the Lesser Slave Lake Band, and he became a member of the Lesser Slave Lake Band with Chief Kinosayoo in or about 1895, and Johnny Stony is shown on the list of Kinnosayo's Band as number 18. Chief Kinosayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band which included what became known as the Sawridge Band.

Affidavit of Maurice Stoney. [Tab 4]

*Treaty No. 8*. [Tab 5]

7. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These Lands were initially considered to be held by him in severalty under *Treaty No. 8* as shown in letters dated April 6, 1903, April 15, 1903, April 16, 1903, April 17, 1903 December 9, 1911, September 9, 1912, April 18, 1913 and August 19, 1920 to and from Indian Affairs.

Affidavit of Maurice Stoney. [Tab 4]

8. In or about 1912, Johnny Stoney and his family were recognized on the first pay list for the Sawridge Band. He was a member of Sawridge, on the pay list until his death in 1956. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be taken as part of the Sawridge Reserve, this appears to be contrary to the provisions of *Treaty No. 8*, where lands could be held in severalty and were held in severalty by Johnny Stoney until 1920.

- 5 -

Affidavit of Maurice Stoney. [Tab 4]

9. Maurice's father was William Stoney, and his grandfather was Johnny Stoney. His mother was also a member of the Sawridge Band. William Stoney lived in Slave Lake, Alberta on the edge of the Sawridge Indian Reserve. The Sawridge Indian Reserve is located on the northeast boundary of the Town of Slave Lake, Alberta.

Affidavit of Maurice Stoney. [Tab 4]

10. In 1944, William Stoney and all of his family, along with other members of Sawridge Band, were enfranchised because William was working. Enfranchisement removed the names of persons from the *Indian Act*, R.S.C. 1927, c. 98, section 114 and treated them as not being Indians under the *Indian Act*. They were not Canadian 'Citizens' since Canadian citizenship did not exist until at the earliest, January 1, 1947 with the first *Canadian Citizenship Act*, S.C. 1946 which provided Canadian citizenship to British subjects born in or resident in Canada.

Affidavit of Maurice Stoney. [Tab 4]

*Canadian Citizenship Act, 1947*. [Tab 6]

11. William Stoney had 15 children, 10 are still alive today: Billy born in 1940; Maurice born in 1941, Angeline born in 1944, Linda born in 1948, Bernie born in 1952, Betty Jean born in 1954, Gail born in 1956, Alma and Alva (twins) born in 1958 and Bryan born in 1959. These are the Applicants in this Application.

Affidavit of Maurice Stoney. [Tab 4]

12. On April 17, 1982, the *Constitution Act, 1982*, amended the *Constitution*, and recognized and affirmed treaty and aboriginal rights in section 35:

35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

*Constitution Act, 1982*, section 35. [Tab 7]

13. Retroactive to April 17, 1985, Bill C-31 (R.S.C. 1985, c. 32 (1<sup>st</sup> Supp.) amended the provisions of the *Indian Act*, R.S.C. 1985, I-5 to bring the *Indian Act* into line with the provisions of section 15 of the *Charter of Rights and Freedoms*, for discrimination by removing sections 109 to 113 of the *Indian Act* which had provided for enfranchisement. Indian Affairs knew that these provisions were unconstitutional under the *Constitution Act, 1982*.

*Indian Act*, R.S.C. 1970, c. I-6, ss. 109-112 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act. [Tab 8]

14. Canada brought a motion for a mandatory injunction against Sawridge in 2003 and obtained a mandatory injunction compelling Sawridge to record the memberships of persons whose memberships in Sawridge were required by Bill C-31 ("acquired rights") effective April 17, 1985 to be included as Sawridge members. Sawridge assumed control of its membership at some point in the summer of 1985, having given notice to the Minister on July 8, 1985. The Minister of Indian Affairs specifically reminded Chief Walter Twinn of this requirement to record and include all of the persons whose membership was restored by Bill C-31 on the Band list for Sawridge, in a letter dated September 26, 1985.

*Sawridge Band v. Canada*, [2003] 4 FCR 748, paras. 31-40. [Tab 9]

*Sawridge Band v. Canada*, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 10]

15. Maurice Stoney's membership in Sawridge was properly recorded on the Sawridge Band List when he was born in 1941. It was removed when his family was enfranchised but Sawridge has refused to comply with Bill C-31 and with the Mandamus Order of the Federal Court in 2003, confirmed on appeal, to restore Maurice and his brothers and sisters as members of Sawridge. Nevertheless, under this Federal Court Order of Mandamus still in effect today, Maurice Stoney and all of his living brothers and sisters are members of Sawridge Band.

Affidavit of Maurice Stoney, Exhibit I, pp. 34-5. [Tab 4]

## II. 1985 SAWRIDGE TRUST

16. Maurice Stoney and his brothers and sisters are all members of the Sawridge Band such that they are within the terms of "beneficiary" in the 1985 Sawridge Trust.

Affidavit of Paul Bujold filed September 6, 2011, Exhibit "B". [Tab 11]

17. The legal issue involved here, of who is or is not a beneficiary, requires a determination of the fundamental issue of whether all of the parts of the definition of a "beneficiary" under the 1985 Sawridge Trust are valid or whether words contained in that definition are void as against public policy.

18. This is unrelated to the judicial review in the Federal Court in the *Stoney* decision which was a review of an administrative process in 2012-3 related to the membership rules put into place by the Sawridge First Nation after they assumed control of their membership at some point after July 8, 1985.

19. As the Federal Court of Appeal in January, 2004 held Sawridge cannot enact membership rules that "operate to deny membership to those individuals who come within paragraph 11 (1) (c). ... That distinction is not permitted by the Act". Further, the Order of Mr. Justice Hugessen, affirmed by the Federal Court of Appeal, applies to all:

...individuals who acquired the right to be members of the Sawridge Band before it took control of its Band List, with the full rights and privileges enjoyed by all Band members.

Without restricting the generality of the foregoing, this order requires that the following persons, ...

*Sawridge Band, (Fed. Ct.) supra*, para. 26, 29-32. [Tab 9]

*Sawridge Band, (Fed. CA) supra*, paras. 29-30. [Tab 10]

*Stony et al. v. Sawridge First Nation*, 2013 FC 509. [Tab 12]

20. It is submitted that the issue - acquired rights - and the right of unspecified persons including Maurice Stoney and all of his brothers and sisters to membership in Sawridge Band on April 17, 1985, was determined by the Federal Court of Appeal in January, 2004.

21. The matters addressed in the *Stoney* judicial review in Federal Court were concerned with judicial review of a membership application based on membership rules of the Sawridge First Nation in or about 2012 because Sawridge First Nation had continued to deny membership to Maurice Stoney, even though the 2003 Federal Court required them to recognize Maurice Stoney's membership. Maurice Stoney was not represented during these years from 2003 until 2012.

22. The 1985 Sawridge Trust provides:

(a) "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15<sup>th</sup> day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15<sup>th</sup> day of April, 1982, and ...for greater certainty, that any person who shall become enfranchised, ... or in any manner voluntarily cease to be a member of the Sawridge Indian Band No 19 under the Indian Act R.S.C. 1970, chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement, ...

Affidavit of Paul Bujold, Exhibit "B". [Tab 11]

23. Maurice Stoney and his brothers and sisters are persons who became enfranchised in 1944. These stipulations defining beneficiaries under the 1985 Sawridge Trust are against public policy. Such forms of beneficiary designation which exclude persons based on certain categories such as women and "enfranchised" Indians used here in the definition of beneficiary in the April 15, 1985 Sawridge *Inter Vivos* Trust, are void on the ground of public policy.

*Canada Trust Co. v. Ontario Human Rights Commission*, 1990 CanLII 6849, pp. 8-10, 17-20, 40-50. [Tab 13]

*Fox v. Fox Estate et al.*, 1996 CanLII 779, pp. 9-11. [Tab 14]

*McCorkill v. Streed*, 2014 NBQB 148, paras. 59-89. [Tab 15]

*Royal Trust Corporation of Canada v. The University of Western Ontario et al.*, 2016 ONSC 1143. [Tab 16]

24. Unlike some other types of trusts, the courts will interpret this type of trust which is for the benefit of a community, in a fashion that will permit it to continue.

*Re Fitzpatrick*, 1984 CanLII 3086, paras. 18-21. [Tab 17]

*Re Forbes Estate*, 2003 NBQB 430, paras. 28-48. [Tab 18]

25. The definition of beneficiary in the 1985 Sawridge Trust is also unconstitutional in 1985 since it seeks to retroactively apply the *Indian Act* as it stood two days before the *Constitution Act, 1982* came into force. Once an event occurs after April 17, 1982, the *Constitution Act, 1982* applies with the only legal method of it not applying provided by section 33 of the *Constitution Act, 1982*. Section 33 only provides this power to not have a law apply to Parliament or to a legislature and such a provision may only have effect for five years. It is submitted that it is unconstitutional for Sawridge, in the 1985 Sawridge Trust to apply provisions of the *Indian Act, 1970*, which are no longer in force, to the definition of a beneficiary of the 1985 Sawridge Trust, in order to exclude persons whose *Treaty* rights were recognized and affirmed on April 17, 1982 and whose memberships in Sawridge were effective on April 17, 1985.

26. Further Sawridge Band does not possess the constitutional authority stated to rest only with Parliament or the legislature in any province, to create an exception to the application of the *Charter of Rights and Freedoms*, as provided by section 33.

*Constitution Act, 1982*. [Tab 7]

27. It is submitted that as of April 17, 1982, the *Indian Act* and each First Nation under the *Indian Act*, including Sawridge Band, was constitutionally required to comply with the treaty and aboriginal rights of aboriginal peoples recorded or entitled to be recorded as members. Maurice Stoney and others were members of the Sawridge Band, all under *Treaty No. 8*, who were taken off the membership list of the Sawridge Band for various reasons under provisions of the *Indian Act*, which were recognized as unconstitutional and corrected by Bill C-31.

Affidavit of Maurice Stoney. [Tab 4]

28. The *Constitution Act, 1982*, section 35 required recognition of all treaty rights. Maurice Stoney and his brothers and sisters were and are all adherents to *Treaty No. 8* resulting in them being required to be recognized as members of Sawridge Band effect on April 17,

1982 with the *Constitution Act, 1982* and under the Federal Court 2003 Mandamus Order so that they are all "beneficiaries" under the 1985 Sawridge Trust.

29. Questions arise as whether or not the 1985 Sawridge Trust was actually signed on April 15, 1985 since the number on the first page is handwritten while the remainder of the document is typed with no signature bearing the date of when it was signed. This is a matter which the court may need to determine.

III. ORDER REQUESTED

30. It is respectfully submitted that an Order naming Maurice Stoney and his brothers and sisters as beneficiaries of the 1985 Sawridge Trust and listing them as parties or alternatively as Interveners in this Action, should be granted with costs.

31. As the Court previously held at paragraphs 35 and 37 of its June 12, 2012 judgment:

...As a general principle, a trust should pay for legal costs to clarify the construction or administration of that trust: *Deans v. Thachuk*, 2005 ABCA 368 at paras. 42-43, 261 D.L.R. (4<sup>th</sup>) 300, leave denied [2005] S.C.C.A. No. 555. ...

Aline Huzar, June Kolosky, and Maurice Stoney agree with the Public Trustee and observe that trusts have provided the funds for litigation representation in aboriginal disputes: *Horse Lake First Nation v. Horseman*, 2003 ABQB 114, 337 A.R. 22; *Blueberry Interim Trust (Re)*, 2012 BCSC 254.

*Sawridge 1985 Trust*, *supra*, paras. 35 and 37. [Tab 1]

32. This is an aboriginal trust dispute such that the legal costs of Maurice Stoney and his brothers and sisters should be paid by the 1985 Sawridge Trust.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th day of September, 2016.

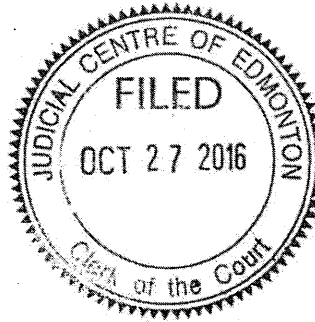
DLA Piper (Canada) LLP.

Per: 

Priscilla Kennedy  
Solicitor for Maurice Stoney and  
his brothers and sisters

## TABLE OF AUTHORITIES

1. *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365.
2. *1985 Sawridge Trust Civil Notice of Appeal*, Appeal No. 1203 0230 AC.
3. *1985 Sawridge Trust Consent Order*, August 24, 2016.
4. Affidavit of Maurice Stoney.
5. *Treaty No. 8*.
6. *Canadian Citizenship Act, 1947*.
7. *Constitution Act, 1982*.
8. *Indian Act*, R.S.C. 1970, c. I-6, ss. 109-112 and *Indian Act*, R.S.C. 1985, c. I-5, showing ss. 109-112 removed; *An Act to Amend the Indian Act*, SC 1985, c. 27.
9. *Sawridge Band v. Canada*, [2003] 4 FCR 748.
10. *Sawridge Band v. Canada*, 2004 FCA 16.
11. Affidavit of Paul Bujold filed September 6, 2011.
12. *Stony et al. v. Sawridge First Nation*, 2013 FC 509.
13. *Canada Trust Co. v. Ontario Human Rights Commission*, 1990 CanLII 6849.
14. *Fox v. Fox Estate et al.*, 1996 CanLII 779, pp. 9-11.
15. *McCorkill v. Streed*, 2014 NBQB 148, paras. 59-89.
16. *Royal Trust Corporation of Canada v. The University of Western Ontario et al.*, 2016 ONSC 1143.
17. *Re Fitzpatrick*, 1984 CanLII 3086.
18. *Re Forbes Estate*, 2003 NBQB 430.



Clerk's Stamp

COURT FILE NO.: 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, RSA  
2000, c. T-8, as am.IN THE MATTER OF THE SAWRIDGE BAND INTER  
VIVOS SETTLEMENT CREATED BY CHIEF  
WALTER PATRICK TWINN, OF THE SAWRIDGE  
INDIAN BAND NO. 19 ON APRIL 15, 1985 (the "1985  
Sawridge Trust")APPLICANT MAURICE STONEY ON HIS OWN BEHALF AND  
THAT OF HIS LIVING SISTERS AND BROTHERSDOCUMENT: WRITTEN RESPONSE ARGUMENT ON  
APPLICATION OF SAWRIDGE FIRST NATION  
TO BE INTERVENER - VOLUME ONEADDRESS FOR SERVICE AND  
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File: 84021-00001CONTACT INFORMATION OF  
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Applicant for Intervener Status  
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**WRITTEN RESPONSE ARGUMENT ON APPLICATION OF SAWRIDGE FIRST  
NATION TO BE ADDED AS AN INTERVENER IN THE 1985 SAWRIDGE TRUST**

**I. OVERVIEW**

1. Retroactive to April 17, 1985, Bill C-31 (R.S.C. 1985, c. 32 (1<sup>st</sup> Supp.) amended the provisions of the *Indian Act*, R.S.C. 1985, I-5 to bring the *Indian Act* into line with the provisions of section 15 of the *Charter of Rights and Freedoms*, by removing sections 109 to 113 of the *Indian Act* which had provided for enfranchisement of Indians. Indian Affairs knew that these provisions of the *Indian Act* were unconstitutional under the *Constitution Act, 1982*.

*Indian Act*, R.S.C. 1970, c. I-6, ss. 1, 5, 11, 12, 109-110 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act. [Tab 1]

2. Canada brought a motion for a mandatory injunction against Sawridge First Nation in 2003 and obtained a mandatory injunction compelling Sawridge First Nation to record the memberships of persons whose memberships in Sawridge were required by Bill C-31 ("acquired rights") effective April 17, 1985 to be included as Sawridge First Nation members. Sawridge First Nation has not fully complied with this Mandatory Injunction to this day.

*Sawridge Band v. Canada*, [2003] 4 FCR 748, paras. 31-40. [Tab 2]

*Sawridge Band v. Canada*, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 3]

3. Sawridge First Nation assumed control of its membership at some point in the summer of 1985 several months after April 17, 1985, having given notice to the Minister of Indian Affairs on July 8, 1985. The Minister of Indian Affairs specifically reminded Chief Walter Twinn, Sawridge First Nation, of this requirement to record and include all of the persons whose membership was restored by Bill C-31 on the Band list for Sawridge First Nation, in a letter dated September 26, 1985. These decisions were noted at paragraph 9 of this Court's 2012 decision:

In 1985 the Sawridge Band also took on the administration of its membership list. It then attempted (unsuccessfully) to deny membership to Indian women who married non-aboriginal persons: *Sawridge Band v. Canada*, 2009 FCA 123, 391 N.R. 375, leave denied [2009] S.C.C.A. No. 248. At least 11 women were ordered to be added as members of the Band as a consequence of this litigation: *Sawridge Band v. Canada*, 2003 FCT 347, [2003] 4 F.C. 748, affirmed 2004 FCA 16, [2004] 3 F.C.R. 274. Other litigation continues to the present in relation to disputed Band memberships: *Poitras v. Sawridge Band*, 2012 FCA 47, 428 N.R. 282, leave sought [2012] S.C.C.A. No. 152.

*1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365. [Tab 4]

4. Maurice Stoney and his brothers and sisters are persons whose membership in the Sawridge Band was restored by Bill C-31 effective April 17, 1985.
5. QB Action 1103 14112 was commenced by the Trustees of the 1985 Sawridge Trust seeking Advice and Directions with respect to the definition of "Beneficiaries" contained in the 1985 Sawridge Trust in the Matter of the Sawridge Band Inter Vivos Settlement Created by Chief Walter Patrick Twinn, of the Sawridge Indian Band, No. 19. Maurice Stoney was previously listed as a party in this action.

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Consent Order August 24, 2016. [Tab 6]

## II. FACTS

9. Sawridge First Nation brings an application to be made an Intervener to the 1985 Sawridge Trust. They have explicitly argued that they are not a party to the 1985 Sawridge Trust before the Court and this Court has found that they are not a party and are "distinct and separate" from the Sawridge Trustees. However there are only 41 persons in the Sawridge First Nation and from these 41 persons, the 5 Trustees of the 1985 Sawridge Trust have been chosen. The Trustees, although "distinct and separate" consist of 5 of these 41 persons including the Chief of the Sawridge First Nation.

*1985 Sawridge Trust v. Alberta (Public Trustee)*, 2015 ABQB 799, paras. 8, 15 to 20. [Tab 7]

10. Maurice Stoney and all of his brothers and sisters were born to parents William and Margaret Stoney who were both members of the Sawridge Band. Maurice and his brother (no longer living) were both listed on the pay list for the Sawridge Band prior to being removed on their father's enfranchisement.

Affidavit of Maurice Stoney. [Tab 8]

11. Their grandfather, Johnny Stoney was born in January 1872 (aka John Stephens and Johnny Assiniboitis), and was a member of the Alexander Band under *Treaty No. 6*. He married Henrietta (aka Harriett Calder) Sinclair born January 1882 who was a member of the Lesser Slave Lake Band, and he became a member of the Lesser Slave Lake Band with Chief Kinodayoo in or about 1895, and Johnny Stony is shown on the list of Kinodayoo's Band as number 18. Chief Kinodayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band which included what became known as the Sawridge Band.

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13. In or about 1912, Johnny Stoney and his family, including William Stoney, his son, were recognized on the first pay list for the Sawridge Band. He was a member of Sawridge Band, on the pay list until his death in 1956. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be taken as part of the Sawridge Reserve, this appears to be contrary to the provisions of *Treaty No. 8*, where lands could be held in severalty and were held in severalty by Johnny Stoney until 1920.

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16. William Stoney had 15 children, 10 are still alive today: Billy born in 1940; Maurice born in 1941, Angeline born in 1944, Linda born in 1948, Bernie born in 1952, Betty

Jean born in 1954, Gail born in 1956, Alma and Alva (twins) born in 1958 and Bryan born in 1959. Each of these children were or would have been on the pay list but for enfranchisement. These are the Respondents to this Application by the Sawridge First Nation to be an intervener.

Affidavit of Maurice Stoney. [Tab 8]

17. On April 17, 1982, the *Constitution Act, 1982*, amended the *Constitution*, and recognized and affirmed treaty and aboriginal rights in section 35:

35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

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18. Retroactive to April 17, 1985, Bill C-31 (R.S.C. 1985, c. 32 (1<sup>st</sup> Supp.) amended the provisions of the *Indian Act*, R.S.C. 1985, I-5 to bring the *Indian Act* into line with the provisions of section 15 of the *Charter of Rights and Freedoms*, for discrimination by removing sections 109 to 113 of the *Indian Act* which had provided for enfranchisement. Indian Affairs knew before 1985 that these provisions were unconstitutional under the *Constitution Act, 1982*.

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...individuals who acquired the right to be members of the Sawridge Band before it took control of its Band List, with the full rights and privileges enjoyed by all Band members.

Without restricting the generality of the foregoing, this order requires that the following persons, ...

21. Maurice Stoney's membership in Sawridge was properly recorded on the Sawridge Band List when he was born in 1941. It was removed when his family was enfranchised but Sawridge Band has refused to comply with Bill C-31 and Sawridge First Nation has refused to comply with the Mandamus Order of the Federal Court in 2003, confirmed on appeal, to restore Maurice and his brothers and sisters as members of Sawridge. Nevertheless, under this Federal Court Order of Mandamus still in effect today, Maurice Stoney and all of his living brothers and sisters are members of Sawridge Band so that they are beneficiaries of the 1985 Sawridge Trust.

Affidavit of Maurice Stoney, Exhibit I, pp. 34-5. [Tab 8]

### III. SHOULD SAWRIDGE FIRST NATION BE AN INTERVENER

22. Sawridge First Nation has consistently argued that they are not a party to the 1985 Sawridge Trust.

*1985 Sawridge Trust, supra*, paras 15-20. [Tab 7]

23. Sawridge now argues that they should be permitted to intervene.
24. Rule 2.10 provides:

On application, a court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

25. Interpretation of Rule 2.10 often starts with the decision of the Alberta Court of Appeal in *Pedersen v. Alberta* where the factors for granting intervener status are set out:

...The case authorities on granting leave have considered the following questions as factors in determining whether to grant intervener status:

1. Will the intervener be directly affected by the appeal;
2. Is the presence of the intervener necessary for the court to properly decide the matter;
3. Might the intervener's interest in the proceedings not be fully protected by the parties;
4. Will the intervener's submission be useful and different or bring particular expertise to the subject matter of the appeal;
5. Will the intervention unduly delay the proceedings;
6. Will there possibly be prejudice to the parties if intervention is granted;
7. Will intervention widen the *lis* between the parties; and
8. Will the intervention transform the court into a political arena?

*Pederson v. Alberta*, 2008 ABCA 192, paras. 3-4. [Tab 11]

26. Leave may be granted using a more lenient standard in cases that involve constitutional issues however this is not such a matter. This case is concerned with who are and who are not beneficiaries to the 1985 Sawridge Trust.

*Pedersen, supra*, para. 4. [Tab 11]

27. In *Pedersen*, leave to intervene was denied on the basis that:

...it could not be said that the proposed intervener was going to contribute usefully to the appeal by providing "fresh information or a fresh perspective on an important constitutional or public law issue".

*R. v. J.L.A.*, 2009 ABCA 324, para. 16. [Tab 12]

28. Chief Justice Wittmann followed *Papaschase Indian Band v. Canada (Attorney General)* which Sawridge First Nation relies on in their Application, in *R. v. Hirsekorn*, following the two step approach where the court must consider the subject matter prior to considering whether the proposed intervenor has a direct interest in the matter.

*R. v. Hirsekorn*, 2011 ABQB 156, paras. 12-15. [Tab 13]

29. Intervener status is discretionary and should be exercised sparingly. This requires that the interest to be provided by an intervener, should provide a fresh or different perspective or special expertise. Traditionally, private rights must be at stake to be permitted to intervene however there are no private rights at issue here.

*R. v. S.C.A.*, 2013 ABCA 80, paras. 7-9. [Tab 14]

30. It is submitted that Sawridge First Nation does not provide any fresh or different perspective than the Trustees of the 1985 Sawridge Trust. These Trustees include the Chief of Sawridge First Nation and the 1985 Sawridge Trustees are already represented by at least three law firms: Roland Twinn, Chief of the Sawridge First Nation and Trustee of the 1985 Sawridge Trust; Walter Twin, Bertha L'Hirondelle and Clara Midbo, Trustees of the 1985 Sawridge Trust, all represented by Doris Bonora of Dentons and Marco Poretti of Reynolds Mirth; and Catherine Twinn is represented by Karen Platten, Q.C. of McLellan Ross.

Canada Aboriginal Affairs and Northern Development Canada. Governance of Sawridge First Nation. List of Chief and Council [Tab 15]

31. The issue of who was part of the Sawridge Band is a matter within the jurisdiction of Canada as determined by the Federal Court in 2003 when the mandatory injunction was granted and this mandatory injunction was upheld by the Federal Court of Appeal. Canada is the responsible party for membership in the Sawridge Band prior to the approval by the Minister of the status to control membership that he granted to Sawridge First Nation when they received his approval at some point between July 8, 1985 and the end of September, 1985. At the end of September, 1985, the Minister of Indian Affairs advised Sawridge First Nation that they must comply with the provisions of Bill C-31. They continue 31 years later to not comply.
32. Sawridge First Nation has a long history of applications against every effort of Bill C-31 acquired rights members to be properly dealt with. In 2009 in *Sawridge Band v. Canada*, the Federal Court of Appeal dismissed the appeal brought by Sawridge and stated:

The dismissal of the action was the end of the retrial of an action commenced on January 15, 1986. The appellants were seeking an order declaring that certain amendments to the

*Indian Act*, R.S.C. 1985, c. I-5, breached the appellants' rights under section 35 of the *Constitution Act, 1982*. The statutory amendments compelled the appellants, against their wishes, to add certain individuals to the list of band members. The appellants argue that the legislation is an invalid attempt to deprive them of their right to determine the membership of their own bands.

The first trial began in September 1993 and ended with a dismissal of the action on July 6, 1995 (*Sawridge Band v. Canada (T.D.)*, [1996] 1 F.C. 3). That decision was set aside by this Court on the basis of a reasonable apprehension of bias (*Sawridge Band v. Canada (C.A.)*, [1997] 3 F.C. 580, application for leave to appeal dismissed December 1, 1997). A new trial was ordered. It began in January of 2007, after almost 10 years of procedural disputes and delays.

The action was dismissed again because, on January 7, 2008, the appellants informed Justice Russell that they would not be calling further evidence. ... The action was formally dismissed on March 7, 2008.

*Sawridge Band v. Canada*, 2009 FCA 123, paras. 3-5. [Tab 16]

33. Sawridge First Nation has consistently failed to comply with the orders of the Federal Court since Mr. Justice Hugessen granted the Mandatory Injunction against them in 2003 and it was upheld by the Federal Court of Appeal in 2004.

*Sawridge Band v. Canada*, [2003] 4 FCR 748, paras. 31-40. [Tab 3]

*Sawridge Band v. Canada*, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 4]

34. In 1989, an action was commenced by Elizabeth Bernadette Poitras to be recognized as a member of Sawridge First Nation pursuant to the provisions of Bill C-31 (and consistent with the Mandamus given in 2003 and upheld in 2004) and these proceedings still continue after 24 years. In 2013, the Federal Court concluded that the constitutional issues were determined by the Sawridge Band action described above. In 2003, Mr. Justice Hugessen had issued the mandatory injunction against Sawridge and this was affirmed by the Federal Court of Appeal. This did not, however, stop Sawridge First Nation from denying Elizabeth Poitras' membership although Sawridge First Nation has no legal ability or constitutional right to do so.
35. In 2010, Mr. Justice Hugessen ordered that "the issue of Ms. Poitras' membership in the band is now moot" because Sawridge had lost its lawsuit to have the provisions of Bill C-31 declared to be unconstitutional. Sawridge First Nation appealed this Order and the

Federal Court of Appeal dismissed the appeal. Sawridge First Nation still today continues with its actions denying membership to Elizabeth Poitras, who is one of the persons covered by the 2003 Mandatory Injunction although a 3 day mediation conference is scheduled to commence on January 17, 2017 in the Federal Court to resolve the issues of damages.

*Walter Patrick Twinn et al. v. Elizabeth Bernadette Poitras*, 2012 FCA 47. [Tab 17]

*Elizabeth Bernadette Poitras v. Walter Patrick Twinn et al.*, 2013 FC 910, paras. 1-19. [Tab 18]

Recorded entries for Federal Court Action No. T-2655-89. [Tab 19]

36. Like Elizabeth Poitras, Maurice Stoney and his brothers and sisters have faced a tortuous long process with no success in persuading Sawridge First Nation to abide by the Mandatory Injunction issued by the Federal Court, confirmed by the Federal Court of Appeal and as stated by the Case Management Judge Aalto, at paragraph 29, "[n]ot to put too fine a tautological point on it - moot is moot is moot is moot".

*Elizabeth Bernadette Poitras, supra.* para. 29. [Tab 18]

37. The desperation of trying to resolve this matter before they die, has led Maurice Stoney to try to persuade Sawridge First Nation to accept him as a member under their scheme created after the summer of 1985, even though this scheme does not apply to him and he and his brothers and sisters are already members of Sawridge Band as required by Bill C-31. In 2011 he applied under the Sawridge First Nation membership rules and was refused, as have all but 2 applicants, one who is the sister of Walter Twinn.

*Stoney v. Sawridge First Nation*, 2013 FC 509. [Tab 20]

38. The first Federal Court proceeding referred to by the Sawridge First Nation was an action brought by Aline Huzar which was struck on procedural grounds not substantive grounds. It related to a claim of the children and grandchildren of women who were excluded on marriage from Sawridge. The primary ground argued by the Plaintiffs in that proceeding was discrimination under the *Charter* related to these children and grandchildren.

Maurice Stoney and his brothers and sisters' claim is different than this because they are members of Sawridge Band.

*Huzar v. Canada*, [2000] FCJ 873, paras. 1-3. [Applicant Sawridge First Nation Tab 1]

39. Maurice Stoney and his brothers and sisters are not re-litigating anything. The Mandatory Injunction of the Federal Court from 2003 affirmed by the Federal Court of Appeal in 2004 applies to them. A previous decision from 2000 by the Federal Court or Federal Court of Appeal (although on a procedural matter) is 'overruled' by the decision on the Mandatory Injunction granted in 2003 and confirmed on appeal in 2004.
40. Maurice was registered as a member of Sawridge Band when he was born and until 1944. Bill C-31 placed him back on the Sawridge Band list on April 17, 1985. Since 2003, this Mandatory Injunction has been re-litigated by Sawridge First Nation over and over again and they continue to fail to comply with it. Desperation of Maurice Stoney as his brothers and sisters, all members of Sawridge Band since April 17, 1985, die, does not equate to abuse of process.
41. Abuse of process applies to the actions of the Sawridge First Nation in the Federal Court and now in this Court where they have strongly argued that they are not a party to this proceeding but expect to now be an "intervener" because they allege that they have a clear direct interest. Canada is the party who has a 'clear direct interest' in the persons who were recognized as members of Sawridge Band on April 17, 1985, Sawridge First Nation does not. Sawridge First Nation has no control over its members prior to the date it removed itself from the provisions of membership in the *Indian Act* in the summer of 1985.
42. Sawridge First Nation blazingly argues that its ability to have the issue "adjudicated in the proper forum" is breached by dealing with Maurice Stoney's application for himself and his brothers and sisters yet they have breached a Mandatory Injunction granted by the Federal Court in 2003, confirmed by the Federal Court of Appeal in 2004 and reiterated continuously since that date by the Federal Court including Prothonotary Aalto who

noted in 2013 in *Poiras v. Twinn*, at paragraph 29 “Not to put too fine a tautological point on it - moot is moot is moot is moot”.

43. Sawridge First Nation is plainly in breach of the Federal Court Orders but it's perspective is not unique.
44. Sawridge First Nation does not have a direct and fresh perspective to offer in this application and they should not be granted intervener status.

#### IV. SAWRIDGE FIRST NATIONS' IMPROPER APPLICATION TO STRIKE/DISMISS

45. Until Sawridge First Nations' application to be added as an Intervener in this proceeding is granted, Sawridge First Nation's application to dismiss Maurice Stoney and his brothers and sisters application is improper and not permitted by the Order of August 24, 2016. Nor is it consistent with the judgment of this Court in December 2015 where Sawridge First Nation plainly argued that it was not a party and was only present because of the application under Rule 5.13 for questioning. Sawridge First Nation has no right to be submitting anything on this question.
46. As the Court of Appeal stated in *Piikani Nation v. Kostic*, “the parties to a lawsuit control how it runs, and non-parties can take no steps whatever in it, without permission of the court, obtained after notice to all the parties”. Here the permission of the Court only allows an application by Sawridge First Nation to be added as an intervener to this application on the 1985 Sawridge Trust.

*1985 Sawridge Trust, supra*, paras. 15-20. [Tab 7]

*Piikani Nation v. Kostic*, 2015 ABCA 60, para. 1. [Tab 21]

See also *Kohler v. Apotex Inc.*, 2015 ABQB 610, para. 7. [Tab 22]

47. Submission of argument by Sawridge First Nation, from paragraphs 50 to 73 should be struck.

48. In the alternative, as Mr. Justice Slatter stated in *Reece v. Edmonton (City)*, that abuse of process may be used to control misuses of the judicial system. Sawridge First Nation's actions are a misuse of the judicial system.

*Reece v. Edmonton (City)*, 2011 ABCA 238, paras. 16-20. [Tab 23]

49. As the decision of Case Management Judge Aalto in *Poitras v. Twinn*, at paragraph 29 "Not to put too fine a tautological point on it - moot is moot is moot is moot". But Sawridge First Nation does not give up, even after 13 years, but instead alleges that matters prior to its independent right to determine membership, (that are governed entirely by Bill C-31) make the application by Maurice Stoney and his brothers and sisters, an abuse of process. Sawridge First Nation openly applies to this Court for re-litigation of a settled issue - settled by the Federal Court, numerous times over the years without Sawridge First Nation ever complying with the Federal Courts' rulings.
50. The question determined by prior proceedings which have involved Maurice Stoney are matters under the membership provisions of the Sawridge First Nation only applicable to matters after the summer of 1985, and with no application to events arising because of Bill C-31 on April 17, 1985. These are matters which are entirely the responsibility of Canada not Sawridge First Nation.
51. Issue Estoppel is a doctrine of public policy which Mr. Justice Binnie noted in *Danyluk v. Ainsworth Technologies Inc.*, prevents re-litigation by the same parties. Sawridge First Nation, as noted above, continues even here, to re-litigate the question of membership for persons who are members because of Bill C-31 which corrected unconstitutional matters as of April 17, 1985, prior to the Sawridge First Nation having any jurisdiction to address these membership issues.
52. Sawridge Band is not Sawridge First Nation for the purpose of this question and this proceeding. The key date here is April 17, 1985 but for Sawridge First Nation the first date that they can have anything to say about is in the summer of 1985. Canada is the only entity that may speak to this issue.

*Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 SCR 460, paras. 18-25, 59-60, 62-64.  
[Sawridge First Nation Brief Tab 14]

53. It is submitted that the issue - acquired rights - and the right of unspecified persons including Maurice Stoney and all of his brothers and sisters to membership in Sawridge Band on April 17, 1985, was already determined by the Federal Court of Appeal in January, 2004. Maurice Stoney and his brothers and sisters are beneficiaries under the 1985 Sawridge Trust. The Sawridge First Nation does not have a direct interest such that it can be granted status as an intervener.

**V. ORDER REQUESTED**

54. It is respectfully submitted that the application by Sawridge First Nation to be granted intervener status should be dismissed with costs.
55. It is submitted that the improper application of Sawridge First Nation, with no standing whatsoever, to strike the application by Maurice Stoney and his brothers and sisters, should be struck with increased costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th day of October, 2016.

DLA Piper (Canada) LLP.

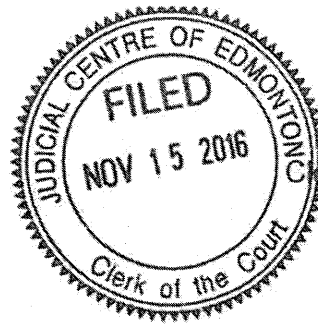
Per: 

Priscilla Kennedy  
Solicitor for Maurice Stoney and  
his brothers and sisters

## TABLE OF AUTHORITIES

1. *Indian Act*, R.S.C. 1970, c. I-6, ss. 1, 5, 11, 12, 109-110 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act.
2. *Sawridge Band v. Canada*, [2003] 4 FCR 748.
3. *Sawridge Band v. Canada*, 2004 FCA 16.
4. *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365.
5. *1985 Sawridge Trust Civil Notice of Appeal*, Appeal No. 1203 0230 AC.
6. *1985 Sawridge Trust Consent Order*, August 24, 2016.
7. *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2015 ABQB 799, paras. 8, 15-20.
8. Affidavit of Maurice Stoney.
9. *Treaty No. 8*.
10. *Constitution Act, 1982*.
11. *Pederson v. Alberta*, 2008 ABCA 192, paras. 3-4.
12. *R. v. J.L.A.*, 2009 ABCA 324, para. 16.
13. *R. v. Hirsekorn*, 2011 ABQB 156, paras. 12-15.
14. *R. v. S.C.A.*, 2013 ABCA 80, paras. 7-9.
15. Canada Aboriginal Affairs and Northern Development Canada. Governance of Sawridge First Nation. List of Chief and Council.
16. *Sawridge Band v. Canada*, 2009 FCA 123, paras. 3-5.
17. *Walter Patrick Twinn et al. v. Elizabeth Bernadette Poitras*, 2012 FCA 47.
18. *Elizabeth Bernadette Poitras v. Walter Patrick Twinn et al.*, 2013 FC 910, paras. 1-19.
19. Recorded entries for Federal Court Action No. T-2655-89.
20. *Stony et al. v. Sawridge First Nation*, 2013 FC 509.
21. *Piikani Nation v. Kostic*, 2015 ABCA 60, para. 1.

22. See also *Kohler v. Apotex Inc.*, 2015 ABQB 610, para. 7.
23. *Reece v. Edmonton (City)*, 2011 ABCA 238, paras. 16-20.



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COURT FILE NO.: 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, RSA  
2000, c. T-8, as am.

IN THE MATTER OF THE SAWRIDGE BAND INTER  
VIVOS SETTLEMENT CREATED BY CHIEF  
WALTER PATRICK TWINN, OF THE SAWRIDGE  
INDIAN BAND NO. 19 ON APRIL 15, 1985 (the "1985  
Sawridge Trust")

APPLICANT MAURICE STONEY ON HIS OWN BEHALF AND  
THAT OF HIS LIVING SISTERS AND BROTHERS

DOCUMENT: WRITTEN RESPONSE ARGUMENT OF MAURICE  
STONEY AND SIBLINGS ON SUBMISSIONS OF  
1985 SAWRIDGE TRUSTEES: ROLAND TWINN,  
WALTER FELIX TWIN, BERTHA L'HIRONDELLE  
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**WRITTEN RESPONSE ARGUMENT OF MAURICE STONEY AND SIBLINGS ON  
SUBMISSIONS OF 1985 SAWRIDGE TRUSTEES: ROLAND TWINN, WALTER  
FELIX TWIN, BERTHA L'HIRONDELLE AND CLARA MIDBO**

1. Retroactive to April 17, 1985, Bill C-31 (R.S.C. 1985, c. 32 (1<sup>st</sup> Supp.) amended the provisions of the *Indian Act*, R.S.C. 1985, I-5 by removing the enfranchisement provisions returning all enfranchised Indians back on the pay lists of the Bands where they should have been throughout all of the years.

*Indian Act*, R.S.C. 1970, c. I-6, ss. 1, 5, 11, 12, 109-110 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act. [Tab 1 of Written Argument Responding to Sawridge First Nation]

2. **Sawridge First Nation** has repeatedly refused to comply with the law, with Mandamus Orders of the Federal Courts and continues today to refuse to comply. The 1985 Sawridge Trustees now adopt this position of the Sawridge First Nation as well in its Written Argument which is in contempt of the law and Orders of the Federal Court and Federal Court of Appeal. Like Elizabeth Poitras, Maurice Stoney and his brothers and sisters have faced a tortuous long process with no success in persuading Sawridge Band or Sawridge First Nation, and now it appears the 1985 Sawridge Trustees, to abide by the Mandatory Injunction issued by the Federal Court, confirmed by the Federal Court of Appeal and as stated by the Case Management Judge Aalto in 2012, at paragraph 29, "[n]ot to put too fine a tautological point on it [this issue]- moot is moot is moot is moot".

*Sawridge Band v. Canada*, [2003] 4 FCR 748, paras. 31-40. [Tab 2 of Written Argument Responding to Sawridge First Nation Application]

*Sawridge Band v. Canada*, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 3 of Written Argument Responding to Sawridge First Nation Application]

*Walter Patrick Twinn et al. v. Elizabeth Bernadette Poitras*, 2012 FCA 47, para. 29. [Tab 17 of Written Argument Responding to Sawridge First Nation Application]

*Elizabeth Bernadette Poitras v. Walter Patrick Twinn et al.*, 2013 FC 910, paras. 1-19. [Tab 17 of Written Argument Responding to Sawridge First Nation Application]

3. The 1985 Sawridge Trust is prior to Sawridge First Nation having any control or say over its membership. The definition of beneficiaries in this 1985 Sawridge Trust does not fall within the jurisdiction or legal ability of Sawridge First Nation or even the 1985 Sawridge Trustees to say anything about the membership of the Sawridge Band. This was entirely determined by Indian Affairs Canada and Bill C-31. Maurice Stoney and his brothers and sisters are not raising the issue of "membership" as such - their memberships were restored by Bill C-31 and this legal issue determined entirely by Bill C-31.

4. Contrary to the assertion at paragraph 22, there is no prejudice to the 1985 Sawridge Trustees in this proceeding. Maurice Stoney was listed as a party in Action 1103 14112 until 2015 so that the only Order that appeared to remove him was the December, 2015 Order of this Court. An appeal was brought with a decision issued by Mr. Justice Watson on February 26, 2016 that the 1985 Sawridge Trustees participated in. Maurice Stoney filed his affidavit for himself and his brothers and sisters to be added as beneficiaries in May, 2016 following this decision of the Alberta Court of Appeal. Ms. Bonora's statement at paragraph 22 of the Written Submissions of the Trustees that there is "serious prejudice to the Trustees" is false and contrary to what she told Mr. Justice Watson in the Court of Appeal. Mr. Justice Watson noted at paragraph 19:

Ms. Bonora quite fairly points out that Mr. Stoney's position as to whether or not he should be considered to be entitled to be a beneficiary in the trust has not arisen yet before Mr. Justice Thomas. That is going to be decided at some future date whether or not the appeal goes ahead from Mr. Justice Thomas and whether or not Mr. Justice Thomas's judgment in this particular regard, is upheld or in some way dealt with by the Court of Appeal.

*Stoney v. 1985 Sawridge Trust*, 2016 ABCA 51, para. 19. [Tab 1]

5. Rules 2.10 and 3.75 are fully addressed in the Response of Maurice Stoney et al. to the Application of Sawridge First Nation to be added as an Intervener, paragraphs 24-44. Rather than reprinting them here, reference is made to that Written Brief filed on October 27, 2016.

6. Maurice Stoney has paid the costs owed to 1985 Sawridge Trustees in this matter in two parts with the last payment on November 14, 2016. Maurice Stoney and his brothers and sisters are all elderly and have limited funds. No lack of respect for Orders of costs has

been displayed. The issue of costs where beneficiaries seek to be able to speak to issues related to determination of the terms of a trust when the Trustees are seeking Advice and Directions before the Court, is a matter where the beneficiaries are entitled to have their costs paid by the trust.

*Twinn v. Twinn*, 2016 ABQB 553, para. 67. [Tab 2]

*1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, paras. 35-37. [Tab 4 of Written Argument Responding to Sawridge First Nation Application]

7. On the issue of questioning Maurice Stoney, who is elderly in his seventies and did not receive much education, where he refused or failed to address the questions asked involved legal issues on which Maurice Stoney became confused and disturbed. In the context of the examination the question at Tab 8 of the Trustees Brief referring to Maurice Stoney's statement "All of our applications for membership in Sawridge were ignored" is plainly defined by the words in his Affidavit, in the preceding paragraph 11 where he refers to applications by himself, Aline Huzar and June Kolowsky. The Trustees are well aware of this from the Appeal to Sawridge First Nation and then judicial review in the Federal Court proceedings [relied on in paragraphs 27 to 29 of the 1985 Sawridge Trustees Brief]. He then answered to the best of his ability to recall, questions about applications by his brothers and sisters. Reliance now on this point is a further effort by the Sawridge Trustees to belittle Maurice Stoney.
8. The Affidavit of Maurice Stoney contains the records of Canada. These records are indisputable including showing that he and his family were recorded as members of Sawridge Band. Contrary to the assertion of the 1985 Sawridge Trustees, these are not "loosely and liberally" provided by Maurice Stoney. They are the public records of Canada from Public Archives that show his membership. They cannot be discounted or ignored.

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9. There has been no delay, no abuse of process or mischaracterization of evidence by Maurice Stoney. The Trustees are not entitled to costs at all for this application in the determination of beneficiaries in the 1985 Sawridge Trust.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2016.

DLA Piper (Canada) LLP

Per: 

Priscilla Kennedy

Solicitor for Maurice Stoney and his  
brothers and sisters

## TABLE OF AUTHORITIES

1. *Stoney v. 1985 Sawridge Trust*, 2016 ABCA 51. [Tab 1]
2. *Twinn v. Twinn*, 2016 ABQB 553. [Tab 2]

