

Fast Track

COURT OF APPEAL OF ALBERTA

Form AP-5

[Rule 14.87]

COURT OF APPEAL FILE
NUMBER:

1703-0288AC

TRIAL COURT FILE NUMBER:

1103 14112 and 1403 04885

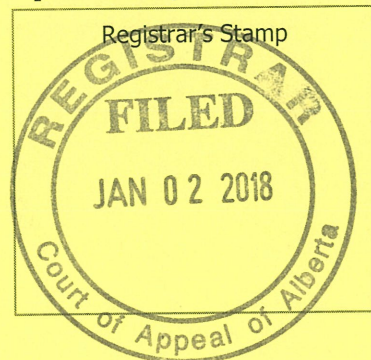
REGISTRY OFFICE:

Edmonton

IN THE MATTER OF THE TRUSTEE
ACT, R.S.A. 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 Trust")

IN THE MATTER OF THE SAWRIDGE
TRUST CREATED BY CHIEF WALTER
PATRICK TWINN OF THE SAWRIDGE
INDIAN BAND, NO. 19 ON AUGUST 15,
1986 (the "1986 Trust")



APPLICANT:

CATHERINE TWINN, as Trustee for the 1985 Trust and the 1986 Trust

STATUS ON APPEAL:

Appellant

RESPONDENTS:

ROLAND TWINN, EVERETT JUSTIN TWINN, CATHERINE TWINN,
BERTHA L'HIRONDELLE and MARGARET WARD, as Trustees for
the 1985 Trust and the 1986 Trust

STATUS ON APPEAL:

Respondents

RESPONDENT:

OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA

STATUS ON APPEAL:

RESPONDENT

DOCUMENT:

EXTRACTS OF KEY EVIDENCE

Appeal from the Decision of
The Honourable Mr. Justice R.P. Belzil
Dated the 13th day of October, 2017

EXTRACTS OF KEY EVIDENCE OF THE APPELLANT
Volume 2 of 2
Pages A297 – A457

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COURT OF APPEAL OF ALBERTA

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1986 (the "1986 Trust")

Registrar's Stamp

APPLICANT: CATHERINE TWINN, as Trustee for the 1985 Trust and the 1986
Trust

STATUS ON APPEAL: Appellant

RESPONDENTS: ROLAND TWINN, EVERETT JUSTIN TWINN, CATHERINE TWINN,
BERTHA L'HIRONDELLE and MARGARET WARD, as Trustees for
the 1985 Trust and the 1986 Trust

STATUS ON APPEAL: Respondents

RESPONDENT: OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA

STATUS ON APPEAL: RESPONDENT

DOCUMENT: **EXTRACTS OF KEY EVIDENCE**

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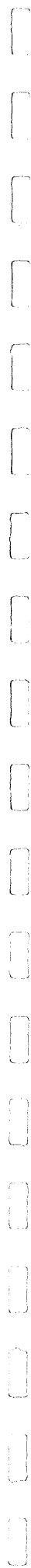
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Federal Court



Cour fédérale

Date: 20170426

Docket: T-1073-15

Citation: 2017 FC 407

Ottawa, Ontario, April 26, 2017

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

SAM TWINN AND ISAAC TWINN

Applicants,

and

SAWRIDGE FIRST NATION, SAWRIDGE
FIRST NATION FORMERLY KNOWN AS
THE SAWRIDGE INDIAN BAND, ROLAND
TWINN, ACTING ON HIS OWN BEHALF
AND IN HIS CAPACITY AS CHIEF OF THE
SAWRIDGE FIRST NATION AND HER
MAJESTY THE QUEEN IN RIGHT OF
CANADA AS REPRESENTED BY THE
ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONSI. INTRODUCTION

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

Catherine Twinn

Sworn before me this 10 day

of May A.D., 20 17

Crista C. Os
A Notary Public, A Commissioner for Oaths

in and for the Province of Alberta

Crista C. Osualdini
a Notary Public and Commissioner for Oaths
in and for the Province of Alberta
My Appointment expires at the Pleasure
of the Lieutenant Governor

[1] This is an application under s 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [Act] for judicial review of connected decisions taken by the Chief Electoral Officer [CEO], made on or about February 17, 2015 [Decisions] related to the 2015 general election [Election] of Sawridge First Nation [SFN].

II. BACKGROUND

[2] On December 4, 2014, prior to the Election, the CEO sent a mail-out package to SFN's electors that contained: a cover letter; Notice of Election; Notice of the Date for Nominations; a resident electors sub-list; and a non-resident electors sub-list. The cover letter advised recipients to refer to s 18 of the *Sawridge First Nation Elections Act, Consolidated with Elections Act Amendment Act* [Elections Act] for the provisions that governed the process for submitting changes to the sub-lists and corresponding deadline.

[3] The CEO received 4 requests to correct the sub-lists and provided notice of the changes to SFN's electors on December 23, 2014. The notice also advised that the deadline for submitting a statutory declaration as to why the changes should not be made was 11 days prior to the January 13, 2015 nomination meeting.

[4] On January 13, 2015, Sam and Roland Twinn were nominated for the position of Chief.

[5] The Election took place on February 17, 2015 from 10:00AM to 6:00PM. After the polls closed, the CEO publicly opened the 15 sealed mail-in ballots, including those of Walter Felix Twinn (Walter) and Deana Morton.

[6] Walter's ballot lacked the initials of the CEO, which is a requirement for validity under the *Elections Act*. Ron Rault [Scrutineer], the scrutineer for Sam Twinn, Tracey Poitras-Collins, and Elizabeth Poitras, suggested that Walter's vote be accepted, or that Walter be permitted to cast an in-person vote since he was present at the polls; however, the CEO rejected both suggestions and determined Walter's vote, along with two others, was invalid.

[7] Deana's vote lacked a witness address but was accepted by the CEO.

[8] Roland was declared the winner of the Election for Chief by one vote. According to s 72 of the *Elections Act*, a tie would have required a run-off election.

[9] The Applicants then proceeded to appeal the Election. On March 2, 2015, they filed a Notice of Appeal with the CEO, which was rejected on March 6, 2015. The Applicants then appealed to the Elders Commission, which did not respond within the required time period. Accordingly, the Applicants appealed to the Special General Assembly [SGA] of the SFN on April 13, 2015. The four grounds of all the appeals were: improper rejection of ballots; non-compliance with election rules; inconsistent administration decisions impacting the popular vote; and non-compliance with the rules regarding the creation and notice of voter lists.

[10] On May 30, 2015, the SGA dismissed the Applicants' appeal. The Applicants then commenced this application for judicial review.

III. DECISIONS UNDER REVIEW

[11] According to the Applicants, there are three related decisions that constitute the subject of this judicial review:

(1) Rejection of Walter's Vote

[12] According to the Scrutineer, the CEO set aside Walter's ballot upon opening Walter's mail-in vote because it had been cut and the CEO's initials removed. The CEO later determined Walter's vote to be invalid, overruling the Scrutineer's suggestion that Walter be permitted to cast a new in-person vote in place of his spoiled ballot.

(2) Conduct of the Election

[13] The mail-out packages were dated December 3, 2014 and mailed December 4, 2014, with the Election held on February 17, 2015.

[14] Two of the mail-out packages, addressed to Patrick Twinn and Georgina Ward, were not delivered and returned.

[15] Following corrections, the CEO sent revised lists of electors. The deadline to correct the new list was January 2, 2015. However, Sam Twinn did not receive the notice until January 6, 2015.

[16] On January 12, 2015, the CEO stated in an email to Catherine Twinn, the Membership Registrar, that general membership issues were dealt with by the Membership rather than the CEO. This response was a reply to Catherine's question of whether the CEO had authority to add the names of persons who were entitled to membership to the list of electors, including those whose completed applications had been pending for an unreasonable length of time.

(3) SFN Membership Application Process

[17] In the mail-out package of December 4, 2014, Roy Twinn, the son of Roland Twinn, was listed on the non-resident sub-list. There is no documentation indicating when Roy became a member, but Roy was not on the elector lists for the 2011 election, and others have applied for membership and have not yet received a decision.

IV. ISSUES

[18] The Applicants submit that the following are at issue:

- A. Whether the CEO erred in law, including that going to jurisdiction, both in his initial and appeal decisions, in rejecting an election ballot through misinterpretation and misapplication of statutory provisions, compounded by breach of rules of natural justice and procedural fairness?
- B. Whether the Respondents failed in their fiduciary duty to establish and confirm that a proper and complete list of electors was prepared, in disregard of constitutional, statutory, and other legal requirements, compounded by corrupt practices, thereby committing errors going to jurisdiction?
- C. Whether the CEO erred in law, including that going to jurisdiction, in failing or declining to make adequate inquiry into the composition of the Electors List, compounded by procedural unfairness and disregard for rules of natural justice?

[19] The Respondents submit that the following are at issue:

- A. Whether the information and documents in Sam's affidavit, referred to in the Respondent's arguments, are all irrelevant and inadmissible in a judicial review of the CEO's Decisions?
- B. Whether the CEO reasonably, indeed correctly, rejected and did not count Walter's mail-in ballot because it did not have "the distinctive mark of the Electoral Officer on the back" as mandated by s 69(1)(b) of the *Elections Act*?
- C. Whether the CEO's decision not to give Walter a new, in-person ballot after he had already voted by mail-in ballot and after the polls had closed is neither unfair, discriminatory, nor anti-democratic, but rather a reasonable, indeed correct, interpretation and application of the *Elections Act*?
- D. Whether the CEO's decision dismissing the Applicants' March 2, 2015 challenge to the electors sub-lists for non-compliance with statutory procedures and limitation periods is a reasonable, indeed correct, interpretation and application of the *Elections Act*?
- E. Whether this judicial review is subject to public policy?

V. STANDARD OF REVIEW

[20] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[21] Although the Applicants raise a wide range of issues in this application, the Court concludes that it is only in a position to review a connected series of decisions (and in particular

the rejection of Walter's vote) made by the CEO during the 2015 Election and the appeal of those decisions to the CEO. This essentially gives rise to issues of procedural fairness and the CEO's interpretation and application of the governing provisions of the *Elections Act*.

[22] Issues of procedural fairness, particularly in regards to the actions of Elections Committees, have been found to be reviewable under a standard of correctness: *Beardy v Beardy*, 2016 FC 383 at para 45 [*Beardy*].

[23] Issues of statutory interpretation and application by the CEO will be reviewed on a standard of reasonableness: *Mercredi v Mikisew Cree First Nation*, 2015 FC 1374 at para 17.

[24] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[25] The following provisions from the *Constitution of the Sawridge First Nation* [*Constitution*] are relevant in this proceeding:

Article 1: Interpretation

1.(1) The definitions in this section apply in this Constitution:

"Law of the First Nation" means a law of the First Nation made in accordance with this Constitution;

[...]

"Member" means a member of the First Nation in accordance with the Membership Code of the First Nation;

[...]

"Membership Rules" are those rules adopted by the Sawridge Band to govern its membership system prior to the establishment of this Constitution;

[...]

Article 3: Membership**Membership Code**

3.(3) Until amended in accordance with this Constitution, membership in the First Nation shall be determined by the Membership Rules that were in force immediately before the day on which this Constitution came into force with such modification as are required by the Constitution. The Membership Rules shall thereafter be called "the Membership Code".

[...]

Article 4: Governing Bodies**How Elected**

4.(2) The Chief, Councilors [sic] and Elder Commissioners shall each be elected in an election of the First Nation by a plurality of the votes cast by Electors pursuant to the provisions of this Constitution in accordance with all of the Election Procedures set out in laws or Codes of the First Nation.

[...]

Article 9: Appointing Electoral Officer

9.(1) The Council, in consultation with the Elders Commission, shall appoint an Electoral Officer not later than eighty days before the date on which an election is to be held.

[...]

Article 10: Calling of Elections**General Elections**

10.(3) The Council shall call a general election of the First Nation for the positions of Chief and Councilors [sic], the Elders Commission, and members of an Audit and Compensation Committee to be held not later than four years from the date on which the last general election was held.

[...]

Article 11: Appealing Election Result

11.(1) Within fourteen days after an election, any candidate in the election or any Elector may lodge a written appeal with the Electoral Officer if the candidate or Elector has reasonable grounds to believe that there was

- a) a corrupt practice in connection with the election; or
- b) a contravention of this Constitution, or any law of the First Nation that might have affected the result of the election.

(2) The Electoral Officer shall make a decision in respect of any appeal within seven days of receipt.

(3) If any candidate at the election or any Elector is not satisfied with the decision of the Electoral Officer in respect of the appeal, then that person may within 28 days after the decision of the electoral officer is made appeal further to the Elders Commission (if the election was for Council or other office) or the Council (if the election was for the Elders Commission) in writing. The Elders Commission or Council, as the case may be, shall be referred to as "the Appeal Tribunal" and shall make a decision in respect of any appeal within seven days of receipt.

(4) If any candidate at the election or any elector is not satisfied with the resolution by the Appeal Tribunal of any appeal made to them pursuant to subsection (3), then that person may within

fourteen days after the appeal was made, lodge an appeal to a Special or Regular General Assembly which shall be called for that purpose within thirty days from the date the appeal is received.

Sending documents to Electoral Officer

(5) Upon the filing of an appeal, the appellant shall forward a copy of the appeal together with all supporting documents to the Electoral Officer and to each candidate.

Written Answers Required

(6) Any candidate may, and the Electoral Officer shall, within fourteen days of the receipt of a copy of an appeal under subsection (4), forward to the Appeal Tribunal, by registered mail, a written answer to the particulars set out in the appeal, together with any supporting documents relating thereto duly verified by affidavit.

The Record

(7) All particulars and documents filed in accordance with this section form the record.

Relief

(8) The Electoral Officer, Appeal Tribunal, or the General Assembly may provide such relief as it sees fit, when it appears that there was

- a) a corrupt practice in connection with the election that might have affected the result of the election; or
- b) a contravention of this Constitution, or any law of the First nation that might have affected the result of the election.

[...]

Article 21: Amendment to Constitution

When An Amendment is Effective

21.(1) Subject to subsections (2) and (4), an amendment to the Constitution is effective and in force on the day it is approved by seventy-five percent (75%) of the votes cast in a referendum held for the purpose of amending the Constitution, provided that at least seventy-five percent (75%) of the Electors vote in the referendum, or on such later date as is set out in the amendment.

[26] The following provisions from the *Elections Act*, in force as of October 26, 2013, are relevant in this proceeding:

Definitions

2. (2) The following terms are defined herewith:

“candidate” means a candidate for election;

“Deputy Electoral Officer” means a person appointed to that position pursuant to this Act;

“election” means a general election for various offices as stipulated in the Constitution or any Law of the First Nation, or a by-election for one or more of these offices;

“election day” means the day fixed for an election by the Council;

“Electors List” means the list of Electors prepared pursuant to this Act, as corrected from time to time;

“in good standing” with reference to debts owed to the First Nation means that no payments due to the First Nation or a First Nation corporation, as defined by regulation, pursuant to the agreement through which the debt was incurred, may be more than 90 days overdue on the date a certificate of good standing is issued for purposes of eligibility for nomination. Where no payment terms are specified in a loan, the loan is due upon demand. A payment on a demand loan is not due until demanded.

“Membership Registrar” is the person named by Council to maintain the Registry of Members pursuant to the Constitution;

“primary residence” means the place which at the time of determination in respect of a person has been for a period of at least six months the principal place of his or her true, fixed and permanent home and place of habitation whereto, when absent or away therefrom, not including absences for normal vacations, temporary work assignments, study or training, always without intention to establish a domicile at some other place, he or she intends to return;

“scrutineer” means a person appointed by a candidate to act pursuant to this Act to observe the election process and to call the attention of the Electoral Officer to any mistake, contravention of this Act and its regulations, or any other matter which might unfairly or unjustly affect the conduct of the election;

"Sawridge entity" means any department, agency, or unit of the Sawridge government.

[...]

Preparation of Electors List

16. (1) Within seven days after the Council has called an election pursuant to the Constitution, the Membership Registrar shall provide the Electoral Officer named by the Council pursuant to the Constitution with an alphabetical list of all Electors, containing the birth date and last-known address of each Elector. The list shall be in two forms:

- (i) one, the Master List, containing the name, date of birth, and address of each Elector and
- (ii) the other, the Public List, containing only the names of the Electors.

Creating and Posting of Resident and Non-Resident Voters Lists

(1) From the Public List, the Electoral Officer shall create a Resident Electors Sub-List and a Non-Resident Electors Sub-List. Not less than 70 days prior to the Election Day, the Electoral Officer shall post the sub-lists in all Principal Offices. Each Elector's name shall be on either the Resident Electors Sub-List or the Non-Resident Electors Sub-List, but no name shall appear on both sub-lists. These sub-lists shall not contain addresses or dates of birth.

(2) On the request of any person, the Electoral Officer shall confirm whether the person's name is on the Public List, and if so, which sub-list it is entered on.

(3) Any Elector is entitled to confirm with the Electoral Officer the information regarding the Elector which is shown on the Master List.

Correcting the Sub-Lists

(2) If any elector wishes to show cause as to why the change should not be made, they may at any time prior to 11 days prior to the date set for the nomination meeting provide the Electoral Officer with a statutory declaration containing evidence and the Electoral Officer shall consider the evidence and make a determination as to which list the elector's name shall appear on and notify all Electors.

[...]

Appeal of Electoral Officer's decision

18.2 If any elector wishes to appeal the decision of the Electoral Officer, the matter shall be referred to the Elders Commission no less than 4 days prior to the date set for the nomination meeting which shall decide whether it wishes to hear the appeal, and if not, the Electoral Officer's decision is final. If the Elders Commission decides to hear the appeal, it shall hear the evidence of the electors who have filed statutory declarations, the elector in question, and the Electoral Officer as to the reasons for his or her decision, and after which, shall decide on which list the name of the Elector in question shall appear. The decision of the Elders Commission must be provided to the Electoral Officer prior to the date set for the nomination meeting.

18.3 After the commencement of the nomination meeting the names which appear on the Electoral List may not be changed and the names which appear on a Sub-List may not be removed from that Sub-List and placed on the other Sub-List.

No Delay in Nomination Meeting or Election

19. Notwithstanding any other section of this Act, no question with respect to the names on the Electoral List or a Sub-List shall cause a delay in the date set for either the Nomination Meeting or the Election or the holding of the Nomination Meeting or the Election.

Correcting the Electors Lists

20. (1) The Electoral Officer shall revise the Electors Lists where it is demonstrated to the Electoral Officer's satisfaction prior to the commencement of the Nomination Meeting that

- (a) the name of an Elector has been omitted from the Electors List;
- (b) the name or birth date of an elector is incorrectly set out in the Electors List;
- (c) the name of a person who is not qualified to vote is included in the Electors List.

(2) For any change made, the Electoral Officer shall give written notice of the correction to any affected person and to any person who provided information which led to the correction.

[...]

Request for Reconsideration of Electoral Officer's decision

21. (1) If an Elector who requested that the Electoral Officer make a correction in the Electors' List or any Elector affected by a decision of the Electoral Officer to correct the Electors' List is not satisfied with the Electoral Officer's decision, such Electors may at any time before the polls close request the Electoral Officer to reconsider his/her decision on one or more of the following grounds, and only on these grounds, namely, that:

- (a) the person is eligible to be on the Electors List;
- (b) the person's name is on the Membership Registry and he/she will be 18 years of age or over on election day;
- (c) the person's name was mistakenly omitted from the Electors List;
- (d) the person is not disqualified from being on the Electors List;
- (f) [sic] the person is ineligible to be on the Electors List.

Responsibility of Each Elector To Keep His/Her Address Current

23. Each Elector is responsible for

- (1) keeping the Membership Registrar informed of his/her current address and for notifying the Membership Registrar of any change of address;
- (2) checking that his/her address is shown correctly on the Electors' List and notifying the Electoral Officer of any correction to be made;
- (3) providing the Membership Registrar with a Declaration of his or her Primary Residence within 120 days of the enactment of this provision or within 120 days of becoming an Elector thereafter, and thereafter within 60 days of any change of his or her Primary Residence.

[...]

Voting Stations

47. (6) Voting stations shall be kept open from 10 a.m., local time, until 6 p.m., local time, on the day of the election unless regulations establish variations in these hours.

[...]

Cancelled ballots

61. (1) If an Elector makes a mistake on a ballot or inadvertently spoils his/her ballot paper in marking it prior to depositing it in the Ballot Box, then the Elector is entitled to another ballot to be issued by the Electoral Officer upon return of the spoiled ballot to the Electoral Officer.

(2) The Electoral Officer shall write the word "Cancelled" on the spoiled ballot and without examining the ballot, store it separately.

(3) An Elector who receives a soiled or improperly printed ballot paper upon returning the ballot paper to the Electoral Officer is entitled to another ballot paper. The Electoral Officer shall write the word "Cancelled" on the spoiled ballot and store it separately.

PART VI

COUNTING OF VOTES

66. As soon as is practicable after the close of the polls, the Electoral Officer shall, in the presence of the Deputy Electoral Officer and any Electors who are present, open each outer envelope without opening the inner envelope containing a mail-in ballot that was received before the close of the polls and, without unfolding the ballot,

- (a) set aside the ballot if
 - (i) it was not accompanied by a Voter Declaration Form, or the Voter Declaration Form is not signed or witnessed,
 - (ii) the name of the Elector set out in the Voter Declaration Form is not on the Electors' List, or
 - (iii) the Electors List shows that the Elector has already voted, or if the ballot is not set aside,
- (b) open the inner envelope and without unfolding the ballot deposit the ballot in the ballot box and place a mark on the Electors List opposite the name of the Elector set out in the Voter Declaration Form and deposit the ballot in a ballot box.

Counting duties of Electoral Officer

69. (1) As soon as is practicable after the mail-in ballots have been deposited under section 66(b), the Electoral Officer shall, in the presence of the Deputy Electoral Officer, any Electors and any other persons permitted by this Act or its Regulations, open all ballot boxes and shall examine each ballot cast and reject ballots that:

- (a) were not issued, mailed out or handed out by the Electoral Officer,
- (b) does not have the distinctive mark of the Electoral Officer on the back;
- (c) are marked "spoiled" "cancelled" or "declined",
- (d) contain a mark that identifies or may identify an Elector.

[27] The following provisions from the *Sawridge First Nation Elections Act*, in force as of January 9, 2010, are relevant in this proceeding:

Application to correct the Electors Lists

19. Any person whose name is not on the Electoral List and believes he/she is eligible to be on the Electoral List, or whose name is on Electoral List but believes his/her name is on the wrong Sub-List, may request the Electoral Officer to correct one or both Lists by giving to the Electoral Officer

- (a) written confirmation from the Membership Registrar that the person is a member and is or will be 18 years of age or older on the day of the election, where the person's name is not on the Electoral List; and
- (b) a statutory declaration of the right to be on the Electors List and setting out the basis of eligibility for entry onto one or the other the Sub-List.

Correcting the Electors Lists

20. (1) The Electoral Officer shall revise the Electors Lists where it is demonstrated to the Electoral Officer's satisfaction that

- (a) the name of an Elector has been omitted from the Electors List;
 - (b) the name or birth date of an elector is incorrectly set out in the Electors List;
 - (c) the name of a person who is not qualified to vote is included in the Electors List; or
 - (d) the name of an Elector was included in the Resident Elector Sub-List or the Non-Resident Elector Sub-List when it should have been included in the other sub-list.
- (2) For any change made, the Electoral Officer shall give written notice of the correction to any affected person and to any person who provided information which led to the correction.
- (3) The Electoral Officer may ask the Elders Commission any question with regard to a dispute as to whether a correction, omission, or addition should be made with respect to the Electoral Lists, and shall consider the counsel, opinion, or recommendation of the Elders Commission before making a decision.

[28] The following provisions from the *Sawridge Membership Rules* are relevant in this proceeding:

3. Each of the following persons shall have a right to his or her name entered in the Band List; [PASSED JULY 4, 1985]

- (a) Any person who, but for the establishment of these rules, would be entitled pursuant to subsection 11(1) of the Act to have his or her name entered in the Band list required to be maintained in the Department and who, at any time after these rules come into force, either
 - (i) is lawfully resident on the reserve; or
 - (ii) has applied for membership in the band and, in the judgment of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band;

- (b) a natural child of parents both of whose names are entered on the Band List;
- (c) with the consent of the Band Council, any person who
 - (i) has applied for membership in the Band;
 - (ii) is entitled to be registered in the Indian Register pursuant to the Act;
 - (iii) is the spouse of a member of the Band, and
 - (iv) is not a member of another band;
- (d) with the consent of the Band Council, any person who
 - (i) has applied for membership in the Band,
 - (ii) was born after the date these rules come into force, and
 - (iii) is the natural child of a member of the Band, and
- (e) any member of another band admitted into membership of the Band with the consent of the council or both bands and who thereupon ceases to be a member of the other band.

[...]

15. No person shall have a right to have his or her name entered in the Band List except as provided in section 3 of these Rules [PASSED JULY 5, 1985] and, for greater certainty, no person shall be entitled to have his or her name included in the Band List unless that person has, at some time after July 4, 1985, had a right to have his or her name entered in the Band List pursuant to these Rules. [PASSED JUNE 24, 1987]

16. In the event that any of the foregoing provisions of these Rules is held by a court of competent jurisdiction to be invalid in whole or in part on the ground that it is not within the power of the Band to exclude any particular person or persons from membership in the Band, these Rules shall be construed and shall have effect as if they contained a specific provision conferring upon such person a right to have his or her name entered in the Band List, but for greater certainty, no other person shall have a right to have his or her name entered or included in the Band List by virtue of the provisions of this Section and, in particular, no person referred to in Subsection 11(2) of the Act shall be entitled to membership in

the Band otherwise than pursuant to Section 3 of these Rules.
[PASSED JUNE 24, 1987]

17. In the event that any provision, or any part of any provision, of these Rules is held to be invalid or of no binding force or effect by an court of competent jurisdiction, these Rules shall be construed and applied as if such provision or part thereof did not apply to or in the circumstances giving rise to such invalidity and the effect of the remaining provisions, or parts thereof, of these Rules shall not be affected thereby. [PASSED JUNE 24, 1987]

VII. ARGUMENT

A. *Applicants*

(1) Rejection of Walter's Vote

(a) *Applicable Jurisprudence*

[29] The Applicants argue that the CEO erred in law, in both his initial and appeal decisions, by rejecting Walter's election ballot through the misinterpretation and misapplication of the relevant statutory provisions, an error which was compounded by a breach of the rules of natural justice and procedural fairness.

[30] This Court has jurisdiction to hear appeals of federal boards, commissions, or other tribunals under s 18.1 of the Act. SFN meets this definition as it is a band recognized under federal statute and holds elections under the SFN *Elections Act*. In *Roseau River Anishinabe First Nation Custom Council v Roseau River Anishinabe First Nation*, 2009 FC 655, at para 27, Justice Phelan determined that this Court has jurisdiction over native band councils regardless of whether their election is pursuant to custom or the *Indian Act*, RSC 1985, c I-5 [*Indian Act*].

[31] The Applicants contend that the Court should review the rejection of Walter's vote under the standard of correctness, as it is part of a band election process and custom cannot ignore or trump natural justice and procedural fairness: *Beardy*, above, at paras 44-45, 126. The right to vote is at the heart of any democratic process; as such, irregularities that affect an election result undermine the integrity of the whole process and are grounds for overturning an election. Moreover, a fair election requires the CEO to be an independent, neutral steward of the integrity of the electoral process: *Longley v Canada (Attorney General)*, 2007 ONCA 852 at para 74; *Stevens v Conservative Party of Canada*, 2005 FCA 383 at paras 19-21. The Court must carefully review the CEO's exercise of discretion and ensure it is fair and consistent with statutory safeguards.

[32] At the heart of this case is the confidence of SFN in its electoral process. If people who are qualified or entitled to vote are not permitted to do so, this erodes the foundations of democracy. This view is reflected in *Harper v Canada (Attorney General)*, [2004] 1 SCR 827 at para 103.

[33] The Applicants argue that the aforementioned jurisprudence is applicable to the current matter because statutes have never declared that the common law principles associated with elections are not applicable to band elections, and courts have the authority to declare an election void under the common law despite the fact that it could have been voided under the statute: *Cameron v McDonnell*, (1874) Russel R (NS) 42-60; *Howley v Campbell*, [1939] 1 DLR 431.

(b) *Application to Walter's Vote*

[34] The Applicants contend that the application of the common law to Walter's vote demonstrates the CEO's decisions were unreasonable and reflect serious errors of law and lack of procedural fairness.

[35] The rejection of Walter's vote directly affected the outcome of the Election for Chief, as the result differed by one vote.

[36] The CEO had the responsibility of ensuring a fair and proper election in accordance with s 12 of the *Elections Act*, which does not specify particulars concerning the vote-counting process, including fair counting, determining the validity of ballots, and processing mail-in ballots. The CEO used his own discretion in his decisions. This was an error, as the *Elections Act* does contain specific rules that govern the cancellation of ballots. In particular: s 47(7) permits an elector inside the voting station to vote; s 61(1) entitles an elector who inadvertently spoils his ballot to be issued another ballot; and s 61(2) requires the CEO to write "Cancelled" on a spoiled ballot without examining the contents.

[37] In rejecting Walter's ballot and refusing him another ballot, the CEO committed an error of law going to jurisdiction. His decisions were based on the fact that the CEO's initials were missing from Walter's ballot, despite there being no issue as to identity, double voting, or that Walter had been present while the polls were open and afterwards. The CEO allowed technicality to govern over substance, which is not the correct approach. Moreover, the CEO

permitted Deana's vote despite apparent deficiencies. Deana's vote lacked a witness address, which means it should have been set aside pursuant to s 66(a) of the *Elections Act*; yet it was accepted.

[38] The CEO justified his rejection of Walter's vote by stating that the CEO's initials were necessary to ensure identification. However, there was no issue as to identification with Walter. The CEO believed that a ballot could not be replaced after 6 p.m., even though a replacement was not necessary and Walter was entitled to vote under ss 47 and 61 of the *Elections Act*.

[39] The CEO then committed a further error in his handling of the appeal decision by refusing to consider the circumstances regarding Walter's vote on the basis that Walter had not appealed and the Applicants were not elders. The *Elections Act* does not identify either factor as a requirement for an issue to be subject to appeal. The CEO effectively rejected the Applicants' appeal on an irrelevant ground and improperly declined jurisdiction to inquire and investigate.

[40] Additionally, the Applicants submit that the CEO refused to hear Walter's representations. In their Notice of Appeal, the Applicants requested the right to attend and adduce evidence, including hearing from Walter. Yet the CEO rendered the appeal decision without any regard for that request. Appeal committees must address the issue put to them: *Meeches v Meeches*, 2013 FC 196 at para 14. While this Court has found that the right to an oral hearing may be waived, the Applicants submit that this did not occur in the present case, which distinguishes it from *Gadwa v Kehewin First Nation*, 2016 FC 597 [*Gadwa*].

[41] The Applicants argue that the CEO failed to conduct the Election and the appeal process in accordance with the highest standards of correctness and procedural fairness, which is sufficient justification to set aside the result.

(2) SFN Membership Application Process

[42] The Applicants submit that the Respondents have failed in their fiduciary duty to establish and confirm that a proper and complete Voter List was prepared, which is in disregard of constitutional, statutory, and other legal requirements. This failure was compounded by corrupt practices, thereby culminating in an error going to jurisdiction.

[43] The SFN has a legal history of attempting to assert complete control over its membership. In *L'Hirondelle v Canada*, 2003 FCT 347, affirmed 2004 FCA 16 [*L'Hirondelle*], this Court held that SFN could not continue to ignore the legal requirements regarding membership imposed by the *Indian Act* and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982 (UK), 1982, c 11 [Charter]* and the clear directions of the courts. In *L'Hirondelle*, the Federal Court of Appeal upheld an injunction mandating compliance, stating "For those persons entitled to membership, a simple request to be included in the band's membership is all that is required. The fact that the individuals in question did not complete a Sawridge Band membership application is irrelevant." Yet in 2008, SFN attempted to have the *Indian Act* provisions declared unconstitutional, an application that was dismissed: *Sawridge Band v Canada*, 2008 FC 322. Furthermore, the Court held in *Poitras v Twinn*, 2013 FC 910 that *L'Hirondelle* is not a legal barrier to an applicant's membership status.

However, SFN continues to refuse to implement *L'Hirondelle* and, by doing so, corrupts its election process. By not adding entitled persons to the band list, there cannot be a fair election.

[44] The corruption in the membership process is worsened by the queue jumping permitted to Roland's children, who were added to the list while others, such as Ms. Donald, are forced to wait until the law is enforced. The evidence demonstrates that it is possible for an individual to be left hanging for years in a SFN membership process that is shrouded in secrecy. The SFN has adopted a stance and process that is the polar opposite of the enfranchisement purpose of the *Indian Act* and any truly fair and democratic electoral process.

(3) Pre-Election and Appeal Conduct

[45] The Applicants also submit that the CEO erred in law, including that going to jurisdiction, in failing or declining to make adequate inquiry into the composition of the Voters List, which is compounded by procedural unfairness and a disregard for the rules of natural justice.

[46] According to s 17 of the *Elections Act*, the CEO must send the election packages out not less than 75 days prior to the date of the election. However, SFN did not comply with this in several ways. First, the number of days between December 4, 2014 and February 17, 2015 is 74 days, not 75. Second, electors either received the notice late, as was the case for Sam on December 12, 2014, or not at all, as was admitted by the CEO in an email to Catherine. Third, notice of corrections to the sub-lists was not given until after the deadline for disputing the sub-lists, thereby rendering it impossible to challenge the lists.

[47] Additionally, the CEO erred when he determined that he had no authority to enquire about the issue of outstanding applications for membership. He stated that the issue was one for "membership" in an email on January 12, 2015, and his appeal decision of March 6, 2015 does not even mention the issue, despite its inclusion in the Notice of Appeal. The CEO failed to consider this issue, which is a clear decline of jurisdiction and a deprivation of the fair opportunity to be heard.

[48] The Applicants submit that the CEO should have considered this matter as it is within his power to do so under s 11(8) of the *Constitution*, which says that the CEO, Appeal Tribunal, or SGA may provide such relief as it sees fit when there is a corrupt practice in connection with the election that might affect the result of the election, or a contravention of the *Constitution* that might affect the result of the election. Section 20 of the *Elections Act* requires the CEO to revise the list of electors where it is demonstrated to the CEO's satisfaction prior to the nomination meeting that the name of an elector has been omitted from the Electors List. A comparison to an older version of the *Elections Act*, in force prior to October 26, 2013, demonstrates that additions to the list used to require confirmation from the Membership Registrar. The removal of such a requirement in the *Elections Act* currently in force indicates that the CEO has the authority to add electors to the lists.

[49] Yet the CEO created the sub-lists from the names provided by SFN and declared that any other names were a matter for "membership," despite the decision in *L'Hirondelle*, above, clearly stating that whether a person has applied for membership or not is irrelevant. The CEO had the responsibility to correct the lists and his failure to do so deprived persons of the

opportunity to challenge the lists, which is a complete abdication of jurisdiction and responsibility.

[50] The CEO's errors continued at the appeal stage when he refused to hear from individuals who asserted entitlement to membership by applying irrelevant considerations such as whether a membership application had been processed and accepted. He also breached procedural fairness by depriving the Applicants and others of a fair hearing and by abdicating his jurisdiction under s 20 of the *Elections Act*.

[51] The Applicants submit that the CEO's interpretation of s 20 of the *Elections Act* compounds the corrupt practices of SFN. The CEO had the jurisdiction to add to the list, yet refused to do so and referred the matter to "membership." Such an abdication of authority must be resolved by the Court, as the refusal to enquire about unreasonably delayed applications that entitle persons to be electors undermines the integrity of the electoral process.

(4) Order Sought

[52] The Applicants seek the following relief:

- A. An Order setting aside the results of the February 17, 2015 Election for the position of Chief and/or declaring the Election of Chief on February 17, 2015 to be null and void, and declaring a new election for Chief of SFN be undertaken;
- B. A order requiring a CEO, approved by the Applicants and the Court, to investigate and establish a fair, proper, and complete Electors List;
- C. An Order setting out such directions as the Court deems fit for the conduct of a new and fair Election;
- D. Enhanced costs of this application and prior motions;

E. Such further and other Orders as this Honourable Court shall deem just and convenient in the circumstances.

B. *Respondents*

(1) Relevance of Affidavit

[53] The Respondents take issue with the information and documents in Sam Twinn's affidavit. They submit that it is irrelevant and inadmissible in a judicial review of the CEO's decision because the information was not before the CEO when he made the decisions that are the subject of judicial review, and it does not provide necessary background information to assist the Court in assessing the reasonableness or correctness of the CEO's decisions. Further, it is inadmissible under Rule 81 because most of it is personal opinion or argument. Accordingly, no weight or consideration should be accorded to Sam's affidavit.

[54] The CEO had no power under Sawridge Law to inquire as to why or when an individual's name came to be on the Electors List, as this is compiled from the Membership Register under s 16(1) of the *Elections Act*. The CEO's powers are restricted to dividing the list provided by the Membership Registrar into sub-lists of resident and non-resident electors. Once this division is made, any elector can request that an individual be moved from one sub-list to another, but the CEO can only accede to the request on certain grounds, which are enumerated in ss 20 and 21 of the *Elections Act*. Such a decision can also be appealed under ss 18.1 and 18.2 of the *Elections Act*.

[55] The Respondents also contend that the Applicants' submissions in paragraphs 70-82 of their memorandum of argument are irrelevant because this judicial review does not review decisions made by SFN under the *Membership Code* between 1984 and 2014. Any interpretation or application of the *Membership Code* is not related or connected to the CEO's decisions and, as such, any submissions regarding this matter should be disregarded by the Court: Rule 302 of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*].

(2) Rejection of Walter's Vote

[56] The Respondents submit that the CEO reasonably, indeed correctly, rejected and did not count Walter's mail-in ballot in accordance with s 69(1)(b) of the *Elections Act*.

[57] The *Elections Act* allows electors to vote either by mail-in ballot or in-person at the polls; however, electors cannot vote both ways in the same election. Mail-in ballots contain the CEO's "distinctive mark" and an elector can either mail the ballot or deliver it to the CEO prior to the close of the polls at 6 p.m. on the date of the election: ss 45(1)(f) and s 47(6) of the *Elections Act*. Alternatively, on the day of the election, an elector can exchange an unmarked mail-in ballot for a ballot to be marked and deposited at the voting station, or obtain a ballot and vote in-person at the voting station, if they swear they have not voted in the election by mail or in-person: ss 45(5) and 55(3)(b)) of the *Elections Act*. Once the polls have closed, the CEO opens the mail-in ballot envelopes, checks for a signed and witnessed Voter Declaration Form, and deposits the ballot in the ballot box without unfolding the ballot: s 66 of the *Elections Act*. Following the deposit of the mail-in ballots, the ballot box is then opened and the CEO must examine and reject ballots that: were not issued by the CEO; do not contain the distinctive mark of the CEO; are marked

“spoiled,” “cancelled,” or “declined,” or contain a mark that identifies or may identify an elector: s 69(1) of the *Elections Act*.

[58] According to the Scrutineer's report, Walter's ballot was deemed spoiled under s 69(1) of the *Elections Act* because it lacked the distinctive mark of the CEO on the back. Accordingly, both the Scrutineer and the CEO understood that Walter's vote had to be rejected pursuant to the *Elections Act*. The fact that Walter's ballot should have been deposited unfolded into the ballot boxes without having first been examined by the CEO does not affect the result of the election because as soon as the boxes were opened, the CEO would have had to reject it under s 69(1)(b). Thus, the CEO's decision to reject the ballot was both reasonable and correct and this judicial review should be dismissed.

[59] Similarly, the Respondents take the position that the CEO's subsequent decision to refuse Walter a new, in-person ballot after the polls had closed is neither unfair, discriminatory, or anti-democratic.

[60] Subsection 61(1) of the *Elections Act* clearly allows an in-person voter who errs in voting to return his ballot and receive a new ballot before voting; but this entitlement is not applicable to electors who have chosen to vote by mail. The latter electors can only vote in-person before the polls have closed on the condition that they exchange their unmarked mail-in ballots for in-person ballots, or if they satisfy the CEO that they have not already voted: ss 45(4) and 45(5) of the *Elections Act*.

[61] By the time Walter's vote was discovered as spoiled, the polls had closed and it was too late for him to receive an in-person ballot under s 45 of the *Elections Act*. Thus, the CEO's decision was reasonable and this judicial review should be dismissed.

[62] The Respondents oppose the Applicants' unsubstantiated suggestion that the CEO used his discretion to reject Walter's vote. In addition to Walter's vote, the CEO applied s 69(1) to reject two additional ballots that had marks that identified or potentially identified an elector: s 69(1)(d). Deana's vote, on the other hand, was accepted because it was signed and witnessed, thereby ensuring her identification, as required by s 66(a)(i) of the *Elections Act*. Walter was not denied the right to vote; he voted incorrectly and, consequently, his vote was invalid. The rejection of his vote is neither unfair, discriminatory, or undemocratic; it was mandatory under the rules of the *Elections Act*.

[63] Provisions such as s 69(1) of the *Elections Act* are not unique. Election laws across Canada require voters to cast ballots in a basic and prescribed form, lest they be rejected. Some election laws do provide electoral officials with discretion to accept non-conforming ballots but some do not, such as s 86(1)(a) of the *Alberta Local Authorities Election Act*, RSA 2000, c L-21. Yet these provisions are not undemocratic.

[64] Further, the CEO did not breach procedural fairness by deciding the Applicants' election appeals in writing without an oral hearing. The duty of procedural fairness is flexible. In *Gadwa*, above, the election officer was only required to provide a response within 7 days of a notice of appeal and did so without an oral hearing, as is the case here. The CEO rendered a decision

within the 7 day time allotment. Additionally, the CEO had all the information required to make a decision because Article 11(1) of the *Constitution* ensures the CEO had a detailed written notice of appeal. Further, the issues to be decided in the appeal required the interpretation and application of the *Elections Act* to undisputed facts, which indicates there could not have been a breach of procedural fairness in not having a hearing between March 2 and 6, 2015. The duty of procedural fairness is limited in this instance because the appeal can be further appealed to the Elders Commission as well as the SGA under Articles 11(3) and 11(4) of the *Constitution*. Thus, the Respondents submit that the Applicants were not denied procedural fairness and this judicial review should be dismissed.

(3) Dismissal of Challenge to the Electors List and Sub-Lists

[65] The Respondents submit that the CEO's decision to dismiss the Applicants' challenge to the lists of electors for non-compliance with the limitation periods in the *Elections Act* was reasonable and correct.

[66] As stated previously, the CEO has no power to inquire into how or why an individual's name is on the list of members entitled to vote that is produced by the Membership Registrar. The CEO's powers are expressly restricted by ss 17-20 of the *Elections Act*, which permits the division of the provided list into sub-lists.

[67] The evidence also demonstrates that the Applicants did not challenge the sub-lists until March 2, 2015, when they filed their Notices of Appeal. This was well past the time fixed for

challenging the Electors List, as set out in ss 18-20 of the *Elections Act*. The CEO's decision to apply the statutory limitations was correct and required by law.

(4) Judicial Review Contrary to Public Policy

[68] Even if the Applicants are successful in their arguments that the CEO's decisions were unreasonable, the Respondents submit that this Court should use its overriding discretion under s 18.1(3) of the Act and refuse relief.

[69] The Applicants had several chances before the Election to challenge the list of electors as well as the right to appeal in a three-tiered process. The Applicants did not avail themselves of their rights before the Election, but they did exercise their constitutional rights to appeal the results of the Election. However, the doctrine of exhaustion requires that parties exhaust all adequate remedial courses in the administrative process prior to court proceedings: *Re Wilson and Atomic Energy of Canada Ltd*, 2015 FCA 17 at paras 28-33; *President of the Canada Border Services Agency et al v CB Powell Limited*, 2010 FCA 61 at paras 30-32.

[70] While Justice Zinn did not find that the doctrine of exhaustion precluded the Applicants from judicial review, his Order does not remove the Applicants' onus of proving entitlement to some relief in their judicial review of the CEO's decisions; nor does it remove this Court's inherent discretionary power to refuse any relief even if such an entitlement is proven. In *Strickland v Canada (Attorney General)*, 2015 SCC 37 at paras 37-45, the Supreme Court of Canada found that the Court may exercise its discretion and refuse judicial relief if applicants have an alternative administrative remedy, which is clearly the case in the present matter.

[71] The Respondents submit that to grant the Applicants relief would ignore: the Applicants' failure to challenge the sub-lists under the *Elections Act*; the Applicants' first appeal of the Election results on March 6, 2015; the Applicants' second appeal of the Election results on May 30, 2015; and the failure to challenge the SGA's decision to dismiss their final constitutional election appeal. If relief were to be granted in this case, the Court would ignore the principles of administrative law and public law values underlying the doctrine of exhaustion. This Court should not undermine the three-tiered election appeal system established by the *Constitution* or allow the Applicants to circumvent and ignore the unchallenged decision of the SGA.

[72] The Respondents therefore submit that the Applicants be denied any relief that might have been available to them in a judicial review under s 18 of the Act, even if they are successful in demonstrating the CEO's decisions were unreasonable.

(5) Relief Sought

[73] The Respondents seek dismissal of this application with costs.

VIII. ANALYSIS

A. *The Decisions*

[74] Bearing in mind the wide-ranging arguments regarding corrupt practices at SFN brought by the Applicants, it should be kept in mind that the decisions under review in this application

are set out in the Notice of Application as confirmed by Justice Zinn in his Order and Reasons of March 30, 2016:

[3] The applicants' Notice of Application states the following regarding the decision sought to be reviewed:

This is an application for judicial review, pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985 c. 41 (1st Supp.) (the "Act") as amended, of Dennis Callihoo (being the Chief Electoral Officer ("CEO")) decisions made on or about February 17, 2015 (the "Decision") concerning Sawridge First Nation's (the "Nation") 2015 general election which decision was appealed by Sam Twinn and Isaac Twinn (the "Applicants") on April 13, 2015 to the Sawridge first Nation Special General Assembly which in turn dismissed the appeal on May 30, 2015.

[75] As can be seen in the Applicants' written representations, it is not at all clear what this application is intended to encompass. The application refers to "decisions" made on or about February 17, 2015. Those decisions were the subject of appeals to the CEO and, eventually, to the SFN SGA. The Applicants have made it clear that they are not appealing the decision of the SGA, but seek to review certain decisions of the CEO made during the 2015 Election. However, the Amended Notice of Application dated June 26, 2015 seeks broad and extensive relief that goes well beyond the decisions of the CEO and includes, for example, a request for a declaration that certain provisions of the *Elections Act* are invalid and of no force and effect. As becomes clear when the written representations of the Applicants are reviewed, the Applicants have failed to comply with Rule 302 of the *Federal Courts Rules* and are asking the Court to review in one application a variety of matters that do not constitute a "continuous course of conduct" as defined by the governing jurisprudence. It seems to me that this judicial review is confined to the

decisions of the CEO made during the Election, which the Applicants raised in their appeal to the CEO, and which the CEO addressed in his decision of March 6, 2015:

**SAWRIDGE FIRST NATION ELECTION APPEAL OF
SAMUEL TWINN and ISAAC TWINN DECISION OF
ELECTORAL OFFICER**

**PURSUANT TO SECTION 11(2) OF THE CONSTITUTION
OF THE SAWRIDGE FIRST NATION 9 (the "Constitution")
DATED, MARCH 6, 2015**

1. An Appeal to the Sawridge First Nation February 17, 2015 Election was received by the Electoral Officer on March 2, 2015. Appeals were filed by Samuel Twinn and Isaac Twinn (referred to as the "Appellants"), both of which appeared to be duplicates. Accordingly, they will be dealt with together.
2. The Appellants stated four grounds of Appeal as follows:
 - i. Improper rejection of ballots contrary to Section 61 of the Sawridge First Nation Elections Act (the "Act") and infringements of the Sawridge Constitution.
 - ii. Non-Compliance with Section 44, 45(4), (7), Section 61 of the Act and Section 2(1)(f) of the Constitution.
 - iii. Inconsistent Administrative Decision Impacting the Popular Vote.
 - iv. Non Compliance with Rules regarding the creation and Notice of Voters Lists.
3. As the first two grounds of Appeal are duplicitous and overlapping, I would propose and will deal with them together.
4. The Appellants allege and state that an Elector should have been allowed another ballot after the Electoral Officer found the ballot spoiled during the opening of the mail-in ballots. The ballot was found to be spoiled as set out under S. 69(1)(b) of the Act as the ballot did not have the distinctive mark of the Electoral Officer on the back.
5. Section 61 of the Act is within Part VI and deals with voting. If an Elector makes a mistake, they can return their ballot and receive another ballot. However, this is for in-person voting and does not apply for mail-in voting. Section 61(1) states in part:

"If an Elector makes a mistake on a ballot.....prior to depositing it in the ballot box..."

6. Section 45(4) and (5) of the Act also allow mail in voters to change their ballots upon signing a written affirmation.
7. Section 47(6) of the Act states that "voting stations shall be kept open from 10:00 a.m., local time, until 6:00 p.m., local time..". I find this applies to both in person voters and mail in voters.
8. There is no provision in the Act for the allowance of voting after the close of the polls at 6:00 p.m. on the election day. The allegations of the Appellants took place after 6:00 p.m. when the polls had closed. Accordingly, this portion of the Appeal is dismissed.
9. It was also alleged that the Electoral Officer allowed a ballot in favour of Roland Twinn despite the irregularity that the Declaration Form did not have an address for the witness. This was not possible as the ballots remained unopened and placed in the ballot box. The assertion of the Appellants of identifying the ballot as in favour of one candidate is based solely on speculation.
10. The purpose of the Declaration Form is to ensure identification of the Elector of which I was satisfied with as the Declaration Form was signed and the Elector identified. This portion of the appeal is dismissed.
11. Further in paragraph 5 of Section II of the Appeal, it is alleged the Electoral Officer should have viewed the in person ballots and correct mistakes before allowing ballots in the ballot box.
12. Section 55(6)(c) of the Act requires the ballot to be folded to conceal printing and any mark placed thereon by the Elector but exposes the distinctive mark of the Electoral Officer. There is no provision to allow the Electoral Officer to view ballots before being placed in the ballot box. This portion of the appeal is dismissed.
13. The Appellants also alleged that an Elector's Rights under S.2 (l)(f) and G) of the Constitution were infringed. This was based in part on the Elector's age as an Elder. I would note the Appellants are not Elders themselves.
14. S. 2(2) of the Constitution states "when a person believes he or she has been treated unfairly, discriminated against or

treated in a manner not in accord with accepted standards of administrative fairness[.]”

15. In these circumstances, the Elector alleged to have had his rights infringed based on age or other grounds has not made a complaint or appeal, but the Appellants. I find the Appellants do not have standing to bring a complaint under S. 2(2) of the Constitution as their Rights and Freedoms were not affected, but those of another Elector.

16. This ground of the appeal is dismissed.

17. The third ground of appeal also deals with complaints based on another Electors alleged infringement of other Rights under Article 2 of the Constitution.

18. Similarly, the Appellants third grounds of Appeal are dismissed for the same reasons as above in paragraph 15.

19. The Appellants in their fourth grounds of Appeal allege non-compliance with the Voters Lists. There is a process including appeals both to the Electoral Officer and the Elders Commission in “Part III, The Electoral List” of the Act. It is both comprehensive and final. This is necessary to allow the Nomination process and the Voting process to proceed.

20. The timelines for appeals within Part III of the Act have expired and are concluded. I find the appeals provision in Section 11(2) of the Constitution under which this appeal has been filed does not allow a second opportunity to revisit expired timelines in the Electoral List process under Part III of the Act. The law in Part III of the Act was followed and concluded.

21. The Appeal is hereby dismissed.

[emphasis in original]

[76] The CEO’s reasons as set out above are important because they provide the rationale for the decisions he made in the pre-Election period under review and which are referred to by the parties in their submissions.

B. *Membership Issues*

[77] In their written submissions, the Applicants say that the CEO erred in law – including jurisdiction – in failing or declining to make adequate inquiry into the composition of the Electors List that was used by the CEO to administer the Election. They say this error was further compounded by the CEO's procedural unfairness and disregard for the rules of natural justice in his handling of the appeals.

[78] For the obligation to ensure the completeness and integrity of the Electors List, the Applicants rely primarily on s 20(1) of the *Elections Act* which reads as follows:

Correcting the Electors Lists

20. (1) The Electoral Officer shall revise the Electors Lists where it is demonstrated to the Electoral Officer's satisfaction prior to the commencement of the Nomination Meeting that

- (a) the name of an Elector has been omitted from the Electors List;
- (b) the name or birth date of an elector is incorrectly set out in the Electors List;
- (c) the name of a person who is not qualified to vote is included in the Electors List.

[...]

[79] The Applicants say that these provisions place the responsibility upon the CEO to go behind the Electors List provided by SFN to ascertain the names of all persons who the Courts have said are rightfully members of SFN, and not just those individuals who SFN has decided to admit to membership in accordance with its own Membership Code. They say the CEO's

decision to leave the status of membership to SFN simply compounds the corrupt practices and procedures regarding membership that the Courts have found to prevail at SFN. In other words, the argument is that membership for the purposes of the Electors List is not simply a matter of accepting the list provided by SFN's Membership Registrar; it is a matter of the CEO ascertaining and assembling a full membership list in accordance with the Court's directions on membership entitlement at SFN.

[80] While I think that current membership practices at SFN could give rise to corrupt electoral practices (which I will address later), I don't think the CEO can be faulted for taking the position that he cannot be expected to resolve such broad and complex issues of membership in his electoral role. And I think that the governing legislation supports that position.

[81] Under the *Elections Act*, the definition of "Electors List" means "the list of Electors prepared pursuant to this Act" and the preparation of the list is governed by Part III of the *Elections Act*.

[82] Under Part III, it is the "Membership Registrar" who must "provide the Electoral Officer named by the Council pursuant to the Constitution with an alphabetical list of all members who will be Electors on the day of the Election...." What the CEO can and should do with this list is set out fully in the other provisions of Part III. These provisions deal mainly with corrections, omissions and additions to the Electors List provided by the Membership Registrar. And this must all be done before the nomination meeting because s 18.3 of the *Elections Act* makes it clear that:

18.3 After the commencement of the nomination meeting the names which appear on the Electoral List may not be changed and the names which appear on a Sub-List may not be removed from that Sub-List and placed on the other Sub-List.

[83] What is more, s 19 of the *Elections Act* provides as follows:

No Delay in Nomination Meeting or Election

19. Notwithstanding any other section of this Act, no question with respect to the names on the Electoral List or a Sub-List shall cause a delay in the date set for either the Nomination Meeting or the Election or the holding of the Nomination Meeting or the Election.

[84] Section 20 of the *Elections Act*, relied upon by the Applicants, allows the CEO to revise the Electors List provided by the Membership Registrar "prior to the nomination meeting" because any application to correct is governed by s 18:

18.1 (1) If the Electoral Officer decides that the information provided in the statutory declaration is sufficient evidence, if unrefuted, that the elector's name should be moved from one list to another, the Electoral Officer shall make reasonable efforts to notify all electors that based on the information received, he or she is considering changing the list on which that elector's name appears and offer all electors the opportunity to show cause as to why that elector's name should not be moved from one list to the other.

(2) If any elector wishes to show cause as to why the change should not be made, they may at any time prior to 11 days prior to the date set for the nomination meeting provide the Electoral Officer with a statutory declaration containing evidence and the Electoral Officer shall consider the evidence and make a determination as to which list the elector's name shall appear on and notify all Electors.

(3) The Electoral Officer may ask the Elders Commission any question with regard to a dispute as to whether a correction, omission, or addition should be made with respect to the Electoral Lists, and shall consider the counsel, opinion, or recommendation of the Elders Commission before making a decision.

(4) When considering a request to move an Elector's name from one Sub-- List to another Sub-List in a situation where the Elector has more than one Residence, the Electoral Officer and the Elders' Commission may consider the following in relation to each residence:

i. An Elector may have only one Primary Residence at any point in time;

ii. The location around which the Elector's life is focussed;

iii. The location of the Elector's usual place of employment or education;

iv. The location where the Elector spends the most time;

v. The location which the Elector represents to be the Elector's Residence;

vi. Whether people other than the immediate family of the Elector reside in the residence;

vii. Whether other members of the Elector's immediate family reside in the residence;

viii. Whether the residence is owned or rented, and if rented or leased, the duration of the lease (daily, weekly, monthly, or annual) and the term of the lease (whether it is fixed or indefinite);

ix. The Elector's social, religious, business, and financial connections to the location of the residence;

x. The location where the majority of the Elector's clothes and personal belongings are located; xi. Regularity and length of stays in a Residence; and

xii. The center of the Electors's vital interests; (5) The Electoral Officer shall make a decision with respect to any appeal received no less than 7 days prior to the date set for the nomination meeting.

18.2 If any elector wishes to appeal the decision of the Electoral Officer, the matter shall be referred to the Elders Commission no less than 4 days prior to the date set for the nomination meeting which shall decide whether it wishes to hear the appeal, and if not, the Electoral Officer's decision is final. If the Elders Commission decides to hear the appeal, it shall hear the evidence of the electors who have filed statutory declarations, the elector in question, and the Electoral Officer as to the reasons for his or her decision, and

after which, shall decide on which list the name of the Elector in question shall appear. The decision of the Elders Commission must be provided to the Electoral Officer prior to the date set for the nomination meeting.

18.3 After the commencement of the nomination meeting the names which appear on the Electoral List may not be changed and the names which appear on a Sub-List may not be removed from that Sub-List and placed on the other Sub-List.

[85] It is questionable whether s 20 gives the CEO any authority to go beyond s 18 but, even if it did, there would have to be a request to amend "prior to the commencement of the Nomination Meeting," which did not occur in this case.

[86] It seems clear from Part III that the CEO is neither empowered or obliged to make changes to the Electors List, or to reject or supplement the Electors List provided by the Membership Registrar, without a request from a member that he do so. On the facts before me, no such request was made. I see nothing in the *Elections Act* that would allow the CEO to reject the Electors List provided by the Membership Registrar and, on his own initiative, compile an alternative Electors List based upon what the Courts have said about entitlement to membership at SFN. It would make no sense for SFN to put in place an *Elections Act* that did not reflect and conform to its own position on membership. This is not to say, of course, that SFN's position on membership is legal, or that it is not simply defiant of what the Courts have ruled on the issue of membership. But I don't think that those Court rulings give the CEO any power to go beyond the present *Elections Act*. And the Court has not been asked to review the legality of the *Elections Act* in this application.

[87] This means that I have to reject the Applicants' argument for reviewable error by the CEO for failing or declining to make inquiry into the composition of the Electors List that was provided to him by the Membership Registrar, after his finding that the "timelines for appeals within Part III of the Act have expired and are concluded." There was no requirement for the CEO to implement some kind of general inquiry into the creation of the Voters List.

[88] It appears to me that the Applicants accepted this position at the oral hearing before me in Edmonton and agreed, at least, that it would be "impractical" to expect the CEO to deal with membership issues in this broad sense.

C. *Failure of Respondents to Establish and Confirm a Proper and Complete Voters List*

[89] The Applicants say that the Respondents failed in their fiduciary duty to establish and confirm that a proper and complete Voters List was prepared. They say further that this was done in disregard of constitutional, statutory and other legal requirements, and was compounded by corrupt practices and errors of jurisdiction.

[90] In written representations, the Applicants summarize the situation as follows:

81. In *Holland v. Saskatchewan*, [2008] SCC 42, the SCC dealt with the situation where a court issues a binding order which is then not complied with. The court ruled that although some aspect of negligence might be a viable action, the traditional and proper remedy is judicial review for invalidity [para 9]. That is precisely what the Applicants seek. So long as the SFN continues to throw down the gauntlet to the courts by refusing to implement the clear language of this Court in *L'Hirondelle*, *supra*, it continues to irretrievably corrupt the election process. So long as entitled persons are not added to the Band list, despite the clear

determination of entitlement, the concept of a truly fair election is illusory.

82. It is made even worse by the queue jumping which has Roland's scions added to the list whilst others must wait for someone to enforce the law. It is possible, as the evidence indicates, for someone to be left hanging for years, in a SFN process that is shrouded in secrecy. The SFN adopts a stance and process that is the polar opposite of the enfranchisement purpose of the *Indian Act* and a truly fair and democratic electoral process.

[footnotes omitted]

[91] The Respondents take the position that these issues are beyond the scope of review in this application. They say that this application is not a challenge to any and all of the decisions made by the Chief and Councillors applying SFN's Membership Code, nor is it a challenge to the confidentiality of SFN's membership list under First Nations Law. In other words, the Respondents say that this issue is entirely irrelevant because it was not before the CEO when he made the pre-Election decisions that are the subject of this judicial review application.

[92] It seems to me that the Applicants are again attempting to use this judicial review of decisions made by the CEO in the 2015 Election to attack the SFN's Membership Code and the way that membership is dealt with at SFN.

[93] Bearing in mind that this application, as confirmed by Justice Zinn, deals with decisions of the CEO during the 2015 Election, I think that Rule 302 excludes this kind of extensive general inquiry into membership issues at SFN. As the Court has made clear on numerous occasions, where review of multiple decisions is sought, Rule 302 requires an application for each decision to be filed, unless the Court orders otherwise, or the applicant can show that the

decisions at issue form part of a continuous course of conduct. However, where two or more decisions are made at different times and involve a different focus, they cannot be said to form part of a continuing course of conduct. See, for example, *Servier Canada Inc v Canada (Minister of Health)*, 2007 FC 196.

[94] In the present case, I do not think that the Respondents' implementation of a Membership Code and the general process for granting membership at SFN can be said to be part of a continuing course of conduct that includes the decisions made by the CEO at the 2015 Election, except perhaps in one respect. There is an allegation of queue jumping in membership applications that the Applicants say was facilitated by Chief Roland Twinn in the 6 month period prior to the 2015 Election to ensure that his own son was granted membership, while other applicants for membership have been kept waiting for years. The inference is that this was done so that Roland's son could vote for his father in the 2015 Election. In a First Nation such as SFN with a total membership of only 44, of which only 41 are qualified to vote, I can see why this might be a concern. In the notice of appeal dated March 2, 2015, the Applicants stated as a ground under IV. Non Compliance with the Rules Regarding the Creation and Notice of Voter Lists:

3. The failure to comply with the creation and notice of Voter's Lists was compounded by a process that unfairly added persons and excluded others. In particular, notwithstanding applications for inclusion which had been outstanding for years, only the son of the successful candidate for Chief was added to the List."

This was not addressed by the CEO in the appeal decision. However, the CEO did reply, in an email to the Membership Registrar regarding the Election and his authority to "add the names of persons entitled to membership to the electoral list including those whose completed applications

have been pending for an unreasonable time" that "a general membership issue would be dealt with by Membership." In other words, the CEO felt that he could not deal with this complaint because, as previously mentioned, his authority to deal with membership issues is restricted by ss 18 and 20 of the *Elections Act*. It seems to me that this position is neither unreasonable or incorrect.

D. *Errors by CEO*

[95] The true focus of this application must be the allegations that the CEO, Mr. Callihoo, erred in law (including jurisdiction) in rejecting Walter's election ballot through misinterpretation and misapplication of the governing statutory provisions, and that this error was compounded by a breach of the rules of natural justice and procedural fairness.

[96] It is noteworthy that the error identified is the rejection of "an election ballot," and this would appear to be a reference to the ballot of Walter Felix Twinn.

[97] The Applicants explain the problems associated with the rejection of Walter's ballot as follows, and I think it would be helpful to set out the arguments of both sides on this central point in detail:

16. Walter Felix Twin ("Walter") is an elderly resident member of the SFN. He asked Sam in 2012 to run for the position of Chief which Sam, in Sept., 2014, decided to do. Walter was about 80 years old, has health issues and may have difficulty reading and comprehending English, Cree being his first language. On election day Sam was present in the polling station before 6 p.m., as were Walter and his wife.

17. Mail in ballots were mailed to electors. Before the poll opened at 10 a.m.; the CEO showed Sam's Scrutineer, Ron Rault

("Scrutineer") all the Mail In Ballots, 15 in total, all unopened. The 15 mail in ballots showed the name of the elector on the return envelope and these 15 names were recorded. One of these names was life time resident elector Walter. A non-resident elector, Wesley Twinn, completed his mail in ballot and asked the CEO if he could drop it off but was refused. Therefore, on Feb. 12, 2015 he express posted the ballot. However, Wesley was not one of the 15 names recorded at the polling station. Wesley Twin had to vote in person. Some electors arrived with mail in ballots but without Voter Declarations as required but were permitted to vote in person.

18. After 6 p.m., the CEO opened the 15 mail in ballots, including Walter's, who was still at the polling station. His ballot was set aside as the portion that had the CEO's initials had been cut off to fit the paper into the return envelope. Discussion ensued between the scrutineer, the CEO and his deputy, in the presence of other electors. The scrutineer's position was that the ballot should be counted as there was no issue as to the elector's intent, identity, nor any suggestion that Walter had voted more than once. Of the 41 electors all were accounted for except for Georgina Ward. Nevertheless, the CEO rejected Walter's ballot. Another mail in ballot (Deanna Morton) was set aside as the Voter Registration had a witness signature but no witness address as required. The CEO ruled that ballot was valid. In total, the CEO disqualified three of four ballots (all mail-in ballots). He set aside two cast in favour of Sam, one cast in favour of Roland. Thereafter, Sam and his Scrutineer sought to inspect the spoiled ballots, and these requests ignored and/or denied.

19. The Scrutineer suggested that as Walter was present he should be permitted to cast an in person vote. Others waded into the discussion. Irene Twinn, sister of Roland, objected to Walter casting and in person vote. Roland stated that mail in ballots are a problem. The CEO rejected the request. This result was Roland won by one vote rather than a tie vote which would have necessitated a runoff election. In any event, three runoff elections were required as a result of voting for council members and Elders.

20. The Applicants appealed on March 2, 2015, setting out their Grounds of Appeal and expressly indicating their desire to attend and intention to call oral evidence of named individuals, and others. Without notice or otherwise communicating the CEO rejected the appeal on March 6, 2015. In his written decision the CEO makes no mention of the request to attend or call evidence. The decision was, therefore, rendered without hearing evidence or submissions. His stated reason for rejecting the appeal was his

interpretation that a spoiled ballot cannot be replaced after 6 p.m., whether the elector is voting in person or by mail in ballot. The purpose of the CEO's initials was to ensure identification. He rejected any element of unfairness or discrimination because Walter was not the appellant and because the Applicants were not elders.

58. In this case, the plurality separating Roland Twin and Sam Twinn was one vote. The rejection of Walter Twin's vote directly affected the outcome.

59. The CEO has direct responsibility for ensuring a fair and proper election. Any discretion must necessarily be confined by the law in relation to the purpose of the legislation, and rules of procedural fairness. The Election Act, s. 12, states:

12.(1) The Electoral Officer shall be responsible for the fair, efficient and proper conduct of an election held in accordance with this Act and the regulations.

(2) The Electoral Officer may take all reasonable means to encourage, in an impartial manner, all Electors to engage in and to vote at an election.

(3) As such, the Electoral Officer may make such decisions and rules, that are not inconsistent with the provisions of the Constitution, this Act or any regulation made pursuant to this Act, to fulfill his/her responsibilities and to deal with any matter that circumstances require so as to protect the integrity of the election within generally accepted standards for the conduct of elections.

60. The SFN has authority to pass regulations concerning the vote counting process, means for fair counting, processes to ensure that all valid votes are counted, when ballots are to be discarded, verification of votes, the counting of mail in ballots, the process of verifying ballots, the process of determining what is a proper mail in ballot and how such ballots are to be identified. The CEO did not refer to any such regulations either in his original decision or appeal decision. The simple reason is that regulations do not exist and the CEO is left to make up his or her own rules.

61. However, the Election Act does contain some specific rules which were not referred to by the CEO at either decision level. Ss. 47 and 61 of the *Election Act* states:

S. 47 (7): An elector who is inside a voting station at the time that the voting station is to close is entitled to vote.

61(1) if and elector makes a mistake on a ballot or inadvertently spoils his/her ballot paper in marking it prior to depositing it in the Ballot Box, then the Elector is entitled to another ballot to be issued by the Electoral Officer upon return of the spoiled ballot to the Electoral Officer.

(2) The Electoral Officer shall write the word "Cancelled" on the spoiled ballot and without examining the ballot, store it separately.

62. The CEO did not specify any statutory basis for rejecting Walter's ballot, or refusing another ballot. In doing so he declined to do that which he was directed to do, thereby committing error of law going to jurisdiction.

63. Both his initial and appeal decisions simply state that because his [the CEO's] initials were not on the ballot it would not be counted, notwithstanding that there was no issue as to identity, or double voting, or that Walter was present before and after the 6 p.m. closing, or that there was a clearly discernible voter intention. Technicality governed substance which is the converse of the correct approach.

64. In contrast, the CEO permitted other votes in which the asserted deficiency was at least as serious. The Election Act, s. 66 (a) states that any mail in ballot shall be set aside if not accompanied by a Voter Declaration Form if that form is not signed or witnessed. S. 70 then specifies that any such ballot is void and must not be counted. A mail in ballot by Deana Morton had no witness address but was nevertheless counted. No explanation for the differential standard has been forthcoming.

65. In his appeal decision the CEO stated that the purpose of the initials was to ensure identification of the standard which was the standard he applied to the vote cast in favour of Roland. There was no issue as to identification with Walter and, even if such was somehow conceivable, Walter was present to confirm. However, the CEO was of the view that a ballot could not be replaced after 6

p.m.. There are two problems with that: (a) replacement was not necessary and (b) even if it was, the plain words of ss. 47 and 61 of the *Election Act* govern. His decision can only be reached by reading in further words which would be contrary to the correct statutory interpretation standard, as set out in the law above.

66. The errors in his decision were compounded by further error. First, he refused to consider any of the circumstances in relation to Walter because Walter had not appealed and neither of the appellants were elders. The governing statute contains no such requirement just as, on a recount vote a returning officer does not require the individual whose vote is challenged or has been rejected to be the applicant for a recount. As previously indicated direct evidence is not required. What matters is that the appeal body is given notice of an issue triggering a right and duty to investigate. By requiring that the Applicant be elderly he effectively rejected the appeal on an irrelevant ground and improperly declined jurisdiction to inquire and investigate.

67. The second problem, which goes directly to the heart of procedural fairness, is that in the appeal process the CEO must be taken to have refused to hear from Walter. The Appeal Notice specifically requested a right to attend and adduce evidence, and specifically put forward a request to hear from Walter who would attend. The Appeal decision was rendered without any regard for that request.

68. As stated in the *Meeches* not only does an appeal committee have power to investigate alleged breaches but must address the issue put to it. The appeal process, as conducted by the CEO, is the mirror opposite of that found in *Gadwa v. Kehewin First Nation* [2016] FC 597. At issue was the counting of certain disputed votes. Because Gadwa failed to raise with the Election Officer his concerns as to the need for an oral hearing, he had waived procedural fairness rights. Further, the Elections Officer had received informal information and indicated that she would take action, provided that affidavits were sworn. That suggestion was declined. In the circumstances the court was satisfied that Gadwa had been given a "meaningful opportunity to put forward his position and evidence in support of that position". Such is the opposite of what occurred here.

69. The Applicants, and indeed all those entitled to vote in a SFN election, have a legitimate and paramount expectation that the voting process - the fundamental cornerstone of democracy - will be conducted to the highest standards of correctness and procedural fairness. The continuing failure of the CEO to meet

those standards is sufficient justification to set aside the election result. Not only were the CEO's decisions unreasonable but reflect serious error of law and lack of procedural fairness.

[footnotes omitted]

[98] The Respondents' position is that the CEO had no choice but to reject Walter's ballot because he was bound to do so in accordance with the governing provisions of the *Elections Act*:

58. An Elector voting by mail-in ballot receives, under section 40(1)(b), a ballot in the mail bearing the Electoral Officer's "distinctive mark" on it. That Elector can either, choose to mark that mail-in ballot and mail or deliver it to the Electoral Officer "before the time at which the polls close on the day of the Election" under section 45(1)(f). Or, that Elector can, under section 45(4) and section 55(3)(a), choose to "exchange his/her **unmarked** [sic] mail-in ballot with the Electoral Officer for a ballot to be marked and deposited in a ballot box at the voting station" or the Elector can, under section 45(5) and section 55(3)(b), "obtain a ballot and vote in person at a voting station" by swearing that he or she "has not voted in the Election by mail or in person". All mail-in ballots received by the Electoral Officer before the polls close remain, under section 66, unopened until after the polls close. Under section 47(6) the polls close at 6:00 pm.

59. An Elector who chooses to vote in person goes to the poll between 10 am and 6 pm and receives a ballot bearing the Electoral Officer's "distinctive mark" if he or she has not already voted in the election either by mail-in ballot or in person: see sections 55(1)(b) and (c) and (e). The Elector then marks the in-person ballot in secret, folds it and deposits it **folded** in the ballot box; section 55(1)(d) and (g).

60. Only after the polls close at 6:00 pm does the Electoral Officer open up the mail-in ballot envelopes he or she received. He or she checks to see whether the Elector has enclosed his or her "signed and witnessed" Voter Declaration Form and, if that form is present, the Electoral Officer shall:

"... **without unfolding** the ballot deposit the ballot in the ballot box..."

61. Only after all of the mail-in ballots that were accompanied by "signed and witnessed" Voter Declaration Forms are deposited

in the ballot box, is the ballot box then opened. Once the ballot box is opened, section 69(1) mandates that the Electoral Officer

"shall examine each ballot and reject ballots that:

"(a) were not issued, mailed out or handed out by the Electoral Officer,

"(b) does [sic] not have the distinctive mark of the Electoral Officer:

"(c) are marked "spoiled", "cancelled" or "declined",

"(d) contain a mark that identifies or may identify an Elector."

Section 69 gives the Electoral Officer no discretion, he or she must reject such ballots.

62. As Sam Twinn's Scrutineer noted in his written report, after the polls closed on February 17, 2015:

"Every ballot - Mail In or In-Person - had to have the initials of either the Electoral Officer or the Deputy Electoral Officer clearly marked and visible on the back of the ballot before it could be deposited in the ballot box. Both [of Walter Felix Twinn's mail-in] ballots, one for Chief and the other for Resident Council and Resident Elder, had been cut, removing the initials of the Electoral Officer. After thoroughly examining the Ballot for Chief, the Chief Electoral Officer set it aside; discussion occurred between us, in the presence of electors. Later the Chief Electoral Officer declared the ballot spoiled."

And, as explained in the Electoral Officer's March 2, 2015 Decision:

"4. . . . The ballot was found to be spoiled as set out under S. 69(1) of the Act as the ballot did not have the distinctive mark of the Electoral Officer on the back."

63. It was clear, both on February 17, 2015 and on March 2, 2015, that the Electoral Officer rejected Walter Felix Twinn's ballots under section 69(1)(b) because the *Consolidated Elections Act* expressly says that they shall be rejected. They cannot be counted. That reasoning was known and

understood on February 17, 2015 by Sam Twinn's Scrutineer. And, as it is an undisputed fact that those ballots did not have "distinctive mark of the Electoral Officer" on them, given the unambiguous meaning of the mandatory wording of section 69(1)(b), the Electoral Officer's decision was reasonable, within the range of possible acceptable outcomes, and indeed correct.

64. Even if Walter Felix Twinn's mail-in ballots should have deposited unfolded into the ballot boxes without having been first examined to see if they had the "distinctive mark of the Electoral Officer on the back", the Electoral Officer's decision not to do so did not affect the result of the election because, as soon as the ballot boxes were opened on February 17, 2015, the Electoral Officer would have then had to summarily reject it under section 69(1)(b). He had no discretion. He could not count it. Indeed, as everyone had already learned from Walter Felix Twinn before the ballot box was opened that he had cut the "distinctive mark of the Electoral Officer" off his ballots, had his Chief ballot been deposited in the ballot box before the ballot box was opened, the Electoral Officer would have also had to reject it under section 69(1)(d). The Electoral Officer's decision not to count Walter Felix Twinn's ballot was reasonable, indeed correct, and this judicial review should be dismissed.

The Electoral Officer's decision not to give Walter Felix Twinn a new, in-person ballot after the polls had closed is neither unfair nor discriminatory nor anti-democratic. It is a reasonable, indeed correct, interpretation and application of the Consolidated Elections Act.

65. As explained by the Electoral Officer in paragraphs 5 - 8 of his March 2, 2015 Decision, while section 61(1) of the *Consolidated Elections Act* allows an **in-person** voter who makes a mistake in the polling booth to return his or her ballot and get a new ballot before actually voting, that section **does not** apply to Electors who have already chosen to vote by mail. Those Electors can only vote in-person before the polls close under sections 45(4) or 45(5); that is, only if they exchange their **unmarked** mail-in ballots for in-person ballots or if they satisfy the Electoral Officer that they have not already voted in the election either in person or by mail-in ballot.

66. By the time it was discovered that Walter Felix Twinn had spoiled his ballot by cutting off "the distinctive mark of the Electoral Officer", it was too late for him to get an in-person ballot under section 45(4) or section 45(5). He had already marked his mail-in ballot, he had already mailed or delivered it to the Electoral

Officer, who had received it before the polls closed and only opened it after the polls had closed. The Electoral Officer's decision was reasonable. It was transparent, intelligible and within the range of possible acceptable outcomes, given the election regime established by the *Consolidated Elections Act*. This judicial review of the Electoral Officer's decision should be dismissed.

67. The Applicants' unsubstantiated suggestion that the Electoral Officer's reasonable and correct interpretation and application of the *Consolidated Elections Act* was inconsistent, unfair, discriminatory or undemocratic must be rejected. The Applicants' unsubstantiated suggestion that the Electoral Officer was left to make up his "own rules" must also be rejected. There is absolutely no evidence to support either of these suggestions.

68. On the contrary, the evidence is clear that the Electoral Officer did not apply his "own rules". He consistently applied the rules established by the *Consolidated Elections Act*, specifically:

- a) he applied the mandatory provisions of section 69(1) to reject not only Walter Felix Twinn's mail-in ballots but also two in-person ballots that, when the ballot box was opened, were found to have "a mark that identifies or may identify an Elector" contrary to section 69(1)(d); and
- b) he accepted the Voter Declaration Form received with Deana Morton's mail-in ballots because it was indeed "signed and witnessed", as required by section 66(a)(i), thus ensuring Elector Morton's identification.

69. Contrary to the Applicants' suggestion, Walter Felix Twinn was not denied his right to vote. He voted. He marked his mail-in ballot and he mailed or delivered it to the Electoral Officer before the polls closed. He voted "by mail". However, because he did it wrong, just as Electors Morton and Potskin did it wrong, his vote was not counted because it had to be rejected under section 69(1) of the *Consolidated Elections Act*. Section 69(1) was applied consistently by the Electoral Officer to all of the ballots he received. Neither the *Consolidated Elections Act* nor the Electoral Officer's interpretation and application of them are "unfair", "discriminatory" or "undemocratic".

[emphasis in original, footnotes omitted]

[99] As the Respondents point out, s 69(1) of the *Elections Act* is mandatory ("shall examine each ballot and reject ballots that ... (b) does [sic] not have the distinctive mark of the Electoral Officer"). The Respondents also point out that Walter's ballot could and should also have been rejected under s 69(1)(d) because everyone involved had already learned from Walter himself before the ballot box was opened that he had cut the distinctive mark of the CEO off his ballot.

[100] The Applicants attempt to circumvent the mandatory impact of s 69(1) in several ways. First of all, they refer the Court to s 12 of the *Elections Act*:

12. (1) The Electoral Officer shall be responsible for the fair, efficient and proper conduct of an election held in accordance with this Act and the regulations.

(2) The Electoral Officer may take all reasonable means to encourage, in an impartial manner, all Electors to engage in and to vote at an election.

(3) As such, the Electoral Officer may make such decisions and rules, that are not inconsistent with the provisions of the Constitution, this Act or any regulation made pursuant to this Act, to fulfill his/her responsibilities and to deal with any matter that circumstances require so as to protect the integrity of the election within generally accepted standards for the conduct of elections.

[101] It is true that s 12(2) imposes a positive duty on the CEO to encourage electors to engage in the election, but this does not mean they can vote in a way disallowed by the *Elections Act*, so that it does not override s 69(1). And the discretion given to the CEO under s 69(2) can only be exercised in ways "that are not inconsistent with the provisions of the Constitution, this Act or any regulations made pursuant to this Act...." Subsection 69(1) is a provision of the *Elections Act* and it says that mail-in ballots cannot be accepted if they do not have the distinctive mark of the CEO, or if they contain a mark that identifies or may identify an elector.

[102] The Applicants also point to ss 47(7) and 61(1) and (2) of the *Elections Act*:

Voting Stations

47. (6) Voting stations shall be kept open from 10 a.m., local time, until 6 p.m., local time, on the day of the election unless regulations establish variations in these hours.

[...]

Cancelled ballots

61. (1) If an Elector makes a mistake on a ballot or inadvertently spoils his/her ballot paper in marking it prior to depositing it in the Ballot Box, then the Elector is entitled to another ballot to be issued by the Electoral Officer upon return of the spoiled ballot to the Electoral Officer.

(2) The Electoral Officer shall write the word "Cancelled" on the spoiled ballot and without examining the ballot, store it separately.

[...]

[103] It seems to me that the Respondents are right to point out that these provisions do not assist the Applicants. Walter chose to vote, and did vote, by way of mail-in ballot. He could have chosen to vote in person before the polls closed under ss 45(4) and 45(5) of the *Elections Act*. But this could only have occurred if he had exchanged his unmarked mail-in ballot for an in-person ballot, or if he had satisfied the CEO that he had not already voted in the Election either in person or by mail-in ballot. Walter did not do this. He marked his mail-in ballot and delivered it to the CEO before the polls closed, and it was opened after the polls closed. This means, as I read the *Elections Act*, that Walter voted by way of mail-in ballot that was spoiled for reasons later given by the CEO in his March 2, 2015 Decision, *i.e.*:

The ballot was found to be spoiled as set out under s 69(1) of the Act as the ballot did not have the distinctive mark of the Electoral Officer in the back.

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[104] The Applicants' final argument is based upon common sense and fair play. In essence, it is that Walter attended to vote before the polls closed, he had only cut off the CEO's distinctive mark to fit his mail-in ballot in the envelope, everyone knew who he was, he could easily have been given an in-person ballot and allowed to vote in a way that would not identify him. No harm would have been done to the electoral process in a context (41 electors) where every vote is highly significant. The Applicants say that the CEO placed form ahead of substance.

[105] This seems to me to be an argument alleging the unreasonable exercise of a discretionary power. But the CEO only had the powers granted to him by the *Elections Act*. The Applicants' arguments make sense to me, but they cannot be reconciled with the process chosen by SFN under the *Elections Act*, and I am not here reviewing that *Elections Act*. If form has been placed before substance, then it is SFN who has done this, not the CEO. The way to deal with this kind of problem is to seek an amendment to the *Elections Act* that would give the CEO the scope to deal with the kind of problems that arose in this case over Walter's vote. Given the current wording of the *Elections Act*, I cannot say that the CEO was either incorrect or unreasonable in rejecting Walter's ballot.

E. *Queue Jumping*

[106] The Applicants complain that the election process is corrupted at SFN by the way that the Membership Committee allocates membership to applicants and controls the Membership Register and hence, the Electors List.

[107] There is no Membership Code decision before the Court in this application, but the Applicants' specific complaint appears to be that Chief Roland Twinn's son was granted membership in the 6-month period prior to the Election – thus effectively ensuring a vote for his father - while other applications for membership have been left hanging for years. The Applicants point out that the whole membership process is shrouded in secrecy and this undermines the democratic process, and did in this case because Chief Roland Twinn's son was granted membership in a way that was not transparent. It is also not disputed that Chief Roland Twinn chaired the SFN Membership Committee which controls applications and provides recommendations on membership to Chief and Council. It seems obvious, then, that Chief Roland Twinn could find himself in a conflict of interest when it comes to deciding any application for membership, and particularly when his own children are involved. Even if he abstains, that does not mean that his influence and his wishes will be disregarded.

[108] Because there is no application to review the decision to grant Membership to Chief Roland Twinn's son before me, the Court is not in a position to assess whether that decision was erroneous or unlawful, either in terms of SFN's own constitution or the significant jurisprudence that has dealt with the vexed issue of membership at SFN. The Applicants are simply asking the Court to draw an inference that Chief Roland Twinn, and those he is able to influence, have, in this instance, used their control over membership to secure an advantage in the Election. Based upon the record before me, I do not think that such an influence can be drawn. In any event, however, the Court is reviewing the decision of the CEO during the Election and the Applicants' appeal of the Election.

[109] The grounds of the appeal were:

SAWRIDGE FIRST NATION ELECTION APPEAL

FEBRUARY 17, 2015

We provide Notice pursuant to the Constitution of this Nation of our intent to Appeal the results of the General Election of the First Nation for the position of Chief, the position of Councillor and the position for the Elders Commission. I have reasonable grounds to believe that there has been a contravention of the Constitution and contraventions of the laws of the First Nation that have affected the results of the Election. In the final analysis, the announced results do not reflect the popular vote and the Nation is best served by the relief requested and calling for a new Election in order to properly reflect the popular vote.

GROUND'S OF APPEAL

I. Improper Rejection of Ballots, Contrary to s.61 of the Sawridge Election Act and the Sawridge Constitution which Guarantees the Right Not to be Discriminated Against and, the Right to Equal Protection, Treatment and Benefit under the Laws of the First Nation

During the Ballot Opening and Count Process of the February 17, 2015 Election:

1. The Chief Electoral Officer (CEO) discounted the clear intention of voter Elder Walter Felix Twin who cut his Mail In Ballots to fold and fit the envelope. The CEO, in searching for his own initials, thoroughly examined the Ballots which had been in the sealed envelope. At this point in time, the CEO embraced the now discredited strict procedural approach and determined there was an Irregularity. A ballot in every sense complete, with the exception of the Electoral Officer's identifying initials, was held to be an invalid expression of the Voter's intent. The CEO deemed the ballot cast by Walter Felix Twin "spoiled" or otherwise rejected;
2. On the contrary, the modern electoral guidelines embrace a substantive approach emphasizing the right of the elector to express his free political opinion. There can be no question that all of the usual safeguards were in place, protecting the sanctity of the ballots. With the exception of the CEO's initials, all other safeguards were in place and the unfettered will of the voter clearly expressed. While other voters subsequently enjoyed corrective

measures, this specific mail in voter who was present February 17, 2015, did not receive any assistance and was therefore deprived of his right to participate.

3. This error on the face of the record effectively added one vote in favour of the Incumbent and reduced by one the number of votes for the Challenger contesting the position of Chief, resulting in a reversal of the elected representative. At best, the error resulted in a tie, giving rise to a new Election. Subject to the evidence of the Chief Electoral Officer and the Scrutineer, the elections for the position of Councillor and the Election for the position of Resident Elder to the Elders Commission, have been similarly impacted.

II. Non Compliance with Election Rules - s. 44, s.45(4), (7), s.61 and s.2(1)(f) of the Sawridge Constitution which Guarantees the Right to Vote to all Electors

1. The CEO closed the Polls and started opening the Mail In Ballots thereby depriving any elector present, in particular, 80 year old Elector Walter Felix Twin, the opportunity to correct their Mail In Ballot or vote in person as provided for by the Elections Act as amended. We have a custom which shows great deference to age, life, experience, education, health, ability to appreciate and understand the written word and, we make every effort to accommodate these issues. The strict procedural approach by the CEO is contrary to our custom, culture and prevailing law.

2. The CEO refused to allow the 80 year Elector, Walter Felix Twin, present, to cast a new Ballot, despite being asked by Scrutineer Ron Rault. The incorrect interpretation of the procedural rules coupled with the small size of the return envelope, and difficulty appreciating written instructions required the voter to cut down the size of the ballot to fit the envelope with a predictable result. Cutting the Ballot is one of a list of available responses some of which are more reasonable than others. With every other safeguard in place to protect the sanctity of the Ballot itself, this voter response was not so unreasonable as to deprive the voter of the opportunity to participate. On the contrary, participation is to be encouraged and indeed commended.

3. Alternatively if the Rules do not provide an opportunity to substitute a Ballot, such provisions improperly discriminate as between types of electors.

4. In contrast the CEO set aside then allowed a Mail In Ballot in favor of Roland Twinn despite the irregularities in the Voter's

Declaration Form which form did not identify the address of the witness to the Elector's Declaration. The form is specific, directive and clear that the address of the Witness must be included.

5. The CEO failed to show the Scrutineer the two Ballots that allegedly identified the Elector. He then deemed these Ballots "spoiled". The CEO and DEO failed to check the Ballots before being deposited into the Ballot Box and enable a correction so each vote would count. The CEO upon request from Sam Twinn confirmed that one of the Ballots was cast in favor of Sam Twinn for Chief.

III. Inconsistent Administrative Decision Impacting the Popular Vote

1. The differential approach by the CEO followed upon the determination of who the votes were cast for, in at least one case. In fact the CEO confirmed his knowledge who the Elector voted for as Chief.

2. Despite Walter Felix Twin's presence to the knowledge of the CEO, no steps were taken to identify any difficulties with the Ballots and allow Walter Felix Twin to exercise his full voting rights under the Election Act as amended and to consider his Mail In Ballot spoiled and offer him the opportunity to vote, as he was entitled to do. Administrative fairness as provided under the Sawridge Dispute Resolution Act requires Notice and an opportunity to express concerns provided it would not cause unreasonable delay. Walter Felix Twin was present and no delay would have occurred.

IV. Non Compliance with the Rules Regarding the Creation and Notice of Voter Lists

1. The Election Act as amended requires that Elector Sub Lists be mailed to each Elector not less than 75 days prior to the Election. This was not complied with.

2. The failure to comply deprives persons who had not been Included in the List the opportunity to present information to the CEO to ensure their proper inclusion as provided by the Election Act as amended.

3. The failure to comply with the creation and notice of Voter's Lists was compounded by a process that unfairly added persons and excluded others. In particular, notwithstanding applications for inclusion which had been outstanding for years,

only the son of the successful candidate for Chief was added to the List.

EVIDENCE

I. We intend to call the evidence of Samuel Twinn, Isaac Twinn, Felix Twinn and others as they become known to us, together with the evidence of the Scrutineer, Ron Rault. The Scrutineer's Report is attached for your information and review.

[110] The CEO's decision rejecting this appeal is set out at paragraph 75 above.

[111] As can be seen from the above, this ground of appeal was rejected on the basis of "timeliness" and non-compliance with Part III of the *Elections Act*.

[112] The Applicants have not addressed this aspect of the decision before me.

F. *Procedural Fairness*

[113] The Applicants raise the following procedural fairness issues:

66. The errors in his decision were compounded by further error. First, he refused to consider any of the circumstances in relation to Walter because Walter had not appealed and neither of the appellants were elders. The governing statute contains no such requirement just as, on a recount vote a returning officer does not require the individual whose vote is challenged or has been rejected to be the applicant for a recount. As previously indicated direct evidence is not required. What matters is that the appeal body is given notice of an issue triggering a right and duty to investigate. By requiring that the Applicant be elderly he effectively rejected the appeal on an irrelevant ground and improperly declined jurisdiction to inquire and investigate.

67. The second problem, which goes directly to the heart of procedural fairness, is that in the appeal process the CEO must be taken to have refused to hear from Walter. The Appeal Notice

specifically requested a right to attend and adduce evidence, and specifically put forward a request to hear from Walter who would attend. The Appeal decision was rendered without any regard for that request.

[114] In their grounds of appeal, the Applicants alleged, *inter alia*, non-compliance with s 2(1)(f) of the *Constitution* which protects the rights and freedoms of members against “unreasonable search or seizure.”

[115] In his decision, the CEO says that the “Appellants also allege that an Electors Rights under s 2(1)(f) and (j) of the Constitution were infringed.”

[116] The CEO appears to have raised s 2(1)(j) himself because of the mention of Walter’s age in the appeal. Subsection 2(1)(f) includes the right not to be discriminated against on the basis of “age.”

[117] The Court does not understand the relevance of s 2(1)(f) to the facts and issues at play in this case which have nothing to do with unreasonable search and seizure. And as the Applicants didn’t raise s 2(1)(j), it is hard to see how they can now say that the appeal was unfairly handled or dismissed based upon this issue:

[118] However, the grounds of appeal do make some mention of age:

II. Non Compliance with Election Rules - s. 44, s.45(4), (7), s.61 and s.2(1)(f) of the Sawridge Constitution which Guarantees the Right to Vote to all Electors

1. The CEO closed the Polls and started opening the Mail In Ballots thereby depriving any elector present, in particular, 80 year

old Elector Walter Felix Twin, the opportunity to correct their Mail In Ballot or vote in person as provided for by the Elections Act as amended. We have a custom which shows great deference to age, life, experience, education, health, ability to appreciate and understand the written word and, we make every effort to accommodate these issues. The strict procedural approach by the CEO is contrary to our custom, culture and prevailing law.

2. The CEO refused to allow the 80 year Elector, Walter Felix Twin, present, to cast a new Ballot, despite being asked by Scrutineer Ron Rault. The incorrect interpretation of the procedural rules coupled with the small size of the return envelope, and difficulty appreciating written instructions required the voter to cut down the size of the ballot to fit the envelope with a predictable result. Cutting the Ballot is one of a list of available responses some of which are more reasonable than others. With every other safeguard in place to protect the sanctity of the Ballot itself, this voter response was not so unreasonable as to deprive the voter of the opportunity to participate. On the contrary, participation is to be encouraged and indeed commended.

[119] It seems to me that although Walter's age is mentioned here, as is the custom to deference for age, it is not really explained how Walter's age and status as an elder affected his ability to vote or required that the normal voting rules needed to be modified in his case.

[120] I think this is what the CEO means by citing Walter's constitutional rights under s 2 of the *Constitution* and pointing out that the Applicants are not elders themselves. The point is that the Applicants did not establish that they themselves had had any s 2 rights that were infringed.

[121] I agree with the Applicants that they did not need s 2 standing to bring an appeal under Article II of the *Constitution* which provides that "any Elector may lodge a written appeal... if the ... Elector had reasonable aground to believe that there was":

(a) a corrupt practice in connection with the election; or

- (b) a contravention of this Constitution, or any law of the First Nation that might have affected the result of the election.

[122] The grounds of appeal focus upon the way that Walter's ballot was dealt with and the CEO's refusal to allow him to vote in person. The CEO gave reasons for this aspect of the appeal and I cannot say that, given the governing provisions of the *Elections Act*, his decision was incorrect or wrong. It is indeed unfortunate that Walter, an elder, was not able to vote, but I don't see any provisions in the *Election Act* or the *Constitution* that say that an elder is not bound by the same election rules as everyone else at SFN, or that special dispensation must be made by the CEO when dealing with an elder. The *Constitution* and the *Elections Act* in their totality don't suggest that an elder's vote is any more valuable than is the vote of other members who qualify as electors.

[123] The balance of the grounds of appeal refer to non-compliance with the rules governing mailing of elector sub-lists "not less than 75 days prior to the Election" which was compounded by the queue-jumping issues I have already referred to.

[124] These voter list issues are dealt with in paragraphs 19 and 20 of the Decision and I can find no reviewable error in the CEO's reasons.

[125] The appeal was not rejected on the irrelevant ground that the Applicants had to be elderly. The substance of the appeal was rejected on the basis that Walter's ballot had been handled in accordance with Part III of the *Elections Act* which is "comprehensive and final." I see no error here.

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[126] I see nothing in the "Appeal Notice" or in the record before me to show that the Applicants "specifically put forward a request to hear from Walter who would attend."

[127] In any event, Article II of the *Constitution* requires all appeals to be made in writing and that the "Electoral Officer shall make a decision in respect of any appeal within seven days of receipt." Appeals have to be made within 14 days after the election.

[128] For obvious reasons, SFN has decided that any appeals need to be dealt with quickly and in writing. Long, drawn-out appeals can give rise to significant uncertainty and difficult legitimacy issues for which the whole First Nation can suffer.

[129] The Court has not been asked to review the Article II appeal process in any general way and, on the facts of this case, it has not been established that the Applicants suffered any procedural unfairness for having to make their appeal in accordance with Article II. Given the issues raised, Article II provided a reasonable process whereby applying the *Elections Act* to undisputed facts, the Applicants were able to state their case. It is true that the Applicants wanted the CEO to take general soundings with regards to membership at SFN, but that was not within the CEO's competence or jurisdiction. The material matters of concern that the CEO could deal with – the handling of Walter's ballot and the Voters List issues – were reasonably and fairly dealt with on the basis of written submissions.

G. *Conclusions*

[130] The Applicants have not convinced me that a reviewable error has occurred in this application.

H. *Costs*

[131] The Respondents have asked for their costs in this case, but I feel this is an appropriate case to require that both sides meet their own costs. As the jurisprudence shows, there is significant concern and confusion regarding membership and, thus, voting entitlement at SFN.

As Justice Zinn pointed out, this application raises "serious matters that will affect the electoral process undertaken in 2015 and future elections." These are serious, public issues that affect all members of SFN and I do not think that individual members should be discouraged from coming before the Court on those occasions when their concerns have some justification. SFN is unique in being such a small and self-contained First Nation. It has also faced numerous disputes on the membership issue. Membership is a requirement which is tightly controlled and the process for granting and withholding membership is opaque and secretive. Hence, there is scope for abuse and the lack of transparency is bound to give rise to future disputes. This application is a function of the system in place at SFN. Although I cannot find for the Applicants on the facts of this case, it seems to me that this application is, to some extent at least, a response to a public need at SFN that will persist until membership issues are resolved.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. The parties will bear their own costs.

"James Russell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1073-15
STYLE OF CAUSE: SAM TWINN ET AL v SAWRIDGE FIRST NATION ET
AL
PLACE OF HEARING: EDMONTON, ALBERTA
DATE OF HEARING: MARCH 14, 2017
JUDGMENT AND REASONS: RUSSELL J.
DATED: APRIL 26, 2017

APPEARANCES:

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Edward Molstad

FOR THE RESPONDENTS

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Regina, Saskatchewan

FOR THE APPLICANTS

McCoy
St. Albert, Alberta

FOR THE APPLICANTS

Parlee McLaws LLP
Edmonton, Alberta

FOR THE RESPONDENTS



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

Crista C. Osualdini
a Notary Public and Commissioner for Oaths
in and for the Province of Alberta
My Appointment expires at the Pleasure
of the Lieutenant Governor

Catherine Twinn
Sworn before me this 10 day
of May A.D., 2017

CATHERINE TWINN NOTES OF JANUARY 22, 2014

TELEPHONE CALL WITH WALTER F. TWINN

WHY HE RESIGNED AS A TRUSTEE

Crista C. Os
Notary Public, A Commissioner for Oaths
in and for the Province of Alberta

I asked about his health. Walter's health is not good. He is avoiding pain killers for the constant throbbing in his neck where he had a large incision on his blocked artery that caused a series of mini strokes. He described what it felt like having the mini strokes. He was completely limp and unable to move while the mini strokes occurred. It traumatized Yvonne and Wesley.

The pain prevents him from sleeping. He said the Dr. at the Grey Nun's marvelled at his recovery and the sharpness of his mind. Walter said each room at the hospital had a crucifix and many patients and family spent time every day in the Chapel.

The Dr. said its important patients get home as soon as possible as they recover faster in their own surroundings.

Many people prayed for Walter and came to see him. His relations from his father St. Germain who are not band members or beneficiaries. He remembers Clara, Ardell and Irene being present and appreciated the support they offered to Yvonne and Wesley. Walter's relations were there all the way through.

I asked Walter why he resigned and told him I only learned of it in January. I had hoped to speak with him personally, face to face, before the January 21, 2014 Trustee meeting. But I had a cold and could not see him in person. I described what occurred at the Trustee meeting yesterday, how:

1. his resignation was quickly accepted and Justin Twin appointed a Trustee;
2. 6 Motions were prepared in advance of the meeting which were not shared with me prior to the meeting. I only saw the Motions after I arrived at the January 21st meeting;

I could not agree to sign the 6 motions, and needed a number of clarifications including

3. Due process in accepting Walter's resignation and appointing Justin Twin;
 - i. I wanted the opportunity to talk to Walter F. Twinn face to face as to why he resigned;
 - ii. I wanted the opportunity to talk to Justin Twin-McCoy face to face;
4. I wanted independent and competent legal advice on a number of questions including:
 - i. can a majority of Trustees appoint a Trustee or does it requires unanimity as Brian Heidecker had represented September 16, 2013;
 - ii. whether under the 1985 Trust, Justin Twin-McCoy qualifies as a beneficiary, his mother having married a non-Indian, Jody McCoy, Justin's father;
 - iii. How assets were and are currently held and why the Joint Tenancy method is now required;
 - iv. A fair process to resolve the issues raised in my January 17, 2014 letter including the appropriateness of appointing another elected official of the Band given the Reasons of Justice Denny Thomas;



5. Agreement on a proper succession process including a fair opportunity to identify and explore other candidates against criteria the Trustees agree upon. Making up the rules as we go, combined with the toxic work culture, has created a very difficult situation;

I also shared the calls I received from Paul Bujold prior to the January 21, 2014 Trustee Meeting:

- January 15, 2014 at 2:44 p.m. from Paul Bujold (780-988-7723) saying the January 21, 2014 Trustee meeting is cancelled because Bertha is in the hospital and we will wait until she is out of the hospital before the meeting is rescheduled;
- January 17, 2014 at 4:12 p.m. from Paul Bujold (780-988-7723) saying the January 21, 2014 meeting was "back on". Bertha is out of hospital and wants to go ahead with the meeting;

Walter said it was hard for him to talk about why he resigned. He talked about and named some of his relatives – children and grandchildren of the late Chief St. Germain Twin. They have been excluded from beneficiary status and membership – it pains and hurts Walter. While he was in the Grey Nun's Hospital his relatives told him he must not fight for them. His health is more important. They accept what God decides. They are grateful they are not dependent on the Government and Sawridge, like those who are dependent.

Walter said he is too old to fight for those entitled but excluded. He said that once on the plane, when he spoke of his excluded relatives, Bertha became angry and hateful; she turned her back on him, refused to look at him and would not speak with him. He said the excluders love money and that disconnects them. Their love of money separates them. They are separated from the love of family. He spoke at length about this.

He said Roland and his siblings are "dysfunctional". They reject each other and are constantly in turmoil. He described the constantly shifting dynamics of which one is not talking to another sibling e.g. Arlene rejects Ardell, then another sibling and so on. He went on. He said Roland is secretly using alcohol and drugs even though his wife threatened to leave if he continued to use alcohol and drugs. When Walter was with Roland in Edmonton Roland used drugs and at the meeting he made no sense.

Walter quit the Membership Committee for the same reason as resigning as a Trustee. He cannot try to counter the excluders any more, the stress is too great. His impacted relatives do not want him to fight for them because they love him and value his health. The stress of dealing with the excluders is too great.

Walter F. Twin

Walter F. Twin – The above accurately reflects my reasons for resigning as a Sawridge Trustee. I make this statement freely, with concern, not knowing what if any reprisal might occur to me and my family

Sam Twin

Witness

April 14 2014

Dated, Sawridge Indian Reserve



Crista Osualdini

From: Catherine Twinn <ctwinn@telusplanet.net>
Sent: Thursday, April 01, 2004 2:29 PM
To: Bill Kostenko; Clara Midbo; Roland Twinn
Cc: jmacnutt@telus.net
Subject: RE: Trustee Sucession

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

Catherine Twinn

Sworn before me this 10 day

of May A.D., 2017

Crista C. Osualdini

Crista C. Osualdini
 a Notary Public and Commissioner for Oaths in and for the Province of Alberta
 My Appointment expires at the Pleasure of the Lieutenant Governor

File 1646

April 1, 2004

Hi Bill,

With respect to the chart on Beneficiary breakdown, it may be that Justin Twinn is not a beneficiary under the Old Trust, given his mother's marriage to a non-Indian and the deeming effect the marriage has on the children and how that interplays with the provisions of the Indian Act as they stood immediately prior to April 17, 1985, as interpreted by the Courts. I believe the Trust Deed refers to the rules as they stood in 1982. I would suggest that outside legal advice be sought on Justin and all other persons who may or may not be beneficiaries. The list that Mike McKinney prepared has not been reviewed or approved by the Trustee group and in my opinion, is not inclusive of all persons who may, under the law, be entitled. Therefore the list needs to be finalized and confirmed and I would recommend that a statement of facts be prepared for each person whose status is unclear. Thereafter, the facts should be forwarded to outside counsel, presumably Tim Youden, who is the lawyer for the Trust, and regarded as the best Trust lawyer in Canada. He may wish to work with counsel already well versed in the Indian Act status and membership provisions. I don't think Mike McKinney or myself, although well versed, should be involved. I would recommend Martin Henderson and/or Phil Healey to work with Tim Youden.

Catherine M Twinn

Ph: (780) 849-4319

Fax: (780) 805-3274

Email: ctwinn@twinnlaw.com

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-----Original Message-----

From: Bill Kostenko [mailto:BKostenko@FTF.ca]
Sent: Tuesday, March 30, 2004 10:53 AM
To: Clara Midbo; Catherine Twinn; Roland Twinn
Subject: FW: Trustee Sucession

Dear Trustees

Please find enclosed a draft letter I would like to send to the 4 candidates as potential trustees that we identified in our last meeting. I have the contact details for Peggy Ward and Deana Morton, however I will require the contact information for David Midbo and Justin Twinn. Clara please provide David's and Guy could you provide Justin's.

Please review and let me know if you have any revisions. I have included a summary of who is a beneficiary to the two trust as supplied by Catherine to me. I have included some speaking notes as an outline of what I would say to each candidate. I think I should try to meet with them in April to present the Trustee in training program in detail.

Please provide your input.

Bill

Roland please pass a copy of this package to Bertha and Walter Felix.

Catherine M. Twinn

9918-115 St
Edmonton, Alberta
T5K 1S7
Telephone: (780) 482-7519
Fax: (780) 805-3274
ctwinn@twinnlaw.com

Cell (780) 886-2921

810 Caribou Trail N.E.
Sawridge Indian Reserve 150G
Slave Lake, Alberta
T0G 2A0
Mailing Address: Box 1460, Slave Lake
T0B 2A0

Without Prejudice

March 19, 2014

Brian Heidecker
Chair, Sawridge Trusts

Email: brianhei@telus.net

Brian,

Re: Deed of Resignation, Appointment with provision for Asset Transfer

I am in receipt of the letter from Doris Bonora, dated March 12, 2014, emailed March 13, 2014. Given the position taken by the Trustees, I am unable to reply directly to Doris Bonora.

I note the quick timelines you want to adhere to. You acknowledged March 18, 2014 it is improper to expect a Trustee to sign documents without fully understanding what they are signing and resolving all questions essential to informed consent. The way in which the resignation, appointment and asset transfer has been conducted is alarming and the timelines cannot be met without cooperation on providing the information that I need to make an informed decision, as is incumbent on all Trustees. The proposed timeline is unreasonable.

With regard to my questions and concerns, on the issue of the Asset Transfer, they include the following:

1. Why is the transfer being done in the fashion suggested?
2. Why has March 24, 2014 been selected as a critical date for signing?
3. The asset transfer and the appointment of Justin as Trustee are two separate issues and I request that they be split into two separate documents.
4. In the March 12, 2014 letter from Doris Bonora she states:

"I know that you have also questioned whether the new trustee can be appointed as a Trustee because you have questioned his beneficiary status. I understand that his status as a beneficiary has been fully investigated and that he is a proper beneficiary of the 1985 Trust."

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

Catherine Twinn

Sworn before me this 10 day

of May A.D., 20 17

Crista C. Os

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

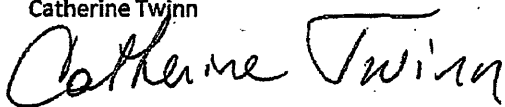
Crista C. Osualdini
a Notary Public and Commissioner for Oaths
in and for the Province of Alberta
My Appointment expires at the Pleasure
of the Lieutenant Governor

What investigation? By who? Who decided, on what facts, applying what rules and law, with input from whom? Please provide me with any and all information used to determine Justin's eligibility including any legal opinion obtained.

5. How are current trust assets held? Why is the signature of all 5 trustees required? Why is the position taken now when it was never required in the past?
6. At one time, share certificates for the Holding Companies were in the names of individual Trustees. Paul Bujold on March 18, 2014 undertook to provide a Memo outlining how, for each Trust, Trust Assets have been held, from the beginning, to the present. Please provide that information;
7. If Share Certificates are in the name of the Trusts – and not the individual names of Trustees (confirmed orally March 18, 2014) – and the Trust Deeds make no reference to the Trustees holding property "jointly" (as emphatically stated by Paul Bujold March 18, 2014), why is an Asset Transfer in the manner asserted by Doris Bonora required?
8. If the Share Certificates are in the names of the Trusts then how could this proposed method of "Asset Transfer" impact the Companies and their operations and business? How does it impact the operations and business of the Trusts?
9. Please produce and disclose the materials from Donovan Water's concerning the Joint Tenancy issue, all communications between you, Paul Bujold and the lawyers, and confirm that no Legal Memo or Opinion exists as Paul Bujold stated March 19, 2014;
10. Can a majority accept a resignation and select a Trustee and produce the legal opinion that explains the conclusion?
11. Could the acceptance of the resignation been done in a manner that would have reflected our values and allowed us sufficient time to make a careful and considered selection of a replacement trustee?
12. The other Trustees have suggested that all issues be dealt with outside the court process. The Trustees need to agree on a workable process that deals with the issues and allows the Trustees to come up with workable solutions. When that happens the administrative staff might be called upon to assist in the implementation of the process. Until then it is improper for the administrative staff to make suggestions as to the wisdom or benefit of this exercise.

Lastly, confirm your position on whether the Sawridge Trustees, of which I am one, should have or are required to have independent counsel separate from the Sawridge First Nation. How will the issue of separate legal counsel for the Trustees (as opposed to the Sawridge First Nation) be addressed? I trust you can provide your position forthwith and certainly prior to the March 24, 2014 deadline you've instructed counsel to impose.

Catherine Twinn



THE HONOURABLE ALLAN H. WACHOWICH
CHIEF JUSTICE



THE LAW COURTS
EDMONTON, ALBERTA
T5J 0R2
TEL: (780) 422-2293
FAX: (780) 427-1721

COURT OF QUEEN'S BENCH OF ALBERTA

March 18, 2009

Claude Provencher
Commissioner for Federal Judicial Affairs
8th Floor, 99 Metcalfe Street
Ottawa ON K1A 1E3

Exhibit: D
Date: March 8, 2017
Witness: PAUL BULLOCH
Katie McLeod, Court Reporter

Dear Mr. Provencher:

In the past I have taken the initiative to ask your offices to submit the forms to an individual to make application to become a member of the Court of Queen's Bench in Alberta. It is in those cases where the individuals are reluctant to make the request on their own behalf and for justified reasons. In particular, I was encouraged by the Minister of Justice to seek out candidates who have shown excellent qualifications for the position.

In my view one such candidate is Catherine Twinn of Slave Lake, Alberta. I am enclosing a copy of her current curriculum vitae.

I would therefore appreciate if you would submit the forms in a personal and confidential envelope to the following individual:

Catherine M. Twinn
PO Box 1460
Slave Lake AB T0G 2A0

I have known Ms. Twinn for a number of years and, in my view, she would be an excellent candidate for the Court of Queen's Bench. She has an outstanding reputation amongst her peers and is recognized as a lawyer who is well informed in the law and has excellent communication skills. She specializes in constitutional litigation.

I am confident that Ms. Twinn would make an excellent judge.

Yours truly,

Allan H. Wachowich

AHW/lw
1700-4

bc. Catherine Twinn

This is Exhibit "1" referred to in the
Affidavit of

Catherine Twinn

Sworn before me this 10 day

of May A.D., 2017

Crista C. Osualdini
A Notary Public, A Commissioner for Oaths
in and for the Province of Alberta

Crista C. Osualdini
a Notary Public and Commissioner for Oaths
in and for the Province of Alberta
My Appointment expires at the Pleasure
of the Lieutenant Governor



Fraser Milner Casgrain LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB, Canada T5J 3V5

MAIN 780 423 7100
FAX 780 423 7276

June 21, 2011

Exhibit: C
Date: March 8, 2017
Witness: PAUL BUJOLD
Katie McLeod, Court Reporter *KM*

TO WHOM IT MAY CONCERN

Re: Catherine M. Twinn

I have been requested by the above-named to provide a letter of reference on her behalf as the same is required to support her application for a government administrative position which she is seeking. I am pleased and honoured to meet this request.

I first came to know Catherine Twinn shortly after she was admitted to the Bar in Alberta in 1980. Subsequent to that date, she appeared before me as a Justice of the Court of Queen's Bench. She was always well prepared, had an excellent grasp of the law and presented her case in a manner where it was obvious she was well prepared.

She is a member of the Sawridge First Nations Band and became involved in the Band's group of companies. She opened a law office in the town of Slave Lake, Alberta and represented members of the Band as well as the citizens at large in the Slave Lake area. She was regarded by the citizens of that area as an excellent lawyer and a person socially and economically involved in the community. After the passing of her husband, the late Senator Walter Twinn, her involvement intensified and she dedicated herself to social-economic development in the area and assisted in the building of the community dialogue to assist the aboriginal youth of the area to ensure that they had a promising future. Her work in this area is not confined to aboriginal people of Northern Alberta, but also at a national and international level.

Catherine Twinn has a reputation as a diligent worker and when she sets her goal all of her efforts are dedicated to meeting that objective. Her integrity is beyond question and she possesses a friendly demeanour with those with whom she comes into contact. I have every confidence that she would meet the qualifications of the position that she is seeking and that she would bring talent, dedication, courage and a deep sense of interest as well as intellectual skills to your department.

Should you have any questions relating to my letter of reference, please do not hesitate to give me a call at (780) 423-7211, my office number.

Yours sincerely,


The Honourable Allan H. Wachowich, Q.C., LL.D.

February 29, 2016 Without Prejudice Agreement


The Sawridge Trustees, the Office of the Public Guardian and Trustee ("OPGT") and Catherine Twinn (collectively the "Parties") agree that the meeting between the Parties on February 29, 2016 at the offices of Reynolds Mirth Richards & Farmer LLP (the "Meeting") is being held on a without prejudice basis. All communications, including any admissions, offers and compromises, that occur at the Meeting will be privileged and will not be used by any of the Parties in any legal proceedings existing at the present time or in the future. This privilege will apply regardless of whether any of the issues existing between the Parties are resolved as a result of the Meeting, or otherwise.

DATED THIS 29th day of February, 2016.

CONSENTED TO BY:


OPGT,
per: Barb Martini

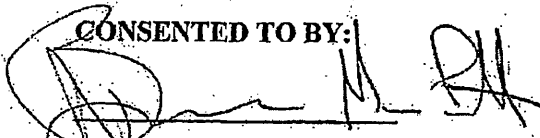
CONSENTED TO BY:


Janet Hutchison, Solicitor for the OPGT

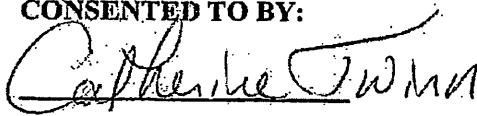
CONSENTED TO BY:


Sawridge Trustees, per: Paul Bujold

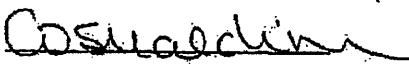
CONSENTED TO BY:


Marco Poretti and Doris Bonora, Solicitors
for the Sawridge Trustees

CONSENTED TO BY:


Catherine Twinn

CONSENTED TO BY:

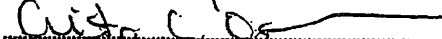

Crista Osualdini and Karen Platten,
Solicitors for Catherine Twinn

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

Catherine Twinn

Sworn before me this 10 day

of May A.D., 2017



A Notary Public, A Commissioner for Oaths
in and for the Province of Alberta
Crista C. Osualdini

a Notary Public and Commissioner for Oaths
in and for the Province of Alberta
My Appointment expires at the Pleasure
of the Lieutenant Governor



DRAFT Agenda & Notes
December 14, 2009
Conference Call
David Ward, Tim Youdan, Megan
Catherine, Paul
9:00 a.m. - 10:50 a.m.

Exhibit: G
 Date: March 9, 2017
 Witness: PAUL BUJOLD
 Katie McLeod, Court Reporter
 This is Exhibit "V" referred to in the Affidavit of
Catherine Twinn
 Sworn before me this 10 day
 of May A.D. 2017
Crista C. Osualdini
 A Notary Public, A Commissioner for Oaths
 in and for the Province of Alberta

1. **Briefing - Meeting Paul had with Keith Anderson and John MacNutt December 10, 2009.**

Crista C. Osualdini
 a Notary Public and Commissioner for Oaths
 in and for the Province of Alberta
 My Appointment expires at the Pleasure
 of the Lieutenant Governor

Paul asked David to contact Ralph Peterson as Keith and John MacNutt do not understand the Waiver of Interest documents.

David - the Trustees need to make a decision tomorrow as to how much interest will be waived for 2009. It must be made before year end.

Paul - how much interest has accrued.

He needs the Financial Statement - which will have the amount of interest and non interest debt and the amount of interest.

2. **Determining Beneficiaries - Roland Twinn does not agree there is any need for lawyers to look at this issue as the beneficiaries are determined. Paul asked Tim for this conference call to discuss this. Tim enlisted Megan (articling student) who has not yet completed her work. Tim intends to meet/discuss the legal issues with CT and Sharon Venne.**

Paul. Roland privately spoke with Paul saying no need to retain lawyers to determine beneficiaries and in particular Sharon Venne who mentioned the McIver decision. Roland said other statutes and case law do not apply. Roland has requested the Trustee decision to retain legal counsel be brought back to the Trustee table December 15, 2009.

Tim asked CT if she could outline the relevant issues to determining who the beneficiaries are – to outline the issues as CT sees them.

Paul – CT already stated these issues but the Trustees will not listen to CT. Paul wants an objective 3rd party to speak to this.

CT – sees many issues:

- a. impact of s.15 on old Trust and new Trust;
- b. Martin v. Chapman;
- c. Adoption law;
- d. Casimel decision;
- e. Private Trust with public aspects;
- f. s.15 is retrospective;
- g. s.4 of the Indian Act;
- h. procedural fairness in making decision;
- i. application of indigenous laws;
- j. etc

CT cannot perform her duties as a Trustee and lawyers cannot do their work if their hands are cuffed and they cannot look at all the applicable law.

Tim – we can help tomorrow by reminding the Trustees of their duties to determine, in accordance with law, who are or are not beneficiaries.

David – could we send a generalized email outlining the issues and the duties of the Trustees in determining .

David – does Roland have a conflict of interest in acting as Chief and Trustee where as Chief he has Indian Act power to exclude persons from membership.

Paul – mentioned that Roland was very upset about DNA testing.

Tim – he does not see a conflict with Roland's position. CT is criticizing the quality of the decision making. Roland is entitled to his views.

David – is the duty of the Band Council one of exclusion – the Band Membership rules purport to give the Band

Council powers to exclude? Those rights of exclusion are being exercised by one or more Trustees.

Tim – if the rules are valid and are being properly exercised, then exclusion.

David – there are 5 Trustees. One of the Trustees – Roland – exercises power to exclude persons from membership thereby affecting who is a beneficiary and affecting Trustees.

Paul – the question of traditional law. Paul wants to provide the Trustees with copies of emails between Paul and David.

Tim – we can provide a written document for tomorrow's meeting. David will be available to join the Trustee meeting tomorrow.

3. Joint meeting – December 4, 2009 – impressions:

Paul:

- a. Directors are concerned that Trustees will draw too much money from the Companies and deprive the Companies of working capital. 2.8 million needed to finance the programs and services plus \$600,000 for care and management.**
- b. Passing of Accounts – Keith and John said Trusts don't have to pass accounts. Tim – incorrect and none of their business.**
- c. List of Documents – what is in the boxes.**
- d. Denis Manning – up to now has refused to provide Paul with information. Discussion. The Trustees tomorrow must pass a resolution instructing Deloitte to deliver all the information to deliver to Paul Bujold.**
- e. Keith Anderson said the Directors not required to give Trustees any information as shareholders.**

- f. **Chair – Directors offered to act as interim Chair for Trustees.**
- g. **Protocol – if Paul meets with a Director and CEO alone, he should be accompanied by a Trustee.**
- h. **Tax – Keith said CRA draft decision expected soon making Band a tax exempt entity. Roland asked the Directors when they were giving out money to beneficiaries to give some to the Band.**
- i. **Corporate Budget – David will communicate with Ralph to ensure that Corporate Budget building allocates adequate funds to finance 2010 programs, services, administration. 2.8 million for programs – if principal only. If interest, 2.8 million plus times 1.65 for tax or about \$4.62 million total. To be settled at the beginning of the year, not the end of the year. Paul said Keith questioned why would Trusts want principal paid back? David to address this with Ralph.**
- j. **Value of Companies – John told Paul that interest is based on an inflated rate and Trust assets overvalued.**
- k. **At the December 4th meeting John MacNutt said the Band's management contract fee of \$750,000 were expenses, which would otherwise have been paid towards taxes. Discussed. David was taken through spreadsheets prepared by John breaking down the Management's fee from 1998-2003. Paul-It was noted that substantial amounts were paid to "Mike McKinney and the Chief" each year, as well as other items.**
- l. **Interim Chair – on Agenda for tomorrow. Paul not happy to have a Director act as interim Chair. David is concerned with the feedback he is hearing as the Directors do not understand what the Trustees are to be doing. After talking to Ralph, David will finalize his opinion. The Directors have stalled with Deloitte, hidden or been reluctant to provide information, passing of accounts, flowing benefits to**

beneficiaries, tax strategy experience. Directors don't seem to understand the role and responsibilities of the Trustees. When the Directors bought Edmonton South they did so without talking to the Trustees.

- m. Budget assumptions. CT asked about Budget assumptions and assurance that Directors were satisfied they were accurate. E.g. CT understands budget assumption for 2010 for Edmonton South is 80% for 2010.

Resolutions needed for tomorrow's meeting:

- a. Deloitte;
- b. Resolution to provide recommendations per Four Worlds, which together with administration requires 2.8 million net divided between the 2 Trusts. Payment of principal of \$2.8 million.
- c. Waiver of Interest – all the interest otherwise payable for 2010 will be cancelled;
- d. For 2009, separate resolution – \$2 million already received – where did it come from? Principal or Interest? Shannon is trying to track this down. Assuming this is all principal, cancel all interest accruing to each of the two Trusts.
- e. Identifying Beneficiaries Resolution – update the February 26 09 Resolution

CT – suggested David draft the Resolutions relating to waiver using precedents from prior years.

Document comparison by Workshare Professional on December 14, 2009
4:00:58 PM

Input:	
Document 1 ID	PowerDocs://TOR_DOCUMENTS/2440608/1
Description	TOR_DOCUMENTS-#2440608-v1-Draft_Notes_-_December_15,_2009_Conference_Call
Document 2 ID	PowerDocs://TOR_DOCUMENTS/2440608/2
Description	TOR_DOCUMENTS-#2440608-v2-Draft_Notes_-_December_15,_2009_Conference_Call
Rendering set	DWPV (with strikethrough for delete)

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	8
Deletions	3
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	11

May 1, 2017

Dear Catherine

Re: Your Conduct as a Trustee

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

Catherine Twinn

Sworn before me this 10 day

of May A.D., 2017

Crista C. Osualdini
a Notary Public and Commissioner for Oaths
in and for the Province of Alberta
My Appointment expires at the Pleasure and for the Province of Alberta
of the Lieutenant Governor

I am following up on our discussion March 20, 2017 regarding allegations made that as a Trustee you have undermined a good working relationship between the Trusts and the Companies. In my 15 years of experience, I never saw any conduct by you that would support this. To the contrary, you listened and tried to help by bringing to light the mistreatment experienced from Roland Twinn.

I was employed by the Sawridge Group of Companies for about 15 years until the fall of 2007 when I felt I had to resign as the Sawridge Hotel Manager in Slave Lake. I never had any issues with your conduct nor do I know of any employees or managers having issues with your conduct. I did however, has issues with the conduct of Roland Twinn.

My resignation resulted from a specific incident where Roland was very angry over the quality of the hotel food served to him. This led to a confrontation first with the server, then escalated into the kitchen, culminating with the assistant manager on duty. I went to the Band office to speak with Roland. There were a number of band members listening to our conversation immediately outside his office door. Roland complained, then belittled, berated, cursed, swore and threatened me and my staff. Roland said he had the power through his influence over others including Mike McKinney, to have me fired. At first Roland was composed but he lost control becoming enraged. Not only was my job at risk, but Roland said he could turn the Corporate Head Office and Directors against me. He impugned my competency as a manager saying the Hotel was poorly run and provided an inadequate return on investment. Finally, he threatened physical violence against me and my staff, in particular, the assistant manager he had the confrontation with. I felt I had to resign. My staff wanted to sign a petition to bring me back but I told them not to. Roland's abuse and maltreatment of me leading to my resignation was not addressed. Instead, my resignation was accepted, there was no exit interview, and my original resignation date of November 2007 was accelerated. I felt harmed by Roland, but further harmed by the response and handling of the cause of my resignation. To my knowledge, Roland never faced consequences for his conduct. It was common knowledge that when Roland did anything at the hotel, it was covered up and nothing was done about it. His in house Band Lawyer, Mike McKinney, also acted as in house lawyer to the Companies. Roland had special influence.

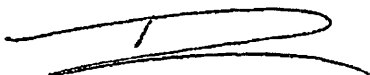
I raised my concerns with Bertha L'Hirondelle and others about Roland's behavior, including his treatment of my staff and his bullying behavior towards me. My complaints about Roland's conduct included the following:

- Roland entered the Hotel and flaunted his power and authority, intimidating Hotel staff;

- Roland was caught smoking pot with Jamie McCoy outside at the rear of hotel by Chef Mike Laird. When this was raised, I was told to hide the evidence;
- Roland always complained loudly and publicly about the food and service at the Hotel;
- Staff from the Hotel had to drive Roland home on various occasions because he was drunk;
- Roland smashed the window of his wife's vehicle;
- Management put huge resources into thoroughly investigating minor complaints by Roland but ignored internal concerns such as Roland's mistreatment of me and others;
- Other managers were abused by Roland without consequence;
- Even though the Band office was separated from the management of the Companies, Roland as Chief and Trustee commanded power and influence;
- Some of the management played favorites, stroking and protecting Roland and responding to his commands. He was seen as the "owner";
- I lost confidence in my employer's ability to protect Corporate employees;
- Mike McKinney worked in Band Office but was Roland's employee. Mike McKinney protects Roland Twinn who protects Mike McKinney;
- I wanted to bar Roland from the Hotel but senior management would not allow it;
- Based on my personal information from management at the Sawridge Truck Stop, they had similar experiences and problems with Roland and his wife.

I do not believe anyone followed up on my concerns or that any action was taken. It took some time to recover from the trauma caused by the abusive conditions.

Yours Truly,



David Nelson

Catherine Twinn

BA., LLB., LL.M., Q.C.

Barrister and Solicitor, Alberta
Mediator and Arbitrator

P.O. Box 1460
Slave Lake, Alberta
T0G 2A0
Telephone: (780) 849-4319
Fax: (780) 488-1893
Cell: 780-886-2921
ctwinnlaw@twinnlaw.com

9918-115 St.
Edmonton, AB
T5K 1S7

Service Address: 810 Caribou Trail N.E.
Sawridge Indian Reserve 150G
Slave Lake, Alberta
T0G 2A0

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

Catherine Twinn

Sworn before me this 10 day

of May A.D., 2017

Crista C. Osualdini

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

Crista C. Osualdini
a Notary Public and Commissioner for Oaths
in and for the Province of Alberta
My Appointment expires at the Pleasure
of the Lieutenant Governor

November 7, 2015

Roland Twinn via email Roland@sawridgetrusts.ca
Bertha L'Hirondelle via email Bertha@sawridgetrusts.ca
Justin Twin-McCoy via email Justin@sawridgetrusts.ca
"Peggy" Ward via email Bargaret@sawridgetrusts.ca

Re: Formal Code of Conduct Complaint Regarding your Conduct as Trustees

This letter is to inform each of Roland Twinn, Bertha L'Hirondelle, Justin Twin-McCoy, and Peggy Ward (the "Respondent Trustees") that I am making a formal complaint against them pursuant to the Code of Conduct and general trust law. The Respondent Trustees have breached the Code of Conduct in various ways, including, among other conduct:

- excluding individuals properly entitled to Beneficiary Status under the 1985 Trust and 1986 Trust (the "Trusts"), in breach of the express wording of the Trusts and a previous Court injunction mandating the inclusion of all members entitled to band membership, without the need to apply;
- arranging for the appointment of ineligible and inappropriate Trustees of the Trusts in an unfair and heavy handed process;
- acting in a manner which is hostile, intolerant, uncooperative, evasive, and aggressive in contravention of the Code of Conduct and its stated values;
- continuing to act as Trustees of the Trusts while in a position of conflict of interest and acting in bad faith; and
- such further conduct as may be established during an adjudication of their conduct.

I will provide further particulars of each class of breach below.

Improper Beneficiary Ascertainment:

- The Respondent Trustees have excluded persons entitled to Beneficiary Status under the 1985 Trust and 1986 Trust and included persons who are not entitled to

Beneficiary Status, in breach of the Trusts. The Respondent Trustees have been misconstruing the enabling documents of the Trusts to claim that band membership, as determined by the Band Council, determines status under the Trusts. The Band membership selection process has become politicized and lacks objectivity, fairness, independence, due process, and transparency. It does not accurately reflect true entitlement to Band membership and as such, it is an inappropriate and inaccurate method of determining beneficiary status.

2. **Additionally, the Respondent Trustees have impaired and unreasonably delayed efforts to create a proper beneficiary selection process. A Tribunal to determine Band membership under the 1986 Trust and beneficiary status under the 1985 Trust was refused by the Respondent Trustees for improper personal and political reasons. In particular, Roland Twinn vehemently rejected the Tribunal recommendation. As the current Chief of the Sawridge First Nation, Roland Twinn has heavily influenced the Band selection process. This rejection is despite the significant effort to establish a proper process, and despite significant legal advice calling on the Trustees to amend non-functional and non-Charter compliant Band Membership Rules.**
3. **The Respondent Trustees improperly carried out their duties as Trustees in relation to the proper ascertainment of Beneficiaries of the Trusts in various ways, including:**
 - a. **prioritizing the membership applications of certain applicants, including Individuals related to the Respondent Trustees, over others applicants;**
 - b. **admitting/delaying Individuals to membership for improper purposes, including improper political purposes to affect voting in Band elections;**
 - c. **improperly rejecting applications and hindering the applications of other Individuals;**
 - d. **attempting to delay the ascertainment of the beneficiaries of the 1985 Trust, in an attempt to also have beneficiary status determined by Band membership;**
 - e. **such further and other particulars as may be established during an adjudication of this matter.**
4. **The number of Band members has remained essentially static since 1985, notwithstanding the 2003 Injunction compelling the Trustees to admit all individuals entitled to Band membership and despite the large number of applicants and/or persons (over 478) registered as Sawridge Indians by INAC.**
5. **The Respondent Trustees and their agents colluded in offering a political list of 20 minor children in the Court action involving ascertainment of the proper beneficiaries of the 1985 Trust. Some of the proposed beneficiaries bear no relation to the actual beneficiary criteria under the 1985 Trust, and thus excluded minors who qualify while including others who likely do not qualify.**

Trustee Succession:

6. The Respondent Trustees have improperly appointed successor Trustees in a manner that is inconsistent with their fiduciary duties, best practices, advice and the Code of Conduct. They limited the pool of candidates for the Trustee position to individuals who support them and thus the individuals appointed are not independent and share the same conflict of interest issues as the other Respondent Trustees. Despite the Court's June 2012 comments on the need to separate the Band's political decision makers from the economic decision makers for the Trusts, there is still no system in place to prevent elected Band officials from being Trustees. Roland Twinn, the current Chief of the Band, is a trustee of the Trusts.
7. Additionally, the Respondent Trustees also breached their obligations by appointing Justin Twin-McCoy, who is ineligible for the position of Trustee as he is not entitled to be a beneficiary of the 1985 Trust.
8. In the replacement of previous two Trustees, Walter Felix Twin and Clara Midbo, the Respondent Trustees gave improper notice and failed to consult with me. The identity of the replacement candidate was not disclosed to me until the meeting where the new Trustees were appointed.

Hostile, Intolerant, Uncooperative, Evasive, and Aggressive Conduct:

9. The Respondent Trustees, and in particular Roland Twinn, have attacked me personally in breach of the Code of Conduct. Such attacks have included threatening to revoke my membership as a woman who "married in" and to take away our home on the reserve, interfering with my contractual relations, and offensive language, tone and attitude. This is in breach of the obligation of trustees to be polite, respectful, and courteous to the other Trustees. The Respondent Trustees have allowed their agent, Paul Bujold, to scream at me on more than one occasion and falsely accuse me without consequence.
10. The Respondent Trustees have been spreading false claims about me, including to the beneficiaries of the Trusts, both personally and through their agents. The Respondent Trustees have falsified the circumstances and facts in which my professional services were performed and have relied on these falsifications to refuse compensation for services. This includes failing to pay in full my 2002-2006 rendered Accounts arbitrarily and unfairly. In the past, fees above the meeting fees have been paid to other Trustees, such as Bertha L'Hirondelle and Clara Midbo, and fees were paid to a non-Trustee who performed the same service as me. The Respondent Trustees are suggesting that I am attempting to receive compensation that I am not entitled to. However, the Respondent Trustees, through their counsel, offered an amount in relation to my fees to induce me to sign the "Asset Transfer", which functionally meant the appointment of Justin Twin-McCoy.

11. The Respondent Trustees have also engaged in reprisals against me for raising and/or speaking to conflict of interest issues. This has created a toxic Trustee work environment with behaviors that include lack of communication and secrecy, ignoring my requests for information and my recommendations, and obstructing my attempts to fulfill my Trustee duties. They have also claimed that I am destroying the Trusts. The actions are wholly inconsistent with the Code of Conduct of the Trusts and the fiduciary requirements of Trustees in law.

12. The Respondent Trustees have treated me unequally and unfairly by having any of their legal fees incurred in relation to the administration of the Trusts paid from the Trusts in full while refusing to fund my reasonable legal fees for the same. This unequal treatment is inconsistent with fair procedure and cooperation, and has impaired my ability to discharge my duties as a Trustee. I have had to incur significant personal expense and loss to pay for legal representation in unnecessary proceedings brought or required by the Respondent Trustees. These proceedings are being used as a method to attempt to silence me, either through removal as a trustee or through economic and other attrition and attack.

13. The Respondent Trustees, through their agents, have previously attempted to appoint a biased arbitrator in a rushed process to hear Code of Conduct disputes in a manner that is inconsistent with fair procedure, objectivity, and transparency.

Conflict of Interest and Bad Faith Conduct

1. The Respondent Trustees have been making decisions based on Band political considerations and their own personal interest rather than the best interests of the beneficiaries of the Trusts, in breach of their obligations under the Code of Conduct and general trust law. The conflict of interest inherent in being both a Trustee and an elected official of the Band, which has previously been recognized by the Court in proceedings relating to the Trusts, does not allow the Respondent Trustees to carry out their fiduciary duties properly.

2. Roland Twinn, Justin Twinn, and Bertha L'Hirondelle have designated or attempted to designate several individuals who they had a personal interest in as beneficiaries of the Trusts through an expedited process that unfairly prejudices other applicants for beneficiary status. In addition to simply expediting the process for some, they are excluding or hindering other individuals who likely are proper beneficiaries of the Trusts.

3. Roland Twinn did not recuse himself from voting March 18, 2015 on the Trustee Resolution directing the Companies to give the Band \$1,500,000 even though the Band is not a beneficiary and Roland is the current Chief of the Band. The Band is funded by the Trusts to participate in the 2011 Trust Action (and the Band's in house legal

counsel is subsidized by Companies owned by the Trusts) and has advised the Court that the Band membership system is working fine.

4. The Respondent Trustees have conducted themselves in such a way as to necessitate unnecessary legal proceedings. They have had their legal fees paid in all of these proceedings. Legal fees will exceed \$2,000,000 in total. Many of these proceedings have been brought to obstruct the proper administration of the trust and maintain the Respondent Trustees position of political power over the Trusts, and were not in the best interest of the beneficiaries.
5. The Respondent Trustees have used legal counsels' who are in positions of conflict of interest.
6. The Respondent Trustees have improperly delegated their Trustee responsibilities to their agents Paul Bujold, the Trust Administrator, and Brian Heidecker, the Trust Chair. Mr. Bujold and Mr. Heidecker have been hostile, evasive and uncooperative, have failed to provide me with appropriate information regarding their actions, and have managed litigation related to the Trusts in an oppressive manner.

Procedural Issues

I have tried to discuss these matters and resolve these disputes informally. If adjudication is required, it is my opinion that these complaints can only be resolved by the Court system, as they involve matters outside of the Code of Conduct, the facts and law are inextricably linked to 3 existing Actions and a fair and balanced process is required. Mediation or arbitration are inappropriate and inadequate venues to resolve both my complaint under the Code of Conduct and the complaints that the Respondent Trustees have previously made against me. As these matters are inextricably linked, they must be heard together in Court.

My offers to meet one on one and in a Binding Issue Resolution Process with the Respondent Trustees have been refused. I previously agreed to meet November 25, 2015 if certain conditions were met. These conditions include the presence of a mutually acceptable outside facilitator, a right for me to bring a person to support me, agreement on ground rules and the exclusion of the agents of the Respondent Trustees, Mr. Heidecker and Mr. Bujold. Mr. Heidecker and Mr. Bujold have been very hostile to me in the past and their presence will reduce the chance of any resolution. Since the last meeting of the Trustees, I have not been contacted at all to discuss implementation of the conditions to ensure a good faith, bona fide, balanced and safe process.

Yours Truly,

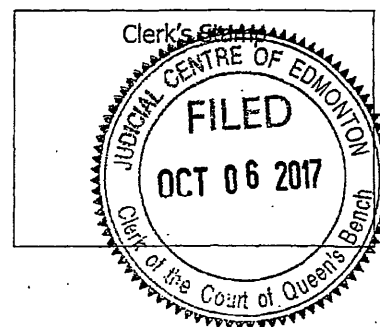
Catherine Twinn
Catherine Twinn



COURT FILE NO. 1103 14112 and 1403 04885

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE TRUSTEE ACT, R.S.A.
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 Trust"),

AND

IN THE MATTER OF THE SAWRIDGE TRUST
CREATED BY CHIEF WALTER PATRICK TWINN,
OF THE SAWRIDGE INDIAN BAND NO. 19,
AUGUST 15, 1986 (the "1986 Trust")

APPLICANT CATHERINE TWINN, as Trustee for the 1985 Trust and the 1986 Trust

RESPONDENTS ROLAND TWINN, BERTHA L'HIRONDELLE, EVERETT JUSTIN TWIN AND MARGARET
WARD, as Trustees for the 1985 Trust and the 1986 Trust

DOCUMENT **AFFIDAVIT OF CATHERINE TWINN**

ADDRESS FOR SERVICE	McLENNAN ROSS LLP	Lawyer: Crista Osualdini
AND CONTACT	#600 West Chambers	Telephone: (780) 482-9200
INFORMATION OF	12220 Stony Plain Road	Fax: (780) 482-9100
PARTY FILING THIS	Edmonton, AB T5N 3Y4	Email: cosualdini@mross.com
DOCUMENT		File No.: 144194

AFFIDAVIT OF CATHERINE TWINN

SWORN ON THE 6th DAY OF OCTOBER, 2017

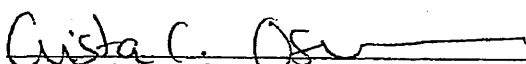
I, Catherine Twinn, of the Sawridge Indian Reserve 150 G and the City of Edmonton, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a trustee of the Sawridge Band Inter Vivos Settlement, April 15, 1985 (the "1985 Trust") and the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively referred to as the

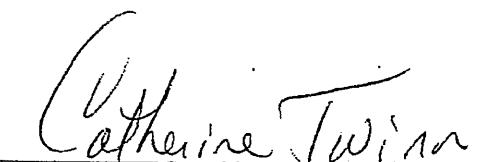
"Trusts"), and, as such, have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief.

2. I have reviewed the Affidavit of Paul Bujold filed August 30, 2017 (the "August 2017 Affidavit") and wish to respond to certain evidence provided by Mr. Bujold and advise the Court that I generally dispute his information contained in the August 2017 Affidavit.
3. Mr. Bujold states at paragraph 10 of his Affidavit that he refutes my evidence that the Trusts have spent more than \$4 million dollars on the 1103 and 1403 actions. Those terms are defined in Mr. Bujold's affidavit.
4. Following the filing of the August 2017 Affidavit, Mr. Bujold circulated meeting materials to the trustees of the Trusts in relation to the September 2017 trustee meeting. In these materials a chart was included that set out the total legal expenses paid by the Trusts in relation to the 1103 and 1403 actions. These expenses amounted to over \$4.2 million dollars and do not include my claimed expenses or all of the Office of the Public Trustee's expenses. Attached as **Exhibit "A"** to my Affidavit is a copy of the expense chart.
5. Attached as a separate document to Mr. Bujold's report was a chart that set out the accumulated fees of those parties who had claimed reimbursement and had not yet received same. These fees primarily are my own and the Office of the Public Trustee's. Attached as **Exhibit "B"** to my Affidavit is a copy of the unpaid expenses chart.
6. I swear this as evidence for the Court and for no improper purpose.

SWORN BEFORE ME at the
City of Edmonton,
in the Province of Alberta
the 6th day of October, 2017


A Commissioner for Oaths in and
for the Province of Alberta

Crista C. Osualdini
Barrister & Solicitor


CATHERINE TWINN

Year	Amount	Legal Actions
2010 Total Legal	220,069.53	Trust Setup by Trustees, Identification of Beneficiaries by Trustees
2011 Total Legal	403,297.37	Taxation by Trustees, Passing of Accounts by Trustees, 1103 Action by Trustees
2012 Total Legal	362,442.82	1103 Action by Trustees, Appeal by Trustees, Passing of Accounts by Trustees
2013 Total Legal	182,436.40	1103 Action by Trustees, Appeal by Trustees, Passing of Accounts by Trustees
2014 Total Legal	387,692.92	1103 Action by Trustees, Transfer of Assets 1 by Trustees, Transfer of Assets 2 by Trustees, 1403 Action by Catherine Twinn
2015 Total Legal	658,589.01	1103 Action by Trustees, 1403 Action by Catherine Twinn, 1503 Action by Catherine Twinn, Code of Conduct 1 by Trustees,
2016 Total Legal	1,093,572.20	1103 Action by Trustees, 1403 Action by Catherine Twinn, 1503 Action by Catherine Twinn, Code of Conduct 1 by Trustees, Settlement Costs Code of Conduct by Catherine Twinn, Appeal by Catherine Twinn and OPGT, Application for Stay by OPGT, Costs Application by Catherine Twinn, Appeal by Maurice Stoney
2017 Legal To Date (Aug 2017)	914,341.29	1103 Action by Trustees, 1403 Action by Catherine Twinn, 1503 Action by Catherine Twinn, Code of Conduct 2 by Trustees, Settlement Costs Code of Conduct by Catherine Twinn, Costs Application by Catherine Twinn, Appeals by Maurice Stoney, Pricilla Kennedy, Patrick Twinn et al
TOTAL	4,222,441.54	

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

Catherine Twinn

Sworn before me this 6 day
of October 2017

Crista C. Osualdini
A Commissioner for Oaths
in and for the Province of Alberta

Crista C. Osualdini
Barrister & Solicitor



Firm	Amount	Actions
2014 Legal Outstanding	87,334.61	Catherine Twinn
2015 Legal Outstanding	330,949.28	Catherine Twinn, Hutchison Law
2016 Legal Outstanding	956,955.73	Catherine Twinn, Hutchison Law
2017 Legal Outstanding	623,309.50	Catherine Twinn, Hutchison Law, Trustees Code of Conduct
Total Outstanding (Aug)	1,998,549.12	
Unknown Amounts		Patrick Twinn et al, Maurice Stoney et al, Priscilla Kennedy

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

Catherine Twinn

Sworn before me this 6 day
of October 2017

Crista C. Os

A Commissioner for Oaths
in and for the Province of Alberta

Crista C. Osualdini
Barrister & Solicitor



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 10180 - 101 Street
 Edmonton, AB, Canada T5J 3V5

T +1 780 423 7100
 F +1 780 423 7276

January 21, 2016

File No.: 551860-1

DELIVERED

The Honourable Mr. Justice D.R.G. Thomas
 Law Courts Building
 1A Sir Winston Churchill Square
 Edmonton AB T5J 0R2

Dear Sir:

RE: 1985 Sawridge Trust - Action No. 1103 14112
December 17, 2015 – Reasons for Judgment
Distribution Scheme

Please find enclosed herein the proposed distribution arrangement for the 1985 Sawridge Trust, as approved by the Sawridge Trustees, in accordance with your Reasons for Judgment dated December 17, 2015.

Yours truly,

Dentons Canada LLP

DORIS C.E. BONORA
 DCEB/sh

Yours truly,

Reynolds, Mirth, Richards & Farmer LLP

MARCO S. PORETTI
 MSP/SH

Enclosures

- c.c. Hutchison Law
 Attn: Janet Hutchison (w/enclosures)
 Eugene Meehan (w/enclosures) (EMAIL)
- cc E. Molstad, Q.C., Parlee McLaws LLP (w/enclosures)
 (Sawridge First Nation)
- cc P. Kennedy, DLA Piper LLP (w/enclosures)
- cc K. Platten, Q.C., McLennan Ross (w/enclosures)
 (Catherine Twinn)
- cc N. Cumming, Q.C./J. Kueber, Q.C., Bryan & Co. (w/enclosures)
 (Four Trustees)

Proposed Distribution Arrangement
of the Sawridge Band Inter Vivos Settlement ("Trust")

A. Introduction

The court has directed that the trustees of the Trust propose a distribution scheme for the Trust. The Public Trustee has been tasked with ensuring fair treatment of minors in the distribution of assets, identifying potential minor beneficiaries and high level review of the distribution process but such supervision is to be done at the highest level and only to ensure a fair and equitable distribution.

This proposed distribution scheme is provided for information as we understand that the Court has concerns and jurisdiction over the protection of minors.

The Trust was established to invest assets of the Sawridge First Nation to provide funds for the members of the Sawridge First Nation and for the future generations of members of the Sawridge First Nation. (Paul Bujold Questioning on Affidavit: page 75 line 7-13) (Tab "A")

The application before the court is to determine a definition of beneficiaries and this proposed distribution scheme will address the payment of funds from the trust and to whom such payments should be made.

B. Intentions of the Settlor

In the trust deed, the opening paragraph says that the Settlor desires to create an inter vivos settlement for the benefit of the individuals who at the date of the execution are members of Sawridge Indian band No. 19... and the future members of such band... and for that purpose has transferred to the trustees property. (See Trust Deed Tab "B").

The intentions of the Settlor were to set aside funds to provide for the members of the First Nation over many generations. The Settlor was the Chief at the time and he certainly would have had the ability to decide to pay out capital distributions to his members if he thought that was in their best interests. His desire and vision was not to squander the resources of the First Nation but instead to invest the assets so that the resources would be available for many successive generations.

C. Proposed Scheme of Distribution

1. Introduction

The distribution of funds from the Trust must be according to the Trust Deed. The Trust Deed says that the funds will be paid out according to the discretion of the Trustees and based on the benefit to the beneficiaries of the Trust (paragraph 6 of the Trust Deed Tab "B"). In the Trust Deed the Trustees may make payments from the income or the capital of the Trust as they see fit in their unfettered discretion, and as is appropriate for one or more beneficiaries. In paragraph 8 of the Trust Deed, the Trustees are authorized to do all acts necessary, or desirable for the purpose of administering the Trust for the benefit of the beneficiaries. Thus it is clear that the administration of the Trust and the payment to beneficiaries is to be focused on the benefit of the beneficiaries and their families.

2. Distribution of Funds as per the policies of the Trustees

Since the 1985 Trust was established, no distributions have been made from the Trust. Payments have been made from the 1986 Trust. In 2009, the Trustees engaged the Four Worlds Center for Development Learning to prepare recommendations for the development and implementation of the Sawridge Trust's beneficiary program. After consultation with the Trustees and members of the Sawridge First Nation, a number of balancing principles were identified in the report done by the Four Worlds Center for Development Learning. One of the balancing principles was to balance the needs of present and future generations. Further, the beneficiaries identified that there was a need for limits on benefits and understood that there are finite limits to benefits that can flow from the trust in order to benefit all beneficiaries and the community over time.

Following the release of the Four Worlds Center report, the Trustees engaged in a process to develop policies for the payment of funds from the 1985 and 1986 Trusts. The Trustees were exercising their discretionary power to determine which policies to put in place, and how funds would be paid under each policy. To date the policies have been used to make payments from the 1986 Trust. The Trustees will use the same policies for the 1985 Trust once the uncertainty around the beneficiary definition is solved.

The Sawridge Trustees passed a number of policies that provide for benefits to the beneficiaries of both the 1985 and 1986 Trusts and to the dependents of beneficiaries of both trusts. The policies are as follows:

- a) **Health, Dental, Vision Care and Life Insurance benefit** - program provides for health, dental, vision care to the beneficiaries and their dependents and life insurance benefit to the beneficiaries;
- b) **Education Support Fund benefit** - this benefit provides payments for the beneficiaries or their dependents to provide for tuition and fee support, support for books and equipment, living expense supports while the beneficiaries or their dependents are attending a recognized education program;
- c) **Addictions Treatment Support Fund benefit** - this benefit provides for the beneficiaries, or their dependents to attend eligible treatment programs;

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- d) **Child and Youth Development benefit** - benefit provides up to \$10,000 per annum to assist with costs associated with caring and educating a special needs dependent on a reimbursement or prepaid basis and up to \$8,500 per annum to assist with childcare costs for a dependent on a reimbursement or prepaid basis;
- e) **Compassionate Care and Death benefit** - this benefit provides payments to a beneficiary for travel costs for family members travelling to visit an ill or injured family member, reasonable accommodation costs, reasonable meal costs for the beneficiary and family, parking costs and child care costs for underage children. It also provides for home modifications, special equipment or dietary supplies or special medications not covered by the health plans. The death benefit provides the cost of transporting remains of the deceased, cost of burial or cremation, cost of the wake, the funeral and headstones, cost of transporting the beneficiary and family to the funeral, costs of accommodation, meals for the beneficiary and family, if the funeral is held at some distance;
- f) **Seniors Support benefit** - this benefit is to provide support for elders who have provided much to the building of the community and is a monthly supplement to other government programs received by the senior;
- g) **Personal Development and Alternative Health benefit** - this benefit provides the beneficiaries, or their dependents, including children, money up to \$2,000 per annum for fitness and nutrition, self-esteem building programs, payments for alternative health, herbs and supplements and fitness equipment, visits to traditional healers, including the costs of transportation and other expenses;
- h) **Income Replacement benefit** - this benefit provides an income replacement of up to \$5,000 per year for any beneficiary if they lose income as a result of attending a personal healing program or because of extended sick leave from work because of an illness;
- i) **Recognition of Beneficiaries and Dependents Educational Achievements** - this benefit provide a recognition of \$250 or suitable gift along with a framed certificate to a graduate of a recognized educational program to assist with finding employment or celebrating their achievement;
- j) **One Time Only "Good Faith" Cash Disbursement** - this benefit provides a one-time payment to every beneficiary of \$2,500, either immediately if they are an adult or upon the beneficiary attaining the age of 18.

A copy of each of the policies is attached as Tab "C". The brochures provided in respect of each of the policies which are provided to each of the beneficiaries are attached as Tab "D".

At the present time, these are the policies which have been approved by the Trustees to support the beneficiaries of both the 1985 and 1986 Trusts. The Trustees continue to investigate the needs of the beneficiaries and their dependents and continue to discuss new policies for payment of benefits as needs arise. The principles behind the payments relate to strengthening individuals

- 4 -

in the community and strengthening the community as a whole. These principles were identified as important to the First Nation.

3. Distributions Available to Minors

Of interest to the Court and to the Public Trustee is how minor children who are the children of beneficiaries are treated. If a minor is a member of the First Nation then they are entitled to all the benefits under all of the policies. The following policies provide for the benefit of the families and dependents of a beneficiary, including their minor children and dependents who are not members:

- a) The **Health, Dental, Vision Care benefit** - program provides for health, dental, vision care for beneficiaries and their dependents who are under 18 or under 25 if they are attending a post-secondary institution.
- b) The **Education Support Fund benefit** provides funding to an eligible dependent who is a natural or adopted child of an eligible beneficiary which child is under 25 years of age and registered in a full-time or part-time education program with an accredited educational institution.
- c) The **Addictions Treatment Support Fund benefit** provides a benefit to an eligible dependent which will include a natural or adopted child of an eligible beneficiary which child is under 25 and living at home with the eligible beneficiary.
- d) The **Child and Youth Development benefit** provides funding for a child of the beneficiary who suffers a permanent physical or mental disability, who is a natural child or adopted child of an eligible beneficiary, as well as for child care, if required, for all children of beneficiaries who are working or going to school.
- e) The **Personal Development and Alternative Health benefit** provides funding for an eligible dependent of a beneficiary which will include a natural or adopted child who is under 25 years of age and living at home with an eligible beneficiary. This policy provides for the payment of all manner of programs for children including sports and fitness programs.
- f) The **Income Replacement benefit** provides a benefit to an eligible dependent of a beneficiary who is a natural or adopted child who is under 25 years of age and living at home with the eligible beneficiary.
- g) The **Recognition of Beneficiaries and Dependents Educational Achievements benefit** provides for the dependents of a beneficiary to receive recognition for educational achievements. A dependent is defined as a natural or adopted child of an eligible beneficiary provided the dependent is living with the beneficiary or still considered to be a dependent of the beneficiary.
- h) The **Compassionate Care and Death benefit** - provides payments to a beneficiary or their children for expenses as set out in the policy.

The policies that do not provide for minors are the Senior's Support benefit and the Cash Disbursement benefit.

Thus it can be said that almost all of the policies provide a benefit to minor dependents (up to the age of 25 or older) of beneficiaries even though the dependent is not a beneficiary. Once the child is no longer dependent as defined in the policies, the child is no longer eligible until they apply and become a member of the Sawridge First Nation. It is submitted that virtually all the needs of a minor child are covered by the policies. If there are needs identified that are not covered above, the Trustees have an ability to implement new policies to cover such needs. The Trustees recognize the need to assess the needs of the beneficiaries and their families and the needs of the community and implement new or replacement policies that best meet the needs of the beneficiaries and their dependents and that best meets the needs of the community.

We must be mindful of the fact that the First Nation considers itself to be a community and a family that supports one another. The principles identified in the Four Worlds Report clearly show that there is a focus on both individual and community development.

The minors of the Sawridge First Nation have not been forgotten in the trust or in the benefits paid by the trust. The Trustees know that the First Nation can only be successful by nurturing and providing for the children who will be the members and leaders of the First Nation in the future.

The struggle of the Trustees in making payments under the policies is that almost 50% of the annual funding provided to the trusts from the companies has been paid in legal fees in this and related litigation. The trusts could provide greater support for its members if this litigation could be concluded.

4. Proposed Distribution Scheme: Proposal to provide for Present Beneficiaries and their families into the future

The Trustees are requesting that the Court approve a distribution scheme that would allow the Trustees to follow the policies set out above and future similar policies for the benefit of the beneficiaries of the trust and their dependents as such are defined in each policy.

Beneficiaries: The beneficiaries of the Trust will be the members of the First Nation as is set out in the Membership List maintained by the First Nation. The dependents of those beneficiaries will receive the benefits set out in the policies. The Trustees propose to ask the court to amend the definition of beneficiary in the trust as set out in Tab "E" attached by striking the necessary words from the definition to remove the discriminatory language.

Trust Payments: There will be distributions whether of income or capital in accordance with the policies set out above and future policies passed. These payments are in accordance with the trust deed. In this way the Trust can continue to provide for the needs of the current beneficiaries and their families and for the beneficiaries and their families in the future.

Two Pools of Funds : The court identified the need to establish two pools of funds. The Trustees propose to satisfy this requirement by identifying those funds which are necessary for the provision of payments under the policies on an annual basis for those beneficiaries and their families which are identified at any given time and by keeping invested the funds for future generations of beneficiaries and their families.

Pool Number One: At the present time, the Trustees prepare a budget of their expected requirements and provide that budget to the directors of the corporations whose shares

- 6 -

are owned by the Trust. The directors then provide the trust with the necessary funds to meet the budget. The Trustees always have the ability to request further funds from the directors if the need arises. This will in essence be pool number one.

Pool Number Two: The second pool will be the current and future investments of the Trust, which will be available for the current and future beneficiaries and their dependents according to the policies in place at any given time.

5. Complete Capital Distribution

We do not interpret the Court judgment as directing a full and complete capital distribution of the trust but in the event that such is interpreted by any party we set out the dangers of such an interpretation below.

Capital distributions have been examined extensively and have been viewed as a dangerous exercise of discretion for First Nations. First, there would need to be a liquidation of the Sawridge branded hotels and businesses that are currently owned by the Trust. It would destroy the vision of the Settlor of the trust. The ability to know the numbers of future generations is limited and thus it will be very difficult to determine the people who are to be provided for in the future.

Capital distributions from the trust can also be viewed as a form of welfare and can lead to a dependency on payments resulting in the same effect as federal welfare payments: thus, reduced interest in education and diminished motivation and work ethic leading to reduced employment - all contributing to greater social problems. If beneficiaries begin relying on capital distributions as a source of income, a full and complete capital distribution could also leave beneficiaries in a position where reckless decisions are made upon a receipt of a windfall that cannot be sustained by future distributions from the trust.

A full capital distribution would also divert resources away from the social programs outlined in the proposed distribution scheme that were established for the income beneficiaries of the Trust. Capital is a reserve source of funds to supplement the valuable social programs supported by Pool Number One.

An expectation for capital distributions can also lead to greater conflict in the question of tribal enrollment and disputes arising regarding tribal citizenship.

A consideration which is particularly striking given the current economic outlook in Alberta is the uncertainty and unpredictability of natural resource markets. Retaining trust capital will help moderate future uncertainties and can add to Pool Number One established for income beneficiaries in the trust and their dependents. Maintenance of capital will also allow diversification of investments to also moderate risk throughout a recessionary economy.

Some benefits to capital distributions have been identified, such as the ability for beneficiaries to meet their urgent needs and to shift agency in the determination of how the money should be used away from the tribal governments to individuals and families. As well, capital distributions can be used strategically as a policy tool and can incentivize certain goals such as school enrollment. Although, we acknowledge these benefits, in most cases these benefits would also be achieved with small, one-time capital distributions, such as the One-Time Good Faith Cash

Disbursement. The benefits could be eroded with larger capital distributions, if larger distributions exacerbate the dangers we have noted above.

Nature of a Discretionary Trust

a. Discretionary payments for the needs of beneficiaries

The distribution of Trust funds is to be paid to the benefit of the beneficiaries and their families. The Trustees have an unfettered discretion as to how to direct the distribution of income and capital from the Trust in the nature of a discretionary trust. A discretionary trust is described in *Waters on Trusts* as a trust "in which the creator of the trust... imposes the duty upon the trustees to distribute income or capital among the beneficiaries described in the trust instrument... as the trustees think fit" [Donovan W.M. Waters, Mark Gillen & Lionel Smith, *Waters' Law of Trusts in Canada*, 4th ed. (Thomson Reuters Canada Limited: Toronto, 2012) at p 36 (*Waters on Trusts*).] It is the duty of the trustees to consider when and how the discretion ought to be exercised and the decision of the trustees must fall within the objects of the trust and the power conferred upon the trustees (*Waters on Trusts* at p 988). The trustees of a discretionary trust are also bound by the fundamental duties of a trustee, that is: not to delegate their duties; not to personally benefit from the trust property; to act with honesty and act with the prudence expected of a reasonable person administering their own affairs; and to decide on the exercise of their discretion in line with the best interests of the beneficiaries (*Ibid* at pp 906, 988).

b. Avoiding Capital Payments to beneficiaries which destroys the Trust

In circumstances where the trustees of a discretionary trust have unfettered discretion as to the distribution of income and capital, then their decision as to the quantum of the distribution, allocation of the distribution between income and capital and the recipients of the distribution should be deferred to by the court. The trustees have the duty to consider whether the discretion to distribute income or capital ought to be exercised; however, it may be the case that the trustees determine that it is in the best interests of the beneficiaries to annually distribute income to the benefit of the beneficiaries and their families but to postpone the collapse of the trust by distributing capital. As discussed below, the court should only interfere with the exercise of the trustees' discretion in exceptional circumstances.

c. Jurisdiction of the Court to direct payment of funds

The Court should only intervene to direct the payment of funds from the Trust when the Trustees fail to give proper consideration as to whether their discretion ought to be exercised. Or alternatively, when the discretion was exercised but the Trustees either acted outside the scope of the power conferred upon them in the trust deed or took into account irrelevant or unreasonable considerations in making their decision. No remedy has been sought in respect of distribution of the trust and there is no evidence of the Trustees acting outside the scope of their power or taking into account irrelevant or unreasonable considerations.

When considering the degree of control a court can exercise over a trustee that holds absolute discretion, *Waters on Trusts* notes that an axiomatic feature of a trustee's dispositive discretion in a discretionary trust is "that provided the trustees act with good faith (i.e., honestly, thoughtfully, objectively and fairly) in the exercise of their discretion, the court will not interfere or counter their decision" (*Ibid* at p 1203, fn 149). *Gisborne v Gisborne* [(1877), 2 App. Cas. 300 (H.L.)] is the

leading case from the House of Lords which represents the principle that the court should not interfere with the discretion of trustees unless there is some "*mala fides*", meaning bad faith or fraud. The Ontario Court of Appeal in *Fox v Fox Estate* extended the definition of *mala fides* to circumstances where the trustee's discretion is conducted in an undesirable manner or if the discretion is influenced by extraneous matters [28 O.R. (3d) 396 (1996) at para 12 (*Fox*)]. In *Fox*, the extraneous consideration impugned by the Court of Appeal was based on religious discrimination rather than a consideration of what would benefit the beneficiaries as specified in the trust deed.

Alberta courts have confirmed the principle adopted in *Fox* in *McNeil v. McNeil* [2006 ABQB 636] and *Lecky Estate v Lecky* [2011 ABQB 802 (*Lecky*)]. Alberta courts have confirmed that if the trustees are acting within the scope of their duties conferred upon them by the trust deed, then their exercise of discretion should be "afforded considerable deference" (*Lecky* at para 50). *Waters on Trusts* summarizes the principle as established in Canadian law: the court will not intervene with the decision of the trustees who are exercising their discretion if they do not agree with the decision or would have not have made the same decision but will intervene if the decision was so unreasonable that no "honest or fair-dealing" trustee would have made it, if the trustee took into account irrelevant considerations with respect to the decision, or when the discretion was not exercised and the trustees could not show that proper consideration was given as to whether the discretion ought to be exercised (*Waters on Trusts* at pp 989-990).

F. Proposal to Provide for the protection of minors and reporting to the Public Trustee

The Trustees would propose to provide a report to the Public Trustee identifying the payments that have been made to beneficiaries from the 1986 trust since 2009. The report would not identify individuals, but would identify the amounts paid. This will allow the Public Trustee to assess whether the payments are being made in a fair and equitable manner.

G. Conclusion

We submit that the above proposed distribution scheme meets all criteria for this discretionary trust, meets the criteria set for the trust by the Court and allows the Public Trustee to satisfy its mandate. The Public Trustee is assured that the trust is providing benefits to minor dependents through their adult beneficiary or to the minor directly if the minor is a member. Parents can apply on behalf of a minor for the minor to become a member of the First Nation in order for the minor to become a beneficiary of the Trust. The child as an adult could on their own apply to become a member. The Sawridge Trust policies provide cradle to grave support programs which is a benefit to the future of the First Nation members.

1 A I was basing this on documents and conversations that I
2 have had with various individuals including the
3 trustees about the reason for the establishment of the
4 1985 Trust.

5 Q Okay. So which trustees did you discuss that with?

6 A All of them.

7 Q All of them, okay. Can you give me a bit of a summary
8 of what -- let's start with Catherine Twinn, what her
9 recollection was about the purposes or intention of the
10 Trust?

11 A What the purpose of the Trust was to provide for the
12 economic future of the members of the Sawridge First
13 Nation. That was pretty much understood by everybody.

14 Q But not Bill C-31 individuals?

15 A Well --

16 Q At that time?

17 A Right, right.

18 Q At that time, okay. So when you say the members, you
19 mean the members that existed prior to --

20 A In 1985.

21 Q -- Bill 31, okay. And anything else that Catherine
22 Twinn was able to advise you on or inform you about on
23 the background or the purposes of the Trust?

24 A Well, the concern, and I can't remember exactly where I
25 got the information, but I remember from looking at the
26 court record of the constitutional challenge on Bill
27 C-31, and some of the testimony of Walter, Chief Walter.

SAWRIDGE BAND INTER VIVOS SETTLEMENT

DECLARATION OF TRUST

THIS DEED OF SETTLEMENT is made in duplicate the 15th
day of April, 1985

B E T W E E N :

CHIEF WALTER PATRICK TWINN,
of the Sawridge Indian Band,
No. 19, Slave Lake, Alberta,
(hereinafter called the "Settlor").

OF THE FIRST PART,

- and -

CHIEF WALTER PATRICK TWINN,
GEORGE V. TWIN and SAMUEL G. TWIN,
of the Sawridge Indian Band,
No. 19, Slave Lake, Alberta,
(hereinafter collectively called
the "Trustees"),

OF THE SECOND PART.

WHEREAS the Settlor desires to create an inter vivos settlement for the benefit of the individuals who at the date of the execution of this Deed are members of the Sawridge Indian Band No. 19 within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, as such provisions existed on the 15th day of April, 1982, and the future members of such band within the meaning of the said provisions as such provisions existed on the 15th day

- 2 -

of April, 1952 and for that purpose has transferred to the Trustees the property described in the Schedule hereto;

AND WHEREAS the parties desire to declare the trusts, terms and provisions on which the Trustees have agreed to hold and administer the said property and all other properties that may be acquired by the Trustees hereafter for the purposes of the settlement;

NOW THEREFORE THIS DEED WITNESSETH THAT in consideration of the respective covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties as follows:

1. The Settlor and Trustees hereby establish a trust fund, which the Trustees shall administer in accordance with the terms of this Deed.
2. In this Settlement, the following terms shall be interpreted in accordance with the following rules:

(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 15th 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

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would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15th day of April, 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15th day of April, 1982, shall be regarded as "Beneficiaries" for the purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of the execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or by any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band

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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; and

(b) "Trust Fund" shall mean:

- (A) the property described in the Schedule hereto and any accumulated income thereon;
- (B) any further, substituted or additional property and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement;
- (C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Settlement; and
- (D) the property and accumulated income thereon (if any) for the time being and from time to time into which any of the aforesaid properties and accumulated income thereon may be converted.

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3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement.

4. The name of the Trust Fund shall be "The Sawridge Band Inter Vivos Settlement", and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. Any Trustee may at any time resign from the office of Trustee of this Settlement on giving not less than thirty (30) days notice addressed to the other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee shall be vested in the continuing Trustees or Trustee of this Settlement and such

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power shall be exercised so that at all times (except for the period pending any such appointment, including the period pending the appointment of two (2) additional Trustees after the execution of this Deed) there shall be at least five (5) Trustees of this Settlement and so that no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there is more than one (1) Trustee who is not then a Beneficiary.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the end of twenty-one (21) years after the death of the last survivor of all persons who were alive on the 15th day of April, 1982 and who, being at that time registered Indians, were descendants of the original signators of Treaty Number 8, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and their status may not have been protested under section 12(2) thereunder.

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The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for Trustees' investments by the Trustees' Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Savings Bank Act applies.

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8. The Trustees are authorized and empowered to do all acts necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Settlement for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner to any extent detracting from the generality of the foregoing, the power

- (a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;
- (b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and
- (c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund,

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including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The provisions of this Settlement may be amended from time to time by a resolution of the Trustees that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years provided that no such amendment shall be valid or effective to the extent that it changes or alters in any manner, or to any extent, the definition of "Beneficiaries" under subparagraph 2(a) of this Settlement or changes or alters in any manner, or to any extent, the beneficial ownership of the Trust Fund, or any part of the Trust Fund, by the Beneficiaries as so defined.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such

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act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and subject to this clause.

13. Subject to paragraph 11 of this Deed, a majority of fifty percent (50%) of the Trustees shall be required for any decision or action taken on behalf of the Trust.

Each of the Trustees, by joining in the execution of this Deed, signifies his acceptance of the Trusts herein. Any other person who becomes a Trustee under paragraph 5 of this Settlement shall signify his acceptance of the Trust herein by executing this Deed or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Deed.

14. This Settlement shall be governed by, and shall be construed in accordance with the laws of the Province of

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Alberta.

IN WITNESS WHEREOF the parties hereto have
executed this Deed.

SIGNED, SEALED AND DELIVERED
in the presence of:

Francis Thom A. Settlor. Witness

NAME

Box 326, Slave Lake, Alta
ADDRESS

B. Trustees:

Francis Thom 1. Witness

NAME

Box 326, Slave Lake, Alta
ADDRESS

Francis Thom 2. Witness

NAME

Box 326, Slave Lake, Alta
ADDRESS

Francis Thom 3. Witness

NAME

Box 326, Slave Lake, Alta
ADDRESS

Schedule

One Hundred Dollars (\$100.00) in Canadian Currency.

Sawridge Trusts Board Policy

Name	Health, Dental, Vision Care and Life Insurance Benefit				
Category	Benefits	Number	B-09-1		
Proposed	10-05-05	Approved	10-05-26	Revised	15-12-16

The Trustees of the Sawridge Band Inter-Vivos Settlement and the Sawridge Trust (Sawridge Trusts) are desirous of providing eligible beneficiaries with health, dental, vision care and life insurance coverage;

SUPPLEMENTARY BENEFIT

1. That this will be a supplementary benefit, that is, that beneficiaries and their dependants must first take advantage of other benefits available through government, First Nation or employer programs or personal insurance plans.
2. That benefits will only be paid so long as the Trusts have sufficient resources to cover this cost.

HEALTH, DENTAL and VISION CARE INSURANCE

In order to achieve this objective, the Trustees have approved a health, dental and vision care insurance program under Great West Life Insurance proposed by the Silverberg Group (summary attached) which covers beneficiaries and their immediate and qualified dependents as of 1 January 2016. This plan will replace previous health insurance plans provided by the Sawridge Trusts under Great West Life, will replace any employee health benefit program presently offered by Sawridge First Nation to beneficiaries and dependants of the Sawridge Trusts and will replace any coverage provided by the Health Canada's Non-Insured Health Benefits (NIHB) for First Nations and Inuit Program.

Where possible, the Sawridge Trusts will enter into an agreement with the Sawridge First Nation in relation to the Sawridge Trusts' health, dental and vision care insurance program, so that if the Sawridge First Nation recovers any eligible amounts from the First Nation Non-Insured Health Benefit Program, or the Government in right of the Crown, with respect to any benefits paid by the Sawridge Trusts on behalf of Status Indians who are Sawridge Trust beneficiaries, that such amounts will be reimbursed or assigned to the Sawridge Trusts.

LIFE INSURANCE

The Sawridge Trusts will provide, to eligible beneficiaries only, a 10 Year Pay Universal Life Insurance policy for providing coverage of \$250,000 life insurance to beneficiaries between the ages of 0 and 60 years of age.

The Sawridge Trusts will be a permanent and irrevocable named beneficiary to receive \$50,000 from this policy upon the death of the insured the remaining \$200,000 being provided to a beneficiary of the insured's choice;

Sawridge Trusts Board Policy

Name	Health, Dental, Vision Care and Life Insurance Benefit				
Category	Benefits	Number	B-09-2		
Proposed	10-05-05	Approved	10-05-26	Revised	15-12-16

DEFINITION OF "IMMEDIATE AND QUALIFIED DEPENDENTS"

For the purposes of the Health, Dental and Vision Care Insurance Benefit, the immediate dependents of beneficiaries will be covered, even if they are not members of the Sawridge First Nation, provided that they are either living with the beneficiary and are under the age of 18 years of age or are attending a post-secondary institution and are under the age of 25 years of age and still consider the home of the beneficiary to be their own home.

SUPPLEMENTARY BENEFITS

In cases where the Insurance Benefit does not cover a specific service or item or in cases where the beneficiary use exceeds the limits of a particular benefit, the Trustees may consider an appeal for additional benefits paid directly from Trusts' equity to supplement the amount of the benefit not covered under the Insurance Benefit provided that, in the Trustees' estimation, the additional cost is reasonable and warranted.

SELF-INSURED PLAN

The Health, Dental and Vision Care Insurance Benefit is a self-insured plan paid for entirely through Trusts' equity and not part of a group insurance plan. The Benefit is administered for the Sawridge Trusts by Great West Life which charges an administration fee based on the number of beneficiaries and dependents covered by the Benefit.

NON-DEROGATION

Nothing in this Policy shall be construed so as to abrogate or derogate from the existing Aboriginal and Treaty rights of Sawridge First Nation beneficiaries as recognized and affirmed in Section 35 of the *Constitution Act, 1982*.

Sawridge Trusts Board Policy

Name	Education Support Fund Benefit				
Category	Benefits		Number	B-11-1	
Proposed	11-02-15	Approved	11-02-15	Revised	

WHEREAS the Trustees of the Sawridge Band Inter-Vivos Settlement and the Sawridge Trust (Sawridge Trusts) are desirous of providing the beneficiaries and dependents of beneficiaries 25 years of age and under with support that will assist them in educating themselves;

NOW THEREFORE BE IT RESOLVED that the Sawridge Trusts agree to provide an Education Support Fund of \$100,000 annually for the benefit of eligible beneficiaries and eligible dependents as follows:

SUPPLEMENTARY BENEFIT

1. That this will be a supplementary benefit, that is, that beneficiaries must first take advantage of other benefits available through government, First Nation programs, student loans and lines-of-credit and scholarship or student bursary programs and through full or part-time employment.
2. That benefits will only be paid so long as the Trusts have sufficient resources to cover this cost.

DEFINITION OF A BENEFICIARY

3. That, for the purposes of this benefit, a beneficiary shall be defined as anyone who meets the requirements and has been accepted by the Trustees as an eligible beneficiary to either the Sawridge Band Intervivos Settlement or the Sawridge Trust.
4. That, for the purposes of this benefit, an eligible dependant will include any natural child or any child adopted through legal or customary adoption by an eligible beneficiary or a spouse of an eligible beneficiary who is under 25 years of age and who is registered in a full-time or part-time education program with an accredited educational institution.

DEFINITION OF ELIGIBLE EDUCATION PROGRAMS

5. That, for the purposes of this benefit, eligible education programs include:
 - a. Recognised upgrading programs to improve opportunities for higher education.
 - b. Recognised technical and skills development training programs
 - c. Recognised university programs up to and including doctoral level study but not including post-doctoral studies.

DEFINITION OF EDUCATION SUPPORT BENEFIT CATEGORIES

6. Tuition and Fee Support:
 - a. Including a portion of tuition fees and other required fees to attend an educational program.
7. Support for Books and Equipment:
 - a. Including a portion of the cost of text books and laboratory and other equipment necessary for the study program, including computers.
 - b. Including a portion of any deposits required to cover the cost of damaged or lost equipment.
8. Living Expense Support:
 - a. Including a portion of rent or mortgage payments, utilities, telephone, tenant/home insurance, food, transportation, basic furniture and personal expenses.
 - b. Does not include any portion of the purchase of a vehicle, payment of credit card or other outstanding debts.

Sawridge Trusts Board Policy

Name	Education Support Benefit				
Category	Benefits	Number	B-11-2		
Proposed	11-02-15	Approved	11-02-15	Revised	

AVAILABLE FUNDING

9. Because funding is limited each year, funding will be made available on a first-come-first-serve basis and on the basis on total funding provided by other funding agencies and by the individual him or herself, that is, if the individual receives maximum funding available through federal government grants or other scholarship programs or if the individual is able to personally fund her/his education through parental contributions or self-employment, this person will not be placed as high in priority as someone who has no financial support programs available to them.
10. Funding will also be accorded in priority to those with high academic performance records.

ACCESSING FUNDING

11. Those wishing to receive funding for their education from the Trusts will first have to fill out and submit an application for funding available through the Trusts' Office. Applications will be reviewed by the Trusts' Administrator and a decision will be made based on available funding and past academic performance.
12. Successful applicants will be required to provide on-going proof of enrolment, attendance and academic performance in order to be considered for on-going financial support from the Trusts.

Sawridge Trusts Board Policy

Name	Addictions Treatment Support Fund Benefit				
Category	Benefits	Number	B-12		
Proposed	11-02-15	Approved	11-02-15	Revised	

WHEREAS the Trustees of the Sawridge Band Inter-Vivos Settlement and the Sawridge Trust (Sawridge Trusts) are desirous of providing the beneficiaries with support that will assist them in dealing with addictions resulting from substance abuse, more specifically, alcohol and drug abuse;

NOW THEREFORE BE IT RESOLVED that the Sawridge Trusts agree to provide an Addictions Treatment Support Fund of \$40,000 annually for the benefit of eligible beneficiaries and eligible dependents as follows:

SUPPLEMENTARY BENEFIT

1. That this will be a supplementary benefit, that is, that beneficiaries must first take advantage of other benefits available through government, First Nation programs, and health insurance programs.
2. That benefits will only be paid so long as the Trusts have sufficient resources to cover this cost.

DEFINITION OF A BENEFICIARY

3. That, for the purposes of this benefit, a beneficiary shall be defined as anyone who meets the requirements and has been accepted by the Trustees as an eligible beneficiary to either the Sawridge Band Intervivos Settlement or the Sawridge Trust.
4. That, for the purposes of this benefit, an eligible dependent will include any natural child or any child adopted through legal or customary adoption by an eligible beneficiary or a spouse of an eligible beneficiary who is under 25 years of age and is living at home with the eligible beneficiary.

DEFINITION OF ELIGIBLE ADDICTIONS TREATMENT PROGRAMS

5. Eligible treatment programs will include accredited programs provided by reputable professionals with a proven record of success in treating addictions.
6. Priority will be given first to certified treatment programs first in the Province of residence of the beneficiary; second to certified treatment programs within Canada; third to certified treatment programs with North America.
7. Only in special circumstances will consideration be given to treatment programs outside North America and only then with the approval of the Trustees.

ACCESSING BENEFITS UNDER THE ADDICTIONS TREATMENT FUND

8. Funding for addictions treatment services will only be provided in cases where the beneficiary or dependent has first developed a treatment plan with the Trusts' Administrator and other professionals and has made a commitment to follow through with the full treatment program.
9. While the Trusts recognize that relapses, in the case of addictions, are possible and even likely, the Trusts will not allow abuses of the Addictions Treatment Fund by beneficiaries who repeatedly relapse and have to attend a new treatment program. After the second use of the Fund, every beneficiary application for renewed treatment will require the approval of the Board of Trustees.
10. The Trusts' Administrator is authorized to approve treatment plans and payment for treatment services for the first two applications without having to obtain the approval of the Trustees provided that there remains sufficient funds in the current year's budget for the Addictions Treatment Fund.

Sawridge Trusts Board Policy

Name	Child and Youth Development Benefit				
Category	Benefits	Number	B-10		
Proposed	13-01-15	Approved	13-05-21	Revised	

WHEREAS the Trustees of the Sawridge Band Inter-Vivos Settlement and the Sawridge Trust (Sawridge Trusts) are desirous of providing the children of eligible beneficiaries who have special needs with support that will assist them in developing their capacities and to assist in the education of all children of beneficiaries;

NOW THEREFORE BE IT RESOLVED that the Sawridge Trusts agree to provide a Child and Youth Development Benefit for the special needs children of eligible beneficiaries and to provide assistance with child care costs for normal children as follows:

SUPPLEMENTARY BENEFIT

1. That this will be a supplementary benefit, that is, that beneficiaries must first take advantage of other benefits available through government, First Nation or employer programs or personal insurance plans and government, school or community social service programs.
2. That benefits will only be paid so long as the Trusts have sufficient resources to cover this cost.

DEFINITION OF A BENEFICIARY

3. That, for the purposes of this benefit, a beneficiary shall be defined as anyone who meets the requirements and has been accepted by the Trustees as an eligible beneficiary to either the Sawridge Band Intervivos Settlement or the Sawridge Trust.
4. That, for the purposes of this benefit, an eligible child will include any child who also suffers from a permanent physical or mental disability either born to an eligible beneficiary, adopted through legal or customary adoption by an eligible beneficiary or for which an eligible beneficiary is the legal guardian.

DEFINITION OF CHILD AND YOUTH DEVELOPMENT BENEFIT

5. That the child and youth development benefit provide the following benefits:
 - a. An annual amount of up to \$10,000 to assist with the costs associated with caring or educating the special needs child on a reimbursement basis or on pre-paid services.
 - b. An annual amount of up to \$8,500 to assist with child care costs for a child on a reimbursement basis or on pre-paid services.

APPLICATION

1. That the beneficiary apply for the child and youth development benefit by telephoning, writing or emailing the Trusts' office and providing the necessary information relating to the age of the applicant, the nature of the program the beneficiary wishes to attend and the beneficiary's entitlement to the Trusts Administrator.

Sawridge Trusts Board Policy

Name	Compassionate Care and Death Benefit				
Category	Benefits	Number	B-06-1		
Proposed	10-04-19	Approved	10-04-19	Revised	

Whereas the Trustees of the Sawridge Band Intervivos Settlement and the Sawridge Trust (hereinafter referred to as the Trusts) are committed to providing benefits that will support the well-being of the beneficiaries under the two trusts, and

Whereas the beneficiaries may, from time to time, require the assistance of the Trusts to defray their expenses related to a prolonged or serious illness or death of an immediate family member, The Trustees hereby resolve:

SUPPLEMENTARY BENEFIT

1. That this will be a supplementary benefit, that is, that beneficiaries must first take advantage of other benefits available through government, First Nation, employer or personal insurance plans and that the Compassionate Care and Death Benefit will only pay the difference between these other benefits and the actual costs incurred. Benefits will only be paid as long as the Trusts have sufficient resources to cover this cost.

DEFINITION OF IMMEDIATE FAMILY

2. That, for the purposes of this benefit, an immediate family member shall be defined as:
 - a. A child of the beneficiary or of her/his current, co-habiting spouse or common-law partner,
 - b. The current, co-habiting spouse or common-law partner of the beneficiary,
 - c. The father or mother or his/her partner of either the beneficiary or her/his current co-habiting spouse or common-law partner,
 - d. Brothers, sisters, stepbrothers or step sisters of either the beneficiary or her/his current, co-habiting spouse or common-law partner,
 - e. Grandparents or step grandparents of either the beneficiary or her/his current co-habiting spouse or common-law partner,
 - f. Grandchildren or step-grandchildren of either the beneficiary or her/his current, co-habiting spouse or common-law partner,
 - g. Son-in-law or daughter-in-law of either the beneficiary or her/his current, co-habiting spouse or common-law partner.

DEFINITION OF PROLONGED OR SERIOUS ILLNESS OR INJURY

3. That, for the purposes of this benefit, prolonged or serious illness shall be limited to:
 - a. A serious or life-threatening illness resulting in hospital confinement or intense home care of two or more weeks' duration,
 - b. A serious or life-threatening injury resulting in hospital confinement, intense home care of two or more weeks' duration or resulting in permanent physical handicap,
 - c. An illness, genetic condition or injury, including injury to an unborn foetus resulting in a permanent physical or mental disability.

Sawridge Trusts Board Policy

Name	Compassionate Care and Death Benefit				
Category	Benefits	Number	B-06-2		
Proposed	10-04-19	Approved		Revised	

DEFINITION OF COMPASSIONATE CARE BENEFIT

4. That the compassionate care benefit provide the following benefits if these are not covered by any other health program:
 - a. Reasonable travel costs to and from the location where the ill or injured is in care by personal vehicle or the most economical and reasonable means of public transportation for the beneficiary and her/his family.
 - b. Reasonable accommodation costs for the beneficiary and her/his family while visiting the ill or injured family member at the most reasonable and economical hotel, boarding house or public program accommodation including Ronald MacDonald House for parents with children afflicted with cancer, Sawridge Inns where these are available, bed and breakfast establishments and reasonably-priced hotels and motels.
 - c. Reasonable meal costs for the beneficiary and her/his family while visiting the ill or injured family member at restaurants and hospital and care facility cafeterias or food purchased and prepared by the beneficiary.
 - d. Parking costs while traveling to or from the location where the ill or injured family member is in care.
 - e. Child care costs for under-aged children remaining at home while the parents go to visit the ill or injured family member.
 - f. Home modifications, special equipment or dietary supplies, or special medications not covered by other health plans if the ill or injured family member is being brought to the beneficiary's home for long-term care, recuperation or rehabilitation. In this case, the beneficiary has to provide the Trustees with a detailed long-term plan, including costs, for the care of the ill or injured family member at home, medical recommendations for the equipment and/or dietary needs to care for this person at home, costs and plans for any home modifications in order to accommodate caring for this person at home and costs of any homecare professional help that may be needed.

LIMITATION OF COMPASSIONATE CARE BENEFIT

5. That the compassionate care benefit be limited to a maximum of \$6,000 per beneficiary per annum with a maximum lifetime benefit of \$60,000.
6. As part of the total compassionate care benefit allowed, that the Trustees may provide an immediate cash disbursement of up to \$300 within the maximum permitted to cover emergency incidental expenses associated with the incident.
7. That this benefit will only be made available so long as the Trusts have sufficient financial resources to cover this cost.

Sawridge Trusts Board Policy

Name	Compassionate Care and Death				
Category	Benefits	Number	B-06-3		
Proposed	10-04-19	Approved		Revised	

DEFINITION OF DEATH BENEFIT

1. That the death benefit include:
 - a. The cost of transporting the remains to the deceased former home or to the home of the beneficiary.
 - b. The cost of burial or cremation, including the purchase of a plot, the cost of the funeral, headstones and the cost of a post-funeral reception.
 - c. The cost of transporting the beneficiary and her/his family to the funeral, if this is at some distance away from the beneficiary's home.
 - d. The cost of accommodation and meals for the beneficiary and her/his family, if the funeral is being held at some distance away from the beneficiary's home and requires an overnight stay.

LIMITATION OF DEATH BENEFIT

2. That the maximum death benefit be \$12,000 per family with a maximum of \$24,000 annually based on submitted receipts.
3. That the Trustees may provide an immediate cash disbursement of up to \$1000 per beneficiary to cover emergency incidental expenses associated with the funeral and burial or cremation of the former family member but that amount will be subtracted from the total benefit paid for this incident.

LIMITATION OF BENEFIT

4. That the compassionate care and death benefit will only be paid one time, regardless of whether the beneficiary is eligible for both the Trusts or for only one Trust or the other.
5. That the compassionate care and death benefit will only be paid to adult beneficiaries or to recognized guardians or caretakers of minor beneficiaries.
6. That the compassionate care and death benefit will not pay for lost time from work or business not for any costs associated with employment or business income.
7. That this benefit will only be made available so long as the Trusts have sufficient financial resources to cover this cost.

APPLICATION

8. That the beneficiary apply for either the compassionate care benefit or the death benefit by calling or emailing the Trusts office and providing the necessary information relating to the incident and the beneficiary's entitlement to the Trusts Administrator.

Sawridge Trusts Board Policy

Name	Seniors' Support Benefit				
Category	Benefits	Number	B-07-1		
Proposed	10-04-19	Approved	10-04-19	Revised	15-12-16

Whereas the Trustees of the Sawridge Band Intervivos Settlement and the Sawridge Trust (hereinafter referred to as the Trusts) are committed to providing benefits that will support the well-being of the beneficiaries under the two trusts, and
Whereas the Trustees desire to provide a benefit that will support the elders who have provided so much toward the building of the community,
Whereas the elders may require additional financial support to benefits provided by Federal and Provincial Governments and community agencies,
The Trustees hereby resolve:

SUPPLEMENTARY BENEFIT

1. That this will be a supplementary benefit, that is, that beneficiaries must first take advantage of other benefits available through government, First Nation or employer programs or personal retirement and insurance plans.
2. That benefits will only be paid so long as the Trusts have sufficient resources to cover this cost.

DEFINITION OF A SENIOR

- a. That, for the purposes of this benefit, a senior shall be defined as a beneficiary who has achieved 65 years of age.

DEFINITION OF SENIORS' SUPPORT BENEFIT

3. That the seniors' support benefit provide the following benefits: A monthly cash disbursement of \$2,500 per eligible beneficiary paid directly to the senior person.

APPLICATION

4. That the beneficiary apply for seniors' support benefit by telephoning, writing or emailing the Trusts' office and providing the necessary information relating to the age of the applicant and the beneficiary's entitlement to the Trusts Administrator.

Sawridge Trusts Board Policy

Name	Personal Development and Alternative Health Benefit				
Category	Benefits	Number	B-08-1		
Proposed	14-02-25	Approved	14-02-25	Revised	15-12-16

Whereas the Trustees of the Sawridge Band Intervivos Settlement and the Sawridge Trust (hereinafter referred to as the Trusts) are committed to providing benefits that will support the well-being of the beneficiaries and their dependants under the two trusts, and

Whereas the Trustees desire to provide a benefit that will support beneficiaries and their dependants in their personal growth and development, and will provide some funding for alternative health treatments, The Trustees hereby resolve:

SUPPLEMENTARY BENEFIT

1. That this will be a supplementary benefit, that is, that beneficiaries and their dependants must first take advantage of other benefits available through government, First Nation or employer programs or personal insurance plans.
2. That benefits will only be paid so long as the Trusts have sufficient resources to cover this cost.

DEFINITION OF A BENEFICIARY

- a. That, for the purposes of this benefit, a beneficiary shall be defined as anyone who meets the requirements and has been accepted by the Trustees as an eligible beneficiary to either the Sawridge Band Intervivos Settlement or the Sawridge Trust.
- b. That, for the purposes of this benefit, an eligible dependent will include any natural child or any child adopted through legal or customary adoption by an eligible beneficiary or a spouse of an eligible beneficiary who is under 25 years of age and is living at home with the eligible beneficiary.

DEFINITION OF PERSONAL DEVELOPMENT AND ALTERNATE HEALTH BENEFIT

1. That the personal development and alternate health benefit provide the following benefits:
 - a. An annual allowance benefit of up to \$2,000 per person.
 - b. The allowance will not be paid directly to the eligible beneficiary except upon the submission of receipts or invoices for
 - i. personal or family counselling provided a recognized traditional healer or elder,
 - ii. recognized fitness or nutrition counselling programs,
 - iii. recognized self-esteem building programs,
 - iv. vitamins, minerals, medicinal herbs, special food supplements,
 - v. fitness equipment.
 - c. In the case of invoices for services provided sent directly to the Sawridge Trusts office, the allowance will be paid directly to the service provider not the beneficiary.
 - d. In the case of visits to traditional healers, the beneficiary will provide an itemized list of the expenses incurred for the visit.

Sawridge Trusts Board Policy

Name	Personal Development and Alternative Health Benefit				
Category	Benefits	Number	B-08-2		
Proposed	14-02-25	Approved	14-02-25	Revised	15-12-16

- e. The allowance may also be used to cover the cost of part of the transportation costs required to attend the personal development or alternative health program on the same basis as provided for the purchase of services under this program. Transportation costs may be reimbursed upon the submission of receipts for gasoline purchase or upon the submission of receipts for public transportation, provided that the cost is related to accessing the personal development program.

APPLICATION

3. That the beneficiary apply for the personal development and alternative health benefit by telephoning, writing or emailing the Trusts' office and providing the necessary information relating to the age of the applicant, the nature of the program the beneficiary or dependant wishes to attend and the beneficiary's entitlement to the Trusts Administrator.

Sawridge Trusts Board Policy

Name	Income Replacement Benefit				
Category	Benefits	Number	B-13		
Proposed	11-10-18	Approved	11-10-18	Revised	11-12-07

WHEREAS the Trustees of the Sawridge Band Inter-Vivos Settlement and the Sawridge Trust (Sawridge Trusts) are desirous of providing the beneficiaries with support that will assist them in dealing with addictions resulting from substance abuse, more specifically, alcohol and drug abuse;

NOW THEREFORE BE IT RESOLVED that the Sawridge Trusts agree to provide an Income Replacement Benefit of \$40,000 annually for the benefit of eligible beneficiaries and eligible dependents as follows:

SUPPLEMENTARY BENEFIT

1. That this will be a supplementary benefit, that is, that beneficiaries must first take advantage of other benefits available through government, First Nation programs, and health insurance programs.
2. That benefits will only be paid so long as the Trusts have sufficient resources to cover this cost.

DEFINITION OF A BENEFICIARY

3. That, for the purposes of this benefit, a beneficiary shall be defined as anyone who meets the requirements and has been accepted by the Trustees as an eligible beneficiary to either the Sawridge Band Intervivos Settlement or the Sawridge Trust.
4. That, for the purposes of this benefit, an eligible dependent will include any natural child or any child adopted through legal or customary adoption by an eligible beneficiary or a spouse of an eligible beneficiary who is under 25 years of age and is living at home with the eligible beneficiary.

DEFINITION OF ELIGIBILITY

5. That, for the purposes of this benefit, would only provide up to 80% or 90% of total income with a monthly maximum of \$2,500 and an annual maximum of \$5,000 per individual on a first-come-first-served basis.
6. That would only be available to those already gainfully employed who would lose income as a result of attending a personal healing program or on extended sick leave from work because of an illness.
7. That would only be provided to deal with addictions, mental health or long-term health issues with the assistance of qualified professionals. The issue of dealing with traditional healers has not been addressed satisfactorily at this time.
8. That would be supported by the Personal Development, Health Benefits (for personal and mental health counselling and short-term disability) and the Addictions Treatment Support Fund Benefit (for addictions treatment) and could be limited only to those who attend an accredited treatment program.
9. That would not be repeated.

ACCESSING BENEFITS UNDER THE INCOME REPLACEMENT BENEFIT

10. That individuals wishing to access this benefit first provide the Trusts' Administrator with a treatment plan developed with a certified professional or, in the case of short-term disability, a doctor's note indicating that the person cannot work including the period during which the individual will be off work.
11. That individuals also provide the Trusts' Administrator with pay slips for one full month to prove level of income.

Sawridge Trusts Board Policy

Name	Recognition of Beneficiaries and Dependants Educational Achievements				
Category	Benefits	Number	B-15		
Proposed	14-10-27	Approved	14-10-27	Revised	

Benefit

The Trustees of the Sawridge Trusts are desirous of supporting and encouraging the educational achievements of the beneficiaries and their dependants. In recognition of the completion of an educational program by any beneficiary or her/his dependants, the Sawridge Trusts will:

1. Issue a certificate to said beneficiary or dependant recognizing the educational achievement signed by the Trustees.
2. Note the accomplishment of the beneficiary or dependant in the Sawridge Trusts Newsletter or a notice to all beneficiaries.
3. Provide the graduate with a token of recognition by issuing a cheque for \$250 to assist the graduate with finding employment or celebrating their achievement.

Eligibility

This benefit will be provided to any beneficiary of the Sawridge Trusts and their dependants. For the purpose of this benefit, a dependant means the married or common-law spouse or natural or adopted children of the beneficiary, provided that these dependants are living with the beneficiary or are still considered to be dependants of the beneficiary, that is, still consider their permanent address to be that of the beneficiary.

Recognized Educational Programs

Trustees will recognize the completion of a recognized secondary or post-secondary educational program, including: graduation from high school or a high school upgrading program, graduation from a university degree program, graduation from a technical certificate program, graduation from an apprenticeship program, or graduation from a professional upgrading program that increases the beneficiary or dependants employability or qualification in her/his chosen field.

Application

Upon receiving proof of graduation of a beneficiary or her/his dependant, the Trusts' Administrator will have a framed certificate of recognition prepared and will either issue a cheque for \$250 in the name of the graduate or will provide suitable gift according to the graduate's choice.

This benefit will be applied retroactively for a period of one year from the date of the approval of this policy by the Trustees.

Sawridge Trusts Board Policy

Name	One Time Only "Good Faith" Cash Disbursement				
Category	Benefits	Number	B-04		
Proposed	09-09-26	Approved	09-10-26	Revised	10-06-15

Introduction

The Sawridge Trusts Board of Trustees agrees to a "One Time Only Good Faith Cash Disbursement" to be made to each of the identified and approved adult beneficiaries of either Trust according to the following terms:

Benefit

A single cash disbursement of two thousand five hundred dollars (\$2,500) will be issued by cheque drawn on the Trusts' accounts made payable to each adult beneficiary who is 18 years of age and older.

Only one payment of \$2,500 will be made to each beneficiary for this benefit regardless of whether the beneficiary is a member of one or both Trusts.

Minor beneficiaries under 18 years of age will not be eligible for this benefit until they reach the age of 18 years of age and apply. Payments will be honoured automatically when these beneficiaries reach the age of majority, subject to available funds.

The Sawridge Trusts Tipi

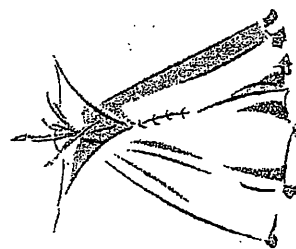
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Through the sharing of these virtues, our ancestors build a strong people able to live at peace with ourselves, with our community and with nature.

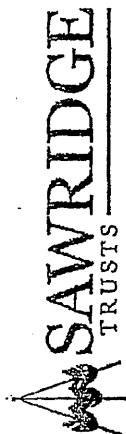
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The benefits developed by the Sawridge Trusts try to help develop these capacities to make the best use of the resources provided by the Creator for our people.



47-Health Support Benefit Pamphlet.pdf

HEALTH SUPPORT BENEFIT



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Health Support Benefit

ramps and glucose monitoring equipment. It also covers basic/major/orthodontic dental care, prescriptions and out-of-country emergency medical care.

Life Insurance

The life insurance will provide \$250,000 of fully-paid, permanent life insurance for each beneficiary between 18 and 60 years of age. This insurance will pay out \$200,000 to the person designated by the beneficiary and \$50,000 to the Trust to fund future life insurance plans.

Member Assistance Plan

The member assistance program will provide telephone and in-person counselling and referral and will help people by providing support after they receive treatment and counselling. The program is available to all beneficiaries and their families.

Who is Eligible

For the purposes of this benefit, an eligible beneficiary is any person who has been confirmed by the Board of Trustees of the Sawridge Trusts as a beneficiary under the rules of the Trusts.

Supplementary Benefit

All Sawridge Trusts are supplementary benefits. They are meant to support other benefits provided by Sawridge First Nation, the Federal Government, the Provincial Government and the community. Where another similar benefit exists, it must be accessed first.

Sawridge Trusts benefits are only available as long as the Trusts have the resources to support these benefits.

The Benefit

The Sawridge Trusts have contracted J.T. Moland Insurance Consultants to set up three health support programs for beneficiaries.

Health Insurance

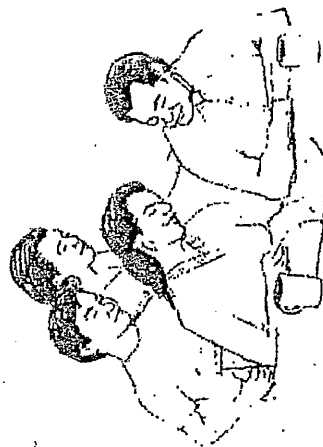
The health insurance will cover the difference between what is paid through Alberta Health Care and Non-Insured Health Benefits. It covers health care costs like hospital, ambulance, chiropractors, physiotherapists, speech therapists, psychologists/social workers, hearing aids, prostheses, wheelchair

How to Access the Benefit

J.T. Moland will be contacting all the identified beneficiaries to enrol them in the program, to provide them with a medical card and to provide detailed benefits information. Once the card is provided, beneficiaries can begin accessing health benefits.

More Information

You can obtain more information on this and other Trusts' benefits by going to the Sawridge Trusts web site at www.sawridgetrusts.ca or by emailing, faxing or calling the Trusts Administrator at the telephone numbers and address provided on the back of this pamphlet.



The Sawridge Trusts Tipi

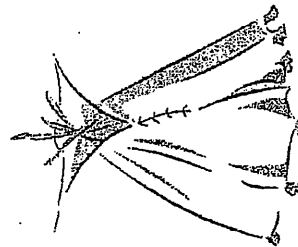
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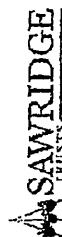
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47-Counseling Benefit Pamphlet.pdf
20 March 2014

COUNSELLING BENEFIT



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E-mail: benefits@sawridgetrusts.ca

COUNSELLING BENEFIT

career counselling by professional career counsellors.

Available Funding

Because funding is limited each year, funding will be made available on a **first-come-first-serve basis up to a maximum annual expense of \$7000.** Decisions will be governed by the total funding provided by other funding agencies and by the commitment of the individual to a treatment regime.

Who is Eligible

For the purposes of this benefit, an eligible beneficiary is any person who has been confirmed by the Board of Trustees of the Sawridge Trusts as a beneficiary under the rules of the Trusts as well as their dependants.

For the purposes of this benefit, an eligible dependant will include any natural child or any child adopted through legal or customary adoption by an eligible beneficiary or a spouse of an eligible beneficiary who is under 25 years of age and who is registered in a full-time or part-time education program with an accredited educational institution.

How to Access the Benefit

Funding for counselling benefits will

Supplementary Benefit

All Sawridge Trusts are supplementary benefits. Where an other similar benefit exists, it must be accessed first.

This is also a supplementary benefit, that is, beneficiaries must first take advantage of other benefits available through government, First Nation programs, and health insurance programs. Sawridge Trusts benefits are only available as long as the Trusts have the resources to support these benefits.

Counselling Benefit

The Sawridge Trusts have established a limited annual fund to cover the costs of beneficiaries and their dependants receiving counselling from accredited professionals.

Eligible counselling programs will include services provided by accredited counselling professionals including psychiatrists, psychologists, social workers, marriage and family therapists, art therapists, and psychiatric nurses.

Counselling benefits will also include

only be provided in cases where the beneficiary or dependent has first developed a treatment plan with the Trusts' Administrator and other professionals and has made a commitment follow through with the full treatment program.



Source: Nancy G. Photography

More Information

You can obtain more information on this and other Trusts' benefits by going to the Sawridge Trusts website at www.sawridgetrusts.ca or by emailing, faxing or calling the Trusts Administrator at the telephone numbers and address provided on the back of this pamphlet.

The Sawridge Trusts Tipi

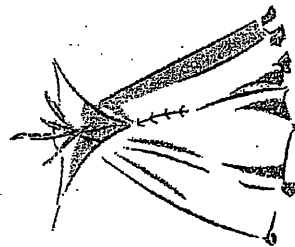
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47-Education Support Benefit Pamphlet.pdf
10 March 2011

EDUCATION SUPPORT BENEFIT FUND



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Education Support Benefit Fund

clude:

- Tuition and Fee Support: including a portion of tuition fees and other required fees to attend an educational program.
- Support for Books and Equipment: including a portion of the cost of text books and laboratory and other equipment necessary for the study program, including computers and including a portion of any deposits required to cover the cost of damaged or lost equipment.
- Living Expense Support: including a portion of rent or mortgage payments, utilities, telephone, tenant/home insurance, food, transportation, basic furniture and personal expenses.

This benefit does not include any portion of the purchase of a vehicle, payment of credit card or other outstanding debts.

Available Funding

Because funding is limited each year, funding will be made available on a first-come-first-serve basis. Decisions will also be governed by the total funding provided by other funding agencies and by the individual him or herself. If the individual receives maximum funding available through federal government grants or other scholarship programs or if the individual is able to personally fund her/his education through parental contributions or self-employment, this person will not be placed as high in priority as someone who has no financial support programs available to them.

Funding will also be accorded in priority to those with high academic performance records.

Supplementary Benefit

All Sawridge Trusts are supplementary benefits. Where another similar benefit exists, it must be accessed first.

This will be a supplementary benefit, that is, that beneficiaries must first take advantage of other benefits available through government, First Nation programs, student loans and lines-of-credit and scholarship or student bursary programs and through full or part-time employment.

Sawridge Trusts benefits are only available as long as the Trusts have the resources to support these benefits.

Education Support Benefit

The Sawridge Trusts have established a limited annual fund to cover the costs of beneficiaries and their dependants attending authorised post-secondary education programs.

For the purposes of this benefit, eligible education programs include:

- Recognised upgrading programs to improve opportunities for higher education.
- Recognised technical and skills development training programs
- Recognised university programs up to and including doctoral level study but not including post-doctoral studies.

Costs that may be covered by this benefit in-

Who is Eligible

For the purposes of this benefit, an eligible beneficiary is any person who has been confirmed by the Board of Trustees of the Sawridge Trusts as a beneficiary under the rules of the Trusts as well as their dependants.

For the purposes of this benefit, an eligible dependant will include any natural child or any child adopted through legal or customary adoption by an eligible beneficiary or a spouse of an eligible beneficiary who is under 25 years of age and who is registered in a full-time or part-time education program with an accredited educational institution.

How to Access the Benefit

Those wishing to receive funding for their education from the Trusts will first have to fill out and submit an application for funding available through the Trusts' Office. Applications will be reviewed by the Trusts' Administrator and a decision will be made based on available funding and past academic performance.

Successful applicants will be required to provide on-going proof of enrolment, attendance and academic performance in order to be considered for on-going financial support from the Trusts.

More Information

You can obtain more information on this and other Trusts' benefits by going to the Sawridge Trusts web site at www.sawridgetrusts.ca or by emailing, faxing or calling the Trusts Administrator at the telephone numbers and address provided on the back of this pamphlet.

The Sawridge Trusts Tipi

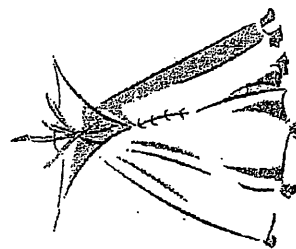
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47-Addictions Treatment Support Benefit Pamphlet.pdf
10 March 2011

ADDICTIONS TREATMENT SUPPORT BENEFIT FUND



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ADDICTIONS TREATMENT SUPPORT BENEFIT FUND

America and only then with the approval of the Trustees.

Available Funding

Because funding is limited each year, funding will be made available on a **first-come-first-serve** basis. Decisions will be governed by the total funding provided by other funding agencies and by the commitment of the individual to a treatment regime.

Who is Eligible

For the purposes of this benefit, an eligible beneficiary is any person who has been confirmed by the Board of Trustees of the Sawridge Trusts as a beneficiary under the rules of the Trusts, as well as their dependants.

For the purposes of this benefit, an eligible dependant will include any natural child or any child adopted through legal or customary adoption by an eligible beneficiary or a spouse of an eligible beneficiary who is under 25 years of age and who is registered in a full-time or part-time education program with an accredited educational institution.

How to Access the Benefit

Funding for addictions treatment services will only be provided in cases where the beneficiary or dependant has first developed a treatment plan with the Trusts' Administrator and other professionals and has made a commitment to follow through with the full treatment program.

While the Trusts recognize that relapses, in the case of addictions, are possible and even likely, the Trusts will not allow abuses of the Addictions Treatment Fund by beneficiaries who repeatedly relapse and have to attend a new treatment pro-

Supplementary Benefit

All Sawridge Trusts are supplementary benefits. Where another similar benefit exists, it must be accessed first.

This will be a supplementary benefit, that is, beneficiaries must first take advantage of other benefits available through government, First Nation programs, and health insurance programs.

Sawridge Trusts benefits are only available as long as the Trusts have the resources to support these benefits.

Addictions Treatment Support Benefit

The Sawridge Trusts have established a limited annual fund to cover the costs of beneficiaries and their dependants attending authorised alcohol and drug treatment programs.

Eligible treatment programs will include accredited programs provided by reputable professionals with a proven record of success in treating addictions.

Priority will be given first to certified treatment programs first in the Province of residence of the beneficiary; second to certified treatment programs within Canada; third to certified treatment programs with North America.

Only in special circumstances will consideration be given to treatment programs outside North

gram. After the second use of the Fund, every beneficiary application for renewed treatment will require the approval of the Board of Trustees.

The Trusts' Administrator is authorized to approve treatment plans and payment for treatment services for the first two applications without having to obtain the approval of the Trustees provided that there remains sufficient funds in the current year's budget for the Addictions Treatment Fund.



More Information

You can obtain more information on this and other Trusts' benefits by going to the Sawridge Trusts web site at www.sawridgetrusts.ca or by emailing, faxing or calling the Trusts Administrator at the telephone numbers and address provided on the back of this pamphlet.

The Sawridge Trusts Tipi

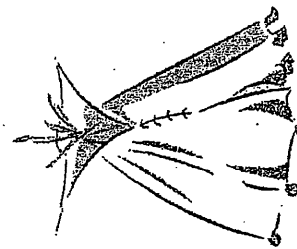
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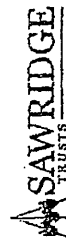
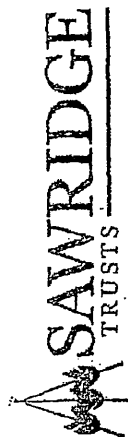
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47-Child and Youth Benefit Pamphlet.pdf
17/06/2013

CHILD AND YOUTH BENEFIT



214, 10310-124 Street NW NW
Edmonton, AB T5N 1R2

Office: 780-988-7723
Toll Free: 1-888-988-7723
Facsimile: 780-988-7724
E-mail: benefits@sawridgetrusts.ca

Child and Youth Benefit

Who is Eligible

For the purposes of this benefit, a beneficiary is defined as anyone who meets the requirements and has been accepted by the Trustees as an eligible beneficiary to either the Sawridge Band Intervivos Settlement or the Sawridge Trust. An eligible child will include any child either born to an eligible beneficiary, adopted through legal or customary adoption by an eligible beneficiary or for which an eligible beneficiary is the legal guardian.

How to Access the Benefit

In order to access this benefit, beneficiaries will have to fill out an application form provided by the Sawridge Trusts. Beneficiaries can obtain the application form by requesting it by email or mail from the trusts' Administrator. Once the completed form is submitted to the Trusts' Office, determination will be made as to the eligibility of the child for whom benefits are being requested and payment arrangements will be made if the child is eligible.

More Information

You can obtain more information on this and other Trusts' benefits by going to the Sawridge Trusts web site at www.sawridgetrusts.ca or by emailing, faxing or calling the Trusts Adminis-

Supplementary Benefit

All Sawridge Trusts are supplementary benefits. They are meant to support other benefits provided by Sawridge First Nation, the Federal Government, the Provincial Government and the community. Where another similar benefit exists, it must be accessed first.

Sawridge Trusts benefits are only available as long as the Trusts have the resources to support these benefits.

The Benefit

The Child and Youth Benefit provides an annual amount of up to \$10,000 to assist with the costs associated with caring or educating the special needs child on a reimbursement basis or pre-paid services basis.

The Benefit also provides annual amount of up to \$8,500 to assist with child care costs for a child without any special need on a reimbursement basis or pre-paid services basis.

47-Child and Youth Benefit Pamphlet.pdf

trator at the telephone numbers and address provided on the back of this pamphlet.



The Sawridge Trusts Tipi

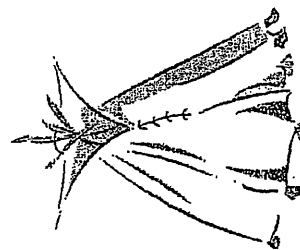
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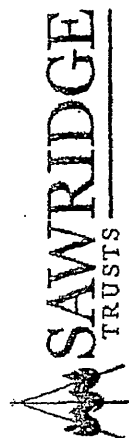
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47-Compassionate Care and Death Benefit Pamphlet.pdf
19 August 2010

COMPASSIONATE CARE AND DEATH BENEFIT



801, 4445 Calgary Trail NW
Edmonton, AB T6H 5R7

Office: 780-988-7723

Toll Free: 1-888-988-7723

Facsimile: 780-988-7724

E-mail: benefits@sawridgetrusts.ca

Compassionate Care and Death Benefit

other suitably priced hotel accommodations. Costs will be covered only as long as the ill family member is confined to a hospital in a distant location.

Death Benefit

In the event of the death of a family member—as defined under **Who is Eligible** section below—the Trusts will assist in covering funeral costs including the cost of the wake, the cost of the funeral, the cost of burial and a headstone and the cost of a reception after the funeral up to a maximum of \$12,000 per incident.

If the person was eligible for the Canada Pension Plan Death Benefit of up to \$2,500, this amount shall be used first. If other sources of funding are available, these will be used first.

Who is Eligible

For the purposes of this benefit, an eligible beneficiary is any person who has been confirmed by the Board of Trustees of the Sawridge Trusts as a beneficiary under the rules of the Trusts.

A family member of an eligible beneficiary includes:

- a child of the beneficiary or of her/his current, co-habiting spouse or common-law partner, the current, co-habiting spouse or common-law partner of the beneficiary;
- the father or mother or his/her partner of either the beneficiary or her/his current co-habiting spouse or common-law partner;
- brothers, sisters, stepbrothers or step sisters of either the beneficiary or her/his current, co-habiting spouse or common-law partner;
- grandparents or step grandparents of either

Supplementary Benefit

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Sawridge Trusts benefits are only available as long as the Trusts have the resources to support these benefits.

Compassionate Care Benefit

This benefit provides for travel, meals and accommodation costs for the beneficiary and her/his immediate family in the event of a serious or life-threatening illness resulting in hospital confinement or two weeks or more of intense home care of a family member—as defined under **Who is Eligible** section below—of an eligible beneficiary. The maximum amount covered is up to \$6,000 per incident and up to a lifetime maximum of \$60,000.

Travel costs are covered from the home of the eligible beneficiary to the place where the family member is being treated. If hotel accommodation is required for the beneficiary and his family at this location, this cost is also covered. If a Sawridge Inn exists at this location, arrangements will be made for the beneficiary to stay at the Sawridge Inn and costs will be billed directly to the beneficiary. If the beneficiary is not at the location, accommodation will be arranged in

the beneficiary or her/his current co-habiting spouse or common-law partner;

• grandchildren or step-grandchildren of either the beneficiary or her/his current, co-habiting spouse or common-law partner; or

• son-in-law or daughter-in-law of either the beneficiary or her/his current, co-habiting spouse or common-law partner.

How to Access the Benefit

In either case, illness or death, first call the Trusts' Administrator at the numbers on the back of this pamphlet to inform him of the incident and he will inform you of the requirements. If he cannot be reached, leave a message and your call will be returned as soon as possible.

1. Keep all receipts for expenses—meals purchased, gasoline and oil purchased, parking costs and hotel costs at the time of the incident.

2. Submit these receipts by mail or in-person to the Trusts' Administrator at the address on the back of this pamphlet along with information about the incident on a separate piece of paper including:

- Name of Eligible Beneficiary
- Date(s)
- Persons involved
- List of Expenses Claimed

More Information

You can obtain more information on this and other Trusts' benefits by going to the Sawridge Trusts web site at www.sawridgetrusts.ca or by

The Sawridge Trusts Tipi

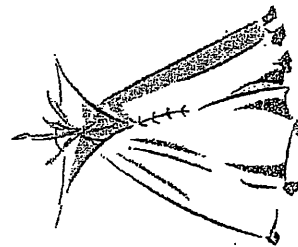
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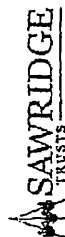
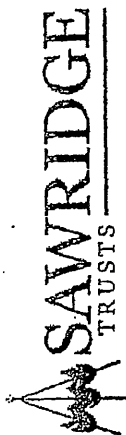
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47-Senior's Support Benefit Pamphlet.pdf
10 March 2011

SENIORS' SUPPORT BENEFIT



801, 4445 Calgary Trail NW
Edmonton, AB T6H 5R7

Office: 780-988-7723

Toll Free: 1-888-988-7723

Facsimile: 780-988-7724

E-mail: benefits@sawridgetrusts.ca

Senior's Support Benefit

Without extra financial support from the family or the community, many seniors are faced with a poorer diet and a very restricted social life.

While living costs for most seniors go down once they no longer are working, for many indigenous seniors, these costs may not go down because they often assist in raising their grandchildren.

The Sawridge Trusts Seniors' Support Benefit is meant to provide some relief to these disadvantaged persons in our community.

Supplementary Benefit

All Sawridge Trusts are supplementary benefits. They are meant to support other benefits provided by Sawridge First Nation, the Federal Government, the Provincial Government and the community. Where another similar benefit exists, it must be accessed first.

Sawridge Trusts benefits are only available as long as the Trusts have the resources to support these benefits.

Monthly Income Benefit

A monthly cash disbursement of \$2,000 effective 1 April 2011 is made to each Senior to assist them by supplementing other senior's income benefits like the Old Age Pension and Canada Pension Plan. This benefit is meant to assist with cost-of-living, transportation and home maintenance expenses.

Seniors Economically Disadvantaged

Many seniors in Canada are economically disadvantaged. Indigenous seniors are among the most disadvantaged in this group.

Once they are no longer able to work, seniors must either rely on money that they have saved while they were working or employee pensions. If the senior has no savings or pension, Old Age Pension and the Canada Pension Plan is the only money left to support the senior's living costs.

the Board of Trustees of the Sawridge Trusts as a beneficiary under the rules of the Trusts and who has attained the age of 65 years.

More Information

You can obtain more information on this and other Trusts' benefits by going to the Sawridge Trusts web site at www.sawridgetrusts.ca or by emailing, faxing or calling the Trusts Administrator at the telephone numbers and address provided on the back of this pamphlet.



Who is Eligible

For the purposes of this benefit, an eligible beneficiary is any person who has been confirmed by

The Sawridge Trusts Tipi

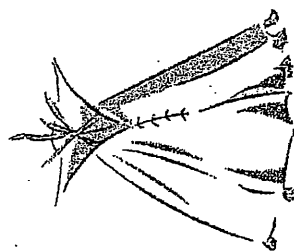
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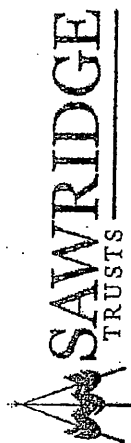
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47-Personal Development and Alternative Health Benefit Pamphlet.pdf
10 March 2014

PERSONAL DEVELOPMENT
AND ALTERNATIVE
HEALTH BENEFIT



214, 10310-124 Street NW
Edmonton, AB T5N 1R2

Office: 780-988-7723
Toll Free: 1-888-988-7723
Facsimile: 780-988-7724
E-mail: benefits@sawridgetrusts.ca

Personal Development and Alternative Health Benefit

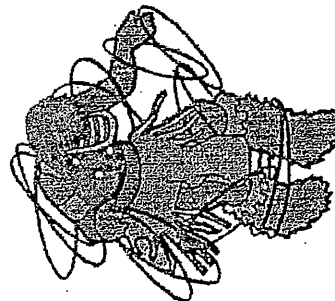
2. Submit these receipts by mail or in-person to the Trusts' Administrator at the address on the back of this pamphlet along with a separate piece of paper including:

- Name of Eligible Beneficiary
- A Description of the Service Claimed
- List of Expenses Claimed and Dates Services Were Provided

Arrangements can also be made for the Trusts to pay the service provider directly provided that eligibility of the service and of the beneficiary has been determined ahead of time and provided that the service provider is willing to bill the Trusts directly.

More Information

You can obtain more information on this and other Trusts' benefits by going to the Sawridge



Trusts website at www.sawridgetrusts.ca or by emailing, faxing or calling the Trusts Administrator at the telephone numbers and address provided on the back of this pamphlet.

tional healer or elder,

- treatment services from a recognized, mental health or addictions treatment centre,
- recognized fitness or nutrition counselling programs,
- recognized self-esteem building programs,
- vitamins, minerals, medicinal herbs, special food supplements,
- visits to alternative health practitioners such as naturopaths, osteopaths, homeopaths, chiropractors, massage therapists, reiki therapists, acupuncturists, kinesiologists, shiatsu therapists, herbalists, traditional indigenous healers, sweat lodges, and the like.
- in the case of visits to traditional healers, the beneficiary will provide an itemized list of the expenses incurred for the visit.

Who is Eligible

For the purposes of this benefit, an eligible person includes anyone who has been confirmed by the Board of Trustees of the Sawridge Trusts as a beneficiary under the rules of the Trusts as well as their dependants.

How to Access the Benefit

The annual allowance will not be paid directly to the eligible beneficiary. The beneficiary will first have to submit receipts for eligible expenses listed under The Benefit above for reimbursement.

To claim the benefit, the beneficiary should:

1. Get a receipt for every expense they intend to claim from the person, store or company providing a service.

Supplementary Benefit

All Sawridge Trusts are supplementary benefits. They are meant to support other benefits provided by Sawridge First Nation, the Federal Government, the Provincial Government and the community. Where another similar benefit exists, it must be accessed first.

Sawridge Trusts benefits are only available as long as the Trusts have the resources to support these benefits.

If services requested under the Personal Development and Alternative Health Benefit duplicate other benefits provided by the Sawridge Trusts through other programs, reimbursement for these services will not be provided under the Personal Development and Alternative Health Benefit until these other benefits have been expended first.

The Benefit

In order to promote the health and well-being of the beneficiaries and their dependants, the Sawridge Trusts will provide an annual allowance of up to \$2,000 per person. Benefits will be paid upon submission of receipts for expenditures or by payment of invoices from the supplier up to the maximum amount under the benefit.

Eligible expenditures include:

- personal or family counselling provided by a certified professional and on the condition that the beneficiary provides a receipt for the service.

The Sawridge Trusts Tipi

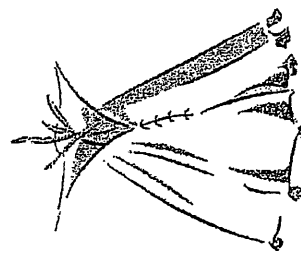
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47-Income Replacement Benefit Pamphlet.pdf
14 March 2013

INCOME
REPLACEMENT
BENEFIT



214, 10310-124 Street NW NW
Edmonton, AB T5N 1R2

Office: 780-988-7723
Toll Free: 1-888-988-7723
Facsimile: 780-988-7724
E-mail: benefits@sawridgetrusts.ca

Income Replacement Benefit

received in the month immediately preceding the illness requiring time-off up to a maximum of \$2,500.00 per month. The benefit is only provided for two (2) months and up to an annual maximum of \$5,000.00 per person.

Who is Eligible

For the purposes of this benefit, an eligible beneficiary is any person who has been confirmed by the Board of Trustees of the Sawridge Trusts as a beneficiary under the rules of the Trusts who has attained the age of 18 years and who is employable.

How to Access the Benefit

The beneficiary will first have to submit a physician's note to the Trusts' Administrator indicating when the time-off period begins and ends and the reason for the sick leave being requested. In addition, the beneficiary will have to provide copies of pay slips for the past month indicating the level of income immediately preceding the period of sick leave.

More Information

You can obtain more information on this and other Trusts' benefits by going to the Sawridge Trusts web site at www.sawridgetrusts.ca or by emailing, faxing or calling the Trusts Adminis-

Supplementary Benefit

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Sawridge Trusts benefits are only available as long as the Trusts have the resources to support these benefits.

The Benefit

The Income Replacement Benefit is meant to replace income for beneficiaries who have to take time-off from work in order to recover and obtain treatment for physical or mental health conditions, including addictions.

The benefit only covers those persons who are regularly employed but who are not covered for sick leave by their employer or by Employment Insurance Sick Benefits and who have no other source of income during times of illness.

47-Income Replacement Benefit Pamphlet.pdf

The benefit will provide up to 80% of the salary

trator at the telephone numbers and address provided on the back of this pamphlet.



The Sawridge Trusts Tipi

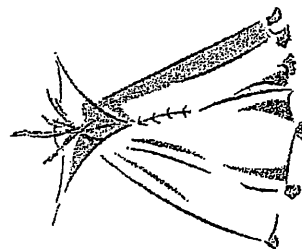
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47-Cash Disbursement Benefit Pamphlet.pdf

CASH DISBURSEMENT BENEFIT



801, 4445 Calgary Trail NW
Edmonton, AB T6H 5R7

Office: 780-988-7723

Toll Free: 1-888-988-7723

Facsimile: 780-988-7724

E-mail: benefits@sawridgetrusts.ca

Cash Disbursement Benefit

Supplementary Benefit

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Sawridge Trusts benefits are only available as long as the Trusts have the resources to support these benefits.

The Benefit

The Sawridge Trusts have established a "One Time Only Good Faith Cash Disbursement" to be made to each of the identified and approved adult beneficiaries of either Trust.

A single cash disbursement of \$2,500 will be to each adult beneficiary who is 18 years of age and older.

Only one payment of \$2,500 will be made to each beneficiary for this benefit regardless of whether the beneficiary is a member of one or both Trusts.

A7-Cash Disbursement Benefit Pamphlet.pdf
Minor beneficiaries under 18 years of

age will not be eligible for this benefit until they reach the age of 18 years of age and apply. Payments will be honoured automatically when these beneficiaries reach the age of majority, subject to available funds.

Payments to newly identified beneficiaries will be made as soon as that beneficiary has been authorized by the Board of Trustees and registered with the Trusts' Office.

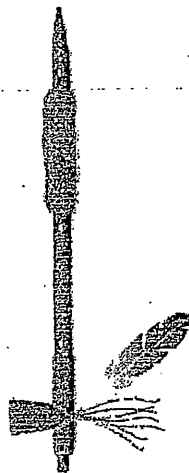
While other cash disbursements may be made available to beneficiaries in the future, it is not the intent of the Trusts to make regular cash disbursements at this time.

Who is Eligible

For the purposes of this benefit, an eligible beneficiary is any person who has been confirmed by the Board of Trustees of the Sawridge Trusts as a beneficiary under the rules of the Trusts and who has attained the age of 18 years.

How to Access the Benefit

Beneficiaries do not need to do anything



to receive this benefit. It will be issued automatically by the Trusts' Office.

If you are eligible for this benefit and have not received payment, you can contact the Trusts' Office at the address on the back of this pamphlet for more information.

More Information

You can obtain more information on this and other Trusts' benefits by going to the Sawridge Trusts web site at www.sawridgetrusts.ca or by emailing, faxing or calling the Trusts Administrator at the telephone numbers and address provided on the back of this pamphlet.

Other Benefits

The Sawridge Trusts have developed or are developing a number of benefits that support the growth and development of beneficiaries. You may be interested in receiving information on:

- Compassionate Care and Death Benefit
- Senior's Support Benefit
- Personal Development Benefit
- Educational Support Benefit

Introduction

Under the Inter Vivos Settlement Agreement dated 15 April 1985, the following is the definition of a beneficiary:

"Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 454 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th 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 15th day of April 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15th day of April, 1982, shall be regarded as "Beneficiaries" for the purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of the execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band 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;



PAUL BUJOLD - March 7, 8, 9, 10, 2017
Questioned by Ms. Osualdini

COPY

1 **COURT FILE NUMBERS:** 1103 14112 and 1403 04885
2
3 **COURT:** COURT OF QUEEN'S BENCH OF ALBERTA
4
5 **JUDICIAL CENTRE:** EDMONTON
6
7 IN THE MATTER OF THE TRUSTEE ACT,
8 R.S.A. 2000, C. T-8, AS AMENDED, and
9 IN THE MATTER OF THE SAWRIDGE
10 BAND INTER VIVOS SETTLEMENT
11 CREATED BY CHIEF WALTER PATRICK
12 TWINN, OF THE SAWRIDGE INDIAN
13 BAND, NO. 19, now known as
14 SAWRIDGE FIRST NATION, ON APRIL 15,
15 1985 (the "1985 Trust"),
16
17 AND
18
19 IN THE MATTER OF THE SAWRIDGE
20 TRUST CREATED BY CHIEF WALTER
21 PATRICK TWINN, OF THE SAWRIDGE
22 INDIAN BAND NO. 19, AUGUST 15,
23 1986 (the "1986 Trust")
24
25 **APPLICANT:** CATHERINE TWINN, as Trustee for
26 the 1985 Trust and the 1986 Trust
27
28 **RESPONDENTS:** ROLAND TWINN, BERTHA
29 L'HIRONDELLE, EVERETT JUSTIN TWIN
30 AND MARGARET WARD, as Trustees
31 for the 1985 Trust and the
32 1986 Trust

33 -----
34 Questioning on Affidavits of PAUL BUJOLD,
35 sworn the 15th day of February 2017 C.E., held at the
36 offices of McLennan Ross LLP, Edmonton, Alberta,
37 on the 7th, 8th, 9th, and 10th days of March 2017 C.E.
38 -----



PAUL BUJOLD - March 9, 2017

Questioned by Ms. Osualdini

1 -----
2 **Appearances:**
3
4 Ms. C.C. Osualdini For the Applicant
5 D. Risling, Esq. For the Applicant
6 Ms. N.E. Cumming, Q.C. For the Respondents
7
8 Ms. K. McLeod, CSR(A), RPR Official Court Reporter
9

10 -----
11 **[QUESTIONING COMMENCED AT 9:05 A.M., MARCH 9, 2017]**

12 **PAUL BUJOLD, RE-AFFIRMED, QUESTIONED BY MS. OSUALDINI:**

13 Q. MS OSUALDINI: Good morning, Mr. Bujold.

14 A. Good morning.

15 Q. Today is a continuation of the examination on your
16 affidavits in this matter. You confirm that you
17 have taken your affirmation this morning and it's
18 binding on your conscience?

19 A. Yes.

09:05



PAUL BUJOLD - March 9, 2017
Questioned by Ms. Osualdini

11:52

12 Q. And I'm showing you a copy of an email dated
13 December 23rd, 2010, that appears to be from
14 Donovan Waters to yourself, Mr. Heidecker, and
15 Catherine Twinn, Clara Midbo, and
16 Chief Roland Twinn.

17 I'll just give you a second to read it.

18 A. Okay.

11:53

19 Q. Okay. So this email would have shortly followed the
20 December 2010 trustee meeting?

21 A. Yes.

22 Q. Okay. And in this email, Donovan states: [as read]
23 "For there's several purposes both
24 Band and trustees need to know who
25 are the Band members and to know also
26 there is in place an overhauled
27 process for the future appointment of



PAUL BUJOLD - March 9, 2017
Questioned by Ms. Osualdini

1 Band members."

2 A. Yes.

3 Q. Was there a discussion at the December 2010 trustee
4 meeting about overhauling process for the future
5 appointment of Band members?

6 A. There was a discussion, and there was -- as I said,
7 there was a letter that went from the trustees to
8 the Sawridge Council about that and how it could be
9 done.

11:54 10 Q. But was there more than that? Were the trustees
11 advised that there would be -- were the trustees
12 provided with information that the Band membership
13 process would be overhauled?

14 A. No.

15 Q. So is the information from Donovan Waters not what
16 was discussed at the trustee meeting?

17 A. What he's saying is this -- the trustees need to
18 know who the Band members are and to know who the --
19 that there is also -- there is in place an
11:54 20 overhauled process. So I -- you know, that doesn't
21 mean that they know that there -- that process
22 because we received no response from the
23 First Nation.

24 Q. And no steps were taken to follow up with the
25 First Nation?

26 A. That's not true.

27 Q. Okay.



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1 A. A letter was sent -- I just said --

2 Q. I know.

3 A. -- two or three times now, a letter was sent from
4 the trustees to the Sawridge First Nation Council.

5 Q. To which there was no response.

6 A. To which there was no response. And then I inquired
7 later with Mike McKinney, who is the administrator,
8 if the matter ever been considered, and were we
9 going to expect a response. At that point, he said
10 that they hadn't considered the letter.

11 Q. And have any further steps been taken to follow up
12 on the letter?

13 A. No.

14 MS. OSUALDINI: I know we need to get
15 highlighting off that, but let's mark that --

16 A. Is this an exhibit?

17 MS. OSUALDINI: Yeah. That will be the next
18 exhibit, and I'll get a copy without highlighting.

19 EXHIBIT - 10 - EMAIL DATED
20 DECEMBER 23, 2010, FROM
21 DONOVAN WATERS TO PAUL BUJOLD,
22 BRIAN HEIDECKER, CATHERINE TWINN,
23 CLARA MIDBO, AND CHIEF ROLAND TWINN.

11:55





Paul Bujold

From: Donovan Waters [donovan.waters@shaw.ca]
Sent: December-23-10 12:50 AM
To: Brian Heidecker; Catherine Twinn; Clara Midbo; Roland Twinn; Paul Bujold
Subject: Trustees Meeting December 21, 2010

Exhibit: 10
 Date: March 9, 2017
 Witness: PAUL BUJOLD
 Katie McLeod, Court Reporter

Trustees and Guests,

May I be allowed to support our Chairman's closing remarks, and, as counsel to the Trustees, to say how encouraged I was with the conclusion to which the Trustees came on the 'merger' question, and their choice of the option to work with the Band on the 'certainty' question. Co-operation between the Trustees and the Band in my view is indispensable. For their several purposes both Band and Trustees need to know who are the Band members and to know also there is in place an overhauled process for the future appointment of Band members.

The 1985 and 1986 Trusts

For the Trustees' consideration I will now start framing a court application. We need to determine whether the 1985 Trust definition of "beneficiaries" is valid under the relevant legislation and, if so, whether it nevertheless fails for uncertainty or public policy objection. If the court rules in favour of the existing definition, then we would apply the terms of the ruling made by the court, pending further consideration of what other steps, if any, we wish to take. If, as I would think likely, the definition is ruled against on one or more of those grounds, we then consider how the 1986 Trust definition can be adopted for the 1985 Trust, ensuring that all the existing 1985 beneficiaries are grandfathered into the 1986 Trust.

'Certainty' of Trust beneficiaries

The Band is the body with legal authority to decide who shall be Band members, but we will now explore how we have discussions with the Sawridge community, the Chief and Band Council. We need to fashion a criteria-based process, more timely in reaching decisions, whereby Band membership recommendations further to the Code are made to the Band. I look forward to giving any assistance the Trustees are of the opinion I can give. Once we have a discussion formula in place, with which everyone is satisfied, I am certain we will make progress.

Best wishes for the Season to everyone,

Donovan Waters

NB. Walter Felix Twin and Bertha L'Hirondelle : by facsimile

Email Donovan Waters to Trustees, re Trustees Meeting Dec. 21/10
 10/12/23



COURT FILE NO.

1403 04885

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, R.S.A.
2000, c. T-8, AS AMENDED, andIN THE MATTER OF THE SAWRIDGE BAND INTER
VIVOS SETTLEMENT, APRIL 15, 1985 (the "1985
Trust") and THE SAWRIDGE TRUST, AUGUST 15,
1986 (the "1986 Trust")

Clerk's Stamp:



APPLICANT

CATHERINE TWINN, as Trustee for the 1985 Trust and the 1986 Trust

RESPONDENTS

ROLAND TWINN, BERTHA L'HIRONDELLE, EVERETT JUSTIN TWIN AND MARGARET
WARD, as Trustees for the 1985 Trust and the 1986 Trust

DOCUMENT

APPLICATION FOR ADVICE AND DIRECTIONADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENTMcLENNAN ROSS LLP
#600 West Chambers
12220 Stony Plain Road
Edmonton, AB T5N 3Y4Lawyer: Karen A. Platten, Q.C.
Telephone: 780-482-9200
Fax: 780-481-9102
Email: kplatten@mross.com
File No.: 281946**NOTICE TO RESPONDENT(S): ROLAND TWINN, BERTHA L'HIRONDELLE and EVERETT
JUSTIN TWIN, as Trustees for the 1985 Trust and the 1986 Trust**

This application is made against you. You are a Respondent.

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

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

Date: Wednesday, October 1, 2014**Time:** 10:00 a.m.**Where:** Law Courts, 1A Sir Winston Churchill Square, Edmonton, AB T5J 0R2**Before Whom:** A Justice in Chambers

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. Catherine Twinn, as Trustee of the 1985 Trust and as a matter of the administration of the Trusts, seeks the advice and direction of this Court pursuant to Section 43(1) of the *Trustee Act* as to the eligibility of Everett Justin Twin to be appointed as a Trustee of the 1985 Trust and, if appropriate, the removal of Everett Justin Twin as a Trustee.
2. Further, Catherine Twinn, as Trustee of the 1985 Trust, seeks the assistance of this Court in the appointment of appropriate replacement Trustees for Everett Justin Twin and for Clara Midbo pursuant to Section 16(1) of the *Trustee Act*.
3. Catherine Twinn, as Trustee of the 1985 Trust and the 1986 Trust, seeks clarification the Trust Deeds to ensure their proper administration in accordance with Settlor intentions, so that the process for Trustee selection is fair, transparent and appropriate going forward.
4. Catherine Twinn, as Trustee of the 1985 Trust and the 1986 Trust, seeks the direction of the Court respecting the proper composition of the Board of Trustees, including the elimination or reduction of the number of elected officials of the Sawridge Indian Band and the appointment of 2 outside, independent professional Trustees on terms the Court approves should any elected officials remain as Trustees.
5. Catherine Twinn, as Trustee of the 1985 Trust and of the 1986 Trust, seeks her costs, on a solicitor-client basis, to McLennan Ross for advise as a Trustee, this Application and the previous Application before Justice Nielson on May 16th14.
6. Catherine Twinn seeks the Court's Direction that her professional time and costs in dealing with these issues be heard by an Assessment officer and paid as allowed by the Trust Deed.

Grounds for making this application:

7. On January 21, 2014, two Deeds of Resignation and Appointment of Trustees were made. They provided that Walter Felix Twin would resign as Trustee of both the 1985 Trust and the 1986 Trust and that Everett Justin Twin would be appointed Trustee of the same. Due to her concerns regarding Everett Justin Twin's eligibility as a Trustee, Catherine Twinn did not sign the Deeds.
8. The 1985 Trust requires a minimum of five Trustees, no more than two of whom may be non-Beneficiaries. At the time of Everett Justin Twin's appointment, the two non-Beneficiary Trustee positions were filled by Bertha L'Hirondelle and Clara Midbo. Walter Felix Twin is a Beneficiary and therefore his position was to be filled by a Beneficiary Trustee.
9. Under the 1985 Trust, Beneficiaries are defined as those people who, at any particular time, would qualify as members of the Sawridge Indian Band pursuant to the provisions of the *Indian Act*, RSC 1970, c I-6 as they existed on April 15, 1982. The 1985 Trust also states that no person who fails to meet the criteria but who later becomes entitled to membership in the Sawridge Indian Band due to amendments to the *Indian Act* shall be considered a Beneficiary.
10. Evidence suggests that, owing to his status as the illegitimate child of an Indian woman, Everett Justin Twin is not a Beneficiary of the 1985 Trust as he was not entitled to be registered as an Indian or to become a member of the Sawridge Indian Band according to the criteria contained in Section 11 of the *Indian Act*, RSC 1970 c I-6 as it existed on April 15, 1982.

11. Catherine Twinn, as Trustee of the 1985 Trust, wishes for the Trust to be administered appropriately according to the wishes of the Settlor and for this reason seeks the Court's advice and direction on the matter.
12. Clara Midbo was a Trustee of the 1985 Trust until her death on July 13, 2014.
13. Given the difficulties with choosing a replacement Trustee for Walter Felix Twin, it would seem appropriate that this Court determine who the replacement Trustee be to replace Clara Midbo.

Material or evidence to be relied on:

14. The Affidavit of Catherine Twinn, dated September 24th, 2014.
15. The Opinion of Larry Cooper, dated July 2, 2014.
16. Such further and other materials as Counsel may advise and this Honourable Court may allow.

Applicable rules:

17. *Alberta Rules of Court* 1.2, 1.4, 3.2

Applicable Acts and Regulations:

18. *Trustee Act*, RSA 2000, c T-8.
19. *Indian Act*, RSC 1970, c I-6.

Any irregularity complained of or objection relied on:

20. N/A.

How the application is proposed to be heard or considered:

21. The application is to be heard on ___October 1, 2014

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

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 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.

